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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 474/90

of 22 February 1990

amending, with a view to abolishing lodgement of the transit advice note on crossing an internal frontier of the Community, Regulation (EEC) No 222/77 on Community transit

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 222/77 (4), as last amended by Regulation (EEC) No 1674/87 (5), provides, *inter alia*, that the carrier is obliged to present a transit advice note to the customs office at the point of entry into each Member State through the territory of which goods pass in the course of a Community transit operation ; whereas that same Regulation lays down that the purpose of the transit advice note is to make it possible, in cases where goods are not produced at the office of destination, to substantiate the presumption as to the Member State where the irregularity took place and where any charges payable are to be collected ;

Whereas, at the meeting of the European Council held on 28 and 29 June 1985 in Milan, the Commission presented a White Paper on completing the internal market of the Community which set the end of 1992 as the deadline for achieving that goal ; whereas the European Council endorsed that objective ;

Whereas the said White Paper provided in particular that, as an intermediate stage, further measures should be introduced to simplify formalities at the internal frontiers of the Community and, in this connection, listed abolition of lodgement of the transit advice note as the first item in its timetable for completing the internal market by 1992 ;

Whereas abolition of the transit advice note at internal frontiers necessitates the adaptation of the legal framework with regard to determining the amount of charges payable in cases where goods are not produced at the office of destination and also the Member State empowered to collect such charges ;

Whereas abolition of the transit advice note for intra-Community trade shall not lead to its reintroduction in another form,

HAS ADOPTED THIS REGULATION :

Article 1

Regulation (EEC) No 222/77 is hereby amended as follows :

1. Article 22 (1) is replaced by the following :

'1. The carrier shall give a transit advice note only to :

(a) each customs office at the point of exit from the Community when the consignment is leaving the territory of the Community in the course of a Community transit operation via a frontier between a Member State and a third country ;

(b) each office of transit at the point of entry into the Community, where the goods have passed through the territory of a third country.

The design of the transit advice note required in the case of passage through the territory of a third country in transit shall be determined in accordance with the procedure laid down in Article 57.' ;

2. Article 36 is amended as follows :

(a) in paragraph 2, subparagraph (d) is deleted ;

(b) the following new paragraph 3 is added :

'3. When the consignment has not been produced at the office of destination and the place of the offence or irregularity cannot be established, such offence or irregularity shall be deemed to have been committed :

— in the Member State to which the office of departure belongs, or

(1) OJ No C 245, 26. 9. 1989, p. 4.
(2) OJ No C 323, 27. 12. 1989, p. 62 and Decision of 14 February 1990 (not yet published in the Official Journal).
(3) OJ No C 329, 30. 12. 1989, p. 58.
(4) OJ No L 38, 9. 2. 1977, p. 1.
(5) OJ No L 157, 17. 6. 1987, p. 1.

— in the Member State to which the office of transit at the point of entry into the Community belongs and to which a transit advice note has been given,

unless, within a period to be determined, proof is furnished to the satisfaction of the competent authorities, of the regularity of the transit operation or of the place where the offence or irregularity has actually been committed.

If, in the absence of such proof, the said offence or irregularity remains deemed to have been committed in the Member State of departure or in the Member State of point of entry as referred to in the second indent, the duties and other taxes relating to the goods concerned shall be levied by that Member State in accordance with its laws, regulations and administrative provisions.

If, before expiry of the period of three years from the date of registration of the T 1 declaration, the Member State where the said offence or irregularity was actually committed is determined, that Member State shall, in accordance with its laws, regulations and administrative provisions, recover the duties and other taxes (apart from those levied, pursuant to the second subparagraph, as own resources of the Community) relating to the goods concerned. In this case, once the proof of such recovery is provided, the duties and other taxes initially levied (apart from those levied as own resources of the Community) shall be refunded.

The guarantee covering the transit operation shall be released only at the end of the aforementioned three-year period or, where appropriate, after payment of duties and other taxes applicable in the Member State where the said offence or irregularity was actually committed.

Member States shall take the necessary measures to deal with any offence or irregularity and to impose effective penalties.';

3. Article 42 (3) is replaced by the following:

'3. In cases where, in accordance with Article 22 (1) a transit advice note must still be given, the records kept by the railway authorities shall be substituted for transit advice notes.';

4. Article 57 is replaced by the following:

'Article 57

The procedure laid down in Article 17 of Regulation (EEC) No 678/85 (*) shall be followed for the adoption of the provisions necessary:

(a) for the implementation of this Regulation with the exception of Articles 1, 5, 6, 20, 21, 22, 26 to 31, 33, 36 (1) and (2), 37 and 40;

(b) for the adaptation of the Community transit procedure so that certain Community measures entailing control of the use or destination of the goods may be applied;

(c) for the simplification of formalities under the Community transit procedure, in particular in internal Community transit, or for their adaptation to requirements arising from the particular nature of certain goods.

(*) OJ No L 79, 21. 3. 1985, p. 1.'

Article 2

This Regulation shall enter into force on 1 July 1990.

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

Done at Brussels, 22 February 1990.

For the Council

The President

D. J. O'MALLEY