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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 1292/89

of 3 May 1989

amending Regulation (EEC) No 3/84 introducing arrangements for movement within the Community of goods sent from one Member State for temporary use in one or more other Member States

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 Regulation (EEC) No 3/84 (4) became applicable on 1 July 1985 for an initial experimental period of three years; whereas, in the light of the report on the operation of the arrangements introduced by the abovementioned Regulation, submitted to the Council by the Commission on 15 March 1988, the period of validity of the said Regulation was extended until 30 June 1989 by Regulation (EEC) No 1227/88 (5);

Whereas Article 17 (2) of Regulation (EEC) No 3/84 provides that the Council, acting in accordance with Article 235 of the Treaty, and on the basis of the abovementioned report, shall decide on the definitive application of the said Regulation and on any amendments to be made to its provisions, in particular for the purpose of simplifying the arrangements; whereas, following the amendment of the Treaty by the Single European Act, Article 100a provides the legal basis to be used in adopting provisions aimed at the establishment and operation of the internal market; whereas that Article should therefore be the basis for adopting this Regulation;

Whereas, in particular, it emerges from the abovementioned report that since their introduction, the arrangements for the movement of goods within the Community have been fairly widely used and meet a real need on the part of users who appreciate, amongst other things, the fact that no security is required and the facilities they are afforded when crossing frontiers; whereas, consequently, it appears advisable to retain the said arrangements until the single market is established;

Whereas numerous private individuals and business people have contended that the number of goods and beneficiaries covered by Regulation (EEC) No 3/84 is too restricted; whereas, when the Regulation was adopted, it was deemed appropriate to cover only those goods which, when temporarily imported, were granted tax exemption on an identical basis by all Member States under the terms of international conventions; whereas the main beneficiaries of the arrangements are public, official or approved bodies;

Whereas this situation changed considerably upon adoption of the Seventeenth Council Directive 85/362/EEC of 16 July 1985 on the harmonization of the laws of the Member States relating to turnover taxes — exemption from value added tax on the temporary importation of goods other than means of transport (6), which provides that temporary importation with exemption from VAT shall be granted for a wide range of Community goods which are imported temporarily from one Member State into another, in principle irrespective of the beneficiaries; whereas it would therefore appear logical to extend the scope of Regulation (EEC) No 3/84 along the same lines; whereas, however, in order to enable the arrangements for the movement of goods within the Community to play the role which they can in fact play in regard to the establishment of the internal market, such extension must be effected subject to retention of the existing advantages of the said arrangements and, in particular, without requiring security to be provided, even as an optional requirement, and whereas such an option is provided for in the Seventeenth Directive;

Whereas, moreover, in order to ensure that the Seventeenth Directive and Regulation (EEC) No 3/84 correspond, the period of validity of the Community movement carnet introduced by the abovementioned Regulation must be brought into line with the periods during which goods may remain under the temporary importation arrangements provided for in the Directive;

(1) OJ No C 324, 17. 12. 1988, p. 8.
(2) OJ No C 69, 20. 3. 1989 and Decision of 12 April 1989 (not yet published in the Official Journal).
(3) OJ No C 102, 24. 4. 1989, p. 11.
(4) OJ No L 2, 4. 1. 1984, p. 1.
(5) OJ No L 118, 6. 5. 1988, p. 1.
(6) OJ No L 192, 24. 7. 1985, p. 20.

Whereas the procedure in respect of the carnet appears in some cases to be awkward and even superfluous ; whereas, in order to mitigate such disadvantages and in the light of Council Regulation (EEC) No 4283/88 of 21 December 1988 on the abolition of certain exit formalities at internal Community frontiers — introduction of common border posts (1), it would appear possible, in respect of the abovementioned carnet, to abolish certain formalities which are at present carried out on leaving the Member States of transit and use without jeopardizing the correct application of the arrangements for movement within the Community ; whereas, for the same purpose, it would appear appropriate in regard to certain categories of goods to enable them to move under arrangements without formalities throughout the Community ;

Whereas, in the present circumstances, goods under cover of the Community movement carnet cannot cross the territory of third countries ; whereas such a situation may sometimes be detrimental to the movement of the goods in question between two points within the customs territory of the Community ; whereas in such cases, pending the adoption of a suitable solution in conjunction with the third countries concerned, provision should be made for the arrangements for movement within the Community to be suspended while the goods cross such countries, and for them to be re-established when the goods in question again enter the customs territory of the Community ;

Whereas, pursuant to Article 1 thereof, Regulation (EEC) No 3/84 is applicable to goods which leave one Member State and which, after being sent to one or more Member States for the purpose of temporary use there, are intended to be returned without alteration to the territory of the Member State of departure ; whereas, however, in a number of clearly defined and strictly limited cases, the scope of the said Regulation should be extended to cover certain goods which are not likely to be returned to the Member State of departure,

HAS ADOPTED THIS REGULATION :

Article 1

Regulation (EEC) No 3/84 is hereby amended as follows :

1. In Article 1, paragraph 1 is replaced by the following and paragraph 1a is inserted :

'1. Without prejudice to Regulation (EEC) No 4283/88 (1), other Community provisions and Article 12a of this Regulation, the arrangements governing the movement of goods within the Community, hereinafter referred to as the "arrangements", shall apply to goods sent and/or transported from one Member State for the purposes of temporary use in one or more other Member States, which, pursuant to the Treaties and the rules deriving therefrom, are not subject to prohibitions or restrictions unless they meet the conditions laid down by these rules, and which are intended to be returned without alteration to the territory of the Member State of departure.

