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(Acts whose publication is obligatory)

**REGULATION (EC) No 955/1999 OF THE EUROPEAN PARLIAMENT AND
OF THE COUNCIL**

of 13 April 1999

**amending Council Regulation (EEC) No 2913/92 with regard to the external
transit procedure**

THE EUROPEAN PARLIAMENT AND THE COUNCIL
OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European
Economic Community, and in particular Articles 28, 100a
and 113 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 189b of the Treaty ⁽³⁾,

(1) Whereas the external transit procedure as governed
by Council Regulation (EEC) No 2913/92 of 12
October 1992 establishing the Community
Customs Code ⁽⁴⁾ is primarily designed to facilitate
trade in non-Community goods in the Community
customs territory; whereas the need for recourse to
that procedure for the export of Community goods
must be evaluated in relation to very different situa-
tions; whereas it is necessary, in any case, to
prevent products covered by or benefiting from
export measures from either evading or benefiting
unjustifiably from such measures, by ensuring that
the Community customs legislation taken as a
whole guarantees control and monitoring at least
equivalent to that offered by the external
community transit procedure; whereas, if the possi-
bility to use this procedure in some of those situa-
tions is maintained, definition of such situations
should be a matter for the committee procedure;

(2) Whereas all decisions taken under the committee
procedure must be transparent for both customs
administrations and economic operators;

(3) Whereas it is necessary to define the way in which
the customs authorities discharge the procedure, in
relation to the place, the time and the conditions
under which this procedure ends, in order to estab-
lish more clearly the scope and limits of the obliga-
tions of the holder of the external transit procedure
and to ensure that, in the absence of information
capable of establishing that the procedure has
ended, the holder remains fully liable; whereas it is
necessary, in order to increase the security and
efficiency of the transit procedures, to improve the
discharge by means of operational measures and by
implementing provisions, to be determined in
accordance with the Committee procedure,
ensuring that customs authorities discharge the
procedure in the shortest possible time;

(4) Whereas it is necessary for the rules for the guar-
antee in transit to be better defined, including
recourse to the different forms of guarantee and the
cases for a guarantee waiver, in particular following
amendment of the scope of maritime transit;
whereas, to ensure an adequate protection of the
financial interests of the Member States and the
Community without imposing a disproportionate
burden on users, this guarantee and the calculation
of its amount must be based both on the reliability
of the operator and the risks attached to the goods;
whereas a more logical and better structured
presentation of the provisions is desirable with
regard to the guarantee in transit;

⁽¹⁾ OJ C 337, 7.11.1997, p. 52.

⁽²⁾ OJ C 73, 9.3.1998, p. 17.

⁽³⁾ Opinion of the European Parliament of 13 May 1998 (OJ C 167, 1.6.1998, p. 99), Council Common Position of 24 September 1998 (OJ C 333, 30.10.1998, p. 65) and Decision of the European Parliament of 16 December 1998 (OJ C 98, 9.4.1999). Council Decision of 29 March 1999.

⁽⁴⁾ OJ L 302, 19.10.1992. Regulation as last amended by Regulation (EC) No 82/97 (OJ L 17, 21.1.1997, p. 1).

- (5) Whereas, in order to safeguard the revenue of the European Community and of the Member States and to curb fraudulent practices in the transit procedure, arrangements involving graduated measures for application of the comprehensive guarantee are advisable; whereas in the first place a ban on reducing the comprehensive guarantee may be considered where there is an increased risk of fraud and loss of revenue is therefore to be feared; whereas where it is established that especially critical exceptional situations exist, which may arise in particular from the activities of organised crime, it should instead also be possible temporarily to prohibit the application of the comprehensive guarantee itself; whereas account should be taken in the application of these graduated measures of the particular situation of the economic operators who meet specific criteria to be determined; whereas, where an individual guarantee has to be provided instead of the comprehensive guarantee, the burdens entailed for operators should be reduced by means of the greatest possible simplification;
- (6) Whereas the simplified procedures having an exclusively national, bilateral or multilateral scope introduced by the Member States under Article 97(2) of the Community Customs Code, hereafter referred to as 'the Code', vary greatly in nature and may in some cases conflict with the proper application of the Community transit procedures and the need for equal treatment of economic operators; whereas, without calling into question the benefits this system offers to these operators, a communication to the Commission of the simplified procedures introduced by each Member State on this basis must be provided for, in order to ensure the transparency of these measures and to evaluate their compatibility with the rules which govern Community transit procedures and in particular the guarantee;
- (7) Whereas security systems for Community transit procedures cover both customs debt and other charges which may be incurred in respect of the goods, and constitute a special case since the procedures are international in nature and the sum required needs to be tailored to an extent to the risks and to the principal's reliability; whereas, therefore, there is a need to adapt in consequence Article 192 of the Code;
- (8) Whereas under the current wording of Article 215 of the Code it is possible to determine where the customs debt is incurred, but it does not indicate that this place determines the authority responsible for the entry into the accounts of the debt; whereas, moreover, where a customs procedure is not discharged, the rule for determining that place must be amended to reflect the need to establish, as far as possible, the place where the events from which the customs debt arises actually occurred;
- (9) Whereas simplification and clarification of the rules for the benefit of both operators and customs officials form an essential part of the action plan for customs transit in Europe; whereas these rules must also be applied to the provisions determined in accordance with the committee procedure;
- (10) Whereas this amendment of the Code together with the corresponding amendments to its implementing provisions must be such as to facilitate the introduction in due course of a new computerised system of transit for the benefit of both the public interests at stake in transit operations and economic operators,

HAVE ADOPTED THIS REGULATION:

Article 1

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

1. Article 91(1)(b) shall be replaced by the following:

'(b) Community goods, in cases and on conditions determined in accordance with the committee procedure, in order to prevent products covered by or benefiting from export measures from either evading or benefiting unjustifiably from such measures'.

