

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(79) 456 final

Brussels, 7 September 1979

Proposal for a
COUNCIL REGULATION (EEC)

amending for the second time Regulation (EEC)
No 222/77 on Community transit

(submitted to the Council by the Commission)

COM(79) 456 final



EXPLANATORY MEMORANDUM

On 11 August 1975, the Commission transmitted to the Council a proposal for a Regulation (OJ No. C 204 of 6 September 1975) amending certain provisions of Council Regulation (EEC) No. 542/69 of 18 March 1969 on Community transit (1).

This proposal has not been adopted. Furthermore, it has now been overtaken by events, firstly because Regulation (EEC) No. 542/69 has been consolidated and replaced by Council Regulation (EEC) No. 222/77 of 13 December 1976 (2) and secondly because it has been possible since 1975 to introduce improvements and simplifications into the Community transit procedure.

The present proposal thus supersedes the 1975 proposal.

It is one of the priority measures which the Commission is pledged to carry out in 1979 as part of the multiannual programme for achieving customs union.

This proposal forms part of a series of measures aimed at gradually improving the Community transit procedure by introducing, in a balanced fashion, changes designed to simplify the procedure wherever possible and to prevent or penalize irregularities or fraud.

The proposed changes concern Articles 1, 7, 15, 22, 26, 27, 35, 36, 40, 41, 42, 44, 45, 51 and 57.

(1) OJ No. L 77, 29.3.1969, p. 1.

(2) OJ No. L 38, 9.2.1977, p. 1.

Article 1 (2)

The application of support measures intended to facilitate the disposal of Community products on world markets means that measures must be taken to ensure that such products actually leave the territory of the Community and do not return without the financial gain obtained previously being offset.

Article 1(2) has therefore been recast in the form of a horizontal provision to be applied to any goods which are the subject of a Community measure necessitating their exportation. As a result, it covers the case - at present provided for - of export refunds under the common agricultural policy.

In order to prevent the dispersal of measures taken pursuant to this provision and to guarantee their uniformity, the intention is that its implementation will be governed on a case-by-case basis in accordance with the procedure laid down in Article 57 of the Regulation.

Article 1(3)

As defined by the ECSC Committee on Customs Rules and Regulations, goods "in free circulation" under the terms of the Treaty establishing the European Coal and Steel Community satisfy criteria similar to those referred to in Article 9(2) and Article 10(1) of the EEC Treaty. They can therefore be regarded as "Community goods".

Article 7

The main aim of the proposed changes is to discontinue use of the TIF procedure for goods carried by rail. This procedure has not been used since introduction in the Community of the simplified Community transit procedure, based on use of the International Consignment Note (CIM) or the International Express Parcels Consignment Note (TIEEx).

Article 15

Council Regulation (EEC) No. 2102/77 (1) introduced a Community export declaration form. As a result, this Regulation is now the Community instrument on the basis of which Member States are required to draw up the export declaration forms used by them. As it stands, Article 15 has thus been overtaken by events and contradicts to some extent Regulation (EEC) No. 2102/77. It can therefore be repealed.

Article 22

The requirement that a transit advice note be presented at each internal frontier crossed during a transit operation was introduced mainly to permit identification of the Member State in which the offence or irregularity is deemed to have been committed where the consignment is not produced at the office of destination.

Experience has shown that the collection of duties and other charges very rarely depends on the presence or absence of a transit advice note at a customs office. While the transit advice note appears to serve little if any useful purpose, it does impose a burden both on traders and on the customs authorities; it is therefore proposed that its use be discontinued in intra-Community trade. This measure should be a significant step towards achieving effective free movement of goods.

Article 26

It has proved necessary to introduce a provision enabling the trader to be released from his obligations where, through no fault of his own, there is a delay in producing the goods at the office of destination.

Article 27

Operation of the Community transit procedure raises the question of whether the guarantee arrangements under this procedure need to be retained in their totality. This is because, in many cases, the risk of non-recovery of duties and other charges which may be chargeable is minimal or even non-existent. This is particularly so where the transit operation is carried out by a person established in the Community who is known to the customs authorities,

(1) OJ No. L 246, 27.9.1977, p. 1.

who frequently sends goods, who meets his customs or tax obligations on time and whose creditworthiness is not in doubt. It was decided therefore that a provision could be introduced enabling the competent authorities to release the principal from the obligation to furnish a guarantee where the risk of non-recovery is minimal.

