



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION FROM THE COMMISSION  
TO THE EUROPEAN PARLIAMENT**

**pursuant to the second subparagraph of Article 251(2) of the EC Treaty**

**concerning the**

**common position of the Council on the adoption of a proposal for a Regulation of the  
European Parliament and the Council laying down the Community Customs Code  
(Modernised Customs Code)**

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**1. BACKGROUND**

Date of transmission of the proposal to the European Parliament and the Council (document COM(2005) 608 final — 2005/0246 COD):	30 November 2005.
Date of the opinion of the European Economic and Social Committee:	5 July 2006
Date of the opinion of the European Parliament, first reading:	12 December 2006
Date of the amended proposal, made orally to the Council Working Party on Customs Union (Legislation and Policy)	11 January 2007
Date of the political agreement in the Council:	25 June 2007
Date of adoption of the common position by qualified majority:	15 October 2007

**2. OBJECTIVE OF THE COMMISSION PROPOSAL**

The objective of the proposal is to modernise and simplify customs legislation and administrative procedures from the point of view of both customs authorities and traders. The proposed streamlining of customs procedures and processes is also intended to adapt customs rules to common standards for interoperable IT systems.

The proposal must be seen in the context of the Strategy for Growth and Jobs and of “Better Regulation”, insofar as it will simplify European regulation so as to reduce business costs in Europe and to increase efficiency, transparency and public confidence. It was also developed to fulfil the objectives of the e-Government initiative, which should allow business to benefit fully from modern technology and the resulting facilitation of trade.

This proposal is of a significant political importance because it will further deepen the Single Market. It is a significant step towards eliminating remaining barriers to a fully integrated Customs territory. It is sensitive because it entails difficult choices

and sometimes painful reforms (notably in order to make Member States' electronic clearing systems interoperable).

### **3. COMMENTS ON THE COMMON POSITION**

#### **3.1 General**

The common position, on which political agreement was reached by qualified majority on 25 June 2007, 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.

#### **3.2 Consideration of the amendments proposed by Parliament at first reading**

In its common position the Council did not agree to all of the amendments proposed by the European Parliament, but 36 of the 54 amendments adopted by the Parliament are incorporated into this common position, either fully, or in principle, that is with some amendment for consistency or clarity, or partial amendment.

The **table at annex** shows the correlation between the European Parliament amendments on recitals and provisions in the Commission's proposal and the corresponding recitals and provisions as amended and renumbered in the Council's common position.

##### *Amendments accepted by the Council and the Commission*

Those amendments fully accepted by the Council are **1, 4, 6, 7, 8, 12, 17, 20, 21, 32, 33, 35, 38, 49, 52** and **56**; those accepted in principle are **2, 3, 9, 10, 16, 18, 31, 36, 37, 39, 42** to **48**, and **50**.

Amendment **26** is accepted only with regard to the application of simplified procedures to Community goods in trade with or between territories that are part of the customs territory of the Community but are not included in the territorial scope of the 6th VAT Directive.

All these amendments had previously been accepted by the Commission, except Amendments **21** and **31**.

With regard to Amendments **11** and **13**, 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.

##### *Amendments accepted neither by the Council nor by the Commission*

The Council did not accept those other amendments with which the Commission also disagreed:

Amendment **5**, because the references to the Decision amending the Comitology Decision must be given in the footnote and not in the text;

Amendment **14**, because any system of accreditation for customs agents falls outside the scope of the Customs Code;

Amendment **22**, because the change in the wording could jeopardise customs' ability to perform random checks;

Amendment **23**, because the removal of the reference to the opening hours of customs offices would seriously undermine the proposal's efforts to frame the charging of customs fees, and the introduction of a reference to 'any other act required for the purpose of applying customs law' would allow the perpetuation of a practice prevailing in certain Member States of charging fees for drawing up electronic declarations;

Amendment **25**, because it would make it mandatory for Member States to keep all their customs offices operational on a 24/7 basis, which may be desirable but is not realistic at present;

Amendment **26** (in part), because applying simplified procedures to such goods moving within one single Member State or between some Member States only would not ensure uniform application of the VAT provisions within the Single Market.

