COUNCIL REGULATION (EEC) No 1031/88
of 18 April 1988
determining the persons liable for payment of a customs debt

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 Council Regulation (EEC) No 2144/87 of 13 July 1987 on customs debt (4) defined, *inter alia,* the various situations whereby a customs debt on importation or exportation is incurred;

Whereas the rules governing the persons liable for payment of a customs debt are particularly important for the smooth functioning of the customs union in order to ensure that the abovementioned Regulation has identical legal and economic effects throughout the Community;

Whereas simple rules must be laid down in this field which enable the authorities responsible for assessing and recovering customs debts to act with maximum efficiency; whereas the same principles should be adopted both for customs debts on importation and for customs debts on exportation;

Whereas, in the case of a customs debt resulting from acceptance by the competent authority of a customs declaration for release for free circulation or temporary importation with partial relief from import duties or a declaration for export, the person liable for payment of such debt should be the person in whose name the declaration was made; whereas this principle makes it possible to take account of the various types of representation available for completing customs formalities; whereas, where the person making the declaration has stated that he was acting in his own name but on behalf of another person under Article 3 (2) of 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 (5), it is nevertheless justifiable to hold the latter also liable for payment of the customs debt insofar as the person who made the declaration had been granted the necessary authority;

Whereas, in the case of a customs debt resulting from the unlawful introduction of goods into the customs territory of the Community, the removal of goods from customs supervision of the unlawful export of goods from the customs territory of the Community, the person who committed the act which gave rise to the customs debt and any other persons who are also liable, under the provisions in force in the Member States, by reason of such an act having been committed should be held liable for payment of such debt;

Whereas, in the case of a customs debt resulting from the non-fulfilment of a special obligation stemming from the application of the provisions concerning a special customs procedure or arrangements, the person who, through the operation of the provisions governing the customs procedure or arrangements in question, was personally responsible for performing the obligation which was not complied with should be liable for payment of such customs debt;

Whereas in all cases in which the same legal situation gives rise to a customs debt payable by several persons, the latter should be liable jointly and severally for payment of such debt in order to enable the competent authorities to ensure the recovery of customs debts under the most favourable conditions;

Whereas it is necessary to safeguard the uniform application of this Regulation and to provide to that end for a Community procedure enabling the rules for its application to be adopted within an appropriate period; whereas the Committee on General Customs Rules set up by Article 24 of Council Directive 79/695/EEC of 24 July 1979 on the harmonization of procedures for the release of goods for free circulation (6) as last amended by Directive 81/853/EEC (7) is the appropriate body to organize close and effective collaboration between the Member States and the Commission in this field,

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation determines the persons liable for payment of a customs debt.

(1) OJ No C 340, 28. 12. 1982, p. 5.
(2) OJ No C 127, 14. 5. 1984, p. 24 and Decision of 10 February 1988 (not yet published in the Official Journal).
(3) OJ No C 211, 8. 8. 1983, p. 1.
(4) OJ No L 201, 22. 7. 1987, p. 15.
(5) OJ No L 350, 27. 12. 1985, p. 1.
(6) OJ No L 205, 13. 8. 1979, p. 19.
(7) OJ No L 319, 7. 11. 1981, p. 1.

(2) For the purpose of this Regulation :

(a) 'person' means :

— a natural person,

— a legal person, or

— where 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 ;

(b) 'customs debt' means the obligation on a person to pay the amount of the import duties (customs debt on importation) or export duties (customs debt on exportation) which apply under the provisions in force to goods liable to such duties ;

(c) 'import duties' means customs duties and charges having equivalent effect and agricultural levies and other import charges laid down under the common agricultural policy or under the specific arrangements which apply to certain goods resulting from the processing of agricultural products ;

(d) 'export duties' means agricultural levies and other export charges laid down under the common agricultural policy or under the specific arrangements which apply to certain goods resulting from the processing of agricultural products.

TITLE I

Persons liable for payment of a customs debt on importation

Article 2

1. Where a customs debt has been incurred pursuant to Article 2 (1) (a) or (f) of Regulation (EEC) No 2144/87, the person liable for payment of such debt shall be the person in whose name the declaration or any other act with the same legal effects was made.

However :

(a) where, pursuant to Article 3 (1) (c) of Regulation (EEC) No 3632/85, the person who made a declaration or any other act with the same legal effects in his own name stated that he was acting on behalf of another person, the latter shall also be jointly and severally liable for payment of the customs debt, once it has been established, in accordance with the provisions in force in the Member States, that he did in fact authorize the person who made the declaration or any other act with the same legal effects to act accordingly ;

(b) where the customs declaration was made in the name of another person by a person lacking the necessary authority, the latter alone shall be liable for payment of the customs debt.