However, in order to ensure that all traders were afforded the same treatment, it was decided that, under the circumstances, exemption from this obligation needed to be based on objective criteria common to all Member States and laid down by means of an implementing regulation.

Article 35

In order to ensure that guarantors are not kept uninformed indefinitely of the course of any action taken and are not, therefore, obliged to hold open files relating to matters which have for the most part already been settled, it was deemed necessary to stipulate that, in addition to being notified of the non-discharge of transit documents, guarantors must be notified that they are or may be liable for payment of sums due. This notification must be given not later than three years after the date of registration of the Community transit declaration, failing which the guarantor will be released from his obligations.

Article 36(3)

Abolition of the obligation to present transit advice notes when internal frontiers are crossed will make it impossible to apply the presumption at present provided for in Article 36(2)(d) as a basis for determining the place at which the offence or irregularity took place in cases where goods are not produced at the office of destination.

Accordingly, it is now stipulated that, in such cases, the offence or irregularity would be deemed to have been committed in the country of departure or in the first country of transit where proof is furnished that the goods have been exported from the country of departure. In order to provide a deterrent and to prevent deflections of trade, provision has also been made for Member States to take all action necessary to impose effective penalties in respect of this kind of offence or irregularity.

Article 36(4)

Under the basic rules governing the Community transit procedure, the principal assumes full responsibility for the smooth running of the transit operation. However, offences or irregularities in this field are frequently committed by persons who are unknown to the principal and against whom he is powerless to act. Most Member States have adopted legislation empowering them to recover duties and other charges from the persons who have actually committed the offence or irregularity in question. As a consequence, they may also decide not to proceed against the principal. Since not all Member States possess such legislation, it was felt that a provision along these lines should be incorporated into the draft.

Article 40

The principle that a guarantee need not be required could also be applied to goods moving under the internal Community transit procedure. However, exceptions must be made to this rule for categories of goods which, because of the high taxes and other charges to which they are subject, present increased risks of fraud.

In the interests of uniformity, a list of goods of this type, which will still have to be covered by a guarantee, is to be drawn up in accordance with the procedure laid down in Article 57 of the Regulation.

In view of the relaxation of the guarantee arrangements, Article 40, as worded at present, will no longer serve any useful purpose. It can therefore be repealed, to be replaced by the provision described above.

Article 41

Article 41 has been reworded so as to restrict its application to goods which are not to be carried under the customs transit procedure beyond the frontier office of the neighbouring Member State.

Furthermore, it is expressly stipulated that the Article will not apply where an internal sea frontier within the meaning of the second subparagraph of Article 11(g) of the Regulation is crossed.

Article 42

This Article has been supplemented in such a way as to exclude the carriage of goods by rail from the scope of Article 41.

Article 44

This Article has been reworded to ensure that, where goods are carried within the Community by sea, the customs authorities of the port of unloading are not made responsible for carrying out the formalities involved in placing the goods under the Community transit procedure when the goods are to be carried beyond the port of unloading under a combined transport operation commencing in a Community port.

However, this provision would not apply where the goods were to be carried beyond the port of unloading under the Rhine Manifest procedure.

Article 45

At present, the exemption from furnishing a guarantee in respect of goods carried by air is granted to airlines appearing on a list drawn up under the procedure involving the Community Transit Committee.

In view of the frequent updating of this list, it was deemed preferable to extend this exemption to any company authorized to operate air transport services in a Member State of the Community.

Article 51

In view of the amendment made to Article 7(1), the second subparagraph of Article 51(2) has to be deleted.

Article 57

Experience has shown that application of the rules and regulations relating to Community transit should be made more flexible. To this end, it was decided to extend the procedure currently in force for the purpose of applying certain Articles of the Regulation (Community Transit Committee) to all its Articles.

