COUNCIL DIRECTIVE

of 9 October 1990

amending the Directive 79/695/EEC on the harmonization of procedures for the release of goods for free circulation

(90/504/EEC)

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, with regard to the procedures for the release of goods for free circulation, Title II of Directive 79/695/EEC (4), as last amended by Regulation (EEC) No 4046/89 (5), provides for special procedures, containing, in particular, in subtitles A, B and C, provisions concerning exemption from written entries, the drawing up of general, periodic or recapitulative entries and release of goods before lodging of entry;

Whereas the said provisions indicate in what manner and under what conditions the competent authorities may authorize use of simplified procedures for the release of goods for free circulation;

Whereas the conditions under which importers are entitled to use such a procedure should be defined as precisely as possible; whereas a distinction must be drawn between two types of procedure, namely the local clearance procedure and the simplified declaration procedure;

Whereas specific Community provisions apply where goods previously placed under a customs procedure with economic impact are released for free circulation;

Whereas the simplified procedures for the release of goods for free circulation are of considerable economic importance to the customs union and the internal market; whereas, in a single market, importers must be able to enjoy the same facilities irrespective of where goods are released for free circulation;

Whereas Directive 79/695/EEC should be amended accordingly;

(1) OJ No C 235, 13. 9. 1989, p. 16.
(2) OJ No C 38, 19. 2. 1990, p. 49 and OJ No C 260, 15. 10. 1990.
(3) OJ No C 62, 12. 3. 1990, p. 5.
(4) OJ No L 205, 13. 8. 1979, p. 19.
(5) OJ No L 388, 30. 12. 1989, p. 24.

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 79/695/EEC is hereby amended as follows:

1. Articles 16 to 20 are replaced by the following:

'*Article 16*

Except where Articles 16a to 22 provide otherwise, Title I shall apply to the special procedures laid down in those Articles.

Article 16a

Without prejudice to the special provisions laid down in respect of consignments sent by parcel or letter post, and with the exception of cases where an import licence, permit or certificate has to be presented, a written declaration shall, in the cases and under the conditions to be established pursuant to the procedure laid down in Article 26 (2) and (3), be unnecessary for goods imported for non-commercial purposes or goods of low value.

Article 17

1. The local clearance procedure shall enable goods to be released for free circulation at the premises of the person concerned or at other places designated or approved by the competent authorities.

The simplified declaration procedure shall enable goods to be released for free circulation on presentation of a simplified declaration with later presentation of a supplementary declaration which may be of a general, periodic or recapitulative nature, as appropriate.

2. The procedures referred to in paragraph 1 shall be applied in accordance with Articles 18 to 20a and do not preclude the exercise by the customs services of any controls they deem necessary to ensure the proper conduct of operations,

LOCAL CLEARANCE PROCEDURE

Article 18

Authorization to use the local clearance procedure shall be granted in accordance with the conditions and in the manner laid down in Articles 18a, 18b and 18c

to any person who wishes to have goods released for free circulation at his premises or at other places designated or approved by the competent authorities, who submits a written request to this end containing all the particulars necesary for the grant of the authorization

— in respect of goods subject to the Community transit procedure and in respect of which the person referred to above is authorized to use the simplified procedures to be carried out at the office of destination in accordance with Articles 71 to 77 of Commission Regulation (EEC) No 1062/87 (1), as last amended by Regulation (EEC) No 1159/89 (2);

— in respect of goods previously placed under a customs procedure with economic impact, without prejudice to the relevant specific provisions applicable;

— in respect of goods which are consigned, after having been presented to customs pursuant to Article 5 of Regulation (EEC) No 4151/88 (3), to those premises or places, in accordance with a transit procedure other than that referred to in the first indent;

— in respect of goods which are bought into the customs territory of the Community with an exemption from the requirement that they be presented to customs, pursuant to Article 6 (b) of Regulation (EEC) No 4151/88.

(1) OJ No L 107, 22. 4. 1987, p. 1.
(2) OJ No L 119, 29. 4. 1989, p. 1.
(3) OJ No L 367, 31. 12. 1988, p. 1.

Article 18a

1. The authorization referred to in Article 18 shall be granted provided that:

— the applicant's records enable the customs authorities to carry out an effective check, in particular checks at a later date,

— it is possible to guarantee an effective check on import prohibitions or restrictions or compliance with any other provisions governing release for free circulation.

2. Authorization shall in principle be refused where the applicant

— has committed a serious infringement or repeated infringements of customs rules,

— declares goods for release for free circulation only occasionally.