Amendment **28**, because it amounts to using the Customs Code for the purpose of framing negotiating directives for rules of origin in preferential agreements, which is the prerogative of the Council, on the basis of Article 133 EC, as is the implementation of Article 187 EC;

Amendment **29**, because the article has been amended by Council, to the simple effect that debtors should be jointly and severally liable for the debt;

Amendment **30**, because, from a legal drafting point of view, inserting examples is not appropriate and the basic principle that other forms of guarantee may be accepted is all that is necessary in the Code;

Amendments **40** and **41**, because in both cases, the amendments misinterpret current and proposed provisions. The COTIF Convention is not an international convention that establishes a transit procedure or guarantees freedom of transit and cannot therefore be taken into account in these articles;

Amendment **51**, because it is based on the misconception that the exit summary declaration could be processed in the same way as the import summary declaration;

Amendment **53**, because it would go against the principle of subsidiarity.

*Amendments not accepted by the Council but previously accepted by the Commission*

The Council also did not accept other amendments with which the Commission had previously agreed;

Amendment **15**, because Article 13 of the proposal is to be integrated with Article 11;

Amendment **24**, because, due to the new wording of the provision, such an amendment would make the list exhaustive [assuming that AM24 did not concern all language versions];

Amendment **54**, because the proposed Article 195 has been deleted from the revised text, the Council considering that the Code and its implementing provisions should be clear enough to restrict the need for explanatory notes and guidelines to exceptional matters and that there is no need to create a ‘third tier’ of regulation or to oblige the Commission, in the Code, to do so.

### 3.3. New provisions introduced by the Council

The common position includes certain further modifications, made by the Council, that address both the concerns reflected in the European Parliament’s proposed 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 main amendments are as follows:<sup>1</sup>

Reference to a common Community framework for penalties has been withdrawn from Recital 14 (previously Recital 12 of the Commission proposal), in line with Article 21 (previously Article 22), and Recital 32 of the Commission proposal has been deleted, 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 in Recital 39 (previously Recital 38) 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 in Article 1(3), 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

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<sup>1</sup> These comments refer to the Articles as re-numbered in the common position; their previous number in the Commission’s proposal is put between brackets.

than one MS , 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 the EP, 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 in Article 12 from the need to prove empowerment to act as a customs representative. Article 13 of the Commission proposal has been deleted, having been incorporated, in principle, into Article 11.

In Article 16(4) (previously Article 17(4)), 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.

Article 35 of the Commission proposal, relating to **simplifications**, has been deleted, with this provision now more specifically defined in the new Article 116, in Article 1, new paragraph (3), and Article 183(2)(c) (previously Article 194).

The requirement for Member States to report to the Commission on **customs penalties** has been incorporated into Article 21 (previously Article 22), but restricted by Council to reporting only the national provision in force, or brought into force, in Member States.

The provision in Article 29 (previously Article 31) 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; Article 39 (previously Article 42) has been amended accordingly.

The detailed rules on relationship and the rules for the fall back method of **valuation** have been transferred to the implementing provisions and Article 46 of the Commission proposal has consequently been deleted.

Council has re-introduced into Article 51 (previously Article 56) 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 in Article 72(3) (previously Article 77(3)).

Council has also introduced a safeguard against the possible circumvention of tariff measures such as anti-dumping duty into the framework for implementing measures in Article 54 (previously Article 59), 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. By amending Article 56 (previously Article 61), 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, Article 61 (previously Article 66) 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 Article 62 (previously Article 67), 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, 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 Article 66(2) (previously Article 71(2)) and, as with centralised clearance, a defining provision is included in a new article, Article 116, outlining and clarifying the basic concept of self-assessment, which will, however, be restricted to authorised economic operators.

Article 84 of the Commission proposal has been deleted, the definitions of *repayment and remission* being moved to Article 4 and the other provisions included in Article 79 (previously Article 85).

In Article 86 (previously Article 92), 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, dedicated Article 106 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 together with those for standard declarations and common provisions governing them all. (Articles 125 and 128 of the Commission proposal have been re-numbered 109 and 110, and Articles 114 to 117 re-numbered 111 to 114).

