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*(Information)*

# COUNCIL

## COMMON POSITION (EC) No 31/2000

**adopted by the Council on 25 May 2000**

**with a view to adopting Regulation (EC) No 31/2000 of the European Parliament and of the Council of … amending Council Regulation (EEC) No 2913/92 establishing the Community Customs Code**

(2000/C 208/01)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 26, 95 and 133 thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [3],

Whereas:

(1) Article 253(4) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [4], provides that, before 1 January 1998, the Council is, on the basis of a Commission report, which may be accompanied by proposals, to review the Code with a view to making such adaptations as may appear necessary, taking into account in particular the achievement of the internal market.

(2) Every revision of the Code must, without instituting any barriers to international trade, be regarded as an opportunity to introduce instruments and procedures to prevent fraud, the prevention of fraud being one of the best ways of saving taxpayers' money as underlined in the Council's conclusions of 19 May 1998.

(3) Account should be taken of the Council resolution of 25 October 1996 on the simplification and rationalisation of the Community's customs regulations and procedures [5].

(4) The powers of the different authorities to establish exchange rates following the introduction of the euro have not yet been decided.

(5) Provision should be made for the possibility of customs declarations lodged by means of a data-processing technique not being accompanied by certain documents.

(6) In order to make it easier to take advantage of the arrangements for inward processing, processing under customs control and temporary importation, the rules should be made more flexible.

(7) It is appropriate to make provision, in accordance with the committee procedure, for additional cases in which charges due under outward-processing arrangements are calculated taking the cost of processing operations as a basis.

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(1) OJ C 228, 21.7.1998, p. 8.
(2) OJ C 101, 12.4.1999, p. 6.
(3) Opinion of the European Parliament of 12 March 1999 (OJ C 175, 21.6.1999, p. 420), Council common position of 25 May 2000 and decision of the European Parliament of … (not yet published in the Official Journal).
(4) OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 955/1999 of the European Parliament and of the Council (OJ L 119, 7.5.1999, p. 1).
(5) OJ C 332, 17.11.1996, p. 1.

(8) In some free zones it may be appropriate to permit completion of the formalities attaching to the customs warehousing procedure and the carrying-out of customs checks by the customs authorities according to that procedure.

(9) In certain circumstances, the benefit of favourable tariff treatment granted by reason of the nature or end-use of goods and of differential charges under the outward-processing procedure should also be available where a customs debt is incurred for reasons other than the release of goods into free circulation.

(10) The provisions relating to the place where a customs debt is incurred should include special rules for particular cases where the sum involved is below a given threshold.

(11) It is necessary, for the particular case of preferential arrangements, to define the concepts of error by the customs authorities and of the good faith of the person liable for payment. The person liable for payment should not be held responsible for a malfunction of the system due to an error made by the authorities of a third country. The issue of an incorrect certificate by such authorities should not, however, be considered an error if the certificate is based on an application which contains incorrect information. The incorrect nature of the information provided by the exporter in his application must be assessed on the basis of all the factual elements which are contained in that application. The person liable for payment can plead his good faith where he can demonstrate that he has taken due care, except when a notice stating that there are grounds for doubt has been published in the *Official Journal of the European Communities*.

(12) The Community's financial interests and the rights of the person liable for payment should be protected against unduly lengthy legal proceedings.

(13) Provision should be made for suspending the obligation to pay a customs debt incurred where goods have been removed from customs supervision and there is more than one debtor, so as to allow customs authorities to initiate recovery proceedings against one particular debtor, taking priority over other debtors.

(14) The measures necessary for the implementation of Regulation (EEC) No 2913/92 should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [1].

(15) Regulation (EEC) No 2913/92 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

*Article 1*

Regulation (EEC) No 2913/92 is amended as follows.

1. In Article 4, point 24 shall be replaced by the following:

'24. Committee procedure means either the procedure referred to in Articles 247 and 247a, or in Articles 248 and 248a.'

2. In Article 35, the first paragraph shall be replaced by the following:

'Where factors used to determine the customs value of goods are expressed in a currency other than that of the Member State where the valuation is made, the rate of exchange to be used shall be that duly published by the authorities competent in the matter.'

3. In Article 77, the current text becomes paragraph 1 and the following paragraph shall be added:

'2. Where the customs declaration is made by means of a data-processing technique, the customs authorities may allow accompanying documents referred to in Article 62(2) not to be lodged with the declaration. In this case the documents shall be kept at the customs authorities' disposal.'

4. Article 115(4) shall be replaced by the following:

'4. Measures aimed at prohibiting, imposing certain conditions for, or facilitating recourse to paragraph 1 may be adopted in accordance with the committee procedure.'

