

## COUNCIL REGULATION (EEC) No 4046/89

of 21 December 1989

on the security to be given to ensure payment of a customs debt

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

In cooperation with the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas certain provisions of the law on customs matters stipulate that the customs authorities are either obliged or entitled to require security to be given to ensure payment of a customs debt which has been, or may be, incurred;

Whereas the rules governing such security are of particular importance for the proper functioning of the customs union and for ensuring the greatest degree of equal treatment for traders; whereas, since the giving of security in fact involves substantial expense, it is important that all Community traders, irrespective of the Member State in which they are situated, be subject to the same rules in regard, *inter alia*, to the manner in which such security may be given and the calculation of the amount thereof;

Whereas, where security is required, it must be given once only by the person by whom the customs debt has been or may be incurred; whereas no security should be required where that person is a public authority, since there is no risk of failure to pay the amount of the customs debt involved; whereas the cost involved in the provision of security, both for traders and for the customs authority, may be disproportionate to the real risk of non-payment of the customs debt where the amount of the latter does not exceed a certain limit; whereas the customs authority must therefore have the option to waive security for customs debts below that limit;

Whereas, for the sake of simplification, it should be made possible to give comprehensive security covering a number of operations in respect of which a customs debt will or may be incurred;

Whereas, where the requirement of security is optional, such security should be required insofar as the customs debt is not

certain to be paid by the prescribed time-limit; whereas the customs authority should assess the facts of the specific case to determine whether the customs debt is not certain to be paid; whereas provision must be made for such optional security to be required at any time if the customs authority considers it necessary;

Whereas, where the requirement of security is compulsory, the amount thereof must be equal to the amount of the customs debt in question as established or estimated by the customs authority; whereas, where the requirement of security is optional, the maximum amount thereof must not exceed the amount of the customs debt actually at stake;

Whereas the types of security most effective for ensuring payment of a customs debt are a cash deposit or its equivalent or the provision of a guarantor; whereas the persons concerned must be free to choose between those two types of security; whereas, under certain customs procedures, specific types of security are, however, provided for at Community level; whereas they should be retained; whereas the customs authority must have the right to refuse the proposed security where it considers that security does not ensure payment of the customs debt within the time-limit laid down; whereas, as occasion requires, that authority must, however, have the right to accept types of security other than one of the two referred to above where they provide equivalent assurance that the customs debt will be paid;

Whereas the security must be released as soon as the customs debt to which it relates is extinguished or can no longer arise; whereas it must be made possible for part of the security to be released having regard to any reduction in the amount of the secured customs debt;

Whereas, for the sake of simplification, the rules for securing import duties and export duties must also be applied where security is given to ensure payment of charges resulting from the implementation of the common agricultural policy imposed on Community goods in intra-Community trade;

Whereas the rules governing security contained in certain international conventions remain unaffected by the application of Community rules on the subject; whereas the same is true of the Community transit procedure;

Whereas it is necessary to repeal or amend such provisions relating to security as are already contained in Community legislation which conflict with those in this Regulation,

<sup>(1)</sup> OJ No C 30, 4. 2. 1983, p. 11.

<sup>(2)</sup> OJ No C 77, 19. 3. 1984, p. 159 and OJ No C 291, 20. 11. 1989, p. 49.

<sup>(3)</sup> OJ No C 211, 8. 3. 1983, p. 2.

