II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DIRECTIVE

of 17 December 1981

laying down certain provisions for implementing Council Directive 79/695/EEC on the harmonization of procedures for the release of goods for free circulation

(82/57/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Directive 79/695/EEC of 24 July 1979 on the harmonization of procedures for the release of goods for free circulation [1], and in particular Article 26 (1) thereof,

Whereas, in order to define clearly the obligations which the person who completes an entry for release for free circulation must fulfil pursuant to Article 3 of Directive 79/695/EEC, it is necessary to specify the particulars which the entry must contain and the documents which must accompany the entry;

Whereas the specification of those particulars and the production of those documents are, under Article 6 (1) of the abovementioned Directive, prerequisites for the acceptance of the entry; whereas Article 6 (2), however, permits the customs authority, at the request of the declarant and for reasons which that authority deems valid, to waive that requirement and accept an incomplete entry subject to certain conditions; whereas it is necessary, therefore, to indicate the particulars and documents which are in any event essential for the acceptance of the entry and to specify the time limits for completion of the entry;

Whereas the subsequent failure to produce particulars or documents which were missing at the time when the entry was accepted may affect the amount of the import duties payable in respect of the goods in question; whereas it is necessary, therefore, to lay down precise rules to ensure that the Community regulations are applied correctly and that any duties payable in respect of the goods in question are paid;

Whereas, in order to ensure as far as possible the correct application of import duties, it is necessary to establish practical, uniform procedures for the prior examination of goods and the taking of samples by the person concerned; whereas similar provision must also be made with regard to the examination of goods and taking of samples by the competent authorities following acceptance of the entry; whereas, in the latter instance, provision must be made in particular for appropriate measures to deal with any refusal on the part of the declarant to be present at the examination and taking of samples, at the request of the customs authority, with a view to rectifying the suspended operation;

Whereas it is necessary to lay down the measures to be taken by the competent authorities in order to provide for the situation of goods where these cannot be released for free circulation for one of the reasons specified in Article 15 (1) (b) or (c) of Directive 79/695/EEC;

[1] OJ No L 205, 13. 8. 1979, p. 19.

Whereas the provisions of this Directive shall apply without prejudice to 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];

Whereas the measures provided for in this Directive are in accordance with the opinion of the Committee on General Customs Rules,

HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive lays down certain provisions for implementing Articles 3, 4, 6, 9 (1), (4) and (5), 10 (1), 13, 14 and 15 (1) of Directive 79/695/EEC, hereinafter referred to as 'the basic Directive'.

TITLE I

CONTENTS OF THE ENTRY FORM FOR RELEASE FOR FREE CIRCULATION

A. Particulars to be supplied

Article 2

1. The particulars referred to in Article 3 (1) of the basic Directive which must be contained in the entry shall be the following:

(a) the declarant's name and address and, where he is acting on behalf of a third party, the legal conditions under which he does so where such information is necessary to determine the person liable for payment of any customs debt;

(b) where the declarant is not himself the consignee of the goods, the name and address of the said consignee;

(c) where goods have been entered for free circulation at a customs office subsequent to the lodging in respect of those goods of the summary declaration referred to in Article 3 of 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 [2], a reference to this summary declaration unless the customs authority undertakes to enter this information itself;

(d) where the summary declaration referred to in (c) has not been lodged in respect of goods entered for free circulation:

— which have not previously been entered under another customs procedure, the particulars for identifying the means of transport in which the goods reached the customs office,

— which have previously been entered under another customs procedure, a reference to that procedure.