2. Article 92 shall be replaced by the following:

'Article 92

1. The external transit procedure shall end and the obligations of the holder shall be met when the goods placed under the procedure and the required documents are produced at the customs office of destination in accordance with the provisions of the procedure in question.

2. The customs authorities shall discharge the procedure when they are in a position to establish, on the basis of a comparison of the data available to the office of departure and those available to the customs office of destination, that the procedure has ended correctly'.

3. Article 94 shall be replaced by the following:

Article 94

1. The principal shall provide a guarantee in order to ensure payment of any customs debt or other charges which may be incurred in respect of the goods.

2. The guarantee shall be either:

- (a) an individual guarantee covering a single transit operation; or
- (b) a comprehensive guarantee covering a number of transit operations where the principal has been authorised to use such a guarantee by the customs authorities of the Member State where he is established.

3. The authorisation referred to in paragraph 2(b) shall be granted only to persons who:

- (a) are established in the Community;
- (b) are regular users of Community transit procedures or who are known to the customs authorities to have the capacity to fulfil their obligations in relation to these procedures, and
- (c) have not committed serious or repeated offences against customs or tax laws.

4. Persons who satisfy the customs authorities that they meet higher standards of reliability may be authorised to use a comprehensive guarantee for a reduced amount or to have a guarantee waiver. The additional criteria for this authorisation shall include:

- (a) the correct use of the Community transit procedures during a given period;
- (b) cooperation with the customs authorities, and
- (c) in respect of the guarantee waiver, a good financial standing which is sufficient to fulfil the commitments of the said persons.

The detailed rules for authorisations granted under this paragraph shall be determined in accordance with the committee procedure.

5. The guarantee waiver authorised in accordance with paragraph 4 shall not apply to external Community transit operations involving goods which, as determined in accordance with the committee procedure, are considered to present increased risks.

6. In line with the principles underlying paragraph 4, recourse to the comprehensive guarantee for a reduced amount may, in the case of external

Community transit, be temporarily prohibited by the committee procedure as an exceptional measure in special circumstances.

7. In line with the principles underlying paragraph 4, recourse to the comprehensive guarantee may, in the case of external Community transit, be temporarily prohibited by the committee procedure in respect of goods which, under the comprehensive guarantee, have been identified as being subject to large-scale fraud'.

4. Article 95 shall be replaced by the following:

Article 95

1. Except in cases to be determined where necessary in accordance with the committee procedure, no guarantee need be furnished for:

- (a) journeys by air;
- (b) the carriage of goods on the Rhine and the Rhine waterways;
- (c) carriage by pipeline;
- (d) operations carried out by the railway companies of the Member States.

2. The cases in which the furnishing of a guarantee in respect of the carriage of goods on waterways other than those referred to in paragraph (b) may be waived shall be determined in accordance with the committee procedure'.

5. Article 97 shall be replaced by the following:

Article 97

1. The detailed rules for the operation of the procedure and the exemptions shall be determined in accordance with the committee procedure.

2. Provided that the implementation of Community measures applying to goods is guaranteed:

- (a) Member States have the right, by bilateral or multi-lateral arrangement, to establish between themselves simplified procedures consistent with criteria to be set according to the circumstances and applying to certain types of goods traffic or specific undertakings;
- (b) each Member State shall have the right to establish simplified procedures in certain circumstances for goods not required to move in the territory of another Member State.

3. Simplified procedures established under paragraph 2 shall be communicated to the Commission'.

6. In Article 192(1), the introductory sentence shall be replaced by the following:

'1. Where customs legislation makes it compulsory for security to be provided, and subject to the specific provisions laid down for transit in accordance with the committee procedure, the customs authorities shall fix the amount of such security at a level equal to:'.

7. Article 215 shall be replaced by the following:

Article 215

1. A customs debt shall be incurred:

- at the place where the events from which it arises occur,
- if it is not possible to determine that place, at the place where the customs authorities conclude that the goods are in a situation in which a customs debt is incurred,
- if the goods have been entered for a customs procedure which has not been discharged, and the place cannot be determined pursuant to the first or second indent within a period of time determined, if appropriate, in accordance with the committee

procedure, at the place where the goods were either placed under the procedure concerned or were introduced into the Community customs territory under that procedure.

2. Where the information available to the customs authorities enables them to establish that the customs debt was already incurred when the goods were in another place at an earlier date, the customs debt shall be deemed to have been incurred at the place which may be established as the location of the goods at the earliest time when existence of the customs debt may be established.

3. The customs authorities referred to in Article 217(1) are those of the Member State where the customs debt is incurred or is deemed to have been incurred in accordance with this Article'.

Article 2

This Regulation shall enter into force on the third 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 Luxembourg, 13 April 1999.

For the European Parliament

The President

J. M. GIL-ROBLES

For the Council

The President

L. SCHOMERUS
