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(Acts whose publication is obligatory)

**COUNCIL REGULATION (EEC) No 4151/88
of 21 December 1988**

laying down the provisions applicable to goods brought into the customs territory of the Community

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 ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Directive 68/312/EEC of 30 July 1968 on harmonization of the provisions laid down by law, regulation or administrative action relating to:

1. customs treatment of goods entering the customs territory of the Community,
2. temporary storage of such goods ⁽⁴⁾,

as last amended by the Act of Accession of Spain and Portugal, laid down certain principles to be complied with in this field;

Whereas the rules to which goods brought into the customs territory of the Community are subject until they are assigned a customs-approved treatment or use are fundamental to the proper operation of the customs union; whereas it is therefore important to ensure that they are applied, to the greatest possible extent, uniformly throughout the Community; whereas, to that end, the present provisions of Directive 68/312/EEC should be replaced by a regulation incorporating all the necessary clarifications and amendments; whereas this will afford individuals a greater degree of legal certainty;

Whereas goods brought into the customs territory of the Community must be made subject to appropriate customs

supervision so as to ensure that the customs rules, and any other rules applicable to them, are complied with;

Whereas, to that end, the obligations incumbent on persons who bring goods into the customs territory of the Community and on persons who subsequently assume responsibility for those goods in order to move or store them until they are assigned a customs-approved treatment or use, should be defined; whereas the substance of those obligations must be specified in detail in respect of each of the stages reached by goods from their physical entry into the customs territory of the Community until they are assigned a customs-approved treatment or use;

Whereas each of those obligations must take account of the need for the customs authorities to exercise effective supervision of goods; whereas the substance of those obligations should therefore be varied according to the manner in which goods enter the customs territory of the Community; whereas that must apply in particular as regards determining the periods within which goods brought into the customs territory of the Community may remain in that territory until they are assigned a customs-approved treatment or use;

Whereas measures for the supervision of goods brought into the customs territory must take account of the special legal status of free zones and of the particular features of frontier-zone passenger traffic and of consignments sent by letter or parcel post;

Whereas, in order to ensure the best possible conditions for the supervision of goods awaiting assignment to a particular customs-approved treatment or use, their storage in temporary storage facilities approved by the customs authorities, and placed under the responsibility of the operators of such facilities, should be authorized;

Whereas the rules laid down by this Regulation are not, in principle, applicable to goods which are brought into the customs territory of the Community under the transit procedure; whereas, on the other hand, the provisions of this Regulation other than those concerning presentation must be applied to those goods once they have been presented to customs in accordance with the rules governing transit;

⁽¹⁾ OJ No C 356, 31. 12. 1985, p. 31.

⁽²⁾ OJ No C 88, 14. 4. 1986, p. 108 and OJ No C 326, 12. 12. 1988.

⁽³⁾ OJ No C 263, 20. 10. 1986, p. 9.

⁽⁴⁾ OJ No L 194, 6. 8. 1968, p. 13.

Whereas, where Community goods traded between Member States are subject, pursuant to Community rules, to measures requiring their presentation to customs, the provisions laid down with regard to goods brought into the customs territory of the European Community should, for the sake of simplification, apply *mutatis mutandis*;

Whereas it is important to ensure uniform application of this Regulation and make provision for that purpose for a Community procedure which will allow the measures for its implementation to be adopted within appropriate periods; whereas recourse should be had to the Committee on General Customs Rules set up by Article 24 of Directive 79/695/EEC on the harmonization of procedures for the release of goods for free circulation (⁽¹⁾), as last amended by Directive 81/853/EEC (⁽²⁾), in order to establish close and effective cooperation between the Member States and the Commission in this field,

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation lays down the provisions applicable to goods brought into the customs territory of the Community until they are assigned a customs-approved treatment or use.

Without prejudice to Articles 2, 3 (5) and 22, this Regulation shall not apply to goods which are placed under the transit procedure upon their entry into the customs territory of the Community.

