

## COMMON POSITION (EC) No 53/98

adopted by the Council on 24 September 1998

with a view to adopting European Parliament and Council Regulation (EC) No . . ./98, of . . .  
amending Regulation (EEC) No 2913/92 with regard to the external transit procedure

(98/C 333/06)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF  
THE EUROPEAN UNION,Having regard to the Treaty establishing the European  
Economic Community, and in particular Articles 28,  
100a and 113 thereof,Having regard to the proposal from the Commission<sup>(1)</sup>,Having regard to the opinion of the Economic and Social  
Committee<sup>(2)</sup>,Acting in accordance with the procedure laid down in  
Article 189b of the Treaty<sup>(3)</sup>,

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

- (2) Whereas it is necessary to define the way in which the customs authorities discharge the procedure, in relation to the place, the time and the conditions under which this procedure ends, in order to establish more clearly the scope and limits of the obligations of the holder of the external transit procedure and to ensure that, in the absence of information capable of establishing that the procedure has ended, the holder remains fully liable;

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

- (4) Whereas, in order to safeguard the revenue of the European Community and of the Member States and to curb fraudulent practices in the transit procedure, arrangements involving graduated measures for application of the comprehensive guarantee are advisable; whereas in the first place a ban on reducing the comprehensive guarantee may be considered where there is an increased risk of fraud and loss of revenue is therefore to be feared; whereas where it is established that especially critical exceptional situations exist, which may arise in particular from the activities of organised crime, it should instead also be possible temporarily to prohibit the application of the comprehensive guarantee itself; whereas account should be taken in the application of these graduated measures of the particular situation of the economic operators who meet specific criteria to be determined; whereas, where an individual guarantee has to be provided instead of the comprehensive guarantee, the burdens entailed for operators should be

<sup>(1)</sup> OJ C 337, 7.11.1997, p. 52.

<sup>(2)</sup> OJ C 73, 9.3.1998, p. 17.

<sup>(3)</sup> Opinion of the European Parliament of 13 May 1998 (OJ C 167, 1.6.1998), Council Common Position of 24 September 1998 and European Parliament Decision of . . . (not yet published in the Official Journal).

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

reduced by means of the greatest possible simplification;

- (5) Whereas the simplified procedures having an exclusively national, bilateral or multilateral scope introduced by the Member States under Article 97(2) of the Community Customs Code, hereafter referred to as 'the Code', vary greatly in nature and may in some cases conflict with the proper application of the Community transit procedures and the need for equal treatment of economic operators; whereas, without calling into question the benefits this system offers to these operators, a communication to the Commission of the simplified procedures introduced by each Member State on this basis must be provided for, in order to ensure the transparency of these measures and to evaluate their compatibility with the rules which govern Community transit procedures and in particular the guarantee;
- (6) Whereas security systems for Community transit procedures cover both customs debt and other charges which may be incurred in respect of the goods, and constitute a special case since the procedures are international in nature and the sum required needs to be tailored to an extent to the risks and to the principal's reliability; whereas, therefore, there is a need to adapt in consequence Article 192 of the Code;
- (7) Whereas under the current wording of Article 215 of the Code it is possible to determine where the customs debt is incurred, but it does not indicate that this place determines the authority responsible for the entry into the accounts of the debt; whereas, moreover, where a customs procedure is not discharged, the rule for determining that place must be amended to reflect the need to establish, as far as possible, the place where the events from which the customs debt arises actually occurred;
- (8) Whereas simplification and clarification of the rules for the benefit of both operators and customs officials form an essential part of the action plan for customs transit in Europe; whereas these rules must also be applied to the provisions determined in accordance with the committee procedure;
- (9) Whereas this amendment of the code together with the corresponding amendments to its implementing provisions must be such as to facilitate the introduction in due course of a new computerised system of transit for the benefit of both the public interests at stake in transit operations and economic operators,

HAVE ADOPTED THIS REGULATION:

*Article 1*

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

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

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

2. Article 92 shall be replaced by the following:

*'Article 92*

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

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

3. Article 94 shall be replaced by the following:

*'Article 94*

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

2. The guarantee shall be either:

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

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

- (a) are established in the Community,
- (b) are regular users of Community transit procedures or who are known to the customs authorities to have the capacity to fulfil their obligations in relation to these procedures, and

(c) have not committed serious or repeated offences against customs or tax laws.

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

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

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

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

6. In line with the principles underlying paragraph 4, recourse to the comprehensive guarantee for a reduced amount may, in the case of external Community transit, be temporarily prohibited by the Committee procedure as an exceptional measure in special circumstances.

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

4. Article 95 shall be replaced by the following:

*'Article 95*

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

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

2. The cases in which the furnishing of a guarantee in respect of the carriage of goods on waterways other than those referred to in paragraph 1(b) may be waived shall be determined in accordance with the Committee procedure.;

5. Article 97 shall be replaced by the following:

*'Article 97*

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

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

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

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

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

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

7. Article 215 shall be replaced by the following:

*'Article 215*

1. A customs debt shall be incurred:

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

Community customs territory under that procedure.

