Modernised Community Customs Code

2005/0246(COD) - 15/10/2007 - Council position

After a thorough examination of the proposal during successive Presidencies, and in the light of its practical implications both for customs administrations and trade, the Council, having taken on board a large majority of Parliament's amendments, has also restructured the text and made a number of changes, mostly of a technical nature.

Amendments accepted by the Council: the European Parliament adopted 51 amendments to the proposal, out of which 34 have been taken on board, totally or in part, in the Council's common position. The Council states that particular attention should be paid to the amendments on comitology. Parliament listed 28 provisions to which the regulatory procedure with scrutiny should apply, a list extended by the Council to 49 instances amongst 44 provisions. The Council has based its position with regard to the type of comitology procedures on the legal requirements and criteria provided for in Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred to the Commission, in particular Article 5a.

Amendments not accepted by the Council: the Council rejected certain amendments, and gave the following reasons, inter alia:

- the Council considers that the status of authorized economic operator should only be granted to those operators, including customs representatives, who comply with the criteria laid down;

- with regard to customs representatives, the Council has followed an approach in line with the principles of the internal market, where customs representatives, provided that they comply with the criteria laid down in Article 14, shall be entitled to operate in other Member States than the one where they are established;

- the Council considers that, by definition, random checks cannot be based on risk analysis;

- the charging of fees by customs authorities should be restricted to those cases where application of the customs legislation, including the performance of customs controls, occurs outside the official opening hours of the competent customs offices;

- simplified procedures for certain concerned could lead in some cases to discrepancies in the application of the VAT legislation;

- the negotiation of agreements containing preferential measures is a Council prerogative under Article 133 TEC;

- in the case of plurality of debtors, they should be jointly and severally liable for the totality of the debt;

- the rules which apply to the import summary declaration cannot be mirrored in the handling of the export summary declaration;

- the rules pertaining to the electronic data exchange between customs authorities and other competent authorities, which are under the competence of the Member States, are outside the scope of one of the amendments;

- the non-binding nature of explanatory notes and guidelines prevent them from being referred to in a legal text.

New elements introduced by the Council: the changes introduced by the Council have led to a substantial restructuring of the proposal and a subsequent re-numbering of the articles. The new elements are as follows:

- **VAT**: all references to VAT and excise duties have been withdrawn from the text, in accordance with EP amendments, and replaced, depending on the context, with "import taxes", or, more generally, with "other charges";

- **Simplifications**: the idea that simplifications should apply to certain customs formalities, or be granted to certain operators, is central to the Code. The Council, taking partially on board a Parliamentary amendment, has introduced this concept into the text, which caters for the intra-Community trade of goods moving between those parts of the customs territory where the legal provisions on VAT apply and those parts of that territory where these provisions do not apply. At any rate, national or local simplifications, which could potentially distort the application of customs legislation in the customs territory, have been repealed. Additional simplifications, which would apply in the entirety of the customs territory, may be introduced in the customs legislation via the regulatory procedure with scrutiny.

- **Customs representation**: on this key issue, the common position of the Council seeks to reconcile different approaches to customs representation amongst Member States. By introducing common criteria to entitle customs representatives to provide their services in another Member State than the one where they are established, the Council provides for a level playing field, in line with the Treaty, while safeguarding a high quality of customs representation services.

- **Definitions**: the Council has modified a number of definitions: “the customs representative”; “the declarant” (in line with Parliament’s amendment); “the customs debt”; “the debtor” and “the customs status”, “repayment”; “remission” and the (electronic) message.

- **Authorised economic operator**: the common position takes on Parliament’s amendment concerning the two different types of authorisations ("customs simplifications" and "security and safety"), a solution which addresses the possible different needs of economic operators. In addition, the Council considers that applications for the status of authorized economic operator should be restricted to economic operators and that a monitoring of such status should offer better guarantees than a periodic review. In line with Parliament’s amendment, the possibility for the applicant to request that the status of authorized economic operator be limited to one or more specified Member States has been withdrawn.

- **Decisions**: the Council has aligned to four months the deadline for the transmission of information to the customs authorities, a period commonly used by national administrations. The principle according to which the customs authorities should communicate to the person concerned the grounds upon which they intend to take a decision which could affect the addressee has been maintained. The Council has more explicitly defined the cases where the customs authorities may refuse a request for a decision relating to binding information.