(e) the number, kind, marks and serial numbers of packages containing the goods declared or, if the goods are not packed, the number of articles covered by the declaration or the words 'bulk', depending on the circumstances, and the particulars necessary to identify those unpacked goods;

(f) the location of the goods declared, where the customs authority considers this necessary;

(g) the Common Customs Tariff nomenclature heading or subheading of the goods and a description of the said goods in conformity with the terms of that nomenclature or in terms that are sufficiently precise to enable the customs authority to determine forthwith and unambiguously that they correspond to the tariff heading or subheading declared;

(h) in the case of goods liable to *ad valorem* duty, their customs value calculated in accordance with the Community provisions in force as well as, if necessary, the quantitative data needed in order to assess that value;

(i) in the case of goods liable to a specific duty, the quantity and any additional particulars that may be necessary for application of such duty;

(j) in the case of goods liable to *ad valorem* duty with a minimum or a maximum duty based on specific particulars, all the information referred to under (h) and (i);

(k) the country of consignment of the goods within the meaning of Article 10 of Regulation (EEC) No 1736/75 and their country of origin within the meaning of Council Regulation (EEC) No 802/68 of 27 June 1968 on the common definition of the concept of the origin of goods [3] or, in the case of goods for which preferential treatment has been requested by virtue of their origin, of the Community instruments or agreements providing for such preferential treatment;

[1] OJ No L 183, 14. 7. 1975, p. 3.
[2] OJ No L 194, 6. 8. 1968, p. 13.
[3] OJ No L 148, 28. 6. 1968, p. 1.

(l) the number, preceded by the letter(s) indicating the issuing Member State, and the date of issue of any import licence or advance-fixing certificate presented pursuant to the provisions applicable in respect of the common agricultural policy;

(m) all other particulars needed for application of the rules governing the release for free circulation of the goods declared.

2. In addition to the particulars referred to in paragraph 1, the Member States may require that the following be included in the entry:

(a) the name and address of the consignor of the goods;

(b) the rate of import duty applicable to the goods declared;

(c) for information purposes the amount of import duty, as calculated by the declarant.

3. Where a Member State does not apply the provisions contained in Article 17 (b) of the basic Directive and the goods in question qualify either for a flat rate system of imposing charges or for relief from import duty, the particulars referred to in paragraph 1 (g) may be indicated in simplified form.

In addition, where goods qualify for relief from import duty, the particulars referred to in paragraph 1 (h) (i), (j) and (k) shall not be required unless the customs authority considers it necessary in order to enable the provisions governing the release of the goods in question for free circulation to be applied.

B. Documents to accompany the entry

Article 3

1. The documents which, under Article 3 (2) of the basic Directive, must accompany the entry, shall be:

(a) the invoice on the basis of which the customs value is declared, as required to comply with Commission Regulation (EEC) No 1496/80 of 11 June 1980 on the declaration of particulars relating to customs value and on documents to be furnished (1);

(b) where it is required under Regulation (EEC) No 1496/80, the declaration of particulars for the assessment of the customs value of the goods declared, drawn up in accordance with the conditions laid down in the said Regulation;

(c) the documents required for the application of preferential tariff arrangements or other measures derogating from the general legal rules applicable to the goods declared;

(d) all other documents required for the application of the provisions governing the release for free circulation of the goods declared.

2. The customs authority may, should it consider it necessary, require transport documents or, as the case may be, documents relating to the previous customs procedure to be produced when the entry form is lodged.

Where a single item is presented in two or more packages, the customs authority may also require the production of a packing list or equivalent document indicating the contents of each package.

3. Where a Member State does not apply the provisions contained in Article 17 (b) of the basic Directive and the goods in question qualify either for a flat-rate system of imposing charges or for relief from import duty, the documents referred to in paragraph 1 (b) and (c) may be dispensed with.

In addition, where goods qualify for relief from import duty, the documents referred to in paragraph 1 (a) shall not be required unless the customs authority considers it necessary in order to enable the provisions governing the release of the goods in question for free circulation to be applied.

4. The accompanying documents must be kept by the customs authority unless provided otherwise or unless the declarant requires them for other operations. In the latter case the customs authority shall take the necessary steps to ensure that the documents in question cannot subsequently be used except in respect of the quantity or value of goods for which they remain valid.

