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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 2726/90
of 17 September 1990
on Community transit

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 Council Regulation (EEC) No 222/77 ⁽⁴⁾, as last amended by Regulation (EEC) No 474/90 ⁽⁵⁾, established a Community transit procedure applicable, in principle, to all movements of goods within the Community, the aim of which is to facilitate the carriage of those goods by limiting formalities and controls solely to the points of departure and destination and by reducing administrative action, in particular when goods cross internal frontiers, to the minimum necessary;

Whereas the Community transit procedure comprises a procedure for external transit applicable essentially to the movement of third-country goods not in free circulation in the Community and a procedure for internal transit applicable to the movement of goods originating in the Community or in free circulation in the Community;

Whereas Article 8a of the Treaty establishing the European Economic Community provides for the progressive establishment over a period expiring on 31 December 1992 of the internal market comprising an area without internal frontiers in which the free movement of goods, *inter alia*, is ensured;

Whereas the application of that provision has the effect of eliminating all controls and all formalities in respect of Community goods moving within the Community and, consequently, of rendering, in principle, the procedure for internal Community transit devoid of any purpose; whereas it is necessary, however, during the transitional period following the accession of Spain and Portugal to the Community, to maintain that procedure with regard to trade between the Community of Ten and those two countries and between those two countries themselves in goods which do not yet benefit from the total abolition of customs duties and charges or other measures laid down in the Act of Accession;

Whereas this situation is without prejudice to certain specific measures expressly laid down or to be laid down with a view to the introduction of a procedure for inter-linked bonded warehouses relating to excise duties;

Whereas the movement of third-country goods not in free circulation in the Community remains subject to customs requirements intended to guarantee that they are put to their correct use and that any duties payable on them are collected; whereas, consequently, the procedure for external Community transit remains fully applicable to such goods;

Whereas it is necessary to guarantee the uniform application of the provisions relating to the movement of goods within the Community and, to that end, to provide for a Community procedure enabling implementing provisions to be adopted within appropriate time limits; whereas it is necessary to organize, through a committee, close and efficient cooperation in this respect between the Member States and the Commission;

Whereas Regulation (EEC) No 222/77 has been amended on various occasions; whereas it would therefore appear expedient to grasp the opportunity offered by the reform of the Community transit procedure to reformulate the rules in the matter,

⁽¹⁾ OJ No C 307, 6. 12. 1989, p. 5.

⁽²⁾ OJ No C 113, 7. 5. 1990, p. 83 and Decision of 12 September 1990 (not yet published in the Official Journal).

⁽³⁾ OJ No C 112, 7. 5. 1990, p. 13.

⁽⁴⁾ OJ No L 38, 9. 2. 1977, p. 1.

⁽⁵⁾ OJ No L 51, 27. 2. 1990, p. 1.

HAS ADOPTED THIS REGULATION :

TITLE I

GENERAL PROVISIONS

Article 1

A Community transit procedure applicable in the situations referred to in Articles 3 and 4 to the movement of goods from one point to another of the customs territory of the Community is hereby established. This procedure shall comprise an external Community transit procedure and an internal Community transit procedure.

Article 2

For the purposes of this Regulation :

(a) '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 from goods referred to either exclusively in the second indent or in the first and second indents ;

(b) 'non-Community goods' means goods other than those covered by (a).

Without prejudice to agreements concluded with third countries for the purposes of applying the Community transit procedure, goods which, although fulfilling the conditions laid down in (a), are reintroduced into the customs territory of the Community after being exported outside that territory shall also be deemed to be non-Community goods ;

(c) 'competent authorities' means :

the customs authority or any other authority responsible for applying this Regulation ;

(d) 'principal' means :

the person who, in person or through an authorized representative, indicates, by lodging the appropriate declaration, that he wishes to carry out a Community transit operation ;

(e) 'means of transport' means, in particular :

- any road vehicle, trailer or semi-trailer,
- any railway coach or wagon,
- any boat or ship,
- any aircraft,
- any container within the meaning of Council Regulation (EEC) No 3312/89 of 30 October 1989 on the temporary import of containers⁽¹⁾ ;