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

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

*Article 2*

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

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

Done at . . .

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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## STATEMENT OF THE COUNCIL'S REASONS

### I. INTRODUCTION

1. On 29 September 1997, the Commission submitted a proposal, based on Articles 28, 100a and 113 of the EC Treaty, amending Regulation (EEC) No 2913/92 establishing the Community Customs Code (transit)<sup>(1)</sup>.
2. The European Parliament and the Economic and Social Committee gave their opinions on 13 May 1998 and 10 and 11 December 1997 respectively<sup>(2)</sup>.
3. On 24 September 1998, the Council adopted its Common Position in accordance with Article 189b of the Treaty.

### II. OBJECTIVE

The Commission proposal forms part of the reform of transit procedures and follows the Commission's action plan for transit in Europe, which was drawn up partly in response to the findings of the European Parliament's temporary committee of enquiry into Community transit procedures. The amendment to the Community Customs Code is only part of a wider reform, the bulk of which will consist in the overhaul of the implementing provisions of the Code, the revision of the Convention on Common Transit concluded with the EFTA and Visegrad countries, the computerisation of transit procedures and operational improvements to procedures.

### III. ANALYSIS OF THE COMMON POSITION

1. The Council has been examining the proposal since the end of 1997 and has amended it fairly substantially. Essentially, the amendments correspond very closely to the amendments submitted by the European Parliament and the amended proposal subsequently submitted by the Commission.
2. With regard to Amendment 1 (accepted by the Commission), the Council did not consider this new recital necessary, since it was general in scope and therefore did not apply specifically and exclusively to transit decisions.
3. With regard to Amendment 2 (accepted by the Commission), the Council followed the Parliament's amendment to a very large extent; only editorial amendments have been made to the new text of Article 91(1)(b).
4. With regard to Amendment 3, which was not included in the amended Commission proposal, the Council has followed the Parliament's approach and introduced a new paragraph 2 in Article 92 which defines the discharge of the external transit procedure and involves the office of departure and the office of destination.
5. With regard to Amendment 4, which was included in the amended Commission proposal, the Council has very largely accepted the text of the new Article 94, as amended by the Parliament. The changes made by the Council to that amendment are essentially editorial in the case of paragraphs 1, 2, 3 and 4; however, paragraphs 3 and 4 contain more detailed provisions which, via the committee procedure, will improve the targeting of undertakings which can benefit from the comprehensive guarantee system, possibly for a reduced amount or with a guarantee waiver. These additional details are also based on the amendment proposed by Parliament in its paragraph 6.

<sup>(1)</sup> OJ C 337, 7.11.1997, p. 52.

<sup>(2)</sup> OJ C 37, 1.3.1998, p. 17.

New provisions have been entered in paragraphs 5, 6 and 7.

Paragraph 5 deals with the fact that the guarantee waiver cannot be granted for goods which, as determined by the Committee procedure, are considered to present increased risks.

Paragraph 6 opens up the possibility, in exceptional circumstances, of temporarily prohibiting, by the committee procedure, any reduction in the comprehensive guarantee.

In the case of sensitive goods which in the past have been the subject of major fraud, paragraph 7 makes it possible to prohibit temporarily the use of the comprehensive guarantee and hence require an individual guarantee.

This grading of the measures concerning the use of the comprehensive guarantee is explained in a new third recital for the Regulation. The recital explains both the progressive nature of the measures which can be taken and how they should be applied with reference to the principles set out in Article 94(4), namely, taking account of the particular situation of certain commercial operators who comply with criteria to be determined. This recital also lays down the principle of having simplified administrative procedures for operators from whom an individual guarantee is temporarily required.

6. With regard to Amendment 5, accepted by the Commission, the Council has followed Parliament's opinion very precisely, subject to a purely editorial change to the new paragraph 2.
7. With regard to Amendment 6, accepted by the Commission, the Council has similarly followed Parliament's opinion in leaving Article 96 unchanged.
8. With regard to Amendment 7, which was not included by the Commission in its amended proposal, the Council has very precisely followed Parliament's amendment for the new paragraphs 1, 2 and 4. However, the Council has not adopted the Parliament's amendment which would have introduced a new paragraph 3, in view of the limited scope of bilateral and multilateral arrangements as regards simplified procedures, which, moreover, must in any case be communicated to the Commission.

Finally, attention should be drawn to the amendments made by the Council to Article 192(1) and Article 215 of the Code, which in substance largely match the initial Commission proposal; these points had not been amended by the Parliament.

#### IV. CONCLUSION

The Council considers that the Common Position adopted with a view to adopting this Regulation on transit meets the objectives as described in Section II, in particular as an important instrument in the fight against fraud.

With these objectives in mind, the Council has adopted the major part of the European Parliament's amendments.

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