HAS ADOPTED THIS REGULATION:

*Article 1*

1. This Regulation lays down the rules governing the security to be given, in accordance with the law on customs matters, to ensure, in whole or in part, payment of a customs debt.
2. For the purposes of this Regulation:
  - (a) 'the law on customs matters' shall mean all Community provisions and provisions which contribute to the application of Community rules governing the import, export, transit and presence of goods forming the subject of trade between the Member States and between the latter and third countries;
  - (b) 'customs debt' shall mean the obligation on a person to pay the amount of the import duties (customs debt on importation) or export duties (customs debt on exportation) which apply under the provisions in force to goods liable to such duties;
  - (c) 'person' shall mean:
    - either a natural person,
    - or a legal person,
    - or, where such a possibility is provided for by the existing rules and regulations, an association of persons which is recognized as being empowered to execute legal acts without having the legal status of a legal person;
  - (d) 'import duties' shall mean customs duties and charges having equivalent effect, and 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;
  - (e) 'export duties' shall mean 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;
  - (f) 'customs authority' shall mean any authority competent to apply the law on customs matters, even if that authority is not part of the customs administration;
  - (g) 'Community goods' shall mean 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 goods referred to exclusively in the second indent or from goods referred to in the first and second indents.

TITLE I

**Requirement of security**

*Article 2*

1. Where, pursuant to the law on customs matters, the customs authority requires security to be given to ensure payment of a customs debt, such security shall be given by the person by whom that debt has been, or may be, incurred.
2. The customs authority may require only one security to be given for the same customs debt.
3. The customs authority may allow the security to be given by a third party instead of the person from whom the security was required.
4. No security shall be required where the person by whom a customs debt has been, or may be, incurred is a public authority.
5. The customs authority may waive the requirement for provision of security where the amount of the customs debt in question does not exceed ECU 500.

*Article 3*

1. Where the law on customs matters provides that the requirement of security is optional, the requirement of such security shall be left to the customs authority's judgment insofar as a customs debt which has been, or may be, incurred is not certain to be paid within the prescribed time-limit.

Where the security referred to in the preceding subparagraph is not required, the customs authority may nevertheless ask the person referred to in Article 2 (1) for an undertaking setting out the obligations which that person is legally obliged to fulfil.

2. The security referred to in the first subparagraph of paragraph 1 may be required:
  - at the time of application of the rules which make provision for requiring such security to be given, or
  - at any subsequent time when the customs authority finds that the customs debt which has been, or may be, incurred is not certain to be paid by the prescribed time-limit.

*Article 4*

At the request of the person referred to in Article 2 (1), a comprehensive security may be given to cover one or more operations in respect of which a customs debt has been, or may be, incurred.

*Article 5*

Where the law on customs matters makes it compulsory to give security, the amount of the security shall be fixed by the customs authority at a level equal to:

- the exact amount of the customs debt or debts to be secured, where that amount can be established with certainty at the time when the security is required,
- the maximum amount, as estimated by the customs authority, of the customs debt or debts which have been, or may be, incurred in other cases, particularly if the security is required to cover a number of operations to be carried out during a given period.

#### Article 6

Where the law on customs matters provides that the security is optional, and the customs authority requires it to be given, the amount of the security shall be fixed by the customs authority so as not to exceed the level provided for in Article 5.

### TITLE II

#### Giving of security

##### Article 7

Subject to the second subparagraph of Article 10 (1), security may be given by:

- making a cash deposit, or
- a guarantor.

##### Article 8

1. A cash deposit shall be made in the currency of the Member State in which the security is required.

The following shall be deemed equivalent to a cash deposit:

- submission of a cheque the payment of which is guaranteed by the institution on which it is drawn in any manner acceptable to the customs authority,
- submission of any other instrument recognized by the customs authority as a means of payment.

2. Security in the form of a cash deposit or payment deemed equivalent to a cash deposit shall be given in accordance with the provisions in force in the Member State in which the security is required.

##### Article 9

The guarantor shall undertake to pay jointly and severally with the debtor the secured amount of a customs debt which fails to be paid. The guarantor must:

- have his normal residence or an establishment in the Community, and
- subject to the provisions concerning freedom to provide services, have been approved by the customs authority of the Member State in which the security is given. Such approval may be subject, among other things, to the

condition that the guarantor be a person whose main or secondary professional activities relate to the provision of such services.

##### Article 10

1. The person required to give security shall be free to choose between the types of security laid down in Article 7.

However, the customs authority may refuse to accept the type of security proposed where it is incompatible with the proper functioning of the customs procedure concerned.

