

COUNCIL DIRECTIVE

of 24 July 1979

on the harmonization of procedures for the release of goods for free circulation

(79/695/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 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 the Community is based upon a customs union;

Whereas, without prejudice to the transitional measures laid down in Title I, Chapter 1 of Part Four of the Act of Accession, the establishment of this customs union is governed in the main by Title I, Chapter 1 of Part Two of the Treaty; whereas that Chapter contains a series of specific provisions, dealing in particular with the elimination of customs duties between Member States, the establishment and progressive introduction of the Common Customs Tariff and the autonomous alteration or suspension of the duties of the latter;

Whereas, while Article 27 of the Treaty provides that Member States shall, before the end of the first stage in so far as may be necessary, take steps to approximate their provisions laid down by law, regulation or administrative action relating to customs matters, that Article does not empower institutions of the Community to issue binding provisions in that field; whereas, however, a thorough examination undertaken jointly with Member States has shown the need in certain fields for decision, by binding acts of the Community, upon measures essential for the introduction of customs arrangements which will ensure uniform application of the Common Customs Tariff and of the various charges laid down within the framework of the common agricultural policy;

Whereas, for that purpose, the Council has already adopted *inter alia* Directive 68/312/EEC of 30 July

1968 on harmonization of the provisions laid down by law, regulation or administrative action relating to customs treatment of goods entering the customs territory of the Community and temporary storage of such goods ⁽⁴⁾, as well as Directive 78/453/EEC of 22 May 1978 on the harmonization of provisions laid down by law, regulation or administrative action concerning deferred payment of import duties or export duties ⁽⁵⁾;

Whereas the release for free circulation, within the meaning of Article 10 (1) of the Treaty, of goods imported from a third country into a Member State has effect throughout the Community; whereas it therefore assumes a specifically Community character and, in this respect, differs from the release for home use of these same goods, which requires moreover the application of different national provisions, particularly of a fiscal nature, and can therefore take place only in the Member State in which such goods are actually consumed;

Whereas the Member States' laws, regulations or administrative provisions determine the rules of procedure which, in most cases, are devised exclusively for the release of goods for home use; whereas, as a result, the release for free circulation of goods, particularly with a view to their subsequent release for home use in another Member State most often cannot take place in isolation;

Whereas these provisions also show considerable disparities which result in the application, under differing conditions, not only of the Common Customs Tariff duties, charges having equivalent effect and agricultural levies or other charges laid down within the framework of the common agricultural policy, but also of any other Community provisions governing the release of goods for free circulation; whereas the resulting distortions of treatment for Community importers, depending on the Member State in which the customs clearance formalities are carried out, may lead to deflection of trade and artificial movement of activities;

Whereas the said provisions of the Member States directly affect the establishment and operation of the common market;

⁽¹⁾ OJ No C 14, 15. 2. 1974, p. 45.

⁽²⁾ OJ No C 85, 18. 7. 1974, p. 24.

⁽³⁾ OJ No C 125, 16. 10. 1974, p. 10.

⁽⁴⁾ OJ No L 194, 6. 8. 1968, p. 13.

⁽⁵⁾ OJ No L 146, 2. 6. 1978, p. 19.

Whereas, taking into account the progress made in creating the customs union, it is necessary to fix common rules of procedure for the release of goods for free circulation, in the form of a Directive at least; whereas the same rules may also be followed for the release for home use of goods in the Member State of importation;

Whereas these common rules must make it possible to ensure the correct application not only of customs duties, charges having equivalent effect, agricultural levies or other charges laid down within the framework of the common agricultural policy, but also of any other Community provisions governing the release of goods for free circulation; whereas, however, such rules must dispense with all unnecessary formalities; whereas, moreover, they must be sufficiently flexible to be adaptable to differing circumstances and to take into account progress in administration techniques, particularly with regard to informatics;

Whereas it is important to ensure uniform application of these common rules and to provide for this purpose a Community procedure which will allow the measures for implementing them to be adopted within appropriate time limits,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Without prejudice to any special provisions which have been or will be adopted under specific customs arrangements, this Directive determines the rules which must be laid down in the laws, regulations and administrative provisions of the Member States in respect of the release for free circulation, within the meaning of Article 10 (1) of the Treaty, of goods which:

- have been produced to customs and which may have been placed in temporary storage, in accordance with the conditions laid down in Directive 68/312/EEC, or
- are under another customs procedure.

