

COUNCIL REGULATION (EEC) No 2504/88

of 25 July 1988

on free zones and free warehouses

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 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 free zones and free warehouses are parts of, or premises within, the Community customs territory, separate from the rest of that territory, in which there is generally a concentration of activities related to external trade; whereas, because of the customs facilities available in them, these free zones and free warehouses ensure the promotion of the aforesaid activities and, in particular, that goods are redistributed within the Community and elsewhere; whereas, therefore, the provision concerning them forms an essential instrument of the Community's commercial policy;

Whereas Directive 69/75/EEC ⁽⁴⁾, as last amended by the Act of Accession of Spain and Portugal, laid down the rules to be incorporated in Member States' provisions governing free zones; whereas the importance of those zones in the context of the customs union calls for provisions relating to them to be applied uniformly throughout the Community; whereas the rules currently in force should therefore be supplemented and clarified and enacted in a form directly applicable in the Member States, thus affording greater legal security for individuals;

Whereas free zones and free warehouses should not be given any competitive advantage where the application of import duties is concerned; whereas, on the other hand, the customs formalities in such zones or warehouses should, in view of the special circumstances, be simpler than those applying in other parts of the Community customs territory;

Whereas non-Community goods placed in free zones or free warehouses should be allowed to remain there for an unlimited period without the payment of import duties or the application of such duties and measures, the goods in these free zones or free warehouses should therefore be considered

as not being within the customs territory of the Community;

Whereas it should be borne in mind that Community goods placed in free zones or free warehouses qualify for certain benefits normally attaching to their export; whereas it is also necessary to determine the consequences of placing in a free zone or free warehouse Community goods which are subject in intra-Community trade to charges imposed under the common agricultural policy for such time as such charges are applied; whereas it should also be possible to place other Community goods in a free zone or free warehouse; whereas, where such goods are liable to domestic taxes, it is for the Member State to decide on the conditions for, and consequences of, placing them in free zones or free warehouses without prejudice to Community fiscal provisions;

Whereas it is necessary to lay down certain rules for the charging of duties where a customs debt arises in respect of goods placed in a free zone or free warehouse; whereas it should be provided that, in certain circumstances, value added within the customs territory of the Community is not to be included in the customs value of such goods;

Whereas the uniform application of this Regulation must be ensured and accordingly a Community procedure for the enactment of implementing rules should be established; whereas close and effective cooperation in this area between the Member States and the Commission should be organized through the Committee on Customs Warehouses and Free Zones established under Council Regulation (EEC) No 2503/88 of 25 July 1988 on customs warehouses ⁽⁵⁾,

HAS ADOPTED THIS REGULATION:

TITLE I

General provisions

Article 1

1. This Regulation lays down the rules governing free zones and free warehouses.
2. In a free zone or free warehouse:
 - (a) non-Community goods shall be subject neither to import duties nor, save as otherwise provided, to commercial policy measures;

⁽¹⁾ OJ No C 283, 6. 11. 1985, p. 9.

⁽²⁾ OJ No C 120, 20. 5. 1986, p. 16.

⁽³⁾ OJ No C 283, 20. 10. 1986, p. 6.

⁽⁴⁾ OJ No L 58, 8. 3. 1969, p. 11.

⁽⁵⁾ See page 1 of this Official Journal.

- (b) Community goods for which specific Community rules so provide, shall benefit, as a result of their being placed in a free zone, from measures normally attaching to the export of such goods;
- (c) no customs formalities or controls shall apply to the entry, holding or removal of goods other than as provided in this Regulation.

3. For such time as Community goods are subject in intra-Community trade to charges imposed under the common agricultural policy, such charges shall not apply in a free zone or free warehouse.

4. For the purposes of this Regulation:

(a) '*free zone*' means parts of the customs territory of the Community, separate from the rest of that territory, in which non-Community goods placed in them are considered, for purposes of the application of import duties and commercial policy import measures, as not being within the customs territory of the Community provided they are not released for free circulation or entered under another customs procedure under the conditions laid down in this Regulation;

(b) '*free warehouse*' means premises situated within the Community's customs territory, in which non-Community goods placed in them are considered, for purposes of the application of import duties and commercial policy import measures, as not being within the customs territory of the Community provided they are not released for free circulation or entered under another customs procedure under the conditions laid down in this Regulation;

(c) '*Community goods*' means goods:

— entirely obtained in the customs territory of the Community without the addition of goods from third countries or territories which are not part of the customs territory of the Community;

— from countries or territories not forming part of the customs territory of the Community which have been released for free circulation in a Member State;

— obtained in the customs territory of the Community either from the goods referred to exclusively in the second indent or from goods referred to in the first and second indents;

(d) '*non-Community goods*' means goods other than those referred to in (c).

