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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 1999/85
of 16 July 1985
on inward processing relief arrangements

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 28, 43, 113 and 235 thereof,

Having regard to the proposal from the Commission,

Whereas, under the international division of labour, many Community undertakings use goods from non-member countries to manufacture products for export;

Whereas, in order to put these undertakings on an equal footing as regards supplies with the undertakings of non-member countries which manufacture the same goods in order thereby to promote exports from Community undertakings, it is essential that they be given the possibility of acquiring raw materials under the same conditions as the undertakings of non-member countries;

Whereas export manufactured products should not bear import duties where certain economic conditions are fulfilled, so as not to harm the essential interests of Community manufactures; whereas this result can be achieved either by not levying such duties when the non-Community goods are placed under inward processing relief arrangements, or by levying them on the goods in question and refunding or remitting such duties when the manufactured products are exported;

Whereas, in order to achieve the objective sought while avoiding abuse of this system, a set of rules must be laid down which constitute the inward processing relief arrangements;

Whereas undertakings should be allowed to complete these arrangements by means other than export, including release for free circulation where the circumstances so warrant;

Whereas inward processing relief arrangements are governed at Community level by Council Directive 69/73/EEC of 4 March 1969 on the harmonization of provisions laid down by law, regulation or administrative action in respect of inward processing arrangements [1], as last amended by Directive 84/444/EEC [2];

Whereas the importance of these arrangements in the customs union requires their more uniform application in the Community; whereas provision should, therefore, be made for, on the one hand, measures which are directly applicable in the Member States and, on the other hand, a Community procedure enabling the detailed arrangements for implementation to be adopted, the whole offering greater legal certainty for the individual;

Whereas the principles of the said Directive should be retained in this Regulation.

Whereas Directive 69/73/EEC concerns the non-levying of import duties only; whereas, however, it would appear desirable to allow the arrangements to be used likewise where the products manufactured during the processing operations are liable to export duties and to allow the procedures laid down in the Directive to be used where the imported goods are subject to commercial policy measures in cases of release for free circulation;

Whereas it is necessary to establish a Committee to organize close and effective collaboration in this field between Member States and the Commission,

HAS ADOPTED THIS REGULATION:

TITLE I

General principles

Article 1

1. This Regulation lays down the rules governing inward processing relief arrangements.

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[1] OJ No L 58, 8. 3. 1969, p. 1.
[2] OJ No L 245, 14. 9. 1984, p. 28.

2. Without prejudice to Article 2, inward processing relief arrangements shall, under the conditions laid down by this Regulation, enable the following goods to be used in the customs territory of the Community in one or more processing operations :

(a) non-Community goods intended for re-export outside the customs territory of the Community in the form of compensating products, these goods not being subject to import duties ;

(b) goods released for free circulation with refund or remission of the import duties levied on such goods if they are re-exported outside the customs territory of the Community in the form of compensating products.

3. For the purposes of this Regulation :

(a) 'import goods' means non-Community goods which have undergone formalities for being placed under inward processing relief arrangements within the framework of the suspension system or which have undergone formalities for release for free circulation under Article 24 within the framework of the drawback system ;

(b) 'Community goods' means goods :

— entirely obtained in the customs territory of the Community, without the addition of goods from third countries or territories which are not part of the customs territory of the Community,

— from countries or territories not forming part of the customs territory of the Community which have been released for free circulation in a Member State,

— obtained in the customs territory of the Community either from the goods referred to exclusively in the second indent or from the goods referred to in the first and second indents ;

(c) 'non-Community goods' means goods other than those referred to in (b).