PROPOSAL FOR
COUNCIL REGULATION (EEC)

AMENDING FOR THE SECOND TIME REGULATION (EEC)
NO. 222/77 ON COMMUNITY TRANSIT

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,
and in particular Article 235 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas experience over several years of the application of the Community transit procedure established by Council Regulation (EEC) No. 542/69⁽⁴⁾ and consolidated Regulation (EEC) No 222/77⁽⁵⁾ as amended by Regulation (EEC) No 983/79⁽⁶⁾ has revealed that certain formalities required by that procedure can be made more flexible;

Whereas placing under the external Community transit procedure goods that are the subject of Community measures necessitating their definitive exportation to third countries will make for simplification of control procedures and reduce the risk of irregularities;

Whereas, where the time limit prescribed by the office of departure is not met on account of exceptional circumstances which are satisfactorily explained, it must be possible for the principal to be deemed to have fulfilled his obligations;

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- (1) OJ No.
(2) OJ No.
(3) OJ No.
(4) OJ No. L 77, 29.3.1969, p. 1
(5) OJ No. L 38, 9.2.1977, p. 1
(6) OJ No. L 123, 19.5.1979, p. 1

Whereas a greater measure of flexibility can be introduced in respect of the guarantee arrangements, given the present small risk of non-recovery of duties and other charges;

Whereas, in addition, automatic exemption from the guarantee arrangements for goods moving under the internal Community transit procedure, with the exception of those subject to high levels of charges, would be a significant step towards achieving free movement of goods within the Community;

Whereas steps should be taken to ensure that the guarantor is not kept uninformed indefinitely of the action taken in respect of notifications of the non-discharge of transit documents addressed to him and whereas it is important, therefore, that he should also be released from his obligations once a given period has elapsed without any request for payment being forthcoming;

Whereas experience has shown that transit advice notes have proved rather ineffective as documents for determining the place at which the offence or irregularity took place; whereas the obligation to present transit advice notes can, therefore, be restricted to cases in which the goods in question leave the territory of the Community in the course of a transit operation; whereas, in all other cases, the use of transit advice notes can be discontinued without giving rise to difficulty provided Member States take any action necessary to impose effective penalties in respect of the failure to produce consignments at the office of destination where it is not possible to determine the place at which that offence or irregularity was committed or is presumed to have been committed;

Whereas goods transported by sea and then by land or inland waterway under a single contract of carriage should be placed under the Community transit procedure at their first place of departure;

Whereas experience has shown that it would be useful to extend the procedure laid down for applying certain articles of Regulation (EEC) No. 222/77 by means of measures submitted to the Community Transit Committee to all the articles of the said Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No. 222/77 is hereby amended as follows:

a) Article 1 (2) (b) shall be replaced by the following:

"(b) goods which, though satisfying the conditions laid down in Articles 9 and 10 of the Treaty establishing the European Economic Community are the subject of a Community measure necessitating their exportation to third countries and for which the relevant customs export formalities have been carried out; the Commission shall, in accordance with the procedure referred to in Article 57, determine the cases in which this provision is to apply."

b) Article 1 (3) (b) shall be replaced by the following:

"(b) goods coming under the Treaty establishing the European Coal and Steel Community which under the terms of that Treaty are in free circulation within the Community and which are hereinafter referred to as "Community goods".

c) Article 7 (1) shall be replaced by the following:

"1. In derogation from Article 1, the Community transit procedure shall not apply to the carriage of goods under cover of TIR carnets (TIR Convention) or the Rhine Manifest (Article 9 of the revised Convention for the navigation of the Rhine) on condition that carriage of goods began or is to end outside the Community."

d) The second subparagraph of Article 7 (3) shall be replaced by the following:

"The internal Community transit document shall bear a reference to the procedure and document used."

e) Article 15 shall be deleted.

f) Article 22 (1) shall be replaced by the following:

"1. The carrier shall give a transit advice note:

- a) to each office of transit within the meaning of the second indent of Article 11 (d);
- b) to the office of transit at the point of entry into the Community when the goods have been in the territory of a third country.

The design of the transit advice note shall be determined in accordance with the procedure laid down in Article 57."

g) The following paragraph shall be added to Article 26:

"3. Where the goods are produced at the office of destination after expiry of the time limit prescribed by the office of departure and where this failure to comply with the time limit is due to exceptional circumstances which are explained to the satisfaction of the office of destination and which are beyond the control of the carrier and the principal, the latter shall be deemed to have complied with the time limit prescribed."

h) The following paragraphs shall be added to Article 27:

"4. In derogation from paragraph 1, the principal may be relieved of the obligation to furnish a guarantee where the risk of non-recovery of duties or other charges which may be chargeable is minimal.

