

European Communities

443. 1. 1. 6

EUROPEAN PARLIAMENT

Working Documents

1976 - 1977

1 September 1976

DOCUMENT 237/76

Report

drawn up on behalf of the Committee on External Economic Relations

on the proposal from the Commission of the European Communities to the Council (Doc. 104/76) for a directive on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt

Rapporteur: Mr M. SCHMIDT

PE 44.935/fin.

English Edition

443. 1. 1. 6



By letter of 28 April 1976 the President of the Council of the European Communities requested the European Parliament, pursuant to Articles 43 and 100 of the EEC Treaty, to deliver an opinion on the proposal from the Commission of the European Communities to the Council for a directive on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt.

On 10 May 1976 the President of the European Parliament referred this proposal to the Committee on External Economic Relations as the committee responsible and to the Committee on Economic and Monetary Affairs and the Legal Affairs Committee for their opinions.

On 18 May 1976 the Committee on External Economic Relations appointed Mr Schmidt rapporteur.

It considered the draft report presented by Mr Scott-Hopkins, deputizing for Mr Schmidt, at its meeting of 22 June 1976, and adopted the motion for a resolution unanimously.

Present: Mr Scott-Hopkins, vice-chairman (also deputizing for the rapporteur, Mr Schmidt); Mr Baas, Mr Bersani, Mr Cousté, Mr de Clercq, Mr Dykes, Mr Noè, Mr Schwörer, Mr Spicer, Mr Vandewiele and Mr Vetrone.

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

C O N T E N T S

	<u>Page</u>
A. MOTION FOR A RESOLUTION	5
B. EXPLANATORY STATEMENT	6
Opinion of the Committee on Economic and Monetary Affairs	8
Opinion of the Legal Affairs Committee	9

The Committee on External Economic Relations hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement:

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a directive on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council (COM(76) 127),
 - having been consulted by the Council pursuant to Articles 43 and 100 of the EEC Treaty (Doc. 104/76),
 - having regard to the report by the Committee on External Economic relations and the opinions of the Legal Affairs Committee and the Committee on Economic and Monetary Affairs (Doc. 237/76),
1. Welcomes this proposal for a directive inasmuch as it represents an important contribution to the establishment of the customs union;
 2. Hopes that the directive will be implemented by all the Member States on 1 January 1977;
 3. Approves the proposal for a directive.

EXPLANATORY STATEMENT

(a) Purpose of the directive

1. The purpose of the proposed directive is to establish rules to be incorporated in the provisions laid down by law, regulation or administrative action in the Member States in regard to:

- the creation of the customs debt,
- the liability for payment of the debt, and
- the settlement of the debt.

2. Customs debt means, briefly, the legal obligation on a natural or legal person to pay duties on the import or export of goods.

3. The time at which the customs debt is created is of central importance in the directive.

4. The effects of implementing the directive will be twofold:

- equal treatment for the various importers and exporters in the Community, without regard to the Member State in which they are established;
- a more precise definition of the conditions for establishing own resources in the Community budget.

(b) Content

5. Apart from the first article, which defines the terms 'customs debt', 'import duties' and 'export duties' and 'entry in the accounts', the directive has five sections.

6. Title I 'Creation of the customs debt' specifies:

- the cases in which a customs debt is created on imports (Art. 2) and exports (Art. 5);
- the time at which a customs debt on imports (Art. 3) and exports (Art. 6) is deemed to be created; the Commission works on the assumption that this time should correspond as closely as possible to
 - the time at which the goods are actually integrated into the customs territory of the Community, in the case of imports and
 - the time at which the goods leave the geographical territory of the Community, in the case of exports;

- that in the event of destruction or irretrievable loss of the goods subject to certain conditions no customs debt shall be deemed to be created on import (Art. 4).

7. Title II - 'Liability for payment of the amount of the customs debt' - stipulates that the amount of the customs debt shall in principle be payable to the customs authorities when the duties are entered in the accounts, without prejudice to the time limits for payment which the person liable for duty may be allowed under the provisions in force¹ (Art. 7).

8. Title III - 'Settlement of the customs debt' - summarizes the various ways in which the customs debt may be settled - normally by payment of the amount due (Art. 8).

9. Title IV - 'Provisions applicable to trade between Member States' - states that Articles 2 to 8 (inclusive) of the directive are applicable to imports and exports from one Member State to another, to the extent that the goods concerned are liable to duty (Art. 9).