(f) 'office of departure' means :

the office of the competent authority where the Community transit operation begins ;

(g) 'office of transit' means :

- the customs office at the point of exit from the customs territory of the Community when the consignment is leaving that territory in the course of a Community transit operation via a frontier between a Member State and a third country,
- the customs office at the point of entry into the customs territory of the Community when the goods have crossed the territory of a third country in the course of a Community transit operation ;

(h) 'office of destination' means :

the office of the competent authority where goods placed under the Community transit procedure must be produced to complete the Community transit operation ;

(i) 'office of guarantee' means :

the office of the competent authority where a comprehensive or flat-rate guarantee is lodged.

TITLE II

SCOPE

Article 3

1. This Article shall apply without prejudice to transit agreements concluded or to be concluded by the Community with certain third countries.

2. The procedure for external Community transit shall apply to the movement of the following goods :

- (a) non-Community goods ;
- (b) goods coming under the Treaty establishing the European Coal and Steel Community which, under the terms of that Treaty, are not in free circulation in the Community ;
- (c) goods which, although Community goods, are subject to a Community measure requiring their export to a third country and for which the corresponding customs export formalities have been completed.

The Commission shall establish, in accordance with the procedure laid down in Article 44, the cases where this provision shall apply.

⁽¹⁾ OJ No L 321, 4. 11. 1989, p. 5.

3. Without prejudice to paragraph 2 (c), the procedure for internal Community transit shall apply to Community goods which are consigned:

- (a) from one point in the Community to another through the territory of one or more EFTA countries;
- (b) during the transitional period, in accordance with the methods of administrative cooperation intended to ensure in trade between the Community as constituted on 31 December 1985, on the one hand, and Spain or Portugal, on the other hand, as well as in trade between those two Member States, the free movement of goods which do not yet benefit from the total abolition of customs duties or other measures laid down in the Act of Accession;
- (c) in cases where a Community provision has expressly provided for the application of that procedure.

Article 4

Carriage of goods to which the Community transit procedure applies may be effected between two points in the Community through the territory of a third country other than an EFTA country without prejudice to Article 5 (2), under the Community transit procedure provided that carriage through that third country is effected under cover of a single transport document drawn up in a Member State; in such case the operation of that procedure shall be suspended in the territory of the third country.

Article 5

1. The Community transit procedure shall apply without prejudice to the specific provisions applicable to the movement of goods placed under economic customs arrangements.

2. By way of derogation from Articles 1 and 3, the Community transit procedure shall not apply to the carriage of goods under cover of:

- (a) TIR carnets (TIR Convention), provided that such carriage:
 - 1. began or is to end outside the Community;
 - 2. relates to consignments of goods which must be unloaded in the customs territory of the Community and which are conveyed with goods to be unloaded in a third country; or
 - 3. is effected between two points in the Community through the territory of a third country;
- (b) ATA carnets (ATA Convention) used as a transit document;
- (c) the Rhine Manifest (Article 9 of the revised Convention for the Navigation of the Rhine);

(d) the form 302 provided for in the Convention between the Parties to the North Atlantic Treaty regarding the Status of their Forces, signed in London on 19 June 1951.

3. This Regulation shall apply without prejudice to the prohibitions and restrictions on importation, export and transit issued by the Member State, to the extent that they are compatible with the three Treaties establishing the European Communities.

TITLE III

COMMUNITY STATUS OF GOODS

Article 6

1. Subject to Articles 39 and 40, all goods moving within the customs territory of the Community shall be deemed to be Community goods unless it is established that they do not enjoy Community status.

2. Paragraph 1 shall not apply to goods moving under one of the procedures referred to in Article 5, nor to goods moving between two points in the Community through the territory of a third country.

In the cases referred to in the first subparagraph, the Community status of such goods shall be duly established, if appropriate.

Article 7

Goods moving under the external Community transit procedure pursuant to Article 3 (2) (c) and which have not left the customs territory of the Community shall be treated as Community goods, on condition that it is certified that the export declaration and customs formalities corresponding to the Community measures which required the goods to leave the said customs territory as well as, where appropriate, the effect of those formalities have been cancelled.