3. An authorization shall be revoked, when,

(a) a condition laid down for its issue has not been, or is no longer, fulfilled; or

(b) its holder fails to fulfil an obligation imposed under the arrangements.

However, the customs authority may refrain from revoking the authorization when:

— the holder fulfils his obligations within any time limit set by the customs authority, or

— the failure to fulfil an obligation is without any real consequence as regards the correct operation of the arrangements.

4. An authorization shall, in principle, also be revoked where the case referred to in the first indent of paragraph 2 arises.

5. An authorization may be revoked where the case referred to in the second indent of paragraph 2 arises.

6. The customs authorities shall set out the grounds for decisions refusing or revoking authorization.

Article 18b

1. To enable the competent authorities to satisfy themselves as to the proper conduct of operations, the authorized person referred to in Article 18 shall, upon arrival of the goods at the place designated for that purpose:

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

(b) enter the said goods in his records. Such entry may be replaced by any other formality laid down by the competent authorities and offering similar guarantees. The entry shall indicate the date on which it is made and the particulars necessary for identification of the goods; such entry or the act in place of it has the same force in law as the acceptance of the declaration referred to in Article 3;

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

2. On condition that checking on the proper conduct of operations is not thereby affected, the competent authorities may:

(a) permit the notification referred to in paragraph 1 (a) to be effected as soon as the arrival of the goods becomes imminent;

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

Article 18c

The authorization referred to in Article 18 shall set out the practical details for the functioning of the procedure and in particular:

— the goods to which it applies,

— the form of the obligations referred to in Article 18b, as well as the reference to the guarantee to be provided by the person concerned,

— the time of release of the goods,

— the time limit within which the declaration referred to in Article 3, which may be of a general, periodic or recapitulative nature as appropriate, must be presented to the competent customs office designated for that purpose,

— the conditions under which goods are to be covered by general, periodic or recapitulative declarations, as appropriate.

SIMPLIFIED DECLARATION PROCEDURE

Article 19

1. The declarant shall, upon request, be authorized, in accordance with the conditions and in the manner laid down in Articles 20 and 20a, to make the declaration for release for free circulation in a simplified from where goods are presented to customs,

Such simplified declaration may be in the form

— either of an incomplete entry of the type referred to in Article 6, or

— of an administrative or commercial document containing the particulars necessary for identification of the goods.

The simplified declaration shall be accompanied by all documents the production of which may be required to secure the release of the goods for free circulation.

2. The request referred to in paragraph 1 must be made in writing and contain all the particulars necessary for the grant of the authorization.

3. Statements made in supplementary declarations, together with the statements made in the simplified declarations to which they relate, shall be deemed to constitute a single indivisible instrument taking effect at the date on which the corresponding initial declaration was accepted.

4. This Article shall be without prejudice to specific provisions applicable in the case of release for free circulation of goods which have been placed under a customs procedure with economic impact.

Article 20

1. The authorization referred to in Article 19 shall be granted to the person in whose name the declaration for release for free circulation is made on condition that it is possible to guarantee an effective check on and compliance with import prohibitions or restrictions or other provisions governing release for free circulation.

2. Such authorization shall in principle be refused where the person who has made the application:

— has committed a serious infringement or repeated infringements of customs rules,

— declares goods for release for free circulation only occasionally.

It may be refused where the person in question acts on behalf of another person who declares goods for release for free circulation only occasionally.

3. The authorization shall be revoked where the condition referred to in paragraph 1 ceases to be fulfilled. It may also be revoked where the cases referred to in paragraph 2 arise.

4. The customs authorities shall set out the grounds for decisions refusing or revoking authorization.

Article 20a

The authorization referred to in Article 19 shall:

— designate the customs office(s) which accept simplified declarations,

— specify the form and content of the simplified declarations,

— specify the goods to which they apply as well as the particulars which must appear on the simplified declaration for the purposes of identifying the goods,

— make reference to the guarantee to be provided by the person concerned.

It shall also specify the form and content of the supplementary declarations, which may be of a general, periodic or recapitulative nature, as appropriate, and fix the time limits within which they must be lodged with the competent authority to be designated.'

2. In the headings which precede Articles 21 and 22, the letters (D) and (E) are deleted.

3. Article 26 (1) is replaced by the following:

'The provisions necessary for applying this Directive shall be adopted in accordance with the procedure laid down in paragraphs 2 and 3.'

Article 2

Member States shall take the measures necessary to comply with this Directive before 1 January 1993.

Member States shall communicate these measures to the Commission.

Article 3

This Directive is addressed to the Member States.

Done at Luxembourg, 9 October 1990.

For the Council

The President

P. ROMITA