5. The provisions necessary for the application of paragraph 4 shall be adopted in accordance with the procedure laid down in Article 57."

i) The second paragraph of Article 35 shall be replaced by the following:

"When the guarantor has not been notified by the competent customs authorities of the Member State of departure of the non-discharge of the T1 document, he shall be released from his obligations on the expiration of a period of twelve months from the date of registration of the T1 declaration."

j) The following paragraph shall be added to Article 35:

"When, within the period provided for in the second paragraph, the guarantor has been notified by the competent customs authorities of the non-discharge of the T1 document, he must, in addition be informed that he is or may be liable to pay the amounts for which he is liable in respect of the Community transit operation in question. This notification must reach the guarantor not later than three years after the date of registration of the T1 declaration. Where no such notification has been made before the expiry of the aforementioned time limit, the guarantor shall likewise be released from his obligations."

k) The following paragraphs shall be added to Article 36:

"3.(a) When in the case referred to in paragraph 2 (d) the presumption referred to cannot be applied, the offence or irregularity involving non-production of the consignment shall be deemed to have taken place:

- in the Member State of departure, or
- if the principal produces proof that the consignment has been exported from that Member State in accordance with the rules: in the first Member State which, according to the particulars shown on the transit document, the consignment had to enter.

(b) Member States shall take all measures necessary to impose effective penalties in respect of the offence or irregularity referred to in (a).

(c) They shall notify the Commission of the measures provided for in subparagraph (b) not later than one month after their adoption.

4. Without prejudice to the joint and several obligations of the principal and his guarantor to pay the duties or other charges which may be chargeable in the event of an offence or irregularity being committed, Member States shall take all measures necessary to enable them to recover the duties or other charges from any person who can be identified as being responsible for the offence or irregularity or as benefiting in any way whatsoever from that offence or irregularity. To the extent that, in accordance with this paragraph, the duties or other charges are recovered from a person or persons other than the principal, the latter and his guarantor shall be released from their obligations.

Member States shall notify the Commission of the measures provided for in the preceding subparagraph not later than one month after their adoption."

1) Article 40 shall be replaced by the following:

"Article 40

1. Without prejudice to any guarantee exemptions that may be granted under the provisions of Article 27 (4) and (5), the principal shall be exempt from the obligation to furnish a guarantee in the case of goods which are to be carried under the internal Community transit procedure, unless they are goods which appear on a list to be drawn up in accordance with the procedure laid down in Article 57.
2. The list referred to in paragraph 1 shall contain only those goods which present increased risks because of the high taxes and other charges to which they are subject."

m) Article 41 shall be replaced by the following:

"Article 41

1. Goods referred to in Article 1 (3) (a) and (b) in respect of which export formalities are carried out at a frontier customs office of the exporting Member State and which are to be placed, at the office of entry into the neighbouring Member State, under a customs procedure other than transit need not be placed under the Community transit procedure.
In such case, the only particulars which need to be given on the T2 declaration are those required for export purposes by the provisions laid down by law, regulation or administrative provision in the Member State of departure.
2. The customs office of export shall endorse a copy of the T2 declaration and return it to the exporter or his representative. The endorsed copy must be delivered to the office of entry where the goods must be placed under a customs procedure other than transit.
3. The provisions of paragraph 1 shall not apply:
 - when goods cross an internal frontier within the meaning of the second subparagraph of Article 11 (g);
 - when goods are subject to Community measures entailing control of their use or destination."

n) Article 42 (2) shall be replaced by the following:

"2. The provisions of Articles 19 (2) and (3), 21, 22 and 41 shall not apply to the carriage of goods by rail."

o) Article 44 (2) shall be replaced by the following:

"2. The provisions of paragraph 1 shall not apply:

- when the goods are subject to Community measures entailing control of their use or destination, or
- when the transport of the goods by sea, under a single contract of carriage, is to be followed, beyond the port of unloading, by transport by land or inland waterway under a transit procedure except when transport beyond that port is to be effected, in pursuance of Article 7 (2), under the Rhine Manifest procedure."

p) Article 45 (2) shall be replaced by the following:

"2. In cases where a Community transit procedure is used for carriage effected wholly or partly by air, no guarantee need be furnished to cover the air portion of the journey of goods carried by companies authorized to operate scheduled or charter air services in Member States."

q) The second subparagraph of Article 51 (2) shall be deleted.

r) Article 57 (1) (a) shall be replaced by the following:

"(a) for the application of the provisions of this Regulation;"

s) The last subparagraph of Article 57(1) shall be deleted.

Article 2

This Regulation shall enter into force on 1 January 1981.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at

For the Council

The President

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