4. While the aid proposed for the 1978 harvest is on average slightly lower than that for 1977 (326 units of account per hectare in 1978 as against 335 units of account per hectare in 1977), it makes it possible to obtain an average per hectare income of 3 291 units of account (including aid) in 1978 as against 3 179 units of account in 1977. This also reduces EAGGF spending by 0·6 million units of account.

5. In the light of the above, the Economic and Social Committee endorses the draft Regulation.

Done at Brussels, 22 May 1979.

The Chairman
of the Economic and Social Committee

Fabrizia BADUEL GLORIOSO

Opinion on the proposal for a Council Regulation defining the conditions under which a person may be permitted to make a customs declaration

The text referred to the Committee has been published in *Official Journal of the European Communities* No C 29 of 1 February 1979, page 3.

A. LEGAL BASIS FOR THE OPINION

On 2 February 1979 the Council referred the abovementioned proposal to the Economic and Social Committee in accordance with Article 198 of the Treaty establishing the European Economic Community.

B. OPINION OF THE ECONOMIC AND SOCIAL COMMITTEE

The Economic and Social Committee prepared its opinion on the above matter at its 168th plenary session held in Brussels on 22 and 23 May 1979.

The full text of the opinion is as follows:

THE ECONOMIC AND SOCIAL COMMITTEE,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 198 thereof,

Having regard to the request made by the Council on 2 February 1979 for an opinion,

Having regard to the decision taken by its Bureau on 20 February 1979 instructing the Section for Industry, Commerce, Crafts and Services to draw up an opinion on the matter,

Having regard to the opinion issued by the Section for Industry, Commerce, Crafts and Services at its meeting held on 25 April 1979,

Having regard to the oral report submitted by the rapporteur, Mr Marvier,

Having regard to its discussions at its 168th plenary session held on 22 and 23 May 1979 (meeting of 22 May 1979),

HAD ADOPTED THE FOLLOWING OPINION

unanimously:

1. General comments

1.1. The Committee wishes first of all to refer to its opinion of 17 July 1974 on the proposal for a Council Directive on the harmonization of procedures for the release of goods for free circulation.

The Committee approved this draft Directive, subject to certain specific comments, but for nearly five years now it has been pending before the Council.

The draft Regulation (not a draft Directive in the present case) defining the conditions under which a person may be permitted to make a customs declaration reiterates,

with the addition of a few details, the definition of a declarant already given in the draft Directive. Articles 2 and 4 of the draft Regulation between them reproduce Article 3 of the draft Directive in its entirety.

The Committee is astonished that a Directive, for which it was claimed at the time that there was an urgent need, can be held up for so long before the Council. It also notes that the explanatory memorandum to the draft Regulation now submitted for its opinion makes no mention of these circumstances and does not explain why it is now necessary to repeat part of a draft Directive in a draft Regulation. This is all the more inexplicable since some provisions of the draft Directive have been amended in the meantime.

1.2. This said, the Committee, having already approved the abovementioned draft Directive, can only re-state its approval of the attempt to establish a Community definition of a customs declarant.

1.3. As the draft Regulation is based on Article 235 of the Treaty, which requires unanimous agreement among the Member States, the Committee nevertheless wonders whether the differences of opinion which led to the draft Directive being blocked by the Council will not mean that the draft Regulation suffers the same fate. At all events, measures will have to be taken to ensure that the two instruments can be applied simultaneously.

1.4. The Committee would further point out that the draft Regulation can legally apply only to customs declarations proper. All the procedures and formalities for the other declarations (fiscal, statistical, exchange control, etc.) which normally accompany imports remain under national jurisdiction.

1.5. Under these circumstances it is to be feared that the provisions of the draft Regulation will be called into question, since the Member States can require that, in order to comply with national formalities, certain conditions must be met; they are free to fix these conditions, which obviously would not be in line with the principles established by the new Regulation.

There is a very precise distinction in law between release for free circulation under Community conditions and release to the market under national conditions but, it is exceptional to make such a distinction in practice. In the vast majority of cases the formalities are effected in a single operation and it would, of course, be the most restrictive conditions which prevailed.