TITLE IV

SIMPLIFIED PROCEDURES

Article 8

Provided that implementation of the Community measures applicable to the goods is ensured, Member States may introduce among themselves simplified procedures, by means of bilateral or multilateral agreements, which shall conform to criteria to be laid down, where necessary, and which shall be applicable to certain types of traffic or to designated undertakings.

Such agreements shall be communicated to the Commission and to the other Member States.

Article 9

Provided that implementation of the Community measures applicable to the goods is ensured, each Member State may introduce simplified procedures applicable in certain circumstances to goods which will not be moving in the territory of another Member State.

Such procedures shall be communicated to the Commission and to the other Member States.

TITLE V EXTERNAL COMMUNITY TRANSIT

Chapter 1

Procedure

Article 10

1. All goods which are to be carried under the procedure for external Community transit shall be the subject of a T1 declaration, in accordance with the conditions laid down in this Regulation. A T1 declaration means a declaration on a form corresponding to the specimen form drawn up in accordance with the Community provisions in force.

2. The form referred to in paragraph 1 may be supplemented, where appropriate, by one or more supplementary forms corresponding to the specimen supplementary form drawn up in accordance with the Community provision in force.

3. The forms referred to in paragraphs 1 and 2 shall be printed and completed in one of the official languages of the Community accepted by the competent authorities of the Member State of departure. Where necessary, the competent authorities of the Member State concerned in the Community transit operation may require translation into the official language or one of the official languages of that Member State.

4. The T1 declaration shall be signed by the principal and at least three copies thereof shall be produced at the office of departure.

5. Supplementary documents appended to a T1 declaration shall form an integral part thereof.

6. The T1 declaration shall be accompanied by the transport document.

The office of departure may dispense with production of this document at the time of completion of the formalities. However, the transport document shall be produced whenever required by the customs authorities or by any other competent authority in the course of carriage.

7. Where the Community transit procedure in the Member State of departure succeeds another customs procedure, reference shall be made on the T1 declaration to that procedure or to the corresponding customs documents.

Article 11

1. The principal shall be responsible for:

- (a) production of the goods intact and the T1 document at the office of destination by the prescribed time limit and with due observance of the measures adopted by the competent authorities to ensure identification;
- (b) observance of the provisions relating to the Community transit procedure;
- (c) payment of duties and any other charges due as a result of an offence or irregularity committed in the course of or in connection with a Community transit operation.

2. Notwithstanding the principal's obligations under paragraph 1, a carrier or recipient of goods who accepts goods knowing that they are moving under Community transit shall also be responsible for production of the goods intact at the office of destination by the prescribed time limit and with due observance of the measures adopted by the competent authorities to ensure identification.

Article 12

1. The same means of transport may be used for the loading of goods at more than one office of departure and for unloading at more than one office of destination.

2. Each T1 declaration shall include only the goods loaded or to be loaded on a single means of transport for carriage from one office of departure to one office of destination.

For the purposes of the first subparagraph, the following shall be regarded as constituting a single means of transport, on condition that the goods carried are to be dispatched together:

- (a) a road vehicle accompanied by its trailer(s) or semi-trailer(s);
- (b) a line of coupled railway carriages or wagons;
- (c) boats constituting a single chain;
- (d) containers loaded on a means of transport within the meaning of this Article.

Article 13

1. The office of departure shall accept and register the T1 declaration, prescribe the period within which the goods must be produced at the office of destination and take such measures for identification as it considers necessary.

2. The office of departure shall enter the necessary particulars on the T1 declaration, shall retain its own copy and hand back the others to the principal or his representative.

Article 14

1. As a general rule, identification of the goods shall be ensured by sealing.
2. The following shall be sealed :
 - (a) the space containing the goods, where the means of transport has been approved under other rules or recognized by the office of departure as suitable for sealing ;
 - (b) each individual package, in other cases.
3. Means of transport may be recognized as suitable for sealing on condition that :
 - (a) seals can be simply and effectively affixed to them ;
 - (b) they are so constructed that no goods can be removed or introduced without leaving visible traces of tampering or without breaking the seals ;
 - (c) they contain no concealed spaces where goods may be hidden ; and
 - (d) the spaces reserved for the load are readily accessible for inspection by the competent authorities.
4. The office of departure may dispense with sealing if, having regard to other possible measures for identification, the description of the goods in the T1 declaration or in the supplementary documents makes them readily identifiable.