C. Examination of goods and taking of samples before lodging of the entry

Article 4

1. The examination of goods and the taking of samples referred to in Article 4 of the basic Directive may be carried out only by authorization of the customs authority. Such authorization shall be granted at the request of the person concerned.

(1) OJ No L 154, 21. 6. 1980, p. 16.

2. Examination of goods may be authorized at the oral request of the person concerned, unless the customs authority considers, having regard to the circumstances, that a written application is required.

The taking of samples may be authorized only at the written request of the person concerned.

3. A written request as referred to in paragraph 2 must be signed by the person concerned and lodged with the customs office concerned. It must include the following particulars :

— name and address of the applicant,

— the location of the goods,

— number of the summary declaration save where the customs authority undertakes to enter such information, or indication of the previous customs procedure, or the particulars for identifying the means of transport on which the goods are located,

— all other information necessary for identifying the goods.

The customs authority shall indicate its authorization on the request presented by the person concerned. Where the request is for the taking of samples, the said authority shall indicate the quantity of goods to be taken.

4. Prior examination of goods and the taking of samples shall be carried out under the supervision of the customs authority, which shall specify the procedures in each particular case.

The person concerned shall bear the risk and the cost of unpacking, weighing, repacking and any other operation involving the goods. He shall also pay any costs in connection with analysis.

5. Where the samples taken are not covered in due course by the entry for release for free circulation in respect of the goods to which they relate, the import duties to which they may be liable shall be calculated on the basis of the particulars given in the written request referred to in paragraph 2 at the rate applicable at the date on which the request was accepted.

D. **Incomplete entries**

Article 5

Entries which the customs authority may, pursuant to Article 6 (2) of the basic Directive, accept without their containing certain of the particulars referred to in Article 2 must contain at least the particulars referred to in Article 2 (1) (a), (c), (d) and (e) and :

— a description of the goods in terms that are sufficiently precise to enable the customs authority to determine forthwith and unambiguously the tariff heading or subheading concerned,

— where the goods are liable for *ad valorem* duties, their value for customs purposes, or, where it appears that the declarant is not in a position to declare this value, a provisional indication of value which is deemed acceptable by the customs authority, due account being taken in particular of the information available to the declarant,

— any further particulars deemed necessary by the customs authority in order to identify the goods, implement the provisions governing their release for free circulation and determine the amount of any security required before the goods may be released for free circulation.

Article 6

1. Entries which the customs authority may, pursuant to Article 6 (2) of the basic Directive, accept without their being accompanied by certain of the documents specified in Article 3 must be accompanied at least by those documents which must be produced before the goods declared can be released for free circulation.

2. By way of derogation from paragraph 1, an entry not accompanied by any of the documents required before the goods can be released for free circulation may be accepted once it is established, to the satisfaction of the customs authority, that :

(a) the document concerned exists and is valid ;

(b) it could not be annexed to the entry form for reasons beyond the declarant's control ;

(c) any delay in accepting the entry would prevent the release of the goods for free circulation or make them liable to a higher rate of import duty.

Data relating to missing documents shall, in all cases, be indicated in the entry.

Article 7

1. Without prejudice to the Community provisions governing valuation for customs purposes, the period allowed by the customs authority to the declarant for the communication of particulars or production of documents not supplied at the time when the entry was accepted may not exceed one month from the date of such acceptance.

However, in the case of a document required for the application of a reduced or zero rate of import duty, where the customs authority has good reason to believe that the goods covered by the incomplete entry may qualify for such reduced or zero rate of duty, a further period may, at the declarant's request, be allowed for the production of the document in question. Such additional period may not exceed three months.

2. Where a reduced or zero rate of import duty is applicable to goods released for free circulation only within certain tariff quotas or ceilings, the importation may be charged within the authorized limits only when the document on which the granting of this reduced or zero rate is conditional is actually produced. The document must in any case be produced :

— before the date on which a Community measure re-establishes the levying of normal import duties where tariff ceilings are concerned,

— before the limits laid down have been reached where tariff quotas are concerned.