2. For the purposes of this Directive, 'import duties' means customs duties and charges having equivalent effect, as well as agricultural levies and other import charges laid down within the framework of the common agricultural policy or of the specific arrangements applicable, pursuant to Article 235 of the Treaty, to certain goods resulting from the processing of agricultural products.

TITLE I

GENERAL PROCEDURE

Article 2

The release for free circulation of the goods referred to in Article 1 shall be conditional upon the lodging at a customs office, in accordance with the conditions laid down by this Directive, of an entry form for release for free circulation, hereinafter referred to as 'the entry'.

The natural or legal person who makes the entry shall hereinafter be referred to as 'the declarant'.

Article 3

1. The entry shall be made in writing on a form corresponding to the appropriate official model determined by the competent authorities. It shall be signed and contain the particulars necessary for the identification of the goods and for the application of the import duties and any other provisions governing the release of the goods for free circulation.

2. The entry shall be accompanied by all the documents required for the correct application of the import duties and any other provisions governing the release of the goods for free circulation.

Article 4

For the purpose of making entry, the customs authority shall, under conditions which it shall specify, authorize the prior examination of goods and the taking of samples.

Article 5

1. The entry may be lodged at any customs office in the Community which is competent, in accordance with national provisions, to release for free circulation the goods to which the entry relates, on presentation of the goods at that office.

However, the customs authority may authorize the entry to be lodged before the declarant is in a position to present the goods. In this case, the customs authority may set a time limit, to be determined according to the circumstances, for presentation of the goods. If the goods have not been presented within this time limit, the entry shall be deemed not to have been lodged.

2. For the purpose of applying paragraph 1, goods shall be deemed to have been presented at a customs

office when their arrival at the customs office, or at another place designated by the competent authorities, has been notified to the latter in the manner required to enable them to control or to inspect them.

3. The entry shall be lodged in the competent customs office during the days and hours appointed for opening.

However, the customs authority may, at the request of the declarant and at his expense, authorize the entry to be lodged outside the appointed days and hours.

4. Any entry lodged with the officials of a customs office in any other place duly designated for that purpose by agreement between the competent authorities and the person concerned shall be regarded as having been lodged in the aforementioned office.

Article 6

1. Only entries which comply with the conditions laid down in Article 3 may be accepted by the customs authority.

2. However, at the declarant's request and for reasons deemed valid by the customs authority, the latter may accept an entry which does not contain certain of the particulars referred to in Article 3 (1) or to which some of the documents referred to in Article 3 (2) are not attached; it shall then set a time limit for the communication of the particulars or the production of the said documents. In this case, the release of the goods for free circulation, referred to in Article 13, may be made conditional on the provision of security.

The entry shall, in any case, contain the particulars necessary for the identification of the goods to which it relates.

3. An incomplete entry accepted under the conditions set out in paragraph 2 may be either completed by the declarant or, by agreement with the customs authority, replaced by another entry which complies with the conditions laid down in Article 3. In the latter case, the operative date for the fixing of the import duties and the application of any other provisions governing the release of goods for free circulation shall be the date of acceptance of the incomplete entry.

Article 7

1. Entries which comply with the conditions laid down in Article 3 and those which are accorded the facilities provided for in Article 6 (2) shall be accepted by the customs authority immediately, in accordance with the procedures laid down in each Member State.