Article 15

The copies of the T1 document handed back to the principal or to his representative by the office of departure shall accompany the goods.

Article 16

Each Member State shall provide the Commission with a list of the offices authorized to deal with Community transit operations, stating at what hours they are open.

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

Article 17

Copies of the T1 document shall be produced as required by the competent authorities.

Article 18

1. The consignment and the copies of the T1 document shall be produced at each office of transit.

2. The carrier shall give a transit advice note to each office of transit.

3. The offices of transit shall not inspect the goods unless some irregularity is suspected which could result in abuse.

4. Where goods are carried via an office of transit other than that mentioned in the T1 document, that office shall without delay send the transit advice note to the office mentioned in that document.

Article 19

Where goods are loaded or unloaded in the presence of competent authorities, copies of the T1 document handed back by the office(s) of departure shall be produced to those authorities.

Article 20

1. The goods described on a T1 document may, without the need for a new declaration to be made, be transferred to another means of transport under the supervision of the competent authorities of the Member State in the territory of which the transfer is to be made. In such a case, the competent authorities shall record the relevant details on the T1 document.

2. The competent authorities may, subject to such conditions as they shall determine, authorize such transfer without their supervision. In such a case, the carrier shall record the relevant details on the T1 document and shall inform the competent authorities of the Member State of transfer, for the purposes of authentication.

Article 21

1. If seals are broken in the course of carriage without the carrier's so intending, the carrier shall, as soon as possible, request that a certified report be drawn up by the competent authorities in the Member State in which the means of transport is located. The authorities concerned shall, if possible, affix new seals.

2. In the event of an accident necessitating transfer to another means of transport, Article 20 shall apply.

3. In the event of imminent danger necessitating immediate unloading of the whole load or of part of the load, the carrier may take action on his own initiative. He shall record such action on the T1 document. Paragraph 1 shall apply in such a case.

4. If, as a result of accidents or other incidents arising in the course of carriage, the carrier is not in a position to observe the time limit referred to in Article 13, he shall inform the competent authorities referred to in paragraph 1 as soon as possible. Those authorities shall then record the relevant details on the T1 document.

Article 22

1. The goods and the T1 document shall be produced at the office of destination.
2. The office of destination shall record on the copies of the T1 document the details of controls carried out and shall without delay send a copy to the office of departure and retain the other copy.
3. A Community transit operation may be concluded at an office other than that mentioned in the T1 document. That other office shall then become the office of destination.
4. Where the goods are produced at the office of destination after expiry of the time limit prescribed by the office of departure and where this failure to comply with the time limit is due to circumstances which are explained to the satisfaction of the office of destination and are not attributable to the carrier or the principal, the latter shall be deemed to have complied with the time limit prescribed.

Article 23

The Community transit operation shall end when the goods and the corresponding T1 document are produced at the office of destination.

Chapter 2

Guarantees

Article 24

1. In order to ensure collection of the duties and other charges which each Member State is authorized to collect in respect of goods passing through its territory in the course of Community transit, the principal shall furnish a guarantee, subject to the provisions of Articles 32 and 33.

The guarantee referred to in the previous subparagraph shall be valid throughout the Community.

2. The guarantee may be comprehensive, covering a number of Community transit operations, or individual, covering a single Community transit operation.
3. Subject to Article 29 (2), the guarantee shall consist of the joint and several guarantee of any natural or legal third person who shall:
 - be normally resident or established in the Community, and
 - subject to the provisions on freedom to provide services, have been approved by the competent authority of the Member State in which the guarantee is

provided. Such approval may be subject, *inter alia*, to the condition that the guarantor shall be a person whose main or secondary professional activities involve the provision of such services.

Article 25

1. The guarantee referred to in Article 24 (3) shall conform to a specimen to be determined.
2. Where the provisions laid down by national law, regulation or administrative action or common practice so require, each Member State may allow the guarantee to be in a different form, on condition that it has the same legal effects as laid down in the specimen document.