3. Subject to paragraphs 1 and 2, the document on whose presentation the granting of the reduced or zero rate of import duty is conditional may be produced after the expiry date of the period for which the reduced or zero rate was set in so far as the entry in respect of the goods in question was accepted before that date.

Article 8

1. The effect of the customs authority's acceptance of an incomplete declaration may not be such as to prevent or delay the grant of authorization to release the goods thus declared, unless other grounds exist for such action. Without prejudice to the provisions of Article 20, release shall take place in accordance with the conditions laid down in paragraphs 2 to 5 below.

2. Where the late production of a particular or of a supporting document missing at the time when an entry is accepted cannot affect the amount of import duties to which the goods covered by the said declaration are liable, the customs authority shall immediately enter in the accounts the sum payable, calculated in the usual manner.

3. Where, in implementation of the provisions of Article 5, the entry contains a provisional indication of value, the customs authority shall :

— enter forthwith in the accounts the amount of import duties determined on the basis of this indication,

— require, if necessary, the lodging of a security adequate to cover the difference between that amount and the amount to which the goods may ultimately be liable.

4. Where in circumstances other than those referred to in paragraph 3 the late production of a particular or of a supporting document missing at the time when an entry is accepted may affect the amount of import duties to which the goods covered by the said declaration are liable :

(a) where late production of the missing particular or document may lead to the application of import duty at a reduced rate, the customs authority shall :

— immediately enter in the accounts the import duties payable at the reduced rate,

— require the lodging of a security covering the difference between that sum and the sum which would be payable were the import duties on the goods in question calculated at the normal rate ;

(b) where the late production of the missing particular or document may lead to admission of the goods declared with total exemption from import duties, the customs authority shall require the lodging of a security covering the amount which could be payable were the duties charged at the normal rate.

5. Without prejudice to any subsequent amendments which may arise particularly as a result of the final determination of the customs value, Member States may provide for declarants to have the option of requesting the immediate entry in the accounts of the amount of duties to which the goods may ultimately be liable instead of lodging the security referred to in the second indent of paragraph 3 and in the second indent of paragraph 4 (a) and in paragraph 4 (b).

Article 9

If, at the expiry of the period referred to in Article 7, the declarant has not supplied the details necessary for the final determination of the goods' value, or has failed to provide the missing particulars or documents, the customs authority shall at once enter in the accounts as import duties to which the goods in question are subject the amount of the security provided in accordance with the provisions of the second indent of Article 8 (3) or of the second indent of Article 8 (4) (a) and Article 8 (4) (b).

TITLE II

VERIFICATION OF THE ENTRY FORM

A. Documentary verification

Article 10

Without prejudice to verification carried out before an entry is accepted, for the purpose of ascertaining whether it is acceptable, the customs authority may, where it considers this necessary, check the entry form and the documents accompanying it in order to ensure, in particular, that the information contained in the latter corresponds to that given in the entry.

B. Examination of the goods

Article 11

Where it decides to examine a part of the goods only, the customs authority shall inform the declarant or his representative which items it wishes to examine. The authority's choice shall be final.

The findings of such partial examination shall apply to all goods covered by the entry in question. However, the declarant may request a further examination should he consider that the findings of the partial examination are not valid for the remainder of the goods declared.

Article 12

1. Where the customs authority elects to examine goods it shall so inform the declarant or his representative.

2. The declarant or the person designated by him to be present at the examination of the goods shall provide the customs authority with the assistance required to facilitate its work. Should the customs authority consider the assistance given unsatisfactory, it may require the declarant to designate another person able to give the necessary assistance.

3. Where the declarant refuses to be present at the examination of the goods or to designate a person able to give the assistance which the customs authority considers necessary, the latter shall impose on the declarant a period in which to comply, unless it considers that such an examination may be dispensed with.