Without prejudice to the agreements concluded with third countries for the implementation of the Community transit arrangements, goods which, while fulfilling the conditions laid down in (c), are reintroduced into the customs territory of the Community after export therefrom are also considered as non-Community goods;

(e) '*import duties*' means customs duties and charges having equivalent effect, agricultural levies and other import charges laid down under the common agricultural policy or under the specific arrangements applicable to certain goods resulting from the processing of agricultural products;

(f) '*export duties*' means agricultural levies and other export charges laid down under the common agricultural policy or under the specific arrangements applicable to certain goods resulting from the processing of agricultural products;

(g) '*customs authority*' means any authority competent to apply customs rules, even if that authority is not part of the customs administration;

(h) '*person*' means:

— a natural person, or

— a legal person, or

— when this possibility is provided for in the rules in force, an association of persons recognized as having legal capacity but lacking the legal status of a legal person.

Article 2

1. Member States may designate parts of the customs territory of the Community as free zones or authorize the establishment of free warehouses.

2. Member States shall determine the area covered by each free zone. Premises which are to be designated as free warehouses must be approved by Member States.

3. Member States shall ensure that free zones are enclosed and shall determine the entry and exit points of free zones and free warehouses.

4. The construction of any building in a free zone shall require the prior authorization of the customs authority.

Article 3

1. The perimeter and the entry and exit points of free zones and free warehouses shall be subject to supervision by the customs authorities.

2. Persons and means of transport entering or leaving a free zone or a free warehouse may be subjected to a customs check.

3. Access to a free zone or a free warehouse may be denied to persons who do not provide every guarantee necessary for compliance with the rules provided for in this Regulation.

4. The customs authority may check goods entering, leaving or remaining in a free zone or free warehouse. To

enable such checks to be carried out, a copy of the transport document, which must accompany goods entering or leaving, must be handed to, or kept at the disposal of, the customs authority by any person designated for this purpose by such authority. Where these checks are required, the goods must be made available to the customs authority.

TITLE II

Placing of goods in free zones or free warehouses

Article 4

1. Free zones and free warehouses shall be open to all goods irrespective of their nature, quantity and country of origin, consignment or destination.
2. Paragraph 1 shall not preclude:
 - (a) the imposition of prohibitions or restrictions justified on grounds of public morality, public policy or public security, the protection of human, animal or plant health and life, the protection of national treasures of artistic, historic or archaeological value, or the protection of industrial or commercial property;
 - (b) the right of the customs authority to require that goods which present a danger or are likely to spoil other goods or which, for other reasons, require special facilities be placed in premises specially equipped to receive them.

Article 5

1. Without prejudice to Article 3 (4), goods entering a free zone or free warehouse need not be presented to the customs authority, nor need a customs declaration be lodged.
2. Goods need be presented to the customs authority only where:
 - (a) they have been placed under a customs procedure which is discharged when they enter a free zone or free warehouse; however, where the customs procedure in question permits exemption from the obligation to present goods, such presentation need not be required;
 - (b) they have been placed in a free zone or free warehouse on the authority of a decision to grant repayment or remission of import duties;
 - (c) a request has been made for advance payment of export refunds on the goods under the common agricultural policy.
3. The customs authority may require that goods subject to export duties or to other export provisions shall be notified to the customs authority.

4. At the request of the party concerned, the customs authority shall certify that the goods placed in a free zone or free warehouse are either Community goods or non-Community goods.

TITLE III

Operation of a free zone or free warehouse

Article 6

1. There shall be no limit on the length of time goods may stay in free zones or free warehouses.
2. Specific time limits imposed in accordance with Article 17 (2) of Council Regulation (EEC) No 2503/88 shall apply to certain goods.

Article 7

1. Subject to Articles 8 and 9, any industrial, commercial or service activity shall be authorized in a free zone or free warehouse subject to the conditions laid down in this Regulation.
2. However, the customs authority may impose certain prohibitions or restrictions on such activities, having regard to the nature of the goods concerned or the requirements of customs supervision.
3. The customs authority may prohibit persons who do not provide the necessary guarantees for the correct application of this Regulation from carrying on an activity in a free zone or free warehouse.