Article 26

1. A comprehensive guarantee shall be lodged with an office of guarantee.
2. The office of guarantee shall determine the amount of the guarantee, accept the guarantor's undertaking and issue an authorization allowing the principal to carry out, within the limits of the guarantee, any Community transit operation irrespective of the office of departure.
3. Each person who has obtained authorization shall, subject to the conditions laid down by the competent authorities of the Member States, be issued with one or more copies of a guarantee certificate.
4. Reference to the guarantee certificate shall be made in each T1 declaration.

Article 27

The office of guarantee may revoke the authorization if the conditions under which it was issued no longer obtain.

Article 28

1. Each Member State may accept that the guarantor referred to in Article 24 guarantees by declaration, by a single guarantee and for a flat-rate amount to be determined, payment of duties and other charges which may become chargeable in the course of a Community transit operation carried out under his responsibility, whoever the principal may be. If carriage of the goods presents increased risks, having regard, in particular, to the amount of duties and other charges to which they are subject in one or more Member States, the flat-rate amount shall be fixed by the office of departure at a higher level.

The guarantee referred to in the first subparagraph shall conform to a specimen to be determined.

2. The flat-rate guarantee shall be lodged with an office of guarantee.

Article 29

1. An individual guarantee furnished for a single Community transit operation shall be lodged at the office of departure. The office of departure shall fix the amount of the guarantee.

2. The guarantee referred to in paragraph 1 may be a cash deposit lodged with the office of departure. In that case, it shall be returned when the T1 document is discharged at the office of departure.

Article 30

Without prejudice to provisions prescribing other cases of exemption, the principal shall be exempted by the competent authorities of the Member States from payment of duties and other charges in the case of:

- (a) goods which have been destroyed as a result of *force majeure* or unavoidable accident duly proven;
- (b) recognized shortages arising from the nature of the goods.

Article 31

The guarantor shall be released from his obligations when the T1 document has been discharged at the office of departure.

When the guarantor has not been advised by the competent authorities of the Member State of departure of the non-discharge of the T1 document, he shall likewise be released from his obligations upon expiry of a period of 12 months from the date of registration of the T1 declaration.

Where, within the period provided for in the second subparagraph, the guarantor has been advised by the competent authorities of the non-discharge of the T1 document, he shall, in addition, be notified that he is or may be required to pay the amounts for which he is liable in respect of the Community transit operation in question. This notification shall reach the guarantor not later than three years after the date of registration of the T1 declaration. Were no such notification has been made before the expiry of the aforementioned time limit, the guarantor shall likewise be released from his obligations.

Chapter 3

Guarantee waiver

Article 32

1. Any person satisfying the conditions laid down in paragraph 2 may, subject to the limits laid down in para-

graph 3, obtain from the competent authorities in the Member State where he is established a guarantee waiver for external Community transit operations carried out by him from any Member State of departure and through the territory of any Member State.

2. The guarantee waiver referred to in paragraph 1 shall be granted only to persons:

- (a) who are resident in the Member State where the waiver is granted,
- (b) who are regular users of the Community transit system,
- (c) whose financial situation is such that they can meet their commitments,
- (d) who have not committed any serious infringement of customs or fiscal laws; and
- (e) who, in accordance with a specimen form to be determined, undertake to pay, upon the first application in writing by the competent authorities of the Member States, any sums claimed in respect of their Community transit operations.

3. The guarantee waiver granted in accordance with paragraphs 1 and 2 shall not apply to external Community transit operations involving goods:

- (a) of a total value exceeding an amount to be determined; or
- (b) which present increased risks on account of the level of duties and other charges to which they are subject in one or more Member States.

4. The authorities which grant the waiver shall issue to each person obtaining it one or more copies of a guarantee waiver certificate. Where the guarantee waiver is applied, reference to the certificate shall be made on the corresponding T1 declaration.

5. The authorities granting the guarantee waiver shall cancel it:

- (a) in the event of serious irregularity committed by the beneficiary as the principal in a Community transit operation;
- (b) where any of the conditions laid down in paragraph 2 is no longer satisfied;
- (c) where the beneficiary has not complied with the undertaking given in accordance with paragraph 2 (e).