However where, pursuant to the second subparagraph of Article 5 (1), an entry has been lodged before the goods to which it relates have arrived at the customs office or at another place designated by the customs authority, the entry may be accepted only after the goods in question have been presented to the competent authorities, within the meaning of Article 5 (2).

2. The date of acceptance of the entry shall be noted on that document for the purpose of determining the operative date for the application of Article 11 (1).

Article 8

1. The declarant shall, at his request, be authorized to correct entries accepted by the customs authority under the conditions laid down in Article 7, as regards one or more of the particulars referred to in Article 3 (1), subject to the following:

- (a) the correction shall be requested before the goods are released for free circulation;
- (b) the correction may no longer be allowed where the request is made after the customs authority has informed the declarant that it intends to examine the goods or that it has itself established that the particulars in question are incorrect;
- (c) the correction shall not result in the entry applying to goods other than those to which it originally related.

The customs authority may allow or require that the corrections referred to in the preceding subparagraph be made by the lodging of a new entry intended to replace the original entry. In that event, the date for determination of the import duties and for the application of any other provisions governing the release of goods for free circulation shall be that of the acceptance of the original entry.

2. Where the declarant provides proof, to the satisfaction of the competent authorities, that goods have been entered for free circulation by mistake or that, as a result of special circumstances, the release of the goods for free circulation is no longer justified, the customs authority shall authorize cancellation or invalidation of the entry relating to them. Such authorization may be given as long as the customs authority has not released the goods.

Article 9

1. Without prejudice to any other means of control at its disposal, the customs authority may examine all or part of the goods entered.

2. The goods shall be examined in the places designated and during the hours appointed for that purpose.

However, the customs authority may, at the request of the declarant, authorize the examination of goods in places or during hours other than those referred to above. Any costs involved shall be borne by the declarant.

3. Transport of goods to the places where they are to be examined, unpacking, repacking and all other operations necessitated by such examination shall be carried out by the declarant or on his responsibility. In all cases, any costs involved shall be borne by the declarant.

4. The declarant shall be entitled to be present at the examination of the goods or to be represented at it. If the customs authority sees fit, it may require the declarant to be present at the examination of the goods or to be represented at it in order to assist with the examination, as necessary.

5. When examining the goods, the customs authority may take samples for analysis or for more detailed examination. The costs arising from such analysis or more detailed examination shall be borne by the administrative authority.

Article 10

1. The results of the examination of the entry and the documents attached to it, whether or not combined with examination of the goods, shall be used for calculating the import duties and for applying any other provisions governing the release of goods for free circulation. Where neither the entry and the documents attached to it, nor the goods themselves are examined, such duties shall be calculated and such provisions shall be applied on the basis of the particulars contained in the entry.

2. Paragraph 1 shall be without prejudice to either any subsequent verification by the competent authorities of the Member State in which the goods have been released for free circulation or the possible consequences of applying the provisions in force, particularly as regards any change in the amount of import duty charged on these goods.

Article 11

1. Without prejudice to special rules applicable under general or specific Community legislation, and subject to paragraph 2, import duties shall be levied in accordance with the rates and amounts in force at the date of acceptance of the entry. Without prejudice to the said special rules, that same date shall be the operative date for determining other particulars

material to the calculation of duty on the goods and for applying any other provisions governing the release of goods for free circulation.

2. In as much as the import duty payable on goods is a customs duty, where the rate of this customs duty is reduced after the date of acceptance of the entry but before the release of the goods for free circulation has been authorized by the customs authority, the declarant may claim the application of the most favourable rate.

The preceding subparagraph shall not apply to goods which the customs authority has been unable to release for free circulation for reasons attributable solely to the declarant.

Article 12

Without prejudice to any changes which may occur pursuant to Article 10 (2), the amount of the import duties determined by the competent authorities shall be entered in the accounts by the latter under the procedure laid down for that purpose and shall be communicated to the declarant.

