

## II

(Acts whose publication is not obligatory)

## COUNCIL

## COUNCIL DIRECTIVE

of 24 February 1981

on the harmonization of procedures for the export of Community goods

(81/177/EEC)

THE COUNCIL OF THE EUROPEAN  
COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament <sup>(1)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(2)</sup>,

Whereas the Community is based upon a customs union;

Whereas, without prejudice to the transitional measures laid down in Title I, Chapter 1, of Part Four of the 1972 Act of Accession, the establishment of the customs union is governed in the main by Title I, Chapter 1, of Part Two of the Treaty; whereas that Chapter contains a series of specific provisions dealing with the elimination of customs duties between Member States, the establishment and progressive introduction of the Common Customs Tariff and the autonomous alteration or suspension of the duties of the latter;

Whereas, while Article 27 of the Treaty provides that Member States shall, before the end of the first stage, in so far as may be necessary, take steps to

approximate their provisions laid down by law, regulation or administrative action relating to customs matters, it does not empower the Community institutions to issue binding provisions in that field; whereas, however, a thorough examination undertaken jointly with the Member States has shown the need in certain fields for decision, by binding acts of the Community, upon measures essential for the introduction of customs arrangements which will ensure uniform application of the various Community provisions governing trade between the Community and third countries;

Whereas the procedural rules laid down by law, regulation or administrative action in the Member States relating to the export of goods are framed mainly in the light of national interests; whereas they do not always take sufficient account of the requirements of the customs union on which the Community is based;

Whereas these provisions also show considerable disparities in certain cases, which result in the application, under differing conditions, of export duties of the other Community provisions to which the export of Community goods from the customs territory of the Community may give rise; whereas the resulting distortions of treatment for Community exporters, depending on the Member State in which the customs clearance formalities are carried out, may lead to deflections of trade and artificial movement of activities;

Whereas these provisions directly affect the establishment and operation of the common market;

<sup>(1)</sup> OJ No C 34, 11. 2. 1980, p. 116.

<sup>(2)</sup> OJ No C 83, 2. 4. 1980, p. 10.

Whereas, taking into account the progress made in creating the customs union, it is necessary to fix common rules of procedure for the export of Community goods, from the customs territory of the Community, in the form of a Directive at least;

Whereas these common rules must make it possible to ensure the correct application of both export duties and any other Community provisions to which the export of Community goods from the customs territory of the Community may give rise; whereas, however, such rules must dispense with all unnecessary formalities; whereas, moreover, they must be sufficiently flexible to be adaptable to differing circumstances and to take into account progress in administrative techniques, particularly with regard to data processing;

Whereas it is important to ensure uniform application of these common rules and to provide, for this purpose, a Community procedure which will allow the measures for implementing them to be adopted within appropriate time limits,

HAS ADOPTED THIS DIRECTIVE:

#### *Article 1*

1. Without prejudice to any special provisions which have been, or will be, adopted under specific customs arrangements or the common agricultural policy, this Directive determines the rules which shall be laid down in the laws, regulations or administrative provisions of the Member States in respect of the export from the customs territory of the Community of goods fulfilling the conditions laid down in Article 9 (2) of the Treaty.

Goods sent to the island of Heligoland shall not be regarded as exports from the customs territory of the Community.

2. For the purposes of this Directive:

(a) *export duties* mean the agricultural levies and other charges provided for under the common agricultural policy or the specific arrangements applicable, pursuant to Article 235 of the Treaty, to certain goods resulting from the processing of agricultural products;

(b) *customs office* means any office competent to accept the export declaration referred to in Article 2.

3. Component parts of industrial plant coming under a single heading in the Nomenclature of Goods for the External Trade Statistics of the Community (NIMEXE) in accordance with the Decisions adopted in this field pursuant to Council Regulation (EEC) No 1736/75 of 24 June 1975 on the external trade statistics of the Community and statistics of trade between Member States shall be deemed to constitute a single item of goods<sup>(1)</sup>.