Article 33

1. Except in cases to be determined where necessary, no guarantee need be furnished for:

- (a) journeys by sea and air;
- (b) the carriage of goods on the Rhine and the Rhine waterways;

- (c) carriage by pipelines ;
- (d) operations carried out by the railway companies of the Member States.

2. Each Member State may dispense with the furnishing of a guarantee in respect of the carriage of goods on waterways situated in its territory other than those referred to in paragraph 1 (b). It shall forward details of the measures taken to that effect to the Commission, which shall inform the other Member States.

Chapter 4

Irregularities

Article 34

1. When it is found that, in the course of a Community transit operation, an offence or irregularity has been committed in a particular Member State, the recovery of duties or other charges which may be chargeable shall be effected by that Member State in accordance with Community or national provisions, without prejudice to the institution of criminal proceedings.

2. When it is found that, in the course of or in connection with a Community transit operation, an offence or irregularity has been committed and the place of the offence or irregularity cannot be determined, it shall be deemed to have been committed in the Member State in which it was detected.

3. When the consignment has not been produced at the office of destination and the place of the offence or irregularity cannot be established, such offence or irregularity shall be deemed to have been committed in the Member State to which :

- the office of departure belongs, or
- the office of transit at the point of entry into the Community belongs and to which a transit advice note has been given,

unless, within a period to be determined, proof of the regularity of the transit operation or of the place where the offence or irregularity was actually committed is furnished to the satisfaction of the competent authorities.

If, in the absence of such proof, the said offence or irregularity remains deemed to have been committed in the Member State of departure or in the Member State of point of entry as referred to in the first subparagraph, second indent, the duties and other charges relating to the goods concerned shall be levied by that Member State in accordance with Community or national provisions.

If, before expiry of the period of three years from the date of registration of the T1 declaration, the Member State where the said offence or irregularity was actually committed is determined, that Member State shall, in

accordance with Community or national provisions, recover the duties and other charges (apart from those levied, pursuant to the second subparagraph, as own resources of the Community) relating to the goods concerned. In this case, once the proof of such recovery is provided, the duties and other charges initially levied (apart from those levied as own resources of the Community) shall be refunded.

The guarantee covering the transit operation shall be released at the end of the aforementioned three-year period only or, where appropriate, after payment of the duties and other charges applicable in the Member State where the said offence or irregularity was actually committed.

Member States shall take the necessary measures to deal with any offence or irregularity and to impose effective penalties.

Chapter 5

Legal effects and mutual assistance

Article 35

1. The T1 documents issued in accordance with the rules and the identification measures taken or accepted by the competent authorities of one Member State shall have the same legal effect in other Member States as the T1 documents issued in accordance with the rules and the identification measures taken or accepted by the competent authorities of each of those Member States.

2. The findings of the competent authorities of a Member State made when inspections are carried out under the Community transit procedure shall have the same force in other Member States as findings of the competent authorities of each of those Member States.

Article 36

Where necessary, the competent authorities of the Member States shall communicate to one another all findings, documents, reports, records of proceedings and information relating to transport operations carried out under the Community transit procedure and to irregularities and offences in connection with that procedure.

TITLE VI

INTERNAL COMMUNITY TRANSIT

Article 37

1. All goods which are to be carried under the procedure for internal Community transit shall be the subject of a T2 declaration. A T2 declaration means a declaration on a form corresponding to the specimen form drawn up in accordance with the Community provisions in force.

2. The form referred to in paragraph 1 may be supplemented, where appropriate, by one or more supplementary forms corresponding to the specimen supplementary form drawn up in accordance with the Community provisions in force.

3. The provisions of Title V shall apply *mutatis mutandis* to the procedure for internal Community transit.

TITLE VII

SPECIAL PROVISIONS APPLYING TO CERTAIN MODES OF TRANSPORT

Article 38

Article 18 shall not apply to the carriage of goods by rail.

Where, in accordance with Article 18 (2), a transit advice note has still to be handed in, the records kept by the railway companies shall take the place of such note.