2. For the purposes of this Regulation:

- (a) '*customs authority*' means any authority competent to apply customs rules, even if that authority is not part of the customs administration;
- (b) '*customs supervision*' means action taken in general by the customs authority with a view to ensuring compliance with customs rules and, where appropriate, with other rules applicable to goods brought into the customs territory of the Community;
- (c) '*control by the customs authority*' means the performance of sundry specific acts such as examining goods, verifying the existence and authenticity of documents, examining the accounts of undertakings and other records, inspecting means of transport, checking persons, conducting official inquiries, and other similar acts;
- (d) '*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;

- (e) '*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 goods referred to exclusively in the second indent or from goods referred to in the first and second indents;
- (f) '*non-Community goods*' means goods other than those referred to in (e).

Without prejudice to international agreements concluded in the field of transit, goods which, while fulfilling the conditions laid down in (e), are reintroduced into the customs territory of the Community after export therefrom are also considered as non-Community goods;

- (g) '*person*' means:
 - a natural person,
 - 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 legal persons.

TITLE I

Entry of goods into the customs territory of the Community

Article 2

Goods brought into the customs territory of the Community shall, from the time of their entry, be subject to customs supervision. They may also be subject to control by the customs authority, in accordance with the provisions in force.

Article 3

1. Goods brought into the customs territory of the Community shall be conveyed by the person bringing them into the Community without delay, by the route specified by the customs authority and in accordance with its instructions, if any:

(¹) OJ No L 205, 13. 8. 1979, p. 19.

(²) OJ No L 319, 7. 11. 1981, p. 1.

- (a) either to the customs office specified by the customs authority or to any other place specified or approved by that authority ;
- (b) or to a free zone, if the goods are to be brought into that free zone directly :
- either by sea or air,
 - or by land, without passing through another part of Community territory, where the free zone adjoins the land frontier between a Member State and a third country.

The provisions of (a) above shall also apply to goods leaving a free zone situated in the customs territory of the Community, unless the goods leave the zone by sea or air without being placed under a transit procedure or another customs procedure.

2. Any person who assumes responsibility for the carriage of goods after they have been brought into the customs territory of the Community, *inter alia* as a result of transshipment, shall become responsible for compliance with the obligation laid down in paragraph 1.

3. Goods brought into the customs territory of the Community shall be deemed to include goods which, although still outside that territory, may be subjected to control by the customs authority of a Member State by virtue of provisions in force, notably as a result of an agreement concluded between that Member State and a third country.

4. Paragraph 1 (a) shall not preclude implementation of any autonomous provisions or provisions reached by agreement in force in the Member States with respect to tourist traffic, frontier traffic or postal traffic, on condition that customs supervision and customs control possibilities are not thereby jeopardized.

5. Paragraph 1 (a) shall also apply to goods which are already under a transit procedure on their entry into the customs territory of the Community.

6. Paragraph 1 shall not apply to goods on board ships or aircraft crossing the territorial waters or airspace of the Member States without having as their destination a port or airport situated in these Member States.

Article 4

1. Where, by reason of unforeseeable circumstances or *force majeure*, the obligation laid down in Article 3 (1) cannot be complied with, the person bound by that obligation or any other person acting in his place shall inform the customs authority of the situation without delay. Where the unforeseeable circumstances or *force majeure* do not result in total loss of the goods, the customs authority shall also be informed of their precise location.

2. Where, by reason of unforeseeable circumstances or *force majeure*, a ship or aircraft covered by Article 3 (6) is forced to put into port or land temporarily in the customs territory of the Community and the obligation laid down in Article 3 (1) cannot be complied with, the person bringing the ship or aircraft into the customs territory of the Community or any other person acting in his place shall inform the customs authority of the situation without delay.

3. The customs authority shall determine the measures to be taken in order to permit customs supervision of the goods referred to in paragraph 1 as well as those on board a vessel or aircraft in accordance with paragraph 2 and to ensure, where appropriate, that they are subsequently conveyed to a customs office or other place designated or approved by the authority.

TITLE II

Presentation to customs of goods brought into the customs territory of the Community

Article 5

Goods which, pursuant to Article 3 (1) (a), arrive at the customs office or other place designated or approved by the customs authority shall be presented to customs by the person who brought the goods into the customs territory of the Community or, if appropriate, by the person who assumes responsibility for carriage of the goods following such entry.

Presentation of goods to customs shall consist in informing the customs authority, in the requisite manner, that the goods have arrived.