### TITLE I

#### GENERAL PROCEDURE

##### *Article 2*

The export from the customs territory of the Community of the goods referred to in Article 1 (1) shall be conditional upon the lodging at a customs office, in accordance with the conditions laid down in this Directive, of an export declaration (hereinafter referred to as 'the declaration').

The natural or legal person who makes the declaration shall hereinafter be referred to as 'the declarant'.

##### *Article 3*

1. The declaration shall be made in writing on a form corresponding to the appropriate official model determined by the competent authorities in accordance with the Community provisions in force. It shall be signed and contain the particulars necessary for the identification of the goods and, where appropriate, for the application of the export duties and any other provisions governing the export of the goods.

2. The declaration shall be accompanied by all the documents required for the correct application of the export duties and any other provisions governing the export of the goods.

<sup>(1)</sup> OJ No L 183, 14. 7. 1975, p. 3.

*Article 4*

For the purpose of making the declaration and in so far as the goods to be exported are under a specific customs procedure, the customs authority shall, under conditions which it shall specify, authorize the prior examination of the said goods and the taking of samples.

*Article 5*

1. The goods to be exported shall be presented at any Community customs office which is competent, in accordance with the provisions in force in the Member State to which the office is responsible, to complete the export formalities relating thereto.

Where goods are consigned direct from a Member State to a particular third country, the competent authorities of the Member State in question may require the goods to be presented at a competent customs office within its authority.

2. The declaration shall be lodged at the customs office at which the goods are presented. It may be lodged once the goods have been presented there.

However, the customs authority may authorize the declaration to be lodged before the declarant is in a position to present the goods. In this case, the customs authority may set a time limit, to be determined according to the circumstances, for presentation of the goods. If the goods have not been presented within this time limit, the declaration shall be deemed not to have been lodged.

3. For the purposes of applying paragraphs 1 and 2, goods shall be deemed to have been presented at a customs office when their presence at that customs office, or at another place designated by the competent authorities, has been notified to the latter in the manner required to enable them to control or inspect them.

4. The declaration shall be lodged at the competent customs office during the days and hours appointed for opening.

However, the customs authority may, at the request of the declarant and at his expense, authorize the declaration to be lodged outside the appointed days and times.

5. Any declaration lodged with the officials of a customs office in any other place duly designated for that purpose by agreement between the competent authorities and the person concerned shall be regarded as having been lodged in the aforementioned office.

6. This Article shall not preclude the application of national provisions which the Member States may adopt on the basis of Article 36 of the Treaty, when the goods declared in a Member State for export outside the customs territory of the Community are required to pass through the territory of another Member State.

*Article 6*

1. Only declarations which comply with the conditions laid down in Article 3 may be accepted by the customs authority. Such declarations shall be accepted by the customs authority forthwith in accordance with the procedures laid down in each Member State.

However, where, pursuant to Article 5 (2), second subparagraph, a declaration has been lodged before the goods to which it relates have arrived at the customs office or at another place designated by the customs authority, it may be accepted only after the goods in question have been presented to the competent authorities, within the meaning of Article 5 (3).

2. Member States shall take all necessary steps to ensure that the date of acceptance of each declaration can be clearly established for the purpose of determining the operative date for the application of Article 11, where appropriate.

*Article 7*

1. The declarant shall, at his request, be authorized to correct declarations accepted by the customs authority under the conditions laid down in Article 6, as regards one or more of the particulars referred to in Article 3 (1), subject to the following:

- (a) the correction shall be requested before the goods are released from the customs office or place designated for that purpose, unless the request relates to details which the customs authority can check as being correct without the goods being present;
- (b) the correction may no longer be allowed where the request is made after the customs authority has informed the declarant that it intends to examine the goods or that it has itself established that the particulars in question are incorrect;
- (c) the correction shall not result in the application of the declaration to goods other than those to which it originally related.

2. The customs authority may allow or require that the corrections referred to in paragraph 1 be made by the lodging of a new declaration intended to replace the original declaration. In that event, the date for determining the export duties relating to the goods in question and for the application of any other export provisions shall be that of the acceptance of the original declaration.

