

Modernised Community Customs Code

2005/0246(COD) - 23/10/2007 - Commission communication on Council's position

The Commission states that the common position, on which political agreement was reached by qualified majority, follows the general lines of the Commission's amended proposal. The changes have been made in order to provide greater clarity and to provide for more flexible and suitable legislation that will meet the aim of maintaining a proper balance between customs controls and the facilitation of legitimate trade. The Commission fully supports the common position, which incorporates and improves upon a number of the amendments made by the European Parliament.

It discusses those amendments of the European Parliament that were accepted in the common position and those that were rejected. It also points out that the Council — while fully subscribing to the principle of aligning the proposal with the new regulatory procedure with scrutiny resulting from Article 5a of the 'comitology' Decision — reached conclusions different from the European Parliament on some empowerment provisions and completed the work undertaken by the European Parliament by aligning other provisions.

New provisions introduced by the Council: the common position includes certain further modifications that address both the concerns reflected in the European Parliament's amendments, which took account of the opinions of European business interests, and those raised by the Member States' customs administrations. The points at issue fell into two categories, the key issues of customs representation, centralised clearance and the 'single window' (for which political support was sought, and given, in the Council of Ministers), and several lesser issues, such as national simplifications, the application of guarantees and the right to be heard, for which practical solutions have been found within reason. Changes to the procedure for the adoption of implementing provisions have also had considerable implications for the modernised Code.

The Commission draws attention to the main amendments made by Council.

-Reference to a common Community framework for penalties has been withdrawn in keeping with the removal of any reference to excise and VAT in the revised text of the Code, these taxes being subject to other legislation. The list of repealed Regulations has also been amended. The European Parliament's support for keeping certain existing **national simplifications** in the customs legislation is also not fully taken on board in the common position. The abolition of national empowerments is a cornerstone of the proposed reform, as these can lead to non-uniform application of customs rules by Member States and compromise the level playing field for business throughout the EU. Within this constraint, however, certain provisions recommended by Parliament have been adopted, notably to allow for simplified procedures for the movement of goods between the European Community and its 'special territories', such as the Aaland Islands, Channel Islands, Canary Islands etc.

-In the matter of **customs representation**, the common position introduces conditions, based on "common" criteria, to be fulfilled by customs representatives acting in more than one Member State, as this should not be left for a Member State to decide unilaterally. Although this is not an "accreditation procedure", it should address the concerns expressed by Parliament, the customs agents and by some Member States and is in accordance with the Treaty and the Services Directive. The common position also further qualifies the derogations from the need to prove empowerment to act as a customs representative. The time limit within which a requested **decision** must be taken, and the applicant notified, by the customs authorities has been increased by Council to four months, more reasonably in line with many existing national rules.

-The requirement for Member States to report to the Commission on **customs penalties** has been restricted by Council to reporting only the national provision in force, or brought into force, in Member States.

-The provision for an extended time limit for **keeping documents and other information** which formerly applied only to the appeals procedure now applies to court procedures as well.

-Political considerations persuaded Council to retain Council Regulation (EC) No 82/2001, governing **origin** rules in the case of Ceuta and Melilla, as autonomous, but with the agreement that the Regulation be updated to bring it into line with other origin rules. The detailed rules on relationship and the rules for the fall back method of **valuation** have been transferred to the implementing provisions.

-The Council has re-introduced the stipulation that where **several debtors** exist, they shall jointly and severally be liable for the debt. At the same time, the proposed encouragement for customs authorities to attempt to recover the debt, in the first instance, from any deliberate infringer has been set aside. However, the option of suspending the time limit for the payment of duties in such a case has been maintained.

The Council has also introduced a safeguard against the possible circumvention of tariff measures such as anti-dumping duty into the framework for implementing measures relating to **calculation of duty**.

-On **guarantees**, issues arose in connection with the proposal to extend the liability of the guarantor to cover any customs debt arising from undeclared goods and from post-clearance controls. The Council has made it clear that this applies to guarantees in general but that use of the guarantee to recover post-clearance debts is optional for the Member States and, in any case, can only apply if the guarantee had not been released. The common position also better qualifies the need for implementing provisions relating to the general provisions for guarantees, notably in relation to other cases in which no guarantee is to be required, e.g. for particular modes of traffic/transport, or where a guarantee is of limited validity. On guarantors, the text now also better defines the institutions that may provide a guarantee without approval. The proposal to restrict the use of comprehensive guarantees with a reduced amount, or a guarantee waiver, to AEOs has also been removed from the text, while criteria identical to some of those imposed on AEOs (proven solvency, in particular) will have to be met for the use of either simplification.

