

European Communities

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DOCUMENT 1-1356/83

Report

drawn up on behalf of the Legal Affairs Committee

on the proposal from the Commission of the European
Communities to the Council (Doc. 1-1213/82-COM(82)
861 final) for a Regulation on the security to be
given to ensure payment of a customs debt

Rapporteur : Mr A.R. TYRRELL

By letter of 28 January 1983, the President of the Council of the European Communities asked the European Parliament, pursuant to Articles 43 and 235 of the EEC Treaty, to give its opinion on the proposal from the Commission of the European Communities to the Council for a regulation on the security to be given to ensure payment of a customs debt.

On 7 February 1983 the President of the European Parliament referred this proposal to the Legal Affairs Committee as the committee responsible and to the Committee on Budgets, the Committee on Economic and Monetary Affairs and the Committee on External Economic Relations for an opinion.

At its meeting of 23 and 24 February 1983 the Legal Affairs Committee appointed Mr Tyrrell rapporteur.

The committee considered the Commission's proposal and this draft report at its meetings of 3 and 4 November 1983 and 25 and 26 January 1984.

At the latter meeting, the committee decided with twelve votes in favour and two abstentions to recommend to Parliament that it approve the Commission's proposal with the following amendments.

The committee adopted the motion for a resolution as a whole unanimously.

The following were present for the vote; Mr LUSTER, vice-chairman and acting chairman; Mr TYRRELL, rapporteur; Mr ALFONSI, Mr DE GUCHT, Mr DEL DUCA, Mr GEURTSSEN, Mr MEGAHY, Mrs Tove NIELSEN, Mr OUZOUNIDIS, Mr PETERS, Mr PROUT, Mr SIEGLERSCHMIDT, Mrs VAYSSADE, Mr VETTER and Mr VIE.

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The opinions of the Committee on Budgets and the Committee on Economic and Monetary Affairs are attached.

The Committee on External Economic Relations decided not to draw up an opinion.

This report was tabled on 1 February 1984.

The deadline for the tabling of amendments to this report appears in draft agenda for the part-session at which it will be debated.

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The Legal Affairs Committee hereby submits to the European Parliament the following Amendments to the Commission's proposal and Motion for a Resolution together with Explanatory Statement:

Proposal for a regulation on the security to be given to ensure payment of a customs debt

Text proposed by the Commission
of the European Communities¹

Amendments tabled by the
Legal Affairs Committee

Preamble and recitals unchanged

Article 1

Article 1

1. This Regulation lays down the rules governing the security to be given, in accordance with customs rules, to ensure, in whole or in part, payment of a customs debt.

Unchanged

2. For the purposes of this Regulation:

(a) "customs rules" means all the customs and agricultural provisions relating to the import, export, transit and storage of goods traded between Member States and between the latter and non-member countries, whether they be Community provisions or national provisions adopted in implementation thereof;

Unchanged

(b) "customs debt" means the obligation on a natural or legal person to pay the amount of the import duties (customs debt on importation) or export duties (customs debt on exportation) which apply under the provisions in force to goods liable to such duties;

Unchanged

Text proposed by the Commission
of the European Communities

Amendments tabled by the
Legal Affairs Committee

(c) "import duties" means
customs duties and
charges having equivalent
effect, and agricultural
levies and other import
charges laid down under the
common agricultural policy or
under the specific arrangements
applicable to certain goods
resulting from the processing
of agricultural products;

Unchanged

(d) "export duties" means
agricultural levies
and other export charges laid
down under the common
agricultural policy or under
the specific arrangements
applicable to certain goods
resulting from the processing
of agricultural products;

Unchanged.

(e) "competent authority"
means any authority
competent to apply customs
rules within the meaning of
subparagraph (a), even if
that authority is not part
of the customs administration.

Amendment NO. 1

(e) bis (new)

"public authority" means an
authority which exercises stat-
utory powers within the framework
of the State.

Article 2

Article 2

Paragraphs 1 and 2 unchanged

Amendment NO. 2

3. The competent authority may
waive the requirement for
provision of security where
the amount of the customs
debt in question does not
exceed 100 ECU.

3. The competent authority may
waive the requirement for
provision of security where
the amount of the customs debt
in question does not exceed ed
500 ECU.