The Committee acknowledges that Member States which adopted such restrictive practices could be prosecuted for setting up barriers to the free movement of goods. However, it feels it must point out the inadequacy of a legal instrument which, although based on a Council Directive and Regulation, will still require the intervention of the Court of Justice to give it real practical effect.

While approving the draft, the Committee therefore wonders whether it will really solve the current problems.

2. Specific comments

2.1. *Preamble*

The Committee would like the preamble to the Regulation to expressly repeat the principle stated in paragraph (c) of the explanatory memorandum, namely, that 'any person domiciled in the Community should be permitted to make a customs declaration, irrespective of the Member State in which the customs formalities are completed'.

2.2. *Article 2*

The Committee considers that the words 'any person able to produce . . . the goods in question as well as all documents . . .' must be taken to mean 'any person practically and legally capable . . .'.

2.3. *Article 3*

This Article represents the principal new element not contained in the earlier draft Directive. Its content must therefore be very clear. The Committee realizes that this Article is intended to make possible a customs declaration for all customs procedures, whereas the draft Directive covers only the release for free circulation and Regulation (EEC) No 227/77 on Community transit – which already stipulates that any person domiciled in the Community may make a transit declaration – has been applied restrictively in some Member States in this respect. For its part, the Committee considers it necessary that the customs declarant should be able to act in respect of all customs procedures, but it would point out that in this case the present text needs refining.

Article 3 (2) as it stands now, may be interpreted as meaning that customs declarations involving a commitment, authorization, etc., may only be established in the declarant's own name and on his own behalf. This would rule out all customs procedures except those concerning release to the market. Only the

case referred to in Article 3 (1) (b) (declarant in his own name but on behalf of another person) presents any dangers in this respect. It is therefore proposed that the following be added at the end of Article 3 (2):

'Subject to the conditions laid down by this Regulation another person may establish this declaration in the name of and on behalf of the person for whom the authorization or the document required was issued.'

2.4. *Article 3 (3), second sentence*

While acknowledging the customs authorities' need for this provision, the Committee considers that the obligation for the declarant to supply proof of the precise legal capacity in which he is acting could considerably complicate his task. In fact and in law the relations between principals and agents comes under national commercial law or, in the case of a transport contract, the relevant International Conventions to which the Member States are Contracting Parties. In both cases it is therefore up to the Member States, and not the Commission, to judge the evidence. So as to avoid the difficulties which the proof of a representative's power to act on another person's behalf might pose, it would suffice if the representative is considered as being a party to the customs operation himself instead of being another person's representative. This is a practical solution. It relieves the customs authorities of the need to track down the customs debtor afterwards – an operation which always involves varying degrees of difficulty.

2.5. *Article 5*

Article 5 makes it possible to exclude a person throughout the Community from the right to declare on behalf of another person.

Its present wording raises two questions:

(a) To implement this provision some kind of index would have to be drawn up which would be difficult to keep up to date.

(b) It does not state which authorities are competent in this matter. Is it the Commission or the Member States? Furthermore, are these offences against Community law or against national law?

If the final text did not give a positive answer to these questions, Article 5 would have to be deleted.

2.6. *Article 6*

As it has already stated in numerous earlier opinions, the Committee considers that a multiplicity of Regulations and committees must be avoided. It therefore approves the reference to a 'General Customs Regulation Committee', provided that this is not superimposed on the existing committees. It would further observe that all the texts relating to customs declarations and clearance procedures should, as far as possible, be brought together in one legal text, without this leading to a delay in the implementation of this Regulation and the other proposals which are pending.

2.7. *Article 6 (2)*

The Committee observes that the Directive referred to is that on the release of goods for free circulation, pending before the Council, and that the text on which the Committee delivered its opinion in 1974 has undergone various amendments which have not been brought to the Committee's attention.

Done at Brussels, 22 May 1979.

The Chairman
of the Economic and Social Committee

Fabrizia BADUEL GLORIOSO