-As the new Code lays the foundation for system-based controls, the Council broadly accepted the principle of **'self-assessment'** promoted by some Member States in Council, according to which customs formalities are simplified as far as possible and, where practical and appropriate, authorised traders are allowed to regulate (or 'assess') themselves. The right of customs authorities to accept amounts of duty payable determined by the declarant is now included in the text. As with centralised clearance, a defining provision is included in a new article outlining and clarifying the basic concept of self-assessment, which will, however, be restricted to authorised economic operators.

-The Council has sought to clarify the conditions of extinguishment of a **customs debt** where the goods are seized and confiscated. Furthermore, while acknowledging the role of debtors in supporting the fight against fraud, the Council has withdrawn the proposal for a provision specifically allowing the extinguishment of a customs debt incurred during a controlled delivery performed to identify criminals, as this is not the practice in every Member State.

-In Chapter 2 of Title V — **Placing goods under a customs procedure**, the common position now includes a new article outlining and clarifying the basic concept of **centralised clearance**, which will no longer be restricted to those AEOs, although applicants will have to meet AEO criteria. The structure of this Chapter has also been changed to follow a more logical order. The rules for simplified and supplementary declarations are now placed together with those for standard declarations and common provisions governing them all.

-The Council has withdrawn the restriction on the use of **simplified declarations** to AEOs, which renders the provision for 'occasional' simplified declarations in the Commission proposal superfluous, and has also reintroduced the restriction on the right to waive presentation of the goods to simplified declaration by entry in the records alone. The common position also restores the reference in the Code to particular persons who need not be established in the customs territory of the Community in order to lodge a declaration.

-A new Chapter 3 — **Verification and release of goods** — in Title V logically separates out the customs clearance aspects of goods declared for a procedure.

A new article provides for implementing measures.

-Under the proposals for the modernised Code, **temporary storage** becomes a customs procedure and, as with goods in customs warehouses and free zones, no time limit is to be set for placing goods in temporary storage under another customs procedure, so that automatic incurrence of a customs debt after a specific deadline is avoided. The text now recognises that there are circumstances where time limits for temporary storage may be set, notably where the storage facility is operated by the customs authority itself and no commercial arrangements exist, and in exceptional circumstances. The same Article now provides for the adoption of implementing provisions to govern these exceptional circumstances.

-Provisions are now made under **exit formalities** for the presentation of goods leaving the customs territory of the Community to customs at the point of departure, i.e. the office of exit. In the current Code, such presentation is explicit in the rules of certain procedures, e.g. export, transit, but not in all cases, and this is now necessary for security and safety controls.

-The application of the Council '**comitology**' Decision 2006/512/EC, laying down revised procedures for the exercise of implementing powers conferred on the

Commission, is now reflected throughout the Code, with every article that empowers the Commission to adopt **implementing measures** having been amended to specify which procedure applies in each case. In many cases a more detailed framework for the committee procedure has been added to these provisions.

Key issues not addressed by amendments/statements:

-'Centralised clearance' will have an impact on the amounts collected by each Member State and hence on the share (25%) of customs duties they receive in the form of collection costs, on VAT and on statistical arrangements. In order that such outside issues should not delay the adoption of the modernised Code a Council statement has been agreed, advocating that a mechanism be devised to readjust the flow of collection costs. This mechanism should be developed within the appropriate forums and be granted a status ensuring a legally binding effect on Member States, to be in force by the time the modernised Code enters into force and to be operational by the time the Code is applicable.

-The Council statement also notes that the centralised clearance system may also require adjustments in connection with VAT, statistics, and national prohibitions and restrictions, and that these issues should be clarified in the appropriate forums before the provisions on centralised clearance in the Modernised Customs Code enter into force.

In another statement, the Council and the Commission agree to evaluate the functioning of the centralised clearance system three years after the entry into force of the modernised Code.