Without prejudice to the agreements concluded with third countries for the implementation of the Community transit arrangements, goods which, while fulfilling the conditions laid down in (b), are reintroduced into the customs territory of the Community after export therefrom are also considered as non-Community goods ;

(d) 'equivalent goods' means Community goods which are used instead of the import goods for the manufacture of compensating products ;

(e) 'person' means :

— a natural person,

— a legal person, or

— when this possibility is provided for in the rules in force, an association of persons recognized as having legal capacity but lacking the legal status of a legal person ;

(f) 'holder of the authorization' means a person to whom an inward processing authorization has been issued ;

(g) 'operators' means persons who carry out all or part of the processing operations ;

(h) 'processing operations' means :

— the working of goods, including fitting or assembling them or adapting them to other goods,

— the processing of goods,

— the repair of goods, including their restoration,

— the use of certain goods, defined in accordance with the procedure laid down in Article 31 (2) and (3), which are not to be found in the compensating products, but which allow or facilitate the production of those products, even if they are entirely or partially used up in the process ;

(i) 'compensating products' means all products resulting from processing operations ;

(j) 'goods in the unaltered state' means import goods which have not undergone a processing operation ;

(k) 'import duties' means not only customs duties and charges having equivalent effect but also agricultural levies and other import charges provided for under the common agricultural policy or under specific arrangements applicable to certain goods resulting from the processing of agricultural products ;

(l) 'export duties' means agricultural levies and other export charges provided for under the common agricultural policy or under specific arrangements applicable to certain goods resulting from the processing of agricultural products ;

(m) 'customs authority' means any authority competent to apply customs rules, even if that authority is not part of the customs administration ;

(n) 'suspension system' means the inward processing relief arrangements as provided for in paragraph 2 (a) ;

(o) 'drawback system' means the inward processing relief arrangements as provided for in paragraph 2 (b) ;

(p) 'rate of yield' means the quantity or percentage of compensating products obtained from the processing of a fixed quantity of import goods.

Article 2

1. Where the conditions laid down in paragraph 2 are fulfilled and subject to paragraph 4, the customs authority shall authorize :

(a) compensating products to be obtained from equivalent goods ;

(b) compensating products obtained from equivalent goods to be exported outside the Community before import of the import goods.

2. The equivalent goods shall be of the same quality and have the same characteristics as the import goods. However, in specific cases determined in accordance with the procedure referred to in Article 31 (2) and (3), the equivalent goods may be allowed to be at a more advanced stage of manufacture than the import goods.

3. Where paragraph 1 applies, the import goods shall be in the customs position of equivalent goods and the latter in the customs position of import goods.

4. Measures designed to prohibit or limit recourse to paragraph 1 may be adopted in accordance with the procedure laid down in Article 31 (2) and (3).

5. When paragraph 1 (b) is applied and the compensating products would be liable to export duties if they were not exported under an inward processing operation, the holder of the authorization shall provide a security to ensure payment of the duties should the import goods not be imported within the set time limit.

TITLE II

Issue of the authorization

Article 3

1. The use of inward processing relief arrangements shall be conditional on the issue, by the customs authority of the Member State in which the processing operations are to be carried out, of an inward processing authorization, hereinafter referred to as 'authorization'.

2. The authorization shall be issued at the request of the person who carries out processing operations or who arranges for them to be carried out.

This person shall supply, with his application, the information required for issue for the authorization.

3. The authorization may cover one or more processing operations as the case may be.

Article 4

The authorization shall be granted only :

(a) to persons established in the Community. However, in the case of imports of a non-commercial nature, the authorization may be granted to persons established outside the Community ;

(b) to persons who ofter every guarantee which the customs authority considers necessary ;

(c) where, without prejudice to the use of the goods referred to in the last indent of Article 1 (3) (h), it is possible to identify the import goods in the compensating products or, in the case referred to in Article 2, where it can be verified whether the conditions laid down in respect of equivalent goods have been complied with.

Article 5

The customs authority shall grant an authorization if inward processing relief arrangements may contribute towards creating the most favourable conditions for the export of compensating products, provided that the essential interests of Community producers are not affected (economic conditions).