5. The following sentence shall be added to Article 117(c):

'The cases in which the economic conditions are deemed to have been fulfilled may be determined in accordance with the committee procedure.'

6. Article 124 shall be replaced by the following:

'*Article 124*

1. The drawback system may be used for all goods. It shall not, however, be usable where, at the time the declaration of release for free circulation is accepted:

— the import goods are subject to quantitative import restrictions,

— a tariff measure within quotas is applied to the import goods,

[1] OJ L 184, 17.7.1999, p. 23.

— the import goods are subject to presentation of an import or export licence or certificate in the framework of the common agricultural policy, or

— an export refund or tax has been set for the compensating products.

2. Moreover, no reimbursement of import duties under the drawback system shall be possible if, at the time the export declaration for the compensating products is accepted, these products are subject to presentation of an import or export licence or certificate in the framework of the common agricultural policy or an export refund or tax has been set for them.

3. Derogations from paragraphs 1 and 2 may be laid down in accordance with the committee procedure.'

7. Article 131 shall be replaced by the following:

'*Article 131*

The cases in and specific conditions upon which the procedure for processing under customs control may be used shall be determined in accordance with the committee procedure.'

8. In Article 133(e), the following sentence shall be added:

'The cases in which the economic conditions are deemed to have been fulfilled may be determined in accordance with the committee procedure.'

9. Article 142 shall be replaced by the following:

'*Article 142*

1. Use of the temporary importation procedure with partial relief from import duties shall be granted in respect of goods which are not covered by the provisions adopted in accordance with Article 141 or which are covered by such provisions but do not fulfil all the conditions laid down therein for the grant of temporary importation with total relief.

2. The list of goods in respect of which the temporary importation procedure with partial relief from import duties may not be used and the conditions subject to which the procedure may be used shall be determined in accordance with the committee procedure.'

10. The following paragraph shall be added to Article 153:

'By way of derogation from Article 151, the committee procedure may be used to determine the cases in and specific conditions upon which goods may be released for free circulation following an outward-processing operation, with the cost of the processing operation being taken as the basis for assessment for the purpose of applying the customs tariff of the European Communities.'

11. Article 167(3) shall be replaced by the following:

'3. Free zones with the exception of those designated in accordance with Article 168a, shall be enclosed. The Member States shall define the entry and exit points of each free zone or free warehouse.'

12. Article 168(1) shall be replaced by the following:

'1. The perimeter and the entry and exit points of free zones, except the free zones designated in accordance with Article 168a, and of free warehouses shall be subject to supervision by the customs authorities.'

13. The following Article shall be inserted between Article 168 and heading B (Placing of goods in free zones or free warehouses):

'*Article 168a*

1. The customs authorities may designate free zones in which customs checks and formalities shall be carried out and the provisions concerning customs debt applied in accordance with the requirements of the customs warehousing procedure.

Articles 170, 176 and 180 shall not apply to the free zones thus designated.

2. References to free zones in Articles 37, 38 and 205 shall not apply to free zones referred to in paragraph 1.'

14. Article 212a shall be replaced by the following:

'*Article 212a*

Where customs legislation provides for favourable tariff treatment of goods by reason of their nature or end-use or for relief or total or partial exemption from import or export duties pursuant to Articles 21, 82, 145 or 184 to 187, such favourable tariff treatment, relief or exemption shall also apply in cases where a customs debt is incurred pursuant to Articles 202 to 205, 210 or 211, on condition that the behaviour of the person concerned involves neither fraudulent dealing nor obvious negligence and he produces evidence that the other conditions for the application of favourable treatment, relief or exemption have been satisfied.'

15. The following paragraph shall be added to Article 215:

'4. If a customs authority finds that a customs debt has been incurred under Article 202 in another Member State and the amount of that debt is lower than EUR 5 000, the debt shall be deemed to have been incurred in the Member State where the finding was made.'

16. Article 220(2)(b) shall be replaced by the following:

'(b) the amount of duty legally owed was not entered in the accounts as a result of an error on the part of the customs authorities which could not reasonably have been detected by the person liable for payment, the latter for his part having acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration.

Where the preferential status of the goods is established on the basis of a system of administrative cooperation involving the authorities of a third country, the issue of a certificate by those authorities, should it prove to be incorrect, shall constitute an error which could not reasonably have been detected within the meaning of the first subparagraph.

The issue of an incorrect certificate shall not, however, constitute an error where the certificate is based on an incorrect account of the facts provided by the exporter, except where, in particular, it is evident that the issuing authorities were aware or should have been aware that the goods did not satisfy the conditions laid down for entitlement to the preferential treatment.