Text processed by the Commission
of the European Communities

Article 3

1. Where customs rules provide that the requirement of security is optional, such security shall be required only in so far as a customs debt which has been or may be incurred is not certain to be paid within the prescribed time limit.
Where the security referred to in the preceding subparagraph is not required, the competent authority may nevertheless ask the person referred to in Article 2(1) for an undertaking setting out the obligations which this person is legally obliged to fulfil.

Amendments tabled by the
Legal Affairs Committee

AMENDMENT NO. 3

Article 3

1. Where customs rules provide that the requirement of security is optional, such security shall be required only in so far as a customs debt which has been or may be incurred is not certain to be paid within the prescribed time limit.

In the case of security referred to in the preceding subparagraph (three words deleted), the competent authority may (one word deleted) ask the person referred to in Article 2(1) for an undertaking setting out the obligations which this person is legally obliged to fulfil.

Articles 3(2) to 8 unchanged

AMENDMENT NO. 4

Article 9

1. The guarantor shall undertake jointly and severally with the debtor to pay the secured amount of a customs debt which falls to be paid. The guarantor must have his normal residence or an establishment in the Member State in which the security is given and must be approved by the competent authority of that Member State.

Article 9

1. The guarantor shall undertake jointly and severally with the debtor to pay the secured amount of a customs debt which falls to be paid. The guarantor must have his normal residence or an establishment in the Community and, subject to the provisions of the Treaty concerning freedom to supply services, must be approved by the competent authority of the Member State in which the guarantee is provided.

Paragraph 2 unchanged

Text proposed by the Commission
of the European Communities

Amendments tabled by the
Legal Affairs Committee

Amendment No. 5

Article 10

Article 10

1. The person required to give security shall be free to choose between the types of security laid down in Article 7.

1. Unless otherwise provided for
in specific customs regulations,
the person required to give security shall be free to choose between the types of security laid down in Article 7.

However, the competent authority may refuse to accept the type of security proposed where it is incompatible with the proper functioning of the customs procedure concerned.

Articles 10(2) to 19 unchanged

MOTION FOR A RESOLUTION

closing the procedure for consultation of the European Parliament on the proposal from the Commission of the European Communities to the Council for a regulation on the security to be given to ensure payment of a customs debt

The European Parliament,

- having regard to the proposal from the Commission to the Council¹
 - having been consulted by the Council pursuant to Article 43 and 235 of the EEC Treaty (Doc. 1-1213/82),
 - having regard to the report of the Legal Affairs Committee and the opinions of the Committee on Budgets and the Committee on Economic and Monetary Affairs (Doc. 1-1356/83),
 - having regard to the vote on the Commission's proposal,
1. Welcomes the harmonization of the conditions under which security may be given to ensure payment of a customs debt;
 2. Recognises that only when these conditions are common to all the Member States will there be equal treatment of traders throughout the Community;
 3. Welcomes the exemption from the requirement of giving security in the case of public authorities, as well as the limitation of the amount of the security to the actual amount of the customs debt;
 4. Welcomes the granting of the right of the competent authorities to waive the requirement for provision of security where the amount of the customs debt does not exceed 500 ECU.
 5. Points out that the requirement in Article 9 of the draft regulation that the guarantor must have his normal residence or an establishment in the member State in which the security is required would be incompatible with the provisions of the Treaty concerning the freedom to provide services (Articles 59-66) and therefore it is recommended that the guarantor should be able to have his normal residence or establishment anywhere in the Community.
 6. Regrets that the definition of when the competent authority may refuse to accept the type of security proposed by the trader is too vague and may lead to unequal treatment of traders.
 7. Subject to the amendments and to the reservations expressed above, approves the proposal for a regulation.
 8. Instructs its President to forward to the Council and the Commission of the European Communities, as Parliament's opinion, the Commission's proposal as voted by Parliament and the corresponding resolution.

¹ OJ C 30, 4.2.83, p. 11

B.
EXPLANATORY STATEMENT

I. Introduction

(a) Previous Community action

1. - Council Directive 79/623/EEC¹ on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt;
- Proposal for a Council Regulation determining the person liable for payment of a customs debt; submitted by the Commission to the Council on 14 January 1983; submitted by the Council to the European Parliament for consultation on 28 January 1983; the committee responsible, the Legal Affairs Committee, appointed a rapporteur (Mr D'Angelosante) at its meeting of 23 and 24 February 1983.