10. Title V - contains the final provisions, including the fact that the Commission intends this directive to be brought into force on 1 January 1977.

(c) Conclusions

11. This proposal for a directive is the outcome of the deliberations the Customs Legislation Committee - whose members include experts in this field from the Member States - over a period of three years. The International Chamber of Commerce, which is naturally closely involved in the implementation of the directive, received it favourably.

12. The Committee on External Economic Relations also recommends that the proposed directive should be approved, particularly as it represents an important contribution to the establishment of the customs union. However, should any problems arise, these would most probably be in the legal or fiscal fields, for which the two committees asked for their opinions (the Legal Affairs Committee and the Committee on Economic and Monetary Affairs) have particular responsibility.

¹-Council directive of 4 March 1969 on the harmonization of the provisions laid down by law, regulation or administrative provisions relating to exemption from customs duties, charges having equivalent effect and agricultural levies (OJ No L 58, 8.3.1969, p. 14)

-Commission proposal superseding this directive (Doc. 229/75) and the relevant opinion of Mr BAYERL (Doc. 393/75)

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

Letter from the chairman of the committee to Mr G. KASPEREIT, chairman of the Committee on External Economic Relations

Brussels, 24 June 1976

Dear Mr Chairman,

At its meeting of 3 and 4 June, the Committee on Economic and Monetary Affairs considered the proposal for a directive on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt (Doc. 104/76).

The purpose of the proposal is to define the time when a customs debt is created and the time when payment of such a debt can be required. The time of creation of a customs debt is the closest possible time to the moment when the goods are integrated into the economy of the Community or when the goods leave the Community. This principle is, however, adjusted to take account of the various legal situations which give rise to customs debt. Harmonization of these provisions laid down by law, regulation or administrative action will contribute to the smooth operation of the customs union and therefore meets with the approval of the Committee on Economic and Monetary Affairs.

I would ask you to treat this letter as the opinion for your committee, approved unanimously ¹, on the proposal from the Commission to the Council for a directive on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt (Doc. 104/76).

Yours sincerely,

(sgd.) A. van der HEK
Chairman

¹ Present: Mr Van der Hek, chairman; Mr Achenbach, Mr Albertsen, Lord Ardwick, Mr Artzinger, Mr De Broglie, Mr Cifarelli, Mr Cousté, Mr Dykes, Mr Guldberg, Mr Lange, Mr Mitchell (deputizing for Lord Gordon Walker), Mr Mitterdorfer, Mr Normanton and Mr Nyborg.

OPINION OF THE LEGAL AFFAIRS COMMITTEE

Draftsman : Mr J. SANTER

By letter of 28 April 1976 the Council of the European Communities requested the opinion of the European Parliament on a proposal for a Council directive on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt.

On 10 May 1976 the President of the European Parliament referred this proposal to the Committee on External Economic Relations as the committee responsible and to the Committee on Economic and Monetary Affairs and the Legal Affairs Committee for their opinions.

On 31 May 1976 the Legal Affairs Committee appointed Mr SANTER draftsman.

At its meeting of 13 July 1976 the Legal Affairs Committee unanimously approved the draft opinion.

Present: Mr Jozeau-Marigné, vice-chairman and acting chairman; Mr Bermani, vice-chairman; Mr Santer, draftsman of the opinion; Mr Bangemann, Mr Bayerl, Mr Broeks, Mr Calewaert, Mrs Ewing, Mrs Kellett-Bowman (deputizing for Sir Brandon Rhys-Williams), Mr Lautenschlager, Mr Shaw and Mr Vernaschi.

A. Reasons for the submission of the proposal for a directive

1. This proposal for a directive aims at harmonizing the provisions in Member States relating to customs debt, especially those which determine the time of creation of the debt, liability for payment and methods of settlement.

2. This proposal for a directive has been submitted with a view to ensuring equal treatment for Community importers and exporters, irrespective of the Member State in which they are resident: as the Commission points out in its explanatory statement, the implementation of the provisions laid down in the proposal will also make it possible to clarify the conditions for determining the own resources accruing to the Communities' budget.

We agree with the Commission on the desirability of submitting such a proposal.

3. There follows an analysis of the main provisions of this proposal for a directive, together with the observations of the Legal Affairs Committee.