Article 39

1. Where goods are carried by air from an airport in a third country to an airport in the customs territory of the Community, they shall be deemed to be non-Community goods unless their Community status is duly established.

2. Where goods are carried by air from an airport in the customs territory of the Community to another airport in that territory, they shall be deemed to be Community goods unless it is established that they do not have Community status pursuant to paragraph 3.

3. The Community transit procedure provided for in Articles 1 and 3 shall be compulsory in respect of goods carried by air only if they are loaded or reloaded at an airport in the Community.

Article 40

1. Where goods are carried by sea from a port in a third country to a port in the customs territory of the Community, they shall be deemed to be non-Community goods unless their Community status is duly established.

2. Where goods are carried by sea from a port in the customs territory of the Community to another port in that territory, they shall be deemed to be Community goods unless it is established that they do not have Community status pursuant to paragraph 3, or in special cases to be determined where necessary.

3. The Community transit procedure provided for in Articles 1 and 3 shall be compulsory in respect of goods carried by sea only if they are loaded or transhipped at a port in the Community.

4. For the implementation of this Article, goods loaded or transhipped in a free port situated in the customs territory of the Community shall be deemed to be loaded or transhipped in a port situated in a third country.

TITLE VIII

SPECIAL PROVISIONS APPLYING TO POSTAL CONSIGNMENTS

Article 41

1. By way of derogation from Articles 1 and 3, the Community transit procedure shall not apply to postal consignments (including postal packages).

2. Article 6 (1) shall apply to goods contained in consignments sent from a post office situated within the Community, unless a label of a type to be prescribed is affixed to the packages or the accompanying documents. The competent authorities of the Member State of dispatch shall be responsible for affixing such a label or causing it to be affixed to the packages and to the accompanying documents if the goods are non-Community goods.

TITLE IX

PROVISIONS RELATING TO THE APPLICATION OF THIS REGULATION

Article 42

1. A Committee on Community Transit, hereinafter referred to as 'the Committee', is hereby set up, consisting of representatives of the Member States and with a representative of the Commission as Chairman.

2. The Committee shall adopt its own rules of procedure.

Article 43

The Committee may examine any question relating to the application of this Regulation submitted to it by its Chairman either on the latter's own initiative or at the request of the representatives of a Member State.

Article 44

1. The provisions necessary for the:

- (a) application of this Regulation and, in particular, determination of the specimen guarantee forms in accordance with Articles 25 and 28, of the amount of the flat-rate guarantee in accordance with Article 28 and of the value above which the guarantee waiver is not applicable, in accordance with Article 32 (3);

- (b) adaptation of the Community transit procedure so that certain Community measures entailing control of the use or destination of goods subject to it may be applied;
- (c) simplification of formalities under Community transit procedures or their adaptation to requirements specific to certain types of traffic or to designated undertakings; and
- (d) management and discharging of Community transit operations by public or private computerized systems,

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 measures to be taken. The Committee shall deliver its opinion on the draft, within a time limit which the Chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority only (laid down) in Article 148 (2) of the Treaty.

3. (a) The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

(b) If the measures 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 relating to the measures to be taken. The Council shall act by a qualified majority.

(c) If the Council has not acted on the expiry of a three-month period from the date of referral, the proposed measures shall be adopted by the Commission.

TITLE X

FINAL PROVISIONS

Article 45

Each Member State shall inform the Commission of the provisions which it adopts for the implementation of this Regulation.

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

Article 46

1. Regulation (EEC) No 222/77 is hereby repealed as from the date of application of this Regulation.

2. The Commission shall, in accordance with the Article 44 procedure, adopt the transitional provisions applicable to Community transit operations commenced before 1 January 1993.

TITLE XI

ENTRY INTO FORCE

Article 47

1. 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 1993.

2. Before 1 October 1992, the Council shall review this Regulation on the basis of a progress report from the Commission on the harmonization of provisions on the achievement of the internal market which are necessary for the correct application of this Regulation. The report shall be accompanied by proposals, should there be any, on which the Council shall decide by a qualified majority.

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

Done at Brussels, 17 September 1990.

For the Commission

The President

P. ROMITA