(b) Objectives of the proposed regulation

2. The proposal aims to harmonize the conditions under which security for customs debts is given, the computation of the amount of the security and the use to which the security may be put by the competent authorities.
3. At present, the absence of Community rules laying down criteria governing these three areas leads to inequality of treatment of traders within the Common Market, depending on the Member State in which they carry on their activities.

(c) Legal basis for the regulation

4. The security to be given to ensure payment of a customs debt concerns the provisions of the EEC Treaty relating to the common agricultural policy and the customs union. However, these Treaty provisions do not empower the Community institutions to adopt provisions on the security to be provided to ensure payment of a customs debt; therefore, it is necessary to base this Regulation on Articles 43 and 235 of the Treaty. This is a proper use of these Articles.

II. Observations on the text of the Proposal

5. There is not provided in the proposal a definition of 'public authority'. Since the Member States have varying definitions of public authorities, it is desirable that a common definition should be included in the regulation. It is suggested, therefore, that the definition contained in paragraph 10 of the Explanatory Memorandum accompanying the Commission's proposal (COM(82) 861 final, page 4) - "an authority which exercises statutory powers within the framework of the State" - be incorporated into Article 1 of the regulation.

¹ OJ L 179, 17 July 1979, page 31.

6. The right granted in Article 2 to the competent authority to waive the requirement for provision of the customs security where it does not exceed a threshold figure is to be welcomed, since it will result in a saving of administrative expense which would be unreasonable having regard to the size of the debt. However, this figure has been increased from 100 to 500 ECU in order to give this provision a greater scope for application.
7. The first subparagraph of Article 3(1) of the proposed regulation defines when the security need not be given where the customs rules provide that it is optional. The definition is very flexible with the possible result that abuse by the authorities and unequal treatment of traders could, in your rapporteur's opinion, occur. It was therefore suggested that whenever a competent authority demands payment of security where the customs rules provide that it is optional, the reasons for this decision must be given in writing to the trader on request in order to help prevent abuse by the authorities. The committee did not however accept this proposed amendment.
8. The second subparagraph of Article 3(1) provides that a written undertaking may be given as security where customs rules provide that the giving of security is not required. It is at present the practice in several Member States for the authorities to accept undertakings when the rules provide that security is required. This practice should be allowed to continue, since experience has shown that it saves administrative expense in suitable cases.
9. The provision in Article 4 is to be welcomed, and will save time and expense for all concerned.
10. At present, the customs rules of some Member States require the security to cover not only the amount of the debt, but also the amount of any pecuniary penalty that might be imposed as a result of an infringement by the trader. Other Member States impose no such obligation, and this is yet another source of unequal treatment within the Community. Happily, Article 5 removes this problem by providing that the security required may not exceed the exact amount of the customs debt.
11. As stated in paragraph 8 above, it is believed that a written undertaking by the trader should be a valid form of security in addition to the three set out in Article 7 of the proposed regulation. If the competent authorities were to investigate the credit worthiness of the trader and form the opinion that an undertaking would be sufficient, or if the amount of the debt were more than 100 ECU but still relatively small, it should in your rapporteur's opinion be possible for the trade to provide an undertaking that he will pay the customs debt, as is the practice in Denmark, the United Kingdom and Ireland. The committee did not, however, favour an amendment proposed to this effect.

12. Many banks do not have branches in all Member States and when a trader engages his bank to provide a guarantee for a customs debt in a country in which that bank has no branch, the practice is for it to provide this service through its correspondant bank in the country in question. The proposed regulation would prohibit this practice, since Article 9 requires the guarantor to have his normal residence or an establishment in the Member State in which the security is given. The result of this would be that a trader whose bank did not comply with this requirement would have to go to the trouble and expense of changing banks or opening an account at a bank which did have a branch in the relevant Member State, for the sole purpose of providing a guarantee. Therefore, it is suggested that Article 9 be amended to enable a security to be given where the guarantor has his normal residence or an establishment within the Community on condition that, subject to the Treaty provisions on the freedom to provide services, he is approved by the competent authorities of the Member State in which the security is given.
13. The first subparagraph of Article 10(1) permits the trader to choose the type of security he is to give, but the second subparagraph allows the competent authority to refuse to accept the type of security proposed by the trader "where it is incompatible with the proper functioning of the customs procedure concerned". This, in effect, allows the authorities to choose the type of security to be given rather than the trader. No examples of incompatibility are given and possible divergences of application in the different Member States could obviate the usefulness of the first subparagraph of the Article. Therefore, it is recommended that the second subparagraph be deleted, and that the first subparagraph be amended to allow limitations on this freedom of choice only by means of contrary provisions adopted within the framework of specific customs regulations.