#### *Article 8*

1. So long as the goods have not left the customs territory of the Community, the declarant may request that the relevant declaration be cancelled or, where the legislation of the Member State concerned does not permit such cancellation, that it be invalidated.

However, when the customs authority has informed the declarant of its intention to examine the goods in respect of which the declaration was made, a request for cancellation or invalidation may not be made until this examination has taken place.

2. The customs authority shall not authorize the cancellation or invalidation of the declaration unless the declarant:

- (a) provides the competent authorities with proof that the goods have not left the customs territory of the Community;
- (b) returns to the said competent authorities all copies of the export declaration, together with any other documents delivered to him on acceptance of the declaration;
- (c) where appropriate, provides the competent authorities with proof that the refunds and other amounts granted on the strength of the export declaration for the goods in question have been repaid or that the necessary measures have been taken by the services concerned so that they are not paid;
- (d) where appropriate, and in accordance with the provisions in force, complies with the other obligations which may be set by the competent authorities to regularize the position of the goods.

3. The cancellation or invalidation of the declaration shall, where appropriate, result in the cancellation of attributions on any export licence or advance-fixing certificate presented in support of the declaration.

4. The cancellation or invalidation of the declaration shall in no way preclude the application of sanctions for an offence committed by the declarant.

5. Where the goods declared for export are required to leave the customs territory of the Community within a specified period, failure to respect the time limit shall result, in the cancellation or invalidation of the relevant declaration, except where the time limit is extended by the competent authorities.

In the situation referred to in the first subparagraph, paragraph 2 (b), (c) and (d) and paragraph 3 and 4 shall apply.

#### *Article 9*

1. Without prejudice to any other means of control at its disposal, the customs authority may examine all or part of the declared goods.

2. The goods shall be examined in the places designated and during the hours appointed for that purpose.

However, the customs authority may, at the request of the declarant, authorize the examination of goods in places or during hours other than those referred to above. Any costs involved shall be borne by the declarant.

3. Transport of the goods to the places where they are to be examined, unpacking, repacking and all other operations necessitated by such examination shall be carried out by the declarant or on his responsibility. In all cases, any costs involved shall be borne by the declarant.

4. The declarant shall be entitled to be present at the examination of the goods or to be represented at it. If the customs authority sees fit, it may require the declarant to be present at the examination of the goods, or to be represented at it in order to assist with the examination, as necessary.

5. When examining the goods, the customs authority may take samples for analysis or for more detailed examination. The costs arising from such analysis or more detailed examination shall be borne by the administrative authority.

6. Paragraph 5 shall not preclude application of Article 8 (2) of Council Regulation (EEC) No 3035/80 of 11 November 1980 laying down general rules

for granting export refunds on certain agricultural products exported in the form of goods not covered by Annex II to the Treaty, and the criteria for fixing the amount of such refunds <sup>(1)</sup>.

#### Article 10

1. The result of the examination of the declaration and the documents attached to it, whether or not combined with examination of the goods, shall be used for calculating the export duties or export refunds and other export amounts and for applying any other Community provisions governing export of the goods. Where neither the declaration and the documents attached to it, nor the goods themselves, are examined, such duties shall be calculated and such provisions applied on the basis of the particulars contained in the declaration.

2. Paragraph 1 shall be without prejudice to either any subsequent verification by the competent authorities of the Member States or the possible consequences of applying the provisions in force, particularly as regards any change in the amount of the export duties charged on the goods or of the export refunds or other export amounts which have been granted.

#### Article 11

The date of acceptance of the declaration shall be the operative date for:

- (a) determining the rates or amounts of export duties to which the goods may be subject, as well as other particulars material to the calculation of such duties;
- (b) applying any other Community provisions governing export of the goods.

#### Article 12

Without prejudice to any changes which may occur pursuant to Article 10 (2), the amount of the export duties determined by the competent authorities shall be entered in the accounts by the latter under the procedure laid down for that purpose and shall be communicated to either the declarant or the person whom he represents, whomever the authorities choose.

<sup>(1)</sup> OJ No L 323, 29. 11. 1980, p. 27.