The person liable may plead good faith when he can demonstrate that, during the period of the trading operations concerned, he has taken due care to ensure that all the conditions for the preferential treatment have been fulfilled.

The person liable may not, however, plead good faith if the European Commission has published a notice in the *Official Journal of the European Communities*, stating that there are grounds for doubt concerning the proper application of the preferential arrangements by the beneficiary country.'

17. Article 221(3) shall be replaced by the following paragraphs:

'3. Communication to the debtor shall not take place after the expiry of a period of three years from the date on which the customs debt was incurred. This period shall be suspended from the time an appeal within the meaning of Article 243 is lodged, for the duration of the appeal proceedings.

4. Where the customs debt is the result of an act which, at the time it was committed, was liable to give rise to criminal court proceedings, the amount may, under the conditions set out in the provisions in force, be communicated to the debtor after the expiry of the three-year period referred to in paragraph 3.'

18. Article 222(2) shall be replaced by the following:

'2. The cases and conditions in which the debtor's obligation to pay duty shall be suspended may also be provided for in accordance with the committee procedure:

— where an application for remission of duty is made in accordance with Article 236, 238 or 239,

or

— where goods are seized with a view to subsequent confiscation in accordance with the second indent of point (c) or with point (d) of Article 233,

or

— where the customs debt was incurred under Article 203 and there is more than one debtor.'

19. Articles 247, 248 and 249 shall be replaced by the following:

'*Article 247*

The measures necessary for the implementation of this Regulation, including implementation of the Regulation referred to in Article 184, except for Title VIII and subject to Articles 9 and 10 of Regulation (EEC) No 2658/87 (*) and to Article 248 of this Regulation shall be adopted in accordance with the regulatory procedure referred to in Article 247a(2) in compliance with the international commitments entered into by the Community.

*Article 247a*

1. The Commission shall be assisted by a Customs Code Committee (hereinafter referred to as "the Committee").

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its Rules of Procedure.

*Article 248*

The measures necessary for implementing Articles 11, 12 and 21 shall be adopted in accordance with the management procedure referred to in Article 248a(2).

*Article 248a*

1. The Commission shall be assisted by a Customs Code Committee, hereinafter referred to as "the Committee".

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its Rules of Procedure.

*Article 249*

The Committee may examine any question concerning customs legislation which is raised by its chairman, either on his own initiative or at the request of a Member State's representative.

(*) OJ L 256, 7.9.1987, p. 1.'

*Article 2*

This Regulation shall enter into force on the seventh day following its publication in the *Official Journal of the European Communities*.

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

Done at ...

| *For the European Parliament* | *For the Council* |
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| *The President* | *The President* |

# STATEMENT OF THE COUNCIL'S REASONS

## I. INTRODUCTION

1. On 12 June 1998, the Commission submitted a proposal [1], based on Articles 26 (ex Article 28), 95 (ex Article 100a) and 133 (ex Article 113) of the Treaty, amending Council Regulation (EEC) No 2913/92 establishing the Community Customs Code.

2. The European Parliament and the Economic and Social Committee delivered their opinions on 12 March 1999 [2] and 27 January 1999 [3] respectively.

3. In the light of these opinions, the Commission forwarded on 3 June 1999 an amended proposal [4] in accordance with Article 250(2) of the Treaty.

4. At its meeting on 25 May 2000, the Council adopted its common position in accordance with Article 251 of the Treaty.

## II. OBJECTIVE

5. The Commission proposal is the second part of a fundamental revision of the Community Customs Code which came into force in 1994; the first part, concerning the reform of external transit, was adopted in April 1999.

   This proposal is primarily intended to introduce into the Customs Code amendments that take account of the need to facilitate trade by simplifying customs rules and procedures and, at the same time, to introduce legal instruments to prevent and combat fraud while giving economic operators greater security.

## III. ANALYSIS OF THE COMMON POSITION

6. The Council adopted the European Parliament's Amendment 1 deleting the text proposed by the Commission for the second subparagraph of Article 5(2). The Council did not adopt Parliament's Amendment 15 modifying Article 13. This amendment, also rejected by the Commission, provided for the customs authorities to adopt control measures. The Council considers that the introduction of control measures falls within the domain of fighting fraud which must be dealt with outside the Community Customs Code.

7. The Council adopted Parliament's Amendment 2, aimed at deleting the new paragraph 3 from Article 62, as this had in any case been accepted by the Commission in its amended proposal.