OPINION OF THE COMMITTEE ON BUDGETS

Letter from the Chairman of the Committee to Mrs VEIL, Chairman of
the Legal Affairs Committee

Luxembourg, 17 June 1983

Subject:(a) a proposal for a regulation determining the persons liable for payment of a
customs debt (Doc. 1-1166/82 - COM(82) 792 final)

(b) a proposal for a regulation on the security to be given to ensure payment of
a customs debt (Doc. 1-1213/82 - COM (82) 861 final)

Dear Madam Chairman,

At its meeting of 16 June the Committee on Budgets considered the above
two proposals.

The committee found that these two Commission proposals primarily concern
legal problems on which it should not express an opinion.

The Committee on Budgets supports the efforts by the Commission of the
European Communities to harmonize gradually the establishment and recovery of
customs debts, particularly in view of the equality of Member States and of
Community citizens under the provisions governing customs duties, which are the
Community's own resources.

In this connection the Committee on Budgets has asked the Legal Affairs
Committee to study the possibility, when it comes to the next stage in harmonization,
of including fines for non-payment or late payment of customs duties in the
Community's own resources.

Yours sincerely,

(sgd) Erwin LANGE

The following were present at the vote ; Mr LANGE, Chairman; Mr NOTENBOOM, Vice-
chairman, Messrs BALFOUR, GABERT (deputizing for Mr ORLANDI), HERMAN
(deputizing for Mr RYAN), JACKSON, KELLET-BOWMAN, NEWTON-DUNN, PFENNIG,
PROTOPAPADAKIS, SCHON KONRAD and VAN ROMPUY (deputizing for Mr BARBAGLI).

OPINION

(Rule 101 of the Rules of Procedure)
of the Committee on Economic and Monetary Affairs

Draftsman: Mr ROGALLA

On 25 January 1983, the Committee on Economic and Monetary Affairs appointed Mr Dieter ROGALLA draftsman on Document 1-1166/82.

On 15/16 February 1983, the Committee on Economic and Monetary Affairs appointed Mr Dieter ROGALLA draftsman on Document 1-1213/82.

It considered the draft opinion at its meeting of 14, 15 and 16 June 1983 and adopted it unanimously.

Present: Mr MOREAU, chairman; Mr HOPPER and Mr DELEAU, vice-chairmen; Mr ROGALLA, draftsman (deputizing for Mr ROFFOLO); Mr BEAZLEY, Mr von BISMARCK, Mr DELOROZOY, Miss FORSTER, Mr de GOEDE, Mr HEINEMANN, Mr ALBERS (deputizing for Mr MIHR), Mr MÜLLER-HERMANN, Mr NYBORG, Mrs NIKOLAOU (deputizing for Mr PAPANTONIOU) and Mr VERGEER.

1. Council Directive 79/623/EEC of 25 June 1979¹ defines all the situations giving rise to a customs debt at Community level. Parliament approved this directive² which ought to make an important contribution to the establishment of the customs union.
2. The two Commission proposals under consideration^{3/4} fall logically within the framework of Directive 79/623/EEC which lays down a complete list of cases giving rise to a customs debt and is now to be supplemented by the introduction of Community regulations on the determination of the persons liable for payment of a customs debt³ and the security to be given to ensure payment of a customs debt⁴. These two proposals are closely interrelated since 'where the competent authority requires security to be given to ensure payment of a customs debt, such security shall be given by the person by whom that debt has been or may be incurred' (Art. 2 of Doc. 1-1213/82).
3. The Committee on Economic and Monetary Affairs feels that in considering this matter, and therefore also in drafting its opinion, it should concentrate primarily on the specifically economic aspects which fall within its terms of reference.
4. We should begin our examination of the two Commission proposals concerning the payment of a customs debt by considering their impact in terms of equal treatment for all economic operators in the EEC, the improvement of the economic function of import and export duties and the simplification of the assessment and collection of the own resources of the EEC by the authorities of the Member States.