If, on expiry of the period laid down, the declarant has not complied with the requirements of the customs authority, the latter, for the purpose of applying Article 15 (1) (a) of the basic Directive, shall proceed with the examination of the goods, at the declarant's risk and expense, calling if necessary on the services of an expert or any other person designated in accordance with the provisions in force.

The findings made by the customs authority during the examination carried out under the conditions referred to in the preceding paragraph shall have the same validity as if the examination had been carried out in the presence of the declarant.

4. Instead of the measures laid down in paragraph 3, Member States may provide for the customs authority to have the option of invalidating the entry in cases where it is beyond doubt that the declarant's refusal to be present at the examination of the goods or to designate a person able to give the necessary assistance is not intended to prevent, nor in effect prevents, that authority from finding that the rules governing the release of the goods for free circulation have been breached, and is not intended to evade, nor in effect evades, the provisions of Article 8 (2) or the second subparagraph of Article 11 (2) of the basic Directive.

C. Taking of samples

Article 13

1. Where the customs authority decides to take samples, it shall so inform the declarant or his representative.

Should it consider this desirable, the customs authority may require the declarant to be present at the taking of samples, or to arrange to be represented by a person able to tender the authority the necessary aassistance.

2. Samples shall be taken by the customs authority, which may, however, ask that this be done under its supervision by the declarant or a person designated by him.

Samples shall be taken in accordance with the methods laid down in the provisions in force.

3. The quantities taken as samples should not exceed what is needed for analysis or more detailed examination, including possible check analysis.

Article 14

1. The declarant or the person designated by him to be present at the taking of samples shall render to the customs authority all the assistance needed to facilitate the operation.

2. Where the declarant refuses to be present at the taking of samples or to designate a person to attend, or where he fails to render to the customs authority all the assistance needed to facilitate the operation, the provisions of Article 12 (3) and (4) shall apply.

Article 15

Where the customs authority takes samples for analysis or more detailed examination, it shall authorize the release of the goods in question without waiting for the results of the analysis or examination, unless there are other grounds for not doing so.

In this case, the provisions of Article 20 shall apply.

Article 16

For the purposes of assessing the amount of import duties to be applied to the goods declared, the quantities taken by the customs authority as samples shall not be deducted from the quantity declared.

Article 17

Unless destroyed by the analysis or more detailed examination, the samples taken shall be returned to the declarant at his request and expense once they no longer need to be kept by the customs authority, in particular after all the declarant's means of appeal against the decision taken by the customs authority on the basis of the results of that analysis or more detailed examination have been exhausted.

Where the declarant does not ask for samples to be returned, they may either be destroyed or kept to facilitate checking of subsequent operations. In specific circumstances, however, the customs authority may require the declarant to remove any samples that remain.

D. Attestation by the customs authority

Article 18

1. Where the customs authority checks the entry forms and documents accompanying it or examines the goods, it shall indicate at least in the copy of the entry retained by the customs authority, or in a document attached to it, the subject and results of any such check or examination. Where a partial examination of the goods is made, the references of the consignment examined shall also be given.

Where appropriate, the customs authority shall also indicate in the entry form that the declarant or his representative was absent.

2. Should the result of the check on the entry form and documents accompanying it or examination of the goods not be in accordance with the particulars given in the entry form, the customs authority shall specify at least in the copy of the entry form retained by the customs authority, or in a document attached to this form as referred to in paragraph 1, the particulars to be taken into account for the purposes of charging duty on the goods in question and of implementing the other provisions governing their release for free circulation.

3. The attestation by the customs authority shall be dated and bear the particulars needed to identify the official issuing it.

4. Member States may provide for no endorsement to be made by the customs authority on the entry or on a document attached to it as referred to in paragraph 1 where the said authority does not check the entry or examine the goods.

TITLE III

DISPOSAL OF GOODS ENTERED FOR FREE CIRCULATION

A. Release of goods for free circulation

Article 19

Release of the goods for free circulation shall be given on a single occasion for all the goods forming the subject of the entry.

