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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 3904/92

of 17 December 1992

on measures to adapt the profession of customs agent to the internal market

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 the construction of the internal market is a fundamental objective of a decisively positive nature for the development of the Community;

Whereas a certain number of areas will face severe difficulties as they depend heavily on customs activity;

Whereas the abolition of customs formalities on 1 January 1993 will have considerable repercussions on economic activity at the Community's internal borders;

Whereas the work of customs agents and their equivalents derives primarily from customs controls and customs formalities;

Whereas the abolition of customs formalities at the Community's internal borders will abruptly end the intra-Community activities of this profession;

Whereas this profession must completely rethink its future beyond 1 January 1993; whereas this will have major repercussions both for employees in the sector and for the enterprises and areas whose economic structure is geared primarily to cross-border activities;

Whereas small and medium-sized enterprises in particular need help in adapting to the abolition of customs formalities at Community internal borders;

Whereas, given the circumstances and in the light of the Birmingham European Council declaration of 16 October 1992, supplementary Community measures can usefully contribute to the work undertaken by Member States;

Whereas such measures could also encourage the Member States and regions concerned to draw up proposals and release the necessary resources for the purpose of dealing with the economic problems of the border areas in question;

Whereas the Community feels that urgent back-up measures to help customs agents are called for;

Whereas these measures will be related in particular to Community action under the Structural Funds;

Whereas it is necessary to supplement the action supported by the Structural Funds with operations not financed under these Funds, so as to have available a complete set of measures to assist in the restructuring and diversification of the services provided by this profession;

Whereas these specific and exceptional measures, designed to supplement Structural Fund activities, should be limited in time;

(1) OJ No C 220, 27. 8. 1992, p. 4.
(2) OJ No C 337, 21. 12. 1992.
(3) Opinion delivered on 25 November 1992 (not yet published in the Official Journal).

Whereas the measures covered by this Regulation should be in keeping with Community policies, including those relating to competition rules;

Whereas these measures are designed to contribute to economic and social cohesion;

Whereas the Community aims to assist the areas and enterprises affected by the Community policy of abolishing tax frontiers and customs controls;

Whereas the measures to support the areas and enterprises concerned should provide various types of assistance relating, in particular, to management, access to capital markets and vocational training of workers;

Whereas the arrangements for Community action should be specified with a view to implementing the measures for attaining the objectives set,

HAS ADOPTED THIS REGULATION:

Article 1

Objectives

Community action under this Regulation shall be designed to supplement the measures taken under the structural funds by:

— providing assistance for the areas notified by each Member State to the Commission as being the hardest hit by the abolition of customs formalities in the economic restructuring and creation of replacement activities,

— promoting the conversion and/or restructuring of the weakened but viable enterprises referred to in Article 2 (2) to save the maximum number of jobs.

Article 2

Means of operation

1. Community operations designed to provide assistance in the areas referred to in the first indent of Article 1 may be concerned with:

— providing the competent authorities with advice on development and alternative development techniques,

— supporting local development measures,

— funding back-up measures for local development.

2. Community operations designed to assist enterprises primarily involved in customs controls and intra-Community customs formalities may concern:

— management of the conversion or restructuring of the enterprises, in particular by market studies and research,

— technology transfer, including the collection and dissemination of information, and innovations within the enterprises,

— assistance in the creation or maintenance of long-term employment,

— vocational training for employees of the enterprises and any measures to facilitate such training.

Article 3

Eligibility

The measures adopted under Article 2 (2) shall be concentrated on the Community areas designated by the Member States, in accordance with Article 1, as being the hardest hit.

Operations funded under this Regulation shall comply with the provisions of the Treaties, instruments deriving from them and Community policies, particularly those concerning competition rules.

Article 4

Forms of assistance

Community financial assistance may take the form of:

— part-financing of a national assistance sheme, including refunds,

— part-financing of suitable projects including repayments,

— support for technical assistance and studies in preparation for operations.

The financial assistance is intended primarily for small and medium-sized enterprises.

Article 5

Levels of assistance

Community assistance under this Regulation shall not exceed 50 % of the cost of the measures set out in Article 2. In some cases, and in particular in regions whose development is lagging behind, it shall be possible for the Commission to increase the contribution to 75 %.

The Community contribution shall supplement private or public expenditure. In the cases where the Community contribution is supplementary to private expenditure, the contribution shall on no account exceed 50 %.

Community assistance for individual measures or operations funded under this Regulation may not be combined with other assistance from the structural funds.

Article 6

Applications for assistance

From 1 January 1993 onwards, applications for assistance shall be presented by the competent authorities designated by the Member States following consultations with the professional and social interest groups concerned. The deadline for receipt of such applications shall be 31 March 1993.

Article 7

Approval of applications for assistance and implementation

The Commission shall adopt a decision on the applications for assistance, in principle no later than three months after their submission, provided that the conditions stipulated in this Regulation have been met.

The Community's operations shall cover a period commencing on 1 January 1993 and may include retroactive funding for applications for assistance approved on and after that date. The legal commitment for such measures shall be entered into by 31 December 1993.

The Commission shall publish a list of approved applications for assistance in the *Official Journal*.

Article 8

Technical assistance

Apart from the forms of assistance referred to in Article 4, financial support may also be provided for expenditure on technical assistance, evaluation and follow-up concerning measures adopted under this Regulation.

For such operations, by way of derogation from Article 5, Community funding may account for up to 100 % of the cost. However, the overall amount for these measures shall not exceed 2 % of the total budget appropriation provided for in this Regulation.

Article 9

Monitoring, evaluation and financial control

The Commission and the Member States shall ensure effective monitoring and evaluation of Community assistance funded under this Regulation.

The Commission decision approving financial assistance shall include the detailed procedures for monitoring and evaluating such assistance.

In addition, Member States shall be responsible for refunding to the Community any sums paid in error.

Article 10

Commitments and payments

1. Budgetary commitments shall be made on the basis of the decisions taken by the Commission approving the measures concerned.

2. Financial assistance shall be paid in accordance with the budgetary commitments. It shall be sent to the competent authority designated for this purpose in the request for payment submitted by the Member State concerned.

3. An advance of 60 % of each budgetary commitment shall be paid by the Community following the commitment.

4. The balance shall be paid on condition that:

— the authority referred to in paragraph 2 submits to the Commission a request for payment within six months of the actual completion of the measure, and no later than 30 June 1995,

— the Member State certifies the accuracy of the information supplied in the request for payment.

Article 11

Use of the ecu

The amounts of the Commission's commitments and payments shall be expressed and paid in ecus.

The exchange rates applicable at the time of receipt of the application for assistance and the request for final payment shall be used.

Article 12

Report

Before 1 November 1994, the Commission shall report to the European Parliament and the Council on the action taken pursuant to this Regulation.

Article 13

Entry into force

This Regulation shall enter into force on 1 January 1993 for one year.

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

Done at Brussels, 17 December 1992.

For the council

The President

R. NEEDHAM