2. Where pursuant to the provisions in force, the customs authorities authorize the release for free circulation of goods previously placed under another customs procedure without requiring the making of a declaration in writing, the person liable for payment of the customs debt arising in this situation shall be the person who, at the time of such release for free circulation, is required to comply with the obligations attaching to the customs procedure in question.

The first subparagraph shall apply, where appropriate, to products resulting from the processing of the goods concerned and to the waste and scrap resulting from their destruction.

Article 3

Where a customs debt has been incurred pursuant to Article 2 (1) (b) of Regulation (EEC) No 2144/87, the person who introduced the goods unlawfully into the customs territory of the Community shall be liable for payment of such debt.

Under the provisions in force in Member States, the following shall also be jointly and severally liable for payment of such debt :

(a) any persons who participated in the unlawful introduction of the goods and any persons who acquired or held the goods in question ;

(b) any other persons who are liable by reason of such unlawful introduction.

Article 4

1. Where a customs debt has been incurred pursuant to Article 2 (1) (c) of Regulation (EEC) No 2144/87, the person who removed the goods from customs supervision shall be liable for payment of such debt.

Under the provisions in force in the Member States, the following shall also be jointly and severally liable for payment of such debt :

(a) any persons who participated in the removal of the goods from customs supervision and any persons who acquired or held them ;

(b) any other persons who are liable by reason of such removal.

2. The person required to fulfil, in respect of goods liable to import duties, the obligations arising from their temporary storage, or from the use of the customs procedure under which they have been placed, shall also be jointly and severally liable for payment of the customs debt.

Article 5

Where a customs debt has been incurred pursuant to Article 2 (1) (d) of Regulation (EEC) No 2144/87, the person who is required, according to the circumstances, either to fulfil the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs procedure under which they have been placed or to comply with the conditions to which the placing of the goods under that procedure is subject, shall be liable for payment of such debt.

Article 6

Where a customs debt has been incurred pursuant to Article 2 (1) (e) of Regulation (EEC) No 2144/87, the person who is required, to fulfil the obligations arising in respect of goods from their being put into free circulation with total or partial relief from import duties because of their intended use for a particular purpose or the compliance with the conditions laid down for granting this exemption, shall be liable for payment of such debt.

TITLE II

Persons liable for payment of a customs debt on exportation

Article 7

1. Where a customs debt has been incurred pursuant to Article 5 (1) (a) of Regulation (EEC) No 2144/87 and the goods in question have been the subject of an export declaration, the person liable for payment of such debt shall be the person in whose name the declaration was made.

However, where the declaration was made in the name of another person by a person lacking the necessary authority, that person alone shall be liable for payment of the customs debt.

Furthermore, Article 2 (1), second subparagraph, (a) of this Regulation shall apply *mutatis mutandis,* in order to determine, where appropriate, the persons jointly and severally liable, together with the person referred to in the first subparagraph of this paragraph, for payment of the customs debt.

2. Where the goods in question have not been the subject of an export declaration, the person who unlawfully exported the goods from the customs territory of the Community shall be liable for payment of the customs debt.

Under the provisions in force in the Member States, the following shall also be jointly and severally liable for payment of the customs debt :

(a) any persons participating in the unlawful export of the goods from the Community ;

(b) and any other persons who are liable by reason of such unlawful export.

Article 8

Where a customs debt has been incurred pursuant to Article 5 (1) (b) of Regulation (EEC) No 2144/87, the person liable for payment of such debt shall be determined under the same conditions as those laid down in Article 7 (1).

TITLE III

Special provisions

Article 9

1. Where a customs debt is incurred pursuant to Article 9 of Regulation (EEC) No 2144/87, Article 2 of this Regulation shall apply *mutatis mutandis.*

2. Where a customs debt is incurred pursuant to Article 10 of Regulation (EEC) No 2144/87, this Regulation shall apply *mutatis mutandis.*

Article 10

Titles I and II shall apply without prejudice to :

(a) the provisions in force in those Member States which, under certain conditions, require persons additional to those referred to in this Regulation to pay a customs debt, including those who, in pursuit of their activity, make the customs declarations under the conditions defined in Article 6 of Regulation (EEC) No 3632/85 ;

(b) the obligations to which guarantors are subject in respect of payment of a customs debt which they have guaranteed.

TITLE IV

Final provisions

Article 11

1. The Commitee on General Customs Rules set up by Article 24 of Directive 79/695/EEC may examine any question concerning the application of this Regulation which is raised by its Chairman either on his own initiative or at the request of a Member State.

2. The measures necessary to implement this Regulation shall be adopted in accordance with the procedure laid down in Article 26 (2) and 3 of Directive 79/695/EEC.

Article 12

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities.*
This Regulation shall apply from 1 January 1989.

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

Done at Luxembourg, 18 April 1988.

For the Council

The President

G. STOLTENBERG