The date on which release is given shall be indicated on the entry.

Article 20

1. Where the customs authority, while waiting for the result of the checks which it has undertaken, whether in order to verify the statements made in the entry or the documents accompanying it or to examine the goods, does not consider that it is in a position to assess the amount of import duties payable on the goods, it may nonetheless, if the declarant requests it, grant release for free circulation of the goods in question. The granting of this release shall give rise to the immediate entry in the accounts of the import duties as assessed according to the statements made in the entry.

Where the customs authority considers that the checks which it has undertaken may enable an amount of customs duties higher than that resulting from the statements made in the entry to be assessed, it shall further require the lodging of a security sufficient to cover the difference between the amount referred to in the preceding subparagraph and the amount which may finally be payable on the goods. However, Member States may provide for declarants to have the option of requesting the immediate entry in the accounts of the amount of duties to which the goods may ultimately be liable instead of lodging this security.

2. Where, on the basis of the checks which it has carried out, the customs authority assesses an amount of import duties different from the amount which results from the statements made in the entry, the release of the goods shall give rise to the immediate entry in the accounts of the amount thus assessed.

Article 21

1. Where the customs authority has been unable to release goods for free circulation for one of the reasons specified in Article 15 (1) (b) or (c) of the basic Directive, the said authority shall set a time limit by which the declarant must fulfil the necessary conditions.

2. Where, in the circumstances referred to in Article 15 (1) (b) of the basic Directive, the declarant has not produced the requisite documents within the time limit referred to in paragraph 1, the entry in question shall be invalidated.

3. In the circumstances referred to in Article 15 (1) (c) of the basic Directive and without prejudice to any measures taken under Article 8 (2) or Article 14 of that Directive where the declarant has neither paid nor guaranteed the duties due within the time limit referred to in paragraph 1, the customs authority may start the preliminary formalities for the sale of the goods. In this case the goods shall be sold unless the requisite conditions have been fulfilled in the interim, possibly by constraint if the law of the Member State in question so permits. The customs authority shall inform the declarant thereof.

The customs authority may, at the risk and expense of the declarant, transfer the goods in question to special premises under its supervision.

B. Surrender of goods

Article 22

For the purpose of applying the first indent of Article 14 (1) of the basic Directive, a request for surrender of goods to the national exchequer shall be made in writing and signed by the declarant. This request may be made on the actual entry form.

Where the relevant authorities authorize the declarant to surrender goods to the national exchequer, such authorization must be indicated on the entry form. The above authorization has the effect of rendering the entry invalid.

C. Destruction of goods

Article 23

For the purpose of applying the second indent of Article 14 (1) of the basic Directive, a request for the destruction of goods shall be made in writing and signed by the declarant. This request may be made on the actual entry form.

Where the relevant authorities agree to goods being destroyed, such agreement must be indicated on the entry form or any other document accompanying it.

The customs authorities present when the goods are destroyed shall endorse the entry or any other document accompanying it accordingly. Where appropriate, they shall specify on the form or document the type and quantity of any waste or scrap resulting from the destruction so that such waste or scrap may be released for free circulation on the basis of the taxation elements applicable to them.

TITLE IV

FINAL PROVISIONS

Article 24

Provided the provisions of the preceding titles are observed, the provisions of this Directive shall not prevent the use of entry forms covering two or more articles.

In such case the particulars relating to each article shall be regarded as constituting a separate entry.

Article 25

Where duties are entered in the accounts immediately, as provided for in Articles 8, 15 and 20, this shall be without prejudice to measures taken under Council 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 [1].

Article 26

The Member States shall bring into force the measures necessary to comply with this Directive not later than 1 July 1982. They shall forthwith inform the Commission thereof.

[1] OJ No L 146, 2. 6. 1978, p. 19.

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

Article 27

This Directive is addressed to the Member States.

Done at Brussels, 17 December 1981.

For the Commission

Karl-Heinz NARJES

Member of the Commission