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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 3632/85

of 12 December 1985

defining the conditions under which a person may be permitted to make a customs declaration

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas a customs declaration is required for placing goods under a customs regime; whereas, save where specifically provided otherwise, a customs declaration is also required to bring such a customs regime to an end where it is not by nature definitive;

Whereas the conditions under which a person is entitled to make a customs declaration vary appreciably from one Member State to another, in particular as regards the possibility of making a customs declaration on behalf of another person;

Whereas the conditions under which a person is entitled to make a customs declaration must be defined at Community level so as to enable Community economic operators to carry out their customs formalities as efficiently as possible;

Whereas the provisions to be adopted at Community level must take into account both the nature of the customs union, and in particular the existence of the common customs territory, and the basic objectives of the Treaty with regard to the free movement of goods, persons and services within the Community;

Whereas the said Community provisions must also take into account the special conditions of international trade and the consequent need for the customs authorities to have a set of rules enabling them to carry out their controls under the best possible conditions and guard against any irregularities;

Whereas there exist in certain Member States rules limiting pursuit of the occupation of making customs declarations either in the name of another person or in one's own name but on behalf of another person, to persons fulfilling certain conditions, or which make the possibility for undertakings to use the services of paid employees specializing in making customs declarations on behalf of those undertakings subject to the condition that those employees have a suitable professional qualification; whereas, insofar as such rules concern access to and the pursuit of a specific occupation, this Regulation does not prevent their being maintained in force;

Whereas, as a simplifying measure, the provisions of this Regulation should be extended to declarations which have to be made to customs authorities, in accordance with Community rules, when Community goods are traded between Member States;

Whereas the Treaty does not provide the necessary powers other than those of Article 235.

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation lays down the conditions under which a person may be permitted to make a customs declaration.

2. For the purposes of this Regulation:

(a) 'person' means
- — a natural person, or
- — 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 legal person.

(b) 'customs declaration' means the act by which a person indicates in the prescribed form and in accordance with the prescribed procedures the wish to place goods under a given customs regime or to bring such a regime to an end.

Article 2

The customs declaration may be made by any person able to produce or cause to be produced to the competent

(1) OJ No C 29, 1. 2. 1979, p. 3.
(2) OJ No C 140, 5. 6. 1979, p. 33.
(3) OJ No C 227, 10. 9. 1979, p. 23.

customs authority, in accordance with the relevant provisions, the goods in question as well as all documents production of which is stipulated by the provisions governing the customs regime requested for the goods.

Article 3

1. Where the customs declaration is made in writing, the person referred to in Article 2 may, without prejudice to the other provisions of this Article, make the declaration :

(a) in his own name and on his own behalf ;

(b) in the name and on behalf of another person ; or

(c) in his own name but on behalf of another person.

2. The option of making the declaration referred to in paragraph 1 (c) may be exercised only if the Member States have so provided.

3. Where a Member State authorizes the declaration to be made referred to in paragraph 1 (c), the right

(a) either to make declarations in the name and on behalf of another person,

(b) or to make declarations in their own name but on behalf of another person,

may be limited by that State to persons pursuing the activity of making customs declarations on a self-employed basis, either as their principal occupation or as a secondary activity related to another occupation.

4. Where the acceptance of a customs declaration involves particular obligations on the part of a specific person, the declaration may be made only in the name of the said person or on his behalf.

Member States may stipulate that, when made in writing, a declaration :

— of personal property imported on the occasion of a transfer of residence or an inheritance,

— of unaccompanied personal baggage of a non-commercial nature

may be made only in the name and on behalf of the person concerned.

5. Where the person referred to in Article 2 acts on behalf of another person, he shall so state on the declaration and shall state whether he is making the declaration in his own name or in the name of the person on whose behalf he is acting, specifying in all cases the name and address of that person.

Where they consider it necessary, the competent authorities may require the prson referred to in Article 2 to furnish proof of the accuracy of such information.

Article 4

Where the customs declaration is not made in writing, the person referred to in Article 2 shall be deemed to be acting in his own name and on his own behalf unless he proves that he is acting on behalf of another person where circumstances necessitate such a course.

Article 5

1. In the absence of any contrary provisions resulting from the application of international Conventions, the person referred to in Article 2 must be established in the Community.

The requirement laid down in the preceding subparagraph shall not, however, apply to persons who :

(a) make Community transit or temporary admission declarations ;

(b) make declarations otherwise than in writing ;

(c) declare goods on an occasional basis, provided that the competent authorities consider this justified.

2. The first subparagraph of paragraph 1 shall not preclude the application by the Member States of bilateral agreements concluded with third countries, or other customary practices having similar effect, under which nationals of these countries may make customs declarations in the territory of the Member States in question, subject to reciprocity.

Article 6

This Regulation shall not form an obstacle to provisions of the Member States which :

(a) in accordance with Article 3 (3), limit pursuit of the activity of making customs declarations either in the name and on behalf of another person or in their own name but on behalf of another person, to persons authorized to pursue such an activity by the competent authorities of the Member State concerned, on conditions defined by the latter with regard specifically to :

— the professional qualifications required,

— and the guarantees deemed necessary for pursuit of the activity ;

(b) make the possibility for undertakings to use the services of paid employees specializing in making customs declarations in the name and on behalf of those undertakings subject to the condition that such employees are recognized by the competent authorities as having a suitable professional qualification.

Article 7

The provisions of this Regulation shall apply to declarations which have to be made to customs authorities, in accordance with Community rules, when Community goods are traded between Member States.

Article 8

This Regulation shall enter into force on 1 January 1987.

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

Done at Brussels, 12 December 1985

For the Council

The President

R. GOEBBELS