Article 8

Where an activity referred to in Article 7 involves working of non-Community goods, the following provisions shall apply:

- (a) without prejudice to Article 13 (2), no authorization shall be required for usual forms of handling within the meaning of Article 18 (1) of Council Regulation (EEC) No 2503/88;
- (b) processing operations other than usual forms of handling shall be carried out in accordance with Council Regulation (EEC) No 1999/85 of 16 July 1985 on inward processing relief arrangements⁽¹⁾. Member States may, however, insofar as is necessary to take into account conditions of operation and customs supervision in free zones and free warehouses, adapt the relevant methods of control. The formalities which may be dispensed with in a free zone or free warehouse

⁽¹⁾ OJ No L 188, 20. 7. 1985, p. 1.

will be determined in accordance with the procedure laid down in Article 31 of Regulation (EEC) No 1999/85.

By way of derogation from the first subparagraph, processing operations within the territory of the Old Free Port of Hamburg shall not be subject to conditions of an economic nature.

However, if conditions of competition in a specific economic sector in the Community are affected as a result of this derogation, the Council, acting by a qualified majority on a proposal from the Commission, shall decide that the economic conditions laid down for the Community with regard to inward processing shall apply to the corresponding economic activity within the territory of the Old Free Port of Hamburg;

- (c) processing under customs control shall be carried out in accordance with Council Regulation (EEC) No 2763/83 of 26 September 1983 on arrangements permitting goods to be processed under customs control before being put into free circulation ⁽¹⁾, as last amended by Regulation (EEC) No 4151/87 ⁽²⁾. Member States may, however, insofar as is necessary to take into account conditions of operation and customs supervision in free zones and free warehouses, adapt the relevant methods of control. The formalities which may be dispensed with in a free zone or free warehouse will be determined in accordance with the procedure laid down in Article 31 of Regulation (EEC) No 1999/85.

Article 9

Where an activity referred to in Article 7 involves the working of Community goods, the following provisions shall apply:

- (a) the Community goods referred to in Article 1 (2) (b) which are covered by the common agricultural policy may undergo only the forms of handling expressly referred to in respect of these goods in Article 18 (2) of Regulation (EEC) No 2503/88. Such handling may be undertaken without authorization;
- (b) the Community goods referred to in Article 1 (3) may undergo without authorization the usual forms of handling referred to in Article 18 (1) of Regulation (EEC) No 2503/88 or be destroyed in accordance with the fourth indent of Article 10 (1).

Article 10

1. Without prejudice to Article 8, non-Community goods placed in a free zone or free warehouse may, while they remain in a free zone or free warehouse, be:

- put into free circulation;
- entered under temporary importation procedure;
- abandoned to the Exchequer, where national regulations provide for this possibility;
- destroyed, provided that the person concerned provides the customs authority with all the information it considers necessary; the scrap and waste resulting from such destruction may be dealt with as described in one of the preceding indents or in Article 8.

The abandoning or destruction of goods must not give rise to any expense to the Exchequer.

2. Where paragraph 1 is not applied, the non-Community goods and the Community goods referred to in Article 1 (2) (b) and (3) may not be consumed or used in free zones or in free warehouses.

3. Without prejudice to the provisions applicable to supplies of stores, where the procedure concerned so provides, paragraph 2 shall not preclude the use or consumption of goods the release for free circulation or temporary importation of which would not entail application of import duties, measures under the common agricultural policy or the commercial policy or the charges referred to in Article 1 (3). In that event, no declaration of release for free circulation or temporary importation shall be required.

A declaration shall, however, be required if such goods are to be charged to a quota or a ceiling.

Article 11

1. Persons carrying on an activity involving the storage, working or processing, or sale or purchase, of goods in a free zone or free warehouse must keep stock accounts in a form approved by the customs authority. Goods must be entered in the stock accounts as soon as they are brought on to such persons' premises. The stock accounts must enable the customs authority to identify the goods, and must record their movements.

The stock accounts must be kept at the disposal of the customs authority to enable it to carry out such controls as it considers necessary.

2. Where goods are transhipped within a free zone, the documents relating to the operation must be kept at the disposal of the customs authority. The short-term storage of goods in connection with such transhipment shall be deemed to be an integral part of the operation.

⁽¹⁾ OJ No L 272, 5. 10. 1983, p. 1.

⁽²⁾ OJ No L 391, 31. 12. 1987, p. 1.

TITLE IV

Removal of goods from a free zone or a free warehouse

Article 12

Without prejudice to special provisions adopted under specific customs arrangements, non-Community goods being removed from a free zone or free warehouse may be:

- exported out of the customs territory of the Community; or
- moved, in accordance with Community rules, to another part of the customs territory of the Community.