A.

Proposal for a regulation determining the persons liable for payments of a customs debt (Doc. 1-1166/82)

5. The text of this proposal for a regulation deals separately with persons liable for a customs debt on importation and those liable for a customs debt on exportation but puts forward similar rules for both cases. This procedure is definitely the right one. The situations which give rise to a customs debt on importation are very similar to those which give rise to a customs debt on exportation although there are fewer instances of the latter and they occur less frequently.
6. It also draws a distinction between the release of goods for free circulation on the basis of a customs declaration and other cases giving rise to a customs debt on importation or exportation (non-fulfilment of an obligation laid down under EEC regulations).
7. In the more specific case of goods released for free circulation and exported on the basis of a customs declaration - which is the main source of customs debts on importation - the general principle put forward by the Commission that the person liable for the customs debt is the person in whose name the customs declaration is drawn up makes it possible to ensure equal treatment for economic operators in the EEC by contrast with the disparities between the current provisions in force in the Member States.

¹ OJ No. L 179 of 17 July 1979, page 31

² OJ No. C 238 of 11 October 1976, page 42

³ Doc. 1-1166/82

⁴ Doc. 1-1213/82

8. We should also approve the principle of joint and several liability of various persons liable for payment of a single customs debt contained in this proposal. By dispensing with the need for national authorities to exhaust every means of legal redress in proceedings against one debtor before being able to institute proceedings against another debtor, this provision would help avoid long delays in the collection of amounts due in respect of import and export duties and to transfer these sums to the Community budget within the periods prescribed.

B.

Proposal for a regulation on the security to be given to ensure payment of a customs debt (Doc. 1-1213/82)

9. A Community regulation in this area is a definite step in the right direction as regards the elimination of sources of unequal treatment of economic operators according to the Member State in which they carry out their professional activities. Specific texts forming part of Community customs regulations include provisions for security to ensure the payment of a customs debt on importation or exportation. This security may be compulsory where the customs debt has already been incurred, or optional in the case of the payment of a customs debt which is merely a possibility.
10. In the case of optional security, it is for the Member States to assess the need to provide security, according to their own criteria. At present, the arrangements for the provision of security, the calculation of the relevant amount and the ways in which it should be used are still covered by national provisions, which differ very widely, hence the need already stated to define Community parameters in this area.
11. Consideration of the mechanism proposed by the Commission suggests that the financial burden falling on economic operators as a result of requests for security will be quite substantial. Furthermore, this burden would vary according to the type of security used.
12. As regards the requirement of security, the text proposed by the Commission seems acceptable and represents a step in the right direction.
13. It is a good idea to include special provisions for not giving security when the person incurring or likely to incur a customs debt is a public administration. The solvency of public administrations cannot be called into doubt. In addition - and this is of considerable economic importance - Member States are not allowed to grant this exemption to public services or certain private undertakings operating in the national interest which would constitute unequal treatment in respect of the various economic operators.