- **Penalties**: in line with Parliament’s amendment, all references to criminal penalties have been withdrawn from the text. A new paragraph creates an obligation for Member States to notify the Commission of their national provisions with regard to penalties.

- **Cooperation between authorities**: the common position has spelled out the role to be assumed by the customs authorities when co-operating with other authorities in performing controls.

- **Intra-Community flight and sea crossings**: the Council has restored the rule that customs controls and formalities should be performed, where provided for under customs legislation, and conferred powers to the Commission under the regulatory procedure for the implementation of this provision.

- **Value of goods for customs purposes**: the Council has considerably simplified the Chapter on valuation of goods, with some technical rules for such valuation to be elaborated under the regulatory procedure (such as the relationship between the buyer and the seller, the elements to be used to determine the computed value, and the fall back method).

-**Customer debt and guarantees**: the Council has restored the rule according to which, in case of plurality of debtors, they should be jointly and severally liable for the debt, considering that such a rule would confer more certainty to the customs authorities that the debt will actually be recovered. In addition, the common position has introduced or reinforced a number of simplifications. The guarantee, under certain conditions, may be used for amounts payable following post-release control. The use of the comprehensive guarantee has been made available to all economic operators, provided that they respect certain criteria, including a proven solvency.

- **Extinguishment of customs debt**: the Council has redrafted the text, pointing out that it is the confiscation of goods (and not their seizure) which, under certain conditions, triggers the extinguishment of the debt. The concept of "irretrievable loss" has also been clarified.

- **Centralised clearance**: the Council has introduced a new Article, since it is more logical to integrate in a single article all the provisions in the Code related to the concept of centralized clearance. Under this new drafting, centralized clearance may be made available to all persons. However its use is restricted in certain cases to applicants complying with the criteria for the granting of the status of authorized economic operator.

- **Customs declaration**: the Council has introduced a number of modifications concerning the customs declarations. In line with the principle laid down that the customs declaration should be lodged using an electronic data-processing technique, the common position allows, under certain conditions, this declaration to take the form of an entry in the declarant's records. The simplified declaration is no longer restricted to authorized economic operators. Two exceptions to the rule that the declarant should be established in the customs territory of the Community have been added.

- **Self-assessment:** the concept of self-assessment, introduced with regard to the determination by the declarant of the amount of duty payable, is extended in to certain customs formalities and certain controls under customs supervision.

- **Special procedures**: the scope of the special procedures has been spelled out and aligned with the structure of Title VIII. The rules related to the end of the transit procedure are no longer mixed with the rules on the discharge of a procedure. The Council has, for practical reasons, introduced exceptions to the rule concerning the absence of a time-limit for goods placed under the storage procedure.

- **Formalities and customs supervision**: the Council has substantially restructured the relevant Article, adding some instances of prohibitions and restrictions, such as those related to drug precursors, and spelling out the persons who shall present the goods leaving the customs territory of the Community.

- **Implementing measures**: a cover-all provision has been added, catering for possible additional simplifications of the Code.

-**Final provisions**: Council Regulation (EEC) No 918/83 and Council Regulation (EC) No 82/2001 have been withdrawn from the lists of Regulations repealed.

In view of providing for a smooth application of the proposed regulation, and given the importance of the implementing provisions in that respect, a distinction has been made between the entry into force and the application of the proposed regulation. The provisions listed in paragraph 1 of Article 188, which confer implementing powers to the Commission, shall be applicable from the date of the entry into force of the Code. The other provisions shall be applicable once the implementing provisions are applicable. The implementing provisions shall enter into force one year after the entry into force of the Code, at the earliest. In any event, all the provisions of the Code shall be applicable five years after its entry into force, at the latest.

The Council concludes that its common position is entirely in line with the objectives of the proposal, i.e. adapting the customs code to the requirements of an electronic environment for customs and trade, streamlining customs procedures, and simplifying the customs legislation, thereby contributing to the fulfilment of the goals of the Lisbon process. The common position not only takes on board the large majority of Parliament's amendments, but also reinforces the use of the newly introduced regulatory procedure with scrutiny. The new elements introduced by the Council reflect the need to adapt the text to the practical and technical realities, to establish a level playing field between operators and to balance better the requirements of the customs administrations and the facilitations of trade.