B. Analysis of the proposal

4. The title of the proposal for a directive refers to 'the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt'. It would probably be better to refer to 'provisions laid down by law, regulation and administrative action', seeing that customs debt provisions of all three types are found in the various Member States and that the text of Article 100, on which the proposal for a directive is based, mentions 'dispositions, legislatives, reglementaires et administratives'¹ ('et' is translated as a non-restrictive 'or' in the English text).

5. The Commission considers that Articles 43 and 100 of the EEC Treaty provide a suitable legal basis. Article 100 might have been sufficient, but Article 43 was added so that the proposal for a directive might also specifically cover agricultural levies (which are, moreover, explicitly referred to in Article 1, Article 2 (b) and (c) of this proposal.

These legal bases may be approved.

¹See Annex I, amendment

6. Article 1 determines the scope of this proposal for a directive and defines customs debt, import duty, export duty and entry in the accounts.

For the reasons already stated in paragraph 4, the beginning of the first paragraph of Article 1 could be amended to provide for the harmonization of all provisions laid down by law, regulation and administrative action.¹

As for the definition of customs debt, there is no specification of the person on whose account the debt is created in respect of the goods subject to import or export duty: at the present stage in harmonizing the differences in customs duty, such specification is impossible.

7. Articles 2 and 5 list how customs debt may be created on imports and exports respectively. It is interesting to note that the Commission has been able to cover all possible causes; Article 2 (a), for example, covers the bringing of goods liable to import duties into free circulation in the customs territory of the Community (this is the 'normal' case), while Article 2 (b), (c) and (d) refer to 'exceptional' situations (such as smuggling).

Article 2 (d) seems to contain one superfluous phrase: 'the failure to use for the intended purposes within the time-limit set goods put into free circulation ... or their use for purposes other than those intended'².

8. Articles 3 and 6 define the time of creation of customs debt on imports and exports respectively. In accordance with the general principle enunciated in the Commission's explanatory memorandum of making the time of creation of customs debt correspond as closely as possible to when the goods are actually integrated into the Community's economy (or when the goods actually leave Community territory), and bearing in mind the need for a precise moment to be specified, the Commission feels that in the 'normal' cases referred to in Article 2 (a) customs debt is created:

- on importation, at the time when the competent authorities accept the entry of the goods for free circulation (Article 3 (a));
- on exportation at the time when the competent authorities accept the customs declaration with a view to exportation of the goods outside the geographical territory of the Community or else at the time when the goods in question have, in effect, left that territory.

¹See Annex II, amendment

²See Annex III, amendment

It must be pointed out that the moment when the competent authority gives customs clearance for free circulation of the goods is nearer to the actual integration of the goods into the Community's economy: however, customs clearance cannot always be given at a precise moment (for example, where unloading operations extend over several days).

The Commission's choice may therefore be approved.

9. In respect of the drafting of the text, the words 'deemed to be' in the first sentence of Article 3 and the first sentence of Article 6 seem superfluous¹. In fact, the moment of creation of a debt is always fixed either by agreement between the parties or by law: in either case it is a notional point in time.

10. Article 4 contains qualifications of the principle laid down in Article 2. There is a case for amending the first sentence² in line with the drafting observation in the previous paragraph.

11. Article 7 governs the liability for payment of the amount of the customs debt. The first paragraph lays down the general rule that this amount shall be liable for payment as from the time when the amount of duties payable is fixed by the competent authorities (this operation is called 'entry in the accounts'), without prejudice to any provisions by the authorities on time-limits for payment by the debiter.

The second paragraph refers to cases where the customs debt results from the failure of the debiter to fulfil his customs obligations: in this case 'immediate payment' of the amount of duties shall be required.

The question might be asked if there is any practical difference between the systems proposed in these two paragraphs. In fact, it is quite unthinkable that the competent authorities might demand payment of duties before entering them in the accounts (in other words, before they know the exact amount). It is equally out of the question that the second paragraph should aim at withdrawing from the competent authorities the power of granting a delay in payment: this seems to be the only difference between the first and second paragraphs of Article 7. Consequently we would recommend the deletion of the second paragraph of Article 7³.

¹ See Annexes IV and VI, amendments

² See Annex V, amendment

³ See Annex VII, amendment

As for the first paragraph of Article 7, some amendments might well be made here. The second half of this paragraph might, as worded at present in the French version, be interpreted as meaning that the competent authorities must demand payment of duties as from a given point in time; this interpretation would contradict the first half of the same paragraph ('without prejudice to the time-limits for payment which the debiter may be allowed under the provisions in force'). Consequently the phrase '... le montant est à exiger par les autorités ...' could therefore be replaced by the phrase '... le montant ...est dû aux autorités ...'¹ (This criticism is not relevant to the English text).

