

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(82) 2 final

Brussels, 20 January 1982

## Amending of the

proposal for a Council Regulation amending  
for the third time Regulation (EEC) No 222/77 on  
Community transit (amendment pursuant to the second  
paragraph of Article 149 of the EEC Treaty)

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(submitted to the Council by the Commission)

COM(82) 2 final



EXPLANATORY MEMORANDUM

1. The proposal for a Council Regulation amending for the third time Regulation (EEC) No 222/77 on Community transit is designed to ease as far as possible the burden on third parties who agree to furnish financial guarantees to cover the payment of duties and other charges which may become due in respect of Community transit operations.

The aim of the measure is to ensure that this guarantee system functions smoothly and at moderate cost, particularly in the interests of small and medium-sized transport undertakings.

2. The proposal could usefully be amended to incorporate changes arising out of further suggestions made by the trade and business circles concerned and by certain Member States, the cogency of which is accepted: that it should be made quite clear that any person who furnishes a guarantee under the Community transit procedure need not pay sums claimed from him if it is established that no infringement or irregularity has been committed; and that, similarly, any such person should be entitled, where the same conditions apply, to obtain the refund of sums which he may have paid in his capacity as guarantor. Drafting changes have also been made to the comprehensive guarantee form covering several Community transit operations, in the interests of clarity.

3. The Commission therefore considers it necessary to amend its original proposal, acting under Article 149 of the Treaty establishing the European Economic Community.

The amendments are: the insertion in Article 35 of Regulation (EEC) No 222/77 of a new provision concerning the refund of sums paid by the guarantor; an addition to paragraph 2 of the specimen guarantee forms annexed to the original proposal stipulating that a guarantor may not be required to pay sums claimed from him; a redrafting of the second subparagraph 2 of the specimen I guarantee form annexed to the initial proposal to make its meaning clearer.

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The Commission hereby amends its proposal<sup>1</sup> as follows:

1. The last recital is replaced by the following:

"Whereas the introduction of this three-month period makes it necessary to adapt the Community transit guarantee forms and whereas the specimens of these forms must therefore be amended; Whereas experience has shown the need to make provision for the sums paid by the guarantors to be reimbursed if it is established that no irregularity has been committed; Whereas Regulation (EEC) No 222/77 should therefore be amended;"

2. Article 1 is replaced by the following:

"Article 1

1. Article 35 of Regulation (EEC) No 222/77 is hereby amended as follows:

(a) the figure 1 shall be inserted before the beginning of the first line of the present text;

(b) the following paragraph 2 shall be added after the present text:

"2. Any sums paid by the guarantor shall be reimbursed to him if, within two years following the date on which the claim for payment was made, it has been established to the satisfaction of the competent authorities that no offence or irregularity was committed in connection with the transit operation in question."

2. The specimen guarantee forms annexed to Regulation (EEC) No 222/77 are hereby replaced by the specimens annexed to this Regulation."

3. The specimen guarantee forms annexed to the proposal for a Regulation are replaced by the specimens annexed to this proposal for an amendment.

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<sup>1</sup>OJ No C 97, 29.4.1981, p. 4.

ANNEX

SPECIMEN I

COMMUNITY TRANSIT

GUARANTEE

(Comprehensive guarantee covering several Community transit operations)

I. UNDERTAKING BY THE GUARANTOR

- 1. The undersigned ..... (1)
- resident at ..... (2)
- hereby jointly and severally guarantees, at the office of guarantee of .....
- up to a maximum amount of .....

in favour of the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland (3),

any amount for which a principal ..... (4) may be or become liable to the abovementioned States by reason of infringements or irregularities committed in the course of a Community transit operation carried out by that person, including duties, taxes, agricultural levies and other charges—with the exception of pecuniary penalties—as regards principal or further liabilities, expenses and incidentals.

- 2. The undersigned undertakes to pay, within a period of three months from the date of the first application in writing by the competent authorities of the States referred to in paragraph 1, and without being able to defer payment beyond such period, the sums requested up to the limit of the maximum amount aforesaid, unless he or any other person concerned establishes, before the expiry of this period, to the satisfaction of the competent authorities, that no offence or irregularity within the meaning of paragraph 1 was committed.

This amount may not be reduced by the sums already paid in pursuance of this undertaking unless recourse is had to the undersigned in respect of a Community transit operation which began before the receipt of the earlier request for payment or during the thirty days following that receipt.