#### Article 13

Without prejudice to the application of any prohibitive or restrictive measures provided for in respect of the goods declared for export, the customs authority may authorize export of the goods only if it is satisfied, where appropriate, that the duties entered in the accounts in accordance with Article 12 have been paid or guaranteed or that payment of them has been deferred under the conditions laid down in Council Directive 78/453/EEC of 22 May 1978 on the harmonization of provisions laid down by law, regulation or administrative action concerning deferred payment of import duties or export duties <sup>(2)</sup>.

#### Article 14

1. The customs authority itself shall decide the form in which it authorizes export of the goods, taking due account of the place in which the said goods are treated and of the special procedures for their control.

2. Goods which have received an export authorization shall remain under customs control until they leave the customs territory of the Community.

### TITLE II

#### SIMPLIFIED PROCEDURES

#### Article 15

1. From 1 January 1984 at the latest, Member States shall no longer apply simplified procedures other than those laid down in Articles 16 to 20.

They shall apply from that date all such simplified procedures in so far as their administrative organization allows it.

2. Recourse to any of the simplified procedures laid down in Articles 16 to 20 shall be conditional upon an authorization from the competent authorities of the Member State in which the procedures are to be applied. The competent authorities shall determine both the conditions to be fulfilled for authorization for such use to be granted and the implementing procedures therefor.

<sup>(2)</sup> OJ No L 146, 2. 6. 1978, p. 19.

The said authorization may be limited to certain goods. It may be granted on an occasional or a permanent basis. It may be revoked.

3. Use of the procedures laid down in Articles 16 to 20 shall not preclude the exercise by the customs authority of any controls which it considers necessary in order to ensure that the operations are correctly carried out.

4. In the case of the simplified procedures referred to in Articles 17 to 20, and without prejudice to Article 13, Member States may, where they consider it necessary, stipulate that their customs authorities make authorization of their use conditional on the lodging of a security designed to ensure that the beneficiary fulfils the obligations imposed on him under the first subparagraph of paragraph 2.

5. Save as otherwise provided in Articles 16 to 20, Title I shall apply to the simplified procedures laid down in these Articles.

#### **A. Exemption from written declaration**

##### *Article 16*

1. Without prejudice to the special provisions laid down in respect of consignments sent by parcel or letter post, Member States may specify that a written declaration is not required for goods exported for non-commercial purposes and goods of low value, including those contained in travellers' personal luggage.

2. Paragraph 1 shall not apply to goods for which an export licence is required or export refunds or other export payments are requested.

#### **B. Drawing up of general, periodic or recapitulative declarations**

##### *Article 17*

1. Without prejudice to Article 20, the competent authorities may authorize the declarant to furnish or to insert at a later date certain particulars of the declaration in the form of supplementary declarations of a general, periodic or recapitulative nature.

2. Statements made in supplementary declarations, together with statements made in the declarations to which they refer, shall be deemed to constitute a

single, indivisible instrument taking effect at the date on which the corresponding initial declaration was accepted.

3. Where the procedure provided for in this Article is invoked, the initial declarations relating to each batch of goods shall in all cases contain the particulars necessary for the identification of the goods in question.

#### **C. Granting of export authorization before the lodging of the entry**

##### *Article 18*

1. Where circumstances so justify, the competent authorities may authorize export of the goods as soon as they have been produced, within the meaning of Article 5 (3), at the competent customs office, without the entry referred to in Article 3 having been lodged.

2. Authorization to export the goods shall be conditional on the presentation at the competent customs office of a commercial or administrative document, at the discretion of the competent authorities, containing the particulars necessary for the identification of the goods and accompanied by an export application, signed by the person concerned.

Where application of the Community measures to which the export of goods in question gives rise is subject to the presentation of any other document, that document shall accompany the said commercial or administrative document.

Acceptance by the customs office of that commercial or administrative document shall have the same force in law as acceptance of the declaration referred to in Article 3.

3. When circumstances so permit, the competent authorities may agree to the replacement of the application referred to in paragraph 2 by a general application covering exports to be carried out during a specific period. Reference to the authorization granted as a result of this general application shall be made in the commercial or administrative document to be presented for each export in accordance with the first subparagraph of paragraph 2.