Since entry in the accounts is an operation consisting of several steps and may thus extend for some length of time, it would be preferable to stipulate that the amount of duties is payable not from the time when the entry in the accounts is begun but when this is completed.¹

12. Article 8 stipulates the method for settling customs debts.

In paragraph 2 (a) the second phrase seems superfluous in the light of the definition of customs debt given in Article 1 and 2 (a) of the proposal for a directive.²

13. Article 9 contains an extension of the applicability of the provisions of the proposal for a directive to trade between Member States under certain conditions.

14. Articles 10 to 13 contain final provisions.

Article 11 specifically fixes 1 January 1977 as the date by which Member States must comply with the provisions of the proposal for a directive.

C. Conclusion

15. The desirability of certain amendments to the Commission's proposal (See Annexes I to VIII) is evident from the above.

Without prejudice to these amendments, the Commission should be congratulated on its submission of this proposal for a directive; its provisions, once they enter into force, should improve the harmonization of customs duties in the countries of the Community.

¹ See Annex VII, amendment

² See Annex VIII, amendment

ANNEX I

AMENDMENT No.1

tabled by Mr SANTER on behalf of the Legal Affairs Committee.

Proposal from the Commission of the European Communities to the Council for a directive on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt.

Doc. 104/76

TITLE

Amend the title as follows:

'Proposal from the Commission of the European Communities to the Council for a directive on the harmonization of provisions laid down by law, regulation and administrative action relating to customs debt'.

AMENDMENT No.2

tabled by Mr SANTER on behalf of the Legal Affairs Committee

Proposal from the Commission of the European Communities to the Council for a directive on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt.

Doc. 104/76

Article 1, first paragraph

Amend this paragraph as follows:

- '1. This Directive determines the rules which must be incorporated in the provisions laid down by law, regulation and administrative action in Member States, in respect of the creation, liability for payment, and settlement of the customs debt'.

AMENDMENT No. 3

tabled by Mr SANTER on behalf of the Legal Affairs Committee

Proposal from the Commission of the European Communities to the Council for a directive on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt.

Doc. 104/76

Article 2 (d), first paragraph

This paragraph to read as follows:

'(d) the failure to use (4 words deleted) within the time-limit set goods put into free circulation which benefit from total or partial relief from import duties because of their intended use for particular purposes, or their use for purposes other than those intended'.

ANNEX IV

AMENDMENT No. 4

tabled by Mr SANTER on behalf of the Legal Affairs Committee

Proposal from the Commission of the European Communities to the Council for a directive on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt.

Doc. 104/76

Article 3, first sentence

This sentence to read as follows:

'The time of creation of a customs debt on imports shall be (3 words deleted)'

AMENDMENT No. 5

tabled by Mr SANTER on behalf of the Legal Affairs Committee

Proposal from the Commission of the European Communities to the Council
for a directive on the harmonization of provisions laid down by law,
regulation or administrative action relating to customs debt.

Doc. 104/76

Article 4, first sentence

This sentence to read as follows:

'No customs debt on importation shall be created when the person concerned
proves ...'

AMENDMENT NO.6

tabled by Mr SANTER on behalf of the Legal Affairs Committee

Proposal from the Commission of the European Communities to the Council for a directive on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt.

Doc. 104/76

Article 6, first sentence

This sentence to read as follows:

'The time of creation of a customs debt on exportation shall be (3 words deleted):'

ANNEX VII

AMENDMENT No.7

tabled by Mr SANTER on behalf of the Legal Affairs Committee

Proposal from the Commission of the European Communities to the Council for a directive on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt.

Doc. 104/76

Article 7

The first paragraph to read as follows:

'Without prejudice to the time-limit for payment which the debiter may be allowed under the provisions in force, the amount of the import or export duties which constitutes the customs debt shall be liable for payment to the competent authorities when the entry in the accounts of the said duties has been completed.'

Second paragraph deleted.

AMENDMENT No. 8

tabled by Mr SANTER on behalf of the Legal Affairs Committee

Proposal from the Commission of the European Communities to the Council for a directive on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt.

Doc. 104/76

Article 8 (2) (a)

The beginning of (a) to read as follows:

'(a) The customs debt on importation shall be settled (12 words deleted):'

The remainder unchanged.