Article 6

Article 5 shall not preclude the implementation of specific rules relating to goods :

- (a) carried by travellers ;
- (b) released for free circulation or placed under another customs procedure but not presented to customs ;
- (c) passing through the territory of a Member State under a national transit procedure.

Article 7

Goods may, once they have been presented to customs, and with the permission of the customs authority, be examined or samples thereof may be taken, in order that they may be assigned a customs-approved treatment or use. Such permission shall be granted, on request, to the person authorized to assign the goods such treatment or use or to his representative.

TITLE III

Summary declaration and unloading of goods presented to customs*Article 8*

Subject to Article 10, goods presented to customs within the meaning of Article 5 shall be covered by a summary declaration.

The summary declaration shall be lodged once the goods have been presented to customs. The customs authority may, however, allow a period for lodging the declaration which shall not extend beyond the first working day following the day on which the goods are presented to customs.

Article 9

1. The summary declaration shall be made on a form corresponding to the model prescribed by the customs authority. However, the customs authority may permit the use, as a summary declaration, of any commercial or official document which contains the particulars necessary for identification of the goods.

2. The summary declaration shall be lodged by :

- (a) the person who conveyed the goods into the customs territory of the Community or by any person who assumes responsibility for carriage of the goods following such entry, or
- (b) the person in whose name the persons referred to in subparagraph (a) acted, or
- (c) the representative of any of the persons referred to in (a) and (b).

3. The summary declaration shall be signed by the person lodging it. The customs authority shall stamp and retain it for the purpose of verifying that the goods to which it relates are assigned a customs-approved treatment or use within the periods laid down in Article 15.

4. The summary declaration may be drawn up in computerized form. In that case, the rules laid down in paragraph 3 shall be adapted accordingly.

Article 10

Without prejudice to the provisions applicable to goods imported by travellers and consignments by letter and parcel post, the customs authority may waive the lodging of a summary declaration, on condition that this does not jeopardize customs supervision of the goods, where, prior to the expiry of the period referred to in Article 8, the said goods are :

- (a) entered for release for free circulation or for another customs procedure ; or
- (b) re-dispatched out of the customs territory of the Community, where appropriate after transhipment, or placed in a free zone ; or

- (c) destroyed with the permission of the customs authority.

Article 11

1. Goods may be unloaded or transhipped from the means of transport carrying them in places designated or approved by the customs authority solely with the permission of that authority.

However, such permission shall not be required in the event of imminent danger necessitating the immediate unloading of all or part of the goods. In that case, the customs authority shall be informed accordingly forthwith.

2. For the purpose of inspecting goods and the means of transport carrying them, the customs authority may at any time require goods to be unloaded.

Article 12

1. Goods covered by a summary declaration which have not been unloaded from the means of transport carrying them shall be represented intact by the person referred to in Article 9 (2) whenever the customs authority so requires.

2. Any person who, in order to move or store them, holds goods after they have been unloaded, shall become responsible for compliance with the obligation to represent goods intact at the request of the customs authority.

Article 13

Goods shall not be removed from their original position without the permission of the customs authority.

TITLE IV

Customs-approved treatment or use of goods presented to customs*Article 14*

1. Goods presented to customs shall be assigned a customs-approved treatment or use which may be :

- (a) their release for free circulation or placement under another customs procedure,
- (b) their entry into a free zone or their re-dispatch out of the customs territory of the Community,
- (c) their destruction with the permission of the customs authority under the conditions laid down by that authority, or,
- (d) their abandonment to the Exchequer, where provision is made therefore under national law.

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

2. Any waste or scrap resulting from destruction, as referred to in paragraph 1 (c), shall be assigned any other customs-approved treatment or use referred to in paragraph 1.

Article 15

1. Where goods are covered by a summary declaration, they must have been entered for release for free circulation or for another customs procedure or be covered by an application for assignment of another customs-approved treatment or use referred to in Article 14 within the periods determined by the customs authority. The said periods shall not exceed:

- (a) forty-five days from the date on which the summary declaration is lodged in the case of goods carried by sea,
- (b) twenty days from the date on which the summary declaration is lodged in the case of goods carried otherwise than by sea.