Article 13

1. Without prejudice to any prohibitive or restrictive measures provided for in respect of the goods, the customs authority may release the goods for free circulation only when the import duties have been paid or guaranteed or payment of them has been deferred under the conditions laid down in Directive 78/453/EEC.

2. The customs authority itself shall determine the form in which it releases goods, taking due account of the place in which the said goods are located and of the special procedures for their control.

3. Until released for free circulation, goods may not be moved from where they are, or handled in any way whatsoever, without the authorization of the customs authority.

Article 14

1. The declarant may be authorized by the customs authority, before the goods have been released for free circulation:

- either to surrender the goods free of charge to the Exchequer, if such a possibility is provided for under national regulations,
- or to destroy them under the supervision of the customs authority; any costs incurred by such destruction shall be borne by the declarant.

2. Where goods are surrendered to the Exchequer or destroyed under the supervision of the customs authority, the declarant shall not be required to pay the import duties.

3. The release for free circulation of any waste or scrap resulting from the destruction of the goods shall be effected on the basis of the import duty and other particulars material to the calculation of duty applicable to it, as recognized or accepted by the customs authority on the date of destruction.

Article 15

1. The customs authority shall take any measures necessary, including the sale of goods, to deal with goods which have not been released:

- (a) either because it has not been possible to undertake or continue the examination within the required time limits for reasons attributable to the declarant;
- (b) or because the documents which must be submitted before their release for free circulation have not been produced;
- (c) or because the import duties have not been paid or guaranteed within the required time limits.

2. If necessary, the customs authority may arrange for goods in the situations referred to in paragraph 1 to be destroyed.

The release for free circulation of any waste or scrap resulting from the destruction of such goods shall be effected on the basis of the import duty and other particulars material to the calculation of duty applicable to it, as recognized or accepted by the customs authority on the date of destruction.

3. If the customs authority arranges for the goods to be sold, this shall be done in accordance with the procedures in force in the Member States. The conditions under which goods sold are released for free circulation shall be defined under the procedure laid down in Article 26 (2) and (3).

TITLE II

SPECIAL PROCEDURES

Article 16

1. From 1 January 1984 at the latest, Member States shall no longer apply special procedures other than those laid down in Articles 17 to 22.

They shall apply from that date all such special procedures laid down in Articles 17 to 22 in so far as their administrative organization allows it.

2. The conditions to be fulfilled by the person concerned in order to obtain authorization to use one or other of the special procedures laid down in Articles 17

to 22, and the practice for the operation of these procedures, shall be determined by the competent authorities.

The said authorization may be limited to certain goods. It may be granted on an occasional or a permanent basis. It may be revoked.

3. Save as otherwise provided in Articles 17 to 22, Title I shall apply to the special procedures laid down in these Articles.

A. Exemption from written entries

Article 17

Without prejudice to the special provisions laid down in respect of consignments sent by parcel or letter post, the competent authorities may specify that:

- (a) lodging of entry referred to in Article 2 is not required for the release for free circulation of goods previously introduced under the inward processing arrangements;
- (b) a written entry is unnecessary for goods imported for non-commercial purposes, and goods of low value, including those contained in travellers' personal luggage.

B. Drawing up of general, periodic or recapitulative entries

Article 18

1. Without prejudice to Article 21, the competent authorities may authorize the declarant to furnish or to insert at a later date certain particulars of the entry in the form of supplementary entries of a general, periodic or recapitulative nature.

2. Statements made in supplementary entries, together with statements made in the entries to which they refer, shall be deemed to constitute a single, indivisible instrument taking effect at the date on which the corresponding initial entry was accepted.

3. The competent authorities may make the granting of the facilities provided for in this Article conditional upon the lodging of security, the nature and amount of which it shall determine.

4. The initial entries relating to each batch of goods must in all cases contain the particulars necessary for the identification of the goods in question.