Article 6

Economic conditions shall be considered fulfilled, where :

1. The goods which are intended to be processed :

(a) are not produced in the Community ;

(b) are not produced in the Community in sufficient quantity ;

(c) cannot be made available to the operator within a suitable time by producers established in the Community ;

(d) are produced in the Community but cannot be used because their price is such as to make the proposed commercial operation economically impracticable ;

(e) are produced in the Community but do not have the quality or characteristics necessary for the operator to produce the required compensating products ;

(f) are produced in the Community but cannot be used because they do not conform to the expressly stated requirements of the third-country purchaser of the compensating products ;

(g) are produced in the Community but cannot be used since the compensating products must be obtained from import goods in order to ensure that the provisions concerning the protection of industrial and commercial property are complied with ;

2. The goods which are intended to be processed :

(a) are supplied for the execution of a job-processing contract ;

(b) are imported as part of a transaction of a non-commercial nature ;

3. The processing operations involve :

(a) repairs to goods, including overhaul and adjustments ;

(b) the usual handling operations to which goods may be subject in pursuance of Community provisions on customs warehousing and free zones ;

(c) operations carried out successively in one or more Member States on the same import goods which have been the subject of an authorization issued after examination of the economic conditions referred to in point 1 ;

4. The value of each type of goods to be imported under an authorization does not, per operator and per calendar year, exceed an amount determined in accordance with the procedure laid down in Article 31 (2) and (3).

Article 7

Cases other than those referred to in Article 6 in which the economic conditions will be deemed to be fulfilled may be determined in accordance with the procedure laid down in Article 31 (2) and (3).

The provisions so adopted may be modified or repealed in accordance with the same procedure.

Article 8

Where the customs authority considers that the economic conditions are fulfilled in cases other than those provided for in Articles 6 and 7, the authorization shall be granted for a limited period, which may not exceed nine months.

The parts of the request for authorization concerning economic conditions shall be communicated to the Commission, which shall inform the other Member States thereof ; the period within which such a communication should be made to the Commission shall be fixed in accordance with the procedure laid down in Article 31 (2) and (3).

The customs authority may, at the request of the holder of the authorization, extend the period of validity of the latter, where the relevant provisions have not been adopted in good time in accordance with the procedure laid down in Article 31 (2) and (3).

Article 9

Where the customs authority considers that consultation at Community level is advisable in order to ensure that the economic conditions enabling an authorization to be issued are fulfilled, the Member State of the authority shall submit the case to the Commission, which shall inform the other Member States thereof. The period within which such cases should be submitted to the Commission shall be fixed in accordance with the procedure laid down in Article 31 (2) and (3).

In such cases, Article 8 may be applied *mutatis mutandis.*

Article 10

The Committee for Customs Procedures with Economic Impact shall exchange information on the application of the provisions in respect of economic conditions.

Article 11

1. The conditions under which the arrangements are used shall be set out in the authorization.

2. The holder of the authorization is required to notify the customs authority of all factors arising after the issue of the authorization which are likely to influence its continuation or contents.

3. Where the circumstances under which the authorization was issued are found to have changed, the customs authority shall amend the authorization accordingly.

Article 12

Cases where the authorization is to be revoked and cases where it is decided that it is null and void, as well as the consequences deriving therefrom, shall be determined in accorrdance with the procedure laid down in Article 31 (2) and (3).

TITLE III

Functioning of the arrangements

Article 13

The conditions for the placing of goods under the inward processing relief arrangments shall be determined in accordance with the procedure laid down in Article 31 (2) and (3).

Article 14

1. The customs authority shall fix the time limit within which the compensating products must be dealt with in one of the days referred to in Article 18. This time limit shall be fixed having regard to the period necessary for completion of the processing operations and for disposal of the compensating products.

2. The time limits shall run from the date on which the non-Community goods are placed under inward processing relief arrangements. The customs authority may extend them on submission of a duly substantiated request by the holder of the authorization.

In order to simplify matters it may be decided that time limits which begin to run during a calendar month or quarter shall expire on the last day of a subsequent calendar month or quarter respectively.

3. Where Article 2 (1) (b) applies, the customs authority shall fix the time limit within which the non-Community goods must be declared for the relief arrangements. This time limit shall run from the date of export of the compensating products obtained from the corresponding equivalent goods.

4. Specific time limits may be established, in accordance with the procedure laid down in Article 31 (2) and (3), for certain processing operations or for certain import goods.

Article 15

1. Without prejudice to paragraph 2, the customs authority shall fix either the rate of yield of the operation or, where necessary, the method of determining such rate. This rate shall be determined on the basis of the actual circumstances in which the processing operation is, or is to be, carried out.