- 3. This undertaking shall be valid from the day of its acceptance by the office of guarantee.  
This guarantee may be cancelled at any time by the undersigned, or by the State in the territory of which the office of guarantee is situated.  
The cancellation shall take effect on the 16th day after notification thereof to the other party.  
The undersigned shall remain responsible for payment of the sums which become payable in respect of Community transit operations covered by this undertaking which began before the date on which the cancellation took effect, even if the demand for payment is made after that date.

(1) Surname and forenames, or name of firm.  
 (2) Full address.  
 (3) Delete the name of any State of which the territory will not be used.  
 (4) Surname and forenames, or name of firm, and full address of the principal.



SPECIMEN II

COMMUNITY TRANSIT  
GUARANTEE

(Guarantee covering a single Community transit operation)

I. UNDERTAKING BY THE GUARANTOR

1. The undersigned ..... (\*)

resident at ..... (\*)

hereby jointly and severally guarantees, at the office of departure of .....

in favour of the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland (\*),

any amount for which a principal ..... (\*) may be or become liable to the abovementioned States by reason of infringements or irregularities committed in the course of a Community transit operation carried out by that person from the office of departure of .....

to the office of destination of ..... in respect of the goods designated hereinafter, including duties, taxes, agricultural levies and other charges — with the exception of pecuniary penalties — as regards principal or further liabilities, expenses and incidentals.

2. The undersigned undertakes to pay, within a period of three months from the date of the first application in writing by the competent authorities of the States referred to in paragraph 1, and without being able to defer payment beyond such period, the sums requested, unless he or any other person concerned establishes, before the expiry of this period, to the satisfaction of the competent authorities, that no offence or irregularity within the meaning of paragraph 1 was committed.

3. This undertaking shall be valid from the day of its acceptance by the office of departure.

4. For the purposes of this undertaking, the undersigned gives his address for service (\*) as ..... (\*) and, in each of the other States referred to in paragraph 1, as care of:

(\*) Surname and forenames, or name of firm.

(\*) Full address.

(\*) Delete the name of any State or States of which the territory is not to be used.

(\*) Surname and forenames, or name of firm, and full address of the principal.

(\*) If, in the law of the State, there is no provision for address for service, the guarantor shall appoint, in each of the States referred to in paragraph 1, an agent authorized to receive any communications addressed to him. The courts of the places in which the addresses for service of the guarantor or of his agents are situated shall have jurisdiction in disputes concerning this guarantee. The acknowledgment in the second subparagraph and the undertaking in the fourth subparagraph of paragraph 4 must be made to correspond.





SPECIMEN III

COMMUNITY TRANSIT

GUARANTEE

(Flat-rate guarantee system)

I. UNDERTAKING BY THE GUARANTOR

- 1. The undersigned ..... (1)
- resident at ..... (2)
- hereby jointly and severally guarantees, at the office of guarantee of .....

.....  
 in favour of the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland,

any amount for which a principal may become liable to the abovementioned States by reason of infringements or irregularities committed in the course of a Community transit operation including duties, taxes, agricultural levies and other charges — with the exception of pecuniary penalties — as regards principal or further liabilities, expenses and incidental charges with regard to which the undersigned has agreed to be responsible by the issue of guarantee vouchers up to a maximum amount of 7 000 ECUs per voucher.

- 2. The undersigned undertakes to pay, within a period of three months from the date of the first application in writing by the competent authorities of the States referred to in paragraph 1, and without being able to defer payment beyond such period, the sums requested up to an amount of 7.000 ECUs per voucher, unless he or any other person concerned establishes, before the expiry of this period, to the satisfaction of the competent authorities, that no offence or irregularity within the meaning of paragraph 1 was committed.
- 3. This undertaking shall be valid from the day of its acceptance by the office of guarantee. This guarantee may be cancelled at any time by the undersigned, or by the State in the territory of which the office of guarantee is situated.

The cancellation shall take effect on the 16th day after notification thereof to the other party.

The undersigned shall remain responsible for payment of the sums which become payable in respect of Community transit operations covered by this undertaking which began before the date on which the cancellation took effect, even if the demand for payment is made after that date.

- 4. (1) For the purpose of this undertaking, the undersigned gives his address for service as ..... (2) and, in each of the other States referred to in paragraph 1, as care of:

(1) Surname and forenames, or name of firm.

(2) Full address.

(3) If, in the law of a State, there is no provision for giving addresses for service, the guarantor shall appoint, in each of the States referred to in paragraph 1, an agent authorized to receive any communications addressed to him. The courts of the places in which the addresses for service of the guarantor or of his agents are situated shall have jurisdiction in disputes concerning this guarantee. The acknowledgement in the second subparagraph and the undertaking to the fourth subparagraph of paragraph 4 must be made to correspond.