C. Release of goods before lodging of entry

Article 20

Article 19

1. Where the circumstances so justify, the competent authorities may authorize release of goods as soon as they have been produced, within the meaning of Article 5 (2), at the customs office designated for that purpose and without the entry referred to in Article 3 having been lodged.

2. The release of goods shall be conditional on the presentation at the competent customs office of a commercial or administrative document, at the discretion of that office, containing the particulars necessary for the identification of the goods and accompanied by a request, signed by the person concerned, for release for free circulation.

Where the release of a particular type of goods for free circulation is subject to the presentation of any other document, that document shall accompany the said commercial or administrative document.

Acceptance by the customs office of that commercial or administrative document shall have the same force in law as acceptance of the entry referred to in Article 3.

3. The customs authority may, if it considers it necessary, make release of the goods conditional on their examination based on the particulars contained in the commercial or administrative document referred to in paragraph 2.

4. The entry relating to goods covered by the authorization referred to in paragraph 1 shall be lodged at the competent customs office within the time limits laid down by the competent authorities.

For the purpose of applying Article 11 (1), this entry shall take effect on the date on which the customs authority accepts the commercial or administrative document referred to in paragraph 2.

5. Without prejudice to Article 21, the customs authority may allow the lodging of general, periodic or recapitulative entries for the goods. Such entries shall take effect on the date on which that authority accepted the commercial or administrative document referred to in paragraph 2.

6. This Article shall not preclude the exercise by the customs authority of any controls which it considers necessary in order to ensure that the procedures are correctly carried out.

7. The competent authorities may make the granting of the facilities provided for in this Article subject to the lodging of security, the nature and amount of which they shall determine.

1. The competent authorities may authorize natural or legal persons who frequently present goods for release for free circulation to receive the goods directly after they have been conveyed to a customs office, within the meaning of Article 2 of Directive 68/312/EEC, into a place designated for that purpose so as to obtain their release without first lodging an entry referred to in Article 3 in the competent customs office.

2. Upon arrival of the goods at the place designated for that purpose, the authorized person referred to in paragraph 1 shall:

(a) duly notify the competent authorities of this arrival in the form and manner laid down by them for the purpose of obtaining release of the goods;

(b) enter the said goods in his records. This shall be done in the form and manner laid down by the competent authorities. This entry shall include the date of entry in the records and the particulars necessary for identification of the goods;

(c) make available to the competent authorities all documents, the production of which may be required for the application of the Community provisions governing the release of goods for free circulation.

Completion of the formalities referred to in subparagraphs (a) and (b) shall have the same force in law as acceptance of the entry referred to in Article 3.

3. Provided that checking on the regularity of transactions is not thereby affected, the competent authorities may:

(a) instead of requiring the authorized person to wait for the actual arrival of the goods before notifying the competent customs office thereof, permit him to inform that office of their arrival as soon as it becomes imminent;

(b) in certain special circumstances justified by the nature of the goods in question and the increased rate of importations, exempt the authorized person from the obligation to notify the competent customs office of each arrival of goods, on condition that he provides that office with all the information which it deems necessary to enable it to exercise, where appropriate, its right to examine the goods. In that case, entry of the goods in the records of the person concerned shall be equivalent to their release.

4. Where the competent customs office decides to examine the goods, such examination shall take place on the basis of the particulars contained in the records of the person concerned.

5. The entry relating to the goods which are the subject of the authorization referred to in paragraph 1 shall be lodged at the competent customs office within the time limits fixed by the competent authorities.

For the purpose of applying Article 11 (1), this entry shall take effect on the date on which the goods are entered in the records of the person concerned.

6. Article 19 (5), (6) and (7) shall also apply where the provisions of this Article are invoked.

7. The entry of the goods in the records of the person concerned, as provided for in paragraph 2 (b), may be replaced by any other formality offering similar guarantees which may be laid down by the competent authorities.