2. Where circumstances so warrant and, in particular, in the case of processing operations customarily carried out under clearly defined technical conditions involving goods of substantially uniform characteristics and resulting in the production of compensating products of uniform quality, standard rates may be fixed in accordance with the procedure laid down in Article 31 (2) and (3) on the basis of data previously ascertained.

Article 16

The customs authority may make the placing of goods under inward processing relief arrangements subject to the provision of a security in order to ensure that any customs debt which may be incurred in respect of these goods will be paid.

Article 17

The customs authority may take any measures of supervision or control which it considers necessary to ensure that the Regulation is implemented correctly by the holder of the authorization or by the operator where this is a different person.

Article 18

1. Inward processing relief arrangements for import goods shall be finally discharged when the compensating products have been exported outside the customs territory of the Community under customs control, provided that all the conditions for use of the relief arrangements have been complied with.

Where Article 2 (1) (b) applies, the arrangements shall be finally discharged when the customs authority has accepted the declaration on the non-Community goods.

2. Inward processing relief arrangements shall also be finally discharged for imported goods when the compensating products are :

(a) placed under a free-zone procedure or one of the following customs procedures with a view to subsequent export outside the customs territory of the Community or being placed under a new inward processing relief arrangement :

— customs warehousing,

— temporary importation,

— Community transit (external procedure) or one of the international transport procedures referred to in Article 7 (1) of Council Regulation (EEC) No 222/77 of 13 December 1976 concerning Community transit [1], provided that the use of the latter procedures is allowed by Community law ;

(b) placed under a new inward processing relief arrangement ;

(e) released for free circulation ;

(d) placed under the system of processing under customs control ;

(e) destroyed under the supervision of the customs authority (waste and scrap resulting from this destruction may itself be re-exported outside the customs territory of the Community or be dealt with in one of the other ways for which provision is made in this paragraph) ;

(f) abandoned to the Exchequer where national regulations provide for this possibility.

3. The final discharge of the relief arrangements under the conditions referred to in paragraph 2 (c) to (f) shall be subject to the authorization of the customs authority, which shall grant this authorization where circumstances so warrant.

The customs authority may also authorize compensating products which have been placed under the free-zone procedure or one of the customs procedures referred to in paragraph 2 (a) to be dealt with in one of the ways referred to in points (c) to (f) of that paragraph.

4. Paragraphs 1, 2 and 3 shall also apply to goods in the unaltered state.

5. The cases in which, the conditions under which, and the moment at which the goods in the unaltered state or the compensating products subject to an authorization for release for free circulation shall be considered as having been released for free circulation may be determined in accordance with the procedure laid down in Article 31 (2) and (3).

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[1] OJ No L 38, 9. 2. 1977, p. 1.

Article 19

1. The final discharge of the inward processing relief arrangements shall be carried out according to the quantities of import goods which correspond to the compensating products dealt with in one of the ways referred to in Article 18 (1) and (2) or of goods in the unaltered state dealt with in one of these ways.

2. The conditions under which the quantities of import goods referred to in paragraph 1 are to be determined may be adopted in accordance with the procedure laid down in Article 31 (2) and (3).

Article 20

1. Subject to paragraph 2 and Article 21, when a customs debt is incurred, the amount of this debt shall be determined on the basis of the taxation elements appropriate to the import goods at the time of acceptance of the declaration of placing of these goods under inward processing relief arrangements.

2. If at the time referred to in paragraph 1 the import goods fulfilled the conditions to qualify for preferential tariff treatment within tariff quotas or ceilings, they shall be eligible for any preferential tariff treatment existing in respect of identical goods at the time of acceptance of the declaration of release for free circulation.

Article 21

1. By way of derogation from Article 20 (1), compensating products :

(a) shall be subject to the import duties appropriate to them where :

— they are released for free circulation and appear on the list adopted in accordance with the procedure laid down in Article 31 (2) and (3) and to the extent that they correspond proportionally to the exported part of the compensating products not included in that list. However, the holder of the authorization may ask for the products to be taxed under the conditions referred to in Article 20,

— they are subject to charges established under the common agricultural policy and where provisions adopted in accordance with the procedure laid down in Article 31 (2) and (3) so provide ;

(b) which have been placed under a free-zone procedure or under one of the customs procedures referred to in Article 18 (2) (a), (b) or (d) shall be subject to import duties calculated in accordance with the rules applicable to free zones or in the framework of the customs procedure in question.