Article 13

1. Where a customs debt arises in respect of non-Community goods, the customs value of such goods shall be determined in accordance with Regulation (EEC) No 1224/80⁽¹⁾, as last amended by the Act of Accession of Spain and Portugal.

Where the customs value is based on a price actually paid or payable which includes the cost of warehousing or of preserving goods while they remain in the free zone or free warehouse, such costs need not be included in the customs value if they are distinguished from the price actually paid or payable for the goods.

2. Where the said goods have undergone, in the free zone or free warehouse, one of the usual forms of handling within the meaning of Article 18 (1) of Regulation (EEC) No 2503/88, the nature of the goods, the value for customs purposes and the quantity to be taken into consideration in determining the amount of import duties shall, at the request of the declarant and provided that such handling was covered by an authorization issued in accordance with Article 18 (3) of that Regulation, be those which would be taken into account if the goods concerned had not undergone such handling. Derogations from this provision may, however, be adopted in accordance with the procedure laid down in Article 28 of Regulation (EEC) No 2503/88.

Article 14

1. Community goods covered by the common agricultural policy and referred to in Article 1 (2) (b) must be dealt with, when placed in a free zone or free warehouse, in one of the ways provided for by the rules under which they are eligible, because they are placed in a free zone, for measures normally attaching to the export of such goods.

2. Should such goods be returned to another part of the customs territory of the Community, or if no application to

have them dealt with in one of the ways provided for in paragraph 1 has been made by the expiry of a time limit set pursuant to Article 6 (2), the customs authority shall take the measures described by the specific rules concerned relating to the case of failure to deal with the goods in the specified way.

Article 15

Community goods referred to in Article 1 (3) placed in a free zone or a free warehouse may be dealt with in any of the ways allowed for such goods.

Article 16

1. Where goods are to be returned to another part of the customs territory of the Community, or placed under a customs procedure, the certificate referred to in Article 5 (4) may be used as proof of the Community or non-Community status of the goods as the case may be.

2. Where no such certificate or other evidence of the Community or non-Community status of the goods is available, the goods shall be deemed to be:

- Community goods, for the purposes of applying export duties and export certificates or export measures laid down under the commercial policy;
- non-Community goods in all other cases.

Article 17

The customs authority shall ensure that rules governing the export or consignment of goods from Member States are complied with where such goods are exported or consigned from a free zone or free warehouses.

TITLE V

Final provisions

Article 18

The Committee on Customs Warehouses and Free Zones set up under Article 26 of Regulation (EEC) No 2503/88 may examine any matter concerning the implementation of this Regulation raised by its chairman either on his own initiative or at the request of a representative of a Member State.

Article 19

The provisions required to implement this Regulation shall be adopted in accordance with the procedure laid down in Article 28 of Regulation (EEC) No 2503/88.

⁽¹⁾ OJ No L 134, 31. 5. 1980, p. 1.

Article 20

This Regulation shall be without prejudice to the adoption of special provisions relating to the common agricultural policy, which remain subject to the rules governing the establishment of that policy.

Article 21

Where specific Community rules refer to free zones, that reference shall be taken to include a reference to free warehouse.

Article 22

This Regulation shall apply without prejudice to Council Regulation (EEC) No 1736/75 of 24 June 1975 on the external trade statistics of the Community and statistics of trade between Member States⁽¹⁾, as last amended by Regulation (EEC) No 1629/88⁽²⁾.

Article 23

Nothing in this Regulation shall affect the provisions of Council Regulation (EEC) No 353/79 of 5 February 1979

laying down the conditions for coupage and wine making in the free zones within Community territory for wine products originating in third countries⁽³⁾.

Article 24

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

It shall be implemented one year after the date of entry into force of the implementing provisions adopted in accordance with the procedure laid down in Article 19.

2. Directive 69/75/EEC and the provisions of Directive 71/235/EEC⁽⁴⁾ which are adopted for the application thereof shall be repealed on the date on which this Regulation is implemented. References to those Directives shall be deemed to be references to this Regulation.

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

Done at Brussels, 25 July 1988.

For the Council
The President
Th. PANGALOS

⁽¹⁾ OJ No L 183, 14. 7. 1975, p. 3.

⁽²⁾ OJ No L 147, 14. 6. 1988, p. 1.

⁽³⁾ OJ No L 54, 5. 3. 1979, p. 94.

⁽⁴⁾ OJ No L 143, 29. 6. 1971, p. 28.