The customs authority may stipulate that the type of security chosen by the person be maintained for a specific period.

2. The customs authority may, where the provisions adopted in accordance with Article 15 (2) so allow, accept types of security other than those referred to in Article 7 where they provide equivalent assurance that the customs debt will be paid.

It may, subject to the same conditions, accept a cash deposit or the submission of securities even if they do not comply with the conditions laid down in Article 8 (1).

##### Article 11

The customs authority may refuse the security proposed where it does not appear to it certain to ensure that the customs debt will be paid by the prescribed time-limit.

##### Article 12

Where the customs authority establishes that the security given does not ensure, or is no longer certain or sufficient to ensure, payment of the customs debt by the prescribed time-limit, it shall require the person referred to in Article 2 (1), at his option, to give additional security or to replace the original security with a new security.

### TITLE III

#### Release of the security

##### Article 13

1. The security may not be released until such time as the customs debt in respect of which it was given is extinguished or can no longer arise. As soon as the customs debt is extinguished or can no longer arise, the security shall be released forthwith.

2. Once the customs debt has been extinguished in part or may arise only in respect of part of the amount which has been secured, part of the security shall be released accordingly at the request of the person concerned, unless the amount at stake does not justify such action.

## TITLE IV

## Final provisions

## Article 14

This Regulation shall apply in cases where security is given to ensure payment of charges resulting from the implementation of the common agricultural policy, imposed on Community goods in intra-Community trade.

## Article 15

1. The Committee on General Customs Rules provided for in Article 24 of Council Directive 79/695/EEC of 24 July 1979 on the harmonization of procedures for the release of goods for free circulation <sup>(1)</sup>, as last amended by Directive 81/853/EEC <sup>(2)</sup>, may consider any matter concerning the application of this Regulation which is raised by its Chairman either on his own initiative or at the request of a Member State.

2. The provisions required for the implementation of this Regulation shall be adopted in accordance with the procedure laid down in Article 26 (2) and (3) of Directive 79/695/EEC.

## Article 16

The provisions of this Regulation shall apply without prejudice to such special provisions as are applicable to security pursuant to:

- international conventions,
- Council Regulation (EEC) No 222/77 of 13 December 1976 on Community transit <sup>(3)</sup>, as last amended by Regulation (EEC) No 1674/87 <sup>(4)</sup>.

## Article 17

1. Directive 79/695/EEC is hereby amended as follows:

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

Done at Brussels, 21 December 1989.

(a) Article 18 (3) is replaced by the following:

'3. The competent authorities may make the granting of the facilities provided for in this Article conditional upon the giving of security.'

(b) Article 19 (7) is replaced by the following:

'7. The competent authorities may make the granting of the facilities provided for in this Article conditional upon the giving of security.'

2. Article 11 of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes <sup>(5)</sup>, as last amended by the Act of Accession of Spain and Portugal, is replaced by the following:

## 'Article 11

If, in the course of determining the customs value of imported goods, it becomes necessary to delay the final determination of such value, the importer may, at his request, obtain the release of the goods in question on condition that he provides sufficient security to cover the difference between the amount of the customs duties for which the goods may ultimately be liable and that resulting from the information contained in the declaration.'

## Article 18

Member States shall inform the Commission of the measures it adopts for the purpose of applying this Regulation.

The Commission shall communicate this information to the other Member States.

## Article 19

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

It shall apply from 1 January 1991.

For the Council

The President

E. CRESSON

<sup>(1)</sup> OJ No L 205, 13. 8. 1979, p. 19.

<sup>(2)</sup> OJ No L 319, 7. 11. 1981, p. 1.

<sup>(3)</sup> OJ No L 38, 9. 2. 1977, p. 1.

<sup>(4)</sup> OJ No L 157, 17. 6. 1987, p. 1.

<sup>(5)</sup> OJ No L 134, 31. 5. 1980, p. 1.