1a. The following shall be excluded from the scope of this Regulation :

(a) means of transport, including pallets and containers, except vehicles designed or specially adapted for use as mobile control posts, workshops or laboratories, equipment for the press, sound or television broadcasting or cinematography for the purposes of reporting, transmitting or recording material or making films, and breakdown vehicles ;

(b) made-up articles of fur, precious stones, carpets and articles of jewellery ;

(c) consumable goods, except such goods which are commercial samples, presented as such, provided that they are returned without alteration to the territory of the Member State of departure ;

(d) those goods referred to in Title III of Regulation (EEC) No 3599/82 (2), as amended by Regulation (EEC) No 1620/85 (3), which are subject to residual duties pursuant to Articles 31 and 190 of the 1985 Act of Accession and which move between the Community of Ten, Spain and Portugal or between these two Member States ;

(e) works of art other than those referred to in Article 12a.

(1) OJ No L 382, 31. 12. 1988, p. 1.
(2) OJ No L 376, 31. 12. 1982, p. 1.
(3) OJ No L 155, 14. 6. 1985, p. 54.'

2. In Article 4 (2), (a) is replaced by the following :

'(a) ensure that the procedures referred to in Title II are correctly carried out and that the arrangements are settled before expiry of the period of validity of the carnet referred to in Article 5.'

3. The following is inserted before Article 5 :

'Article 4a

The arrangements shall include two procedures :

1. a normal procedure applicable to all goods ;

2. a simplified procedure applicable to the goods referred to in Article 10a.

Section I

Normal procedure'

4. Article 5 (1) is replaced by the following:

'1. For the purposes of movement under the normal procedure, goods shall be covered by a Community movement carnet, hereinafter referred to as a "carnet", issued by the competent authorities of the Member State of departure.'

5. In Article 6 (2), the second indent is replaced by the following:

'— fix the period of validity of the carnet, without prejudice to the limit laid down in Article 12a; the period shall not exceed 24 months. In the case of racehorses, the period of validity of the carnet may not exceed six months.'

6. Article 10 is replaced by the following:

'Article 10

1. The competent authorities of the Member State in whose territory the goods are temporarily used may, at the request of the beneficiary:

(a) extend the period during which the goods may remain in their territory, within the period of validity of the carnet;

(b) allow the goods to be temporarily used in their territory at one or more places other than that or those stated on the carnet;

2. The competent authorities referred to in paragraph 1 shall, by way of derogation from Article 1 (1), authorize repairs, including the replacement of defective parts, to the equipment temporarily used in their territory.

3. To this end, they shall enter the necessary particulars on the carnet.'

7. The following sections are inserted after Article 10:

'Section II

Simplified procedure

Article 10a

1. By way of derogation from Section I, movement under these arrangements of:

(a) any portable professional equipment;

(b) press, broadcasting and television equipment, including the various vehicles specially adapted for this purpose and their equipment,

introduced for professional purposes, shall be exempt from all formalities, without prejudice to the right of the competent authority to exercise its power of supervision where necessary.

2. Professional equipment means the equipment and accessories necessary for carrying out the occupation or profession of a person established in the Member State of departure, who is travelling in another Member State to carry out a specific job there.

Section III

Common provisions

Article 10b

Where, under the arrangements, goods moving between two points within the Community must cross the territory of a third country, the effects of the arrangements shall be suspended during transit through the third country in question.'

8. Article 12 (2) is replaced by the following:

'2. When a Member State on whose territory an irregularity has been committed in the course of, or in connection with, a movement operation cannot recover the charges due, the competent authorities of the Member State of departure shall recover, on behalf of the other Member State, the amount which the beneficiary is obliged to pay in accordance with Article 4 (2) (c) together with any interest due in view of the delay, where appropriate. Such recovery shall be carried out by the Member State in accordance with its laws, regulations or administrative provisions relating to the recovery of fiscal debts. Where the beneficiary contests the claim against him, he shall lodge his appeal in the Member State which has made the request for recovery. No action for recovery shall be taken until the appeal proceedings have been concluded.

Alternatively, the Member State which is recovering the debt may apply the provisions adopted pursuant to Directive 76/308/EEC [1], as last amended by the Act of Accession of Spain and Portugal.'

9. After Article 12 the following is inserted:

'Title IIIa

Special provisions

Article 12a

By way of derogation from Article 1 (1), this Regulation shall also apply to:

1. works of art referred to in Article 29 (1) (d) of the Seventeenth VAT Directive which are accompanied by their authors or their agents;

2. spare parts which are normal equipment for persons required to carry out repairs or maintenance.

In the cases referred to in 1 and 2, the period of validity of the Community carnet may not exceed six months.'

10. The third subparagraph of Article 16 and the whole of Article 17 are deleted.

Article 2

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 July 1989.

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

Done at Brussels, 3 May 1989.

For the Council

The President

P. SOLBES