4. The customs authority may make the authorization to export the goods conditional on their examination based on the particulars contained in the commercial or administrative document referred to in paragraph 2.

5. The declaration relating to the goods covered by the authorization referred to in paragraph 1 shall be lodged at the competent customs office within the time limit laid down by the competent authorities.

For the purposes of applying Article 11, this declaration shall take effect on the date on which the customs authority accepts the commercial or administrative document referred to in paragraph 2.

6. Without prejudice to Article 20, the customs authority may allow the lodging of general, periodic or recapitulative declarations for the goods. Such declarations shall take effect on the date on which that authority accepted the commercial or administrative document referred to in paragraph 2.

#### *Article 19*

1. The competent authorities may authorize natural or legal persons who frequently export goods to send such goods out of the customs territory of the Community directly from their premises, without first lodging the declaration referred to in Article 3 at the competent customs office.

2. Before the goods leave his premises, the authorized person referred to in paragraph 1 shall:

- (a) give the competent authorities due notice of dispatch, in the form and manner laid down by them, for the purpose of obtaining authorization to export the goods in question;
- (b) enter the said goods in his records. This shall be done in the form and manner laid down by the competent authorities. This entry shall include the date of entry in the records and the particulars necessary for identification of the goods;
- (c) make available to the competent authorities all documents, in particular export licences or advance-fixing certificates, the production of which may be required for application of the provisions governing export of the goods.

Completion of the formalities referred to in subparagraphs (a) and (b) shall have the same force in law as acceptance of the declaration referred to in Article 3.

3. Provided that checking on the regularity of transactions is not thereby affected, the competent authorities may, in certain special circumstances justified by the nature of the goods in question and

the increased rate of export, exempt the authorized person from the obligation to notify the competent customs office of each dispatch of goods, on condition that he provides that office with all the information which it deems necessary to enable it to exercise, where appropriate, its right to examine the goods. In that case, entry of the goods in the records of the person concerned shall be equivalent to authorization of their export.

4. Where the customs office decides to examine the goods, such examination shall take place on the basis of the particulars contained in the records of the person concerned.

5. The declaration relating to the goods which are the subject of the authorization referred to in paragraph 1 shall be lodged at the competent customs office within the time limits fixed by the competent authorities.

For the purposes of applying Article 11, this declaration shall take effect on the date on which the goods are entered in the records of the person concerned.

6. Article 18 (6) shall also apply where the provisions of this Article are invoked.

7. The entry of the goods in the records of the person concerned as provided for in paragraph 2 (b), may be replaced by any other formality offering similar guarantees which may be laid down by the competent authorities.

#### **D. Replacement of all or part of the particulars of the declaration by codified data**

##### *Article 20*

1. The competent authorities may authorize the declarant to replace all or part of the particulars of the written declaration referred to in Article 3 by sending to the customs office designated for that purpose, with a view to their processing by computer, codified data or data made out in any other form specified by those authorities, corresponding to the particulars required for written declarations.

2. The competent authorities shall determine the conditions under which the data referred to in paragraph 1 are to be sent.

## TITLE III

*Article 22*

## FINAL PROVISIONS

*Article 21*

1. The Committee on General Customs Rules provided for in 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 <sup>(1)</sup> may examine any question concerning the application of this Directive which is raised by its chairman either on his own initiative or at the request of a representative of a Member State.

2. The provisions required for applying Articles 3 to 9, Article 10 (1), Article 13, Article 14 (2) and Articles 17 to 20 of this Directive shall be adopted in accordance with the procedure laid down in Article 26 (2) and (3) of Directive 79/695/EEC.

1. Member States shall take the measures necessary to comply with this Directive not later than 1 January 1983.

2. Each Member State shall inform the Commission of the measures which it adopts for the purposes of implementing this Directive. The Commission shall communicate this information to the other Member States.

*Article 23*

This Directive is addressed to the Member States.

Done at Brussels, 24 February 1981.

*For the Council*

*The President*

G. BRAKS

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<sup>(1)</sup> OJ No L 205, 13. 8. 1979, p. 19.