8. With regard to Amendments 3 and 14 concerning customs declarations by electronic means, the Council very largely adopted the substance of Parliament's amendment, which modified Article 77 by adding new subparagraphs. However, the Council did not maintain the second subparagraph proposed by Parliament as it thought that stipulating in the text that the 'documents shall be kept at [customs] authorities' disposal' was sufficient to guarantee the possibility of a subsequent verification of undertakings which have been authorised to use this form of declaration and which have, under the general provisions of Articles 14 and 16 of the Code, an obligation to keep the documents.

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(1) OJ C 228, 21.7.1998, p. 8.
(2) OJ C 175, 21.6.1999, p. 420.
(3) OJ C 101, 12.4.1999, p. 6.
(4) Not yet published in the Official Journal.

9. With regard to Amendments 4, 5, 6, 7 and 8, aimed at deleting the provisions proposed by the Commission concerning the introduction, into the following Articles, of a committee procedure, the Council,

— as regards Amendment 4 concerning Article 115(4), accepted the new paragraph 4 as set out in the Commission's amended proposal, following Parliament's opinion,

— as regards Amendment 5 concerning Article 117(c) and Amendment 7 concerning Article 133, adopted the texts as initially proposed by the Commission, as these changes were in line with the objective of simplifying the rules in force,

— as regards Amendment 6 concerning Article 118(4), endorsed Parliament's text, which had moreover been included in the Commission's amended proposal,

— as regards Amendment 8 concerning Article 152, thought it advisable to adopt the Commission's initial proposal in substance but to transfer its content to Article 153.

10. With regard to Amendment 13, which refers to the modification of Article 220(2)(b) concerning the problem of the 'good faith' of economic operators (a problem which constituted a very serious stumbling block in the process of revising the Code), the Council presented a new text which very largely adopts the approach followed by Parliament's amendment. However, the wording used supplements Parliament's approach by providing for a more precise definition of the terms 'error', of the customs authorities and 'good faith' of the person liable; both terms appear in the first subparagraph of Article 220(2)(b).

11. As regards Amendment 10 concerning Article 221(3), the Council did not follow the European Parliament, which wished to delete this paragraph, and adopted a new text providing for three years to be kept as the time limit for communication to the debtor of the amount of duty.

12. As regards Amendment 11 concerning the entry into force of the Regulation, the Council adopted the usual wording linking entry into force to the publication of the texts in the *Official Journal of the European Communities*.

13. In addition to the amendments made following the European Parliament's opinion, the Council has made a number of adjustments to the texts in the Commission's proposal, most of which are of an essentially technical nature. These amendments relate to the following points:

— the recitals have been adapted to take account of the enacting terms of the act,

— point 1: the current text of the second subparagraph of Article 5(2) of the Code remains unchanged, as the wording proposed by the Commission was not accepted,

— point 3: Article 49(1) of the Code remains unchanged, as the text proposed by the Commission was not accepted,

— point 8: the new Article 124 departs slightly from the wording proposed by the Commission and has been amended with a view to clarifying the provisions applicable in the drawback system. These new provisions introduce the possibility of derogation through the committee procedure,

— point 9: the second indent of Article 128(1) remains unchanged, as the Commission proposal was not accepted,

— point 13: Article 144 of the Code remains unchanged, as the Commission's proposal was not accepted,

— points 16, 17 and 18: a new text has been adopted with regard to 'free zones'; these amendments are to the first sentence of Article 167(3), Article 168(1) and the wording of the new Article 168a,

— point 19: the new Article 212a corresponds to the Commission's proposal but also adds a reference to Article 82 of the Code,

— point 20: the new paragraph 4 has been added to Article 215 [1], thus following the Commission's proposal; on the other hand, the Council has not adopted the part of the Commission proposal seeking to add a new paragraph relating to the place where the debt was incurred in certain specific situations, as such an addition could cause difficulties in the parallel application of customs rules on the one hand, and of rules currently applicable with regard to taxation on the other,

— point 21: Article 220(1) of the Code remains unchanged, as the Commission's proposal that two new subparagraphs be added was not accepted,

— point 22: Article 221 was amended by making provision for

  — a new text for paragraph 3 corresponding to the Commission's proposal but maintaining the three-year time limit stipulated in the current text of the Code,

  — the addition of a new paragraph 4; this new text corresponds in substance to the paragraph 5 proposed by the Commission; the paragraph 4 proposed by the Commission was not accepted,

— point 23: the new paragraph 2 of Article 222 corresponds to the Commission's proposal, but with the deletion of the last indent which referred to the second subparagraph of Article 220(1).

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[1] The text of Article 215 was amended in connection with the reform of the external transit procedure (Regulation (EC) No 955/1999 of the European Parliament and of the Council of 13 April 1999 (OJ L 119, 7.5.1999, p. 1)).