14. In the case of the value of the security to be given, the rules laid down in the text under consideration are rightly based on the principle of solvency, i.e. the function of the security being to ensure payment of a customs debt which has been incurred or which is likely to be incurred.
15. However, Article 2(3) provides the competent authority with the possibility of waiving the requirement for provision of security where the amount of the debt does not exceed 100 ECU in view of the administrative burden of arranging and administering such security. The Committee on Economic and Monetary Affairs agrees in principle with this provision which is aimed at simplifying the administrative work of customs officials. It should be pointed out, however, that the amount proposed by the Commission in its text is so low that there seems to be little scope for applying this provision. The amount should therefore be raised to 500 ECU.
16. Furthermore the wording of Article 2(3) does not make it clear that it might be advisable not to request security even where this is compulsory and the amount fixed. It therefore seems appropriate to insert the word 'compulsory' before the word 'provision' in the first line.
17. As regards the actual provision of security, the Commission proposal seems quite appropriate particularly since under these provisions the person required to provide security is allowed to choose between various possibilities: cash deposit, guarantor and pledging securities which are guaranteed by the Member State.
18. The aim of preventing in principle the competent authorities of the Member States from systematically imposing a fixed amount of security is two-fold: to ensure equal treatment of economic operators in the Community and to enable these operators to avoid the most expensive type of security (cash deposit).
19. Article 10(2), however, deserves special attention. The Commission felt it necessary in this paragraph to allow the Member States to accept other types of security at the proposal of the operator. The Committee on Economic and Monetary Affairs would like to express its concern that this should not lead to unequal treatment of economic operators. Furthermore, the definition of 'types of security other than those referred to in Article 7' cannot be presented simply as an implementing measure and should therefore be included in the text.
20. Special attention should also be given to the provision in Article 9 that the guarantor must have his normal residence or an establishment in the Member State in which the security is given.
21. The Committee on Economic and Monetary Affairs wonders whether this provision does not in fact constitute a violation of Article 59 of the EEC Treaty concerning the freedom to provide services within the Community, an article which, according to the interpretation given by the Court of Justice in the Van Binsbergen Case of 7 December 1974, has direct effect.
22. We should also consider whether this provision is in line with Article 30 et seq. of the EEC Treaty as a provision affecting an ancillary measure relating to the free movement of goods. In Case No. 155/82 of 2 March 1983, the Court of Justice declared that measures which made access to the national market for imported products conditional on the exporter's having a guarantor or representative on the territory of the importing Member State are equivalent to quantitative restrictions.

23. Article 9 stipulates that the guarantor should be approved by the competent authority of the Member State in which the security is to be given. However, Council Directive 77/780¹ on the coordination of national provisions relating to the taking up and pursuit of the business of credit institutions stipulates that a bank which complies with the terms of the directive and with Community conditions, criteria and procedures cannot be made subject to national procedures as this would be in contravention of the freedom to provide services (Article 59 of the EEC Treaty) and the provisions of Directive 77/780.
24. In the light of the arguments set out above, the Committee on Economic and Monetary Affairs calls on the committee responsible to ask the Commission to reformulate the second sentence of Article 9 to bring it into line with the provisions of Articles 59 and 30 of the Treaty establishing the EEC and with the *acquis communautaire* in this field.

CONCLUSIONS

25. The Committee on Economic and Monetary Affairs approves the two Commission proposals which follow on logically from Directive 79/623/EEC². That directive laid down a list of cases giving rise to a customs debt and is now to be supplemented by Community regulations on the determination of the persons liable for payment of a customs debt³ and the security to be given to ensure payment of a customs debt⁴.

Proposal for a regulation determining the persons liable for payment of a customs debt (Doc. 1-1166/82)

26. The Committee on Economic and Monetary Affairs takes a favourable view of a Community regulation in this field to ensure equal treatment for all economic operators in the EEC, improve the economic function of import and export duties and simplify the assessment and collection of the resources earmarked for the Community budget.
27. The text proposed by the Commission certainly represents a step in the right direction, particularly as regards:
- the general principle that the person liable for payment of a customs debt is the person in whose name the customs declaration is drawn up as against the existing differences in the current provisions of the Member States;
 - the principle of the joint and several responsibility of the various persons liable for payment of a single customs debt: this will make it possible to avoid substantial delays in collecting amounts due in respect of import and export duties.

¹ OJ No. L 322 of 17 December 1977, p. 30

² OJ No. L 179 of 17 July 1979, p. 31

³ Doc. 1-1166/82

⁴ Doc. 1-1213/82

Proposal for a regulation on the security to be given to ensure payment
of a customs debt (Doc. 1-1213/82)

28. The financial burden placed on economic operators as a result of a request for security and depending on the type of security used is quite considerable. The text proposed by the Commission therefore seems to contain desirable measures and represents a step in the right direction, i.e. towards the elimination of the sources of unequal treatment of economic operators according to the Member State in which they carry out their activities.
29. Moving on to consideration of the individual provisions of the text itself, however, the Committee on Economic and Monetary Affairs calls on the committee responsible, on the basis of the arguments set out in paragraphs 14-24 above, to invite the Commission to reformulate:
 - I. Article 2(3) by inserting the word 'compulsory' before the word 'provision' in the first line and by increasing the amount from 100 to 500 ECU;
 - II. the second sentence of Article 9 to bring it into line with the provisions of Articles 59 and 30 of the Treaty establishing the EEC and with the *acquis communautaire* in this field.