D. Replacement of all or part of the particulars of the entry by codified data

Article 21

1. The competent authorities may authorize the declarant to replace all or part of the particulars of the written entry referred to in Article 3 by sending to the customs office designated for that purpose, with a view to their processing by computer, codified data, or data made out in any other form specified by those authorities, corresponding to the particulars required for written entries.

2. The competent authorities shall determine the conditions under which the data referred to in paragraph 1 are to be sent.

3. This Article shall not preclude the exercise by the customs authority of any controls which it considers necessary in order to ensure that the procedures are correctly carried out.

E. Assessment of composite consignments

Article 22

1. Where a single consignment is made up of goods coming under several tariff headings, and where dealing with each type of goods would involve a burden of work and expense disproportionate to the import duty chargeable thereon, the competent authorities may, at the request of the declarant, agree that the whole consignment be assessed at the rate applicable to whichever type of goods is subject to the highest rate of import duty.

2. The granting of the facility provided for in paragraph 1 shall in no way affect the obligations of the declarant as regards the compiling of statistics under the conditions provided for in 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⁾ and the application of the other provisions governing the release of goods for free circulation.

3. The facility provided for in paragraph 1 may be granted as a general authorization to a declarant for consignments made up of the same type of goods which he enters on a regular basis for release for free circulation.

4. The particulars to be included in the entry relating to the goods to which this Article applies shall be defined in accordance with the procedure referred to in Article 26 (2) and (3).

TITLE III

FINAL PROVISIONS

Article 23

Where goods entered for free circulation are not simultaneously entered for home use in a Member State, the competent authorities of that Member State shall take all measures necessary to ensure free circulation of the goods within the Community.

To this end, goods which are in free circulation may be placed under a customs procedure ensuring observance of the national provisions governing the release of goods for home use. Where they are intended to be transported immediately to another Member State, they shall be placed under a customs procedure which ensures their free circulation within the Community.

Article 24

1. A Committee on General Customs Rules, hereinafter referred to as 'the Committee', is hereby set up. It shall be composed of representatives of the Member States, with a representative of the Commission as chairman.

2. The Committee shall adopt its rules of procedure.

Article 25

The Committee may examine any question concerning the application of this Directive which is raised by its

⁽¹⁾ OJ No L 183, 14. 7. 1975, p. 3.

chairman either on his own initiative or at the request of a representative of a Member State.

Article 26

1. The provisions required for applying Articles 3, 4, 6 and 8, Article 9 (1), (4) and (5), Article 10 (1), Article 11 (2), Articles 13 and 14, Article 15 (1) and Articles 18 to 22 shall be adopted in accordance with the procedure laid down in paragraphs 2 and 3.

2. The representative of the Commission shall submit to the Committee a draft of the provisions to be adopted. The Committee shall deliver its opinion on the draft within a time limit set by the chairman having regard to the urgency of the matter. Opinions shall be delivered by a majority of 41 votes, the votes of the Member States being weighted in accordance with Article 148 (2) of the Treaty. The chairman shall not vote.

3. Where the provisions envisaged are in accordance with the opinion of the Committee, the Commission shall adopt them.

Where the provisions envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall without delay submit to the Council a proposal on the provisions to be adopted. The Council shall act by a qualified majority.

If within three months of submission of the proposal the Council has not acted, the proposed provisions shall be adopted by the Commission.

Article 27

1. Member States shall take the measures necessary to comply with this Directive not later than six months after the date of publication in the *Official Journal of the European Communities* of the Regulation laying down the conditions under which a person is permitted to make a customs entry.

However, if the said date of publication is prior to 1 January 1981, Member States may postpone the implementation of the said measures until 1 July 1981.

Member States may postpone the effective implementation of Articles 17 to 22 until 1 January 1984.

2. Each Member State shall inform the Commission of the measures which it takes for the implementation of this Directive. The Commission shall communicate this information to the other Member States.

Article 28

This Directive is addressed to the Member States.

Done at Brussels, 24 July 1979.

For the Council

The President

M. O'KENNEDY