However,

— the person concerned may apply for taxation in accordance with Article 20,

— in the cases referred to in Article 18 (2) (a) and (b), the amount of import duty levied must be at least equal to the amount which would have been levied pursuant to Article 20 ;

(c) may be made subject to the taxation rules laid down in Council Regulation (EEC) No 2763/83 of 26 September 1983 on arrangements permitting goods to be processed under customs control before being put into free circulation [1] if the import goods could have been placed under these arrangements ;

(d) shall qualify for favourable tariff treatment on account of their end-use where such treatment is granted in respect of identical imported goods ;

(e) shall be exempt from import duties where Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty [2] provides for such exemption in respect of identical imported goods.

2. When released for free circulation, the waste and scrap referred to in Article 18 (2) (e) shall be subject to the import duties appropriate to it.

TITLE IV

Processing operations outside the customs territory of the Community

Article 22

1. All or part of the compensating products or goods in the unaltered state may be temporarily exported for the purpose of further processing outside the customs territory of the Community if the customs authority so authorizes, in accordance with the conditions laid down in the outward processing provisions.

2. Where a customs debt is incurred in respect of re-imported products, the following shall be charged :

(a) the import duties on the compensating products or goods in the unaltered state referred to in paragraph 1, calculated in accordance with Articles 20 and 21 ;

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[1] OJ No L 272, 5. 10. 1983, p. 1.
[2] OJ No L 105, 23. 4. 1983, p. 1.

(b) the import duties on the products re-imported after processing outside the customs territory of the Community, the amount of which shall be calculated in accordance with the provisions relating to outward processing relief arrangements exactly as if the products exported under the latter system had been released for free circulation before such export took place.

TITLE V

Drawback system

Article 23

The drawback system may be used for all goods, with the exception of those which, at the time the declaration of release for free circulation is accepted :

— are subject to quantitative import restrictions,

— might qualify for preferential tariff arrangements within quotas or allocated ceilings,

— are subject to an agricultural levy or any other import charge provided for under the common agricultural policy or under specific arrangements applicable to certain goods resulting from the processing of agricultural products.

Moreover, the drawback system may be used only if no export refund is determined for the compensating products at the time the declaration of release for free circulation of the import goods is accepted.

Permission to use the drawback system shall be granted only if, at the time the declaration of exportation of the compensating products is accepted :

— the import goods are not subject to one of the charges referred to in the third indent of the first paragraph,

— no export refund is determined for the compensating products.

Article 24

1. The declaration of release for free circulation must indicate that the drawback system is used and provide a reference to the authorization.

2. At the request of the customs authority, this authorization must be attached to the declaration of release for free circulation.

Article 25

Article 2 (1) (b), 2 (3) and 2 (5), Article 14 (3), Article 16, the second subparagraph of Article 18 (1), Article 18 (2) (c) to (f) and Article 18 (3), (4) and (5), Article 20, the second indent of Article 21 (1) (a), Article 21 (1) (c), (d) and (e) and Article 21 (2) and Article 28 shall not apply.

Article 26

Temporary exportation of compensating products carried out as provided for in Article 22 (1), shall not be considered as exportation within the meaning of Article 27, except where such products are not re-imported into the Community within the set time limits.

Article 27

1. The holder of the authorization may ask for the import duty to be refunded or remitted in so far as he can establish to the satisfaction of the customs authority that compensating products obtained from import goods released for free circulation under the drawback system have been either :

— exported under customs control outside the customs territory of the Community, or

— placed, with a view to being subsequently exported, under a free-zone procedure, under customs warehousing, temporary importation, inward processing relief (suspension system), Community transit (external procedure) arrangements or under one of the international transport procedures within the meaning of Article 7 (1) of Regulation (EEC) No 222/77, provided that the use of the latter procedures is allowed by Community law,

all conditions for use of the arrangements having also been met.