2. Where circumstances so warrant, the customs authority may authorize an extension of the periods referred to in paragraph 1. Such extension shall not however exceed genuine needs which are justified by the circumstances.

TITLE V

Temporary storage of goods*Article 16*

Until such time as they are assigned a customs-approved treatment or use referred to in Article 14, goods presented to customs shall, following such presentation, have the status of goods in temporary storage. Such goods shall hereinafter be described as 'goods in temporary storage'.

Article 17

- 1. Goods in temporary storage shall be stored only in places approved by the customs authority under the conditions laid down by that authority.
- 2. The customs authority may require the person holding the goods to provide a security with a view to ensuring payment of any customs debt which may arise under Article 2 (1) (c) and (d) of Council Regulation (EEC) No 2144/87 of 13 July 1987 on customs debt⁽¹⁾.

Article 18

Without prejudice to Article 7, goods in temporary storage shall be subject only to such forms of handling as are designed to ensure their preservation in an unaltered state without modifying their appearance or technical characteristics.

Article 19

1. The customs authority shall without delay take all measures necessary, including the sale of the goods, to regularize the situation of goods in respect of which the formalities necessary for them to be assigned a customs-approved treatment or use referred to in Article 14 are not

initiated within the periods determined in accordance with Article 15.

2. The customs authority may, at the risk and expense of the person holding them, have the goods in question transferred to a special place, which is under its supervision, until their situation is regularized.

TITLE VI

Temporary storage facilities*Article 20*

1. Where the places referred to in Article 17 (1) have been approved on a permanent basis for the storage of goods in temporary storage, such places shall be described as 'temporary storage facilities'.

2. In order to ensure implementation of the customs rules, the customs authority may, where it does not itself manage the temporary storage facility, require that:

- (a) temporary storage facilities be double-locked, one key being held by the said customs authority;
- (b) the person operating the temporary storage facility keep stock accounts which enable the movements of goods to be traced.

Article 21

Goods shall be placed in a temporary storage facility on the basis of the summary declaration. However, the customs authority may require the lodging of a specific declaration made on a form corresponding to a model which it prescribes.

TITLE VII

Provisions applicable to non-Community goods which have moved under a transit procedure*Article 22*

1. Once non-Community goods which have moved under a transit procedure reach their destination in the customs territory of the Community and have been presented to customs in accordance with the rules governing transit, Articles 8 to 21 shall apply.

2. Where goods are moved under Community transit or common transit procedure, the copy of the transit document retained by the office of destination shall constitute the summary declaration.

TITLE VIII

Provisions applicable to Community goods*Article 23*

Where Community goods brought into the territory of a Member State are subject to measures requiring their presentation to customs pursuant to Community rules, this Regulation shall apply *mutatis mutandis*.

⁽¹⁾ OJ No L 201, 22. 7. 1987, p. 15.

TITLE IX

Final provisions

Article 24

Where the circumstances so require, the customs authority may have goods presented to customs destroyed. The customs authority shall inform the holder of the goods accordingly. Costs incurred as a result of the destruction of the goods shall be borne by the holder.

Article 25

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

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

Done at Brussels, 21 December 1988.

For the Council
The President
V. PAPANDREOU

Article 26

1. Directive 68/312/EEC is hereby repealed.

References to that Directive shall be construed as references to this Regulation.

2. Article 5 (3) of Council Regulation (EEC) No 2151/84 of 23 July 1984 on the customs territory of the Community ⁽¹⁾, as last amended by Regulation (EEC) No 319/85 ⁽²⁾, is hereby repealed.

Article 27

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

It shall be applicable from the date of implementation of Council Regulation (EEC) No 2503/88 of 25 July 1988 on customs warehouses ⁽³⁾ and Council Regulation (EEC) No 2504/88 of 25 July 1988 on free zones and free warehouses ⁽⁴⁾.

⁽¹⁾ OJ No L 197, 27. 7. 1984, p. 1.

⁽²⁾ OJ No L 34, 7. 2. 1985, p. 32.

⁽³⁾ OJ No L 225, 15. 8. 1988, p. 1.

⁽⁴⁾ OJ No L 225, 15. 8. 1988, p. 8.