The delivery of compensating products :

(a) to persons eligible for relief from duty resulting from the application of the Vienna Convention of 18 April 1961 on Diplomatic Relations, the Vienna Convention of 24 April 1963 on Consular Relations, other consular conventions or the New York Convention on Special Missions of 16 December 1969 ;

(b) to armed forces stationed on the territory of a Member State, in accordance with Article 136 of Regulation (EEC) No 918/83.

shall be considered equivalent to an export.

2. The time limit within which the application for a refund must be made shall be determined in accordance with the procedure laid down in Article 31 (2) and (3).

3. Where circumstances so warrant, the customs authority may authorize the release for free circulation of the compensating products placed under a free-zone procedure or under a customs procedure as provided

for in paragraph 1. In this case, without prejudice to Article 21 (1) (b), the amount of the import duty refunded or remitted shall be considered as constituting the amount of the customs debt.

4. For the purpose of determining the amount of the import duties to be refunded or remitted, the first indent of Article 21 (1) (a) shall apply *mutatis mutandis.*

TITLE VI

Final provisions

Article 28

1. Without prejudice to the provisions adopted in connection with the specific rules concerned, non-Community goods may be placed under inward processing relief arrangements, applying the suspension system, in order that the compensating products may qualify for exemption from the export duties to which identical products obtained from Community goods instead of import goods would be liable.

2. The procedures for which provision is made in this Regulation and which relate to the suspension system may also be used for implementation of common commercial policy non-tariff measures.

Article 29

1. The Member States and the Commission shall exchange statistical information concerning :

(a) the import of goods placed under inward processing relief arrangements in the framework of the suspension system ;

(b) the import of goods placed under inward processing relief arrangements in the framework of the drawback system ;

(c) the export of compensating products and goods in the unaltered state in the framework of the suspension system ;

(d) the export of compensating products in the framework of the drawback system ;

(e) the quantities of import goods placed under inward processing relief arrangements in the framework of the suspension system and released for free circulation in the unaltered state or in the form of compensating products.

2. Where, in connection with the inward processing of certain products, specific needs so require, provisions relating to :

— the communication of additional data supplementing the information referred to in paragraph 1,

— the frequency of communication of this information and these additional data

may be adopted in accordance with the procedure laid down in Article 31 (2) and (3).

Article 30

1. A Committee for Customs Procedures with Economic Impact, hereinafter called 'the Committee', is hereby established ; it shall be composed of representatives of the Member States ; a representative of the Commission shall be chairman.

2. The Committee may examine any matter concerning the implementation of this Regulation raised by its chairman either on his own initiative or at the request of the representative of a Member State.

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

Article 31

1. The provisions required for the implementation of this Regulation, with the exception of Articles 16 and 23, 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 provisions to be adopted. The Committee shall deliver its opinion on the draft within a time limit set by the chairman, having regard to the urgency of the matter. Opinions shall be delivered by a majority of votes, as provided for in Article 148 (2) of the Treaty.

The chairman shall not vote.

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

(b) Where the provisions envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall without delay propose to the Council the provisions to be adopted. The Council shall act by a qualified majority.

(c) If within three months of the proposal being submitted to it the Council has not acted, the proposed provisions shall be adopted by the Commission.

Article 32

This Regulation shall be without prejudice to the adoption of specific provisions relating to the common agricultural policy, which remain subject to the rules on the introduction of the aforesaid policy.

Article 33

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 1987.

2. Directive 69/73/EEC and the Directives adopted for its implementation shall be repealed with effect from 1 January 1987. References to those Directives shall be construed as references to this Regulation.

The derogations from Direcitve 69/73/EEC provided for in Annex XXXII.I.1 to the 1985 Act of Accession shall also be deemed to apply to this Regulation.

Pending enactment of implementing provisions for this Regulation, the relevant national provisions in force before the date referred to in the preceding subparagraph and taken pursuant to Directive 69/73/EEC shall remain applicable.

3. Authorizations granted in accordance with provisions adopted pursuant to Directive 69/73/EEC before 1 January 1987 shall be revoked no later than 31 December 1987.

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

Done at Brussels, 16 July 1985.

For the Council

The President

M. FISCHBACH