Council has withdrawn the restriction on the use of *simplified declarations* to AEOs in Article 109 (previously Article 125), which renders the provision for 'occasional' simplified declarations in Article 127 of the Commission proposal superfluous, and has also reintroduced (but in Article 119 (previously Article 115)) the restriction on the right to waive presentation of the goods to simplified declaration by entry in the records alone. Articles 126 and 127 of the Commission proposal have therefore been deleted.

In Article 111 (previously Article 114), 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. (Articles 118 to 124 of the Commission proposal are re-numbered 117 to 121, 123 and 124). A new article, Article 122, provides for implementing measures. [The former Chapter 3 – Simplifications, relating to customs declarations in the Commission proposal, is now Chapter 1, Section 3 of this Title; Article 129 of the Commission proposal has been deleted.]

Article 138 (previously Article 146) has also been amended in the common position, as the ending of a transit procedure is essentially a different event from its discharge, and the rules for ending the procedure are properly restored to Article 146 (previously Article 155). The introductory Article 154 of the Commission proposal has been deleted, as unnecessary.

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. Article 150 (previously Article 159) 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.

Article 166 of the Commission proposal, relating to procedures in a *free zone*, has been deleted and the provision integrated into Article 159 (previously Article 169).

In the common position, provisions are now made under *exit formalities* in Article 177 (previously Article 187) 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<sup>2</sup>, 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.

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<sup>2</sup> OJ 2006 No L 200, p.11



### **3.4. 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.

## **4. CONCLUSION**

The Commission fully supports the common position, which incorporates and improves upon a number of the amendments made by the European Parliament.

## Annex 1

### Correlation Table

**between the 54 European Parliament's amendments, the corresponding recitals/provisions in the Commission's proposal (COM(2005)0608) and the recitals/provisions as re-numbered in the Council's common position**

*(European Parliament's amendments rejected either by the Commission or by the Council or by both are shown in grey shading)*

No EP Amendment	No Recital/Article (Commission's proposal)	No Recital/Article (Council's common position)
1	1	1
2	new Recital 6a	Recital 8
3	Recital 8	Recital 10
4	Recital 9	Recital 11
5	Recital 36	Recital 35
6	Recital 38	Recital 39
7	2	2
8	4 (4)	4 (5)
9	4 (new 4a)	4 (6)
10	4 (new 8a)	4 (11)
11 (Comitology)	5 (1) sub-par. 2, 11 (2), 59 (c), 61, 68, 77, 81, 83, 93 (3)(a), 93 (3)(c), 95, 107, 115, 116, 117, 128, 137, 138, 141, 143 (2), 144 (2), 145, 150, 172, 174, 186, 191, 192, 193	5 (1) sub-par. 2, 11 (3) (a), 59 (c), 61 (9), 68 (3), 77 (3), 81, 83 (1) sub-par. 2, 83 (5), 95 (2) (a), (b) and (c), 107 (2) (a) and (b), 117 (1) sub-par. 3, 120 (3), 121 (2), 141, 143 (2), 145 (2), 150 (1) sub-par. 4, 150 (2) sub-par 2, 150 (3) sub-par 2, 191 sub-par. 3, 192 (2)
12	9 (2)	9 (2) (phrase deleted)
13 (Comitology)	10 (3), 16, 17, 21, 27, 35, 41, 42 (3), 42 (4), 59 (b), 60, 63, 64, 67, 93 (3)(b), 99, 109, 113 (1), 125, 143 (1), 143 (3), 152, 153, 157, 174, 186, 194 (a), 194 (c)	1 (3) sub-par 2 &3, 10 (2), 16, 17 (5), 21 (7) c), 27 (3), 41, 42 (3) & (4), 59 b), 60 (2) sub-par 2), 63 sub-par 2, 64 (1) sub-par 2, 67 (3), 93 (3), 99 (2), 107 (2) b), 109, 113 (1) sub-par 2, 114 (2)&(3), 123, 143 (1) sub-par 4, & (3) sub-par 2, 152 (2), 153 (3) sub-par 2, 157 (2) sub-par 2, 174 sub-par 1, 186 (1), 194 (1)&(2)
14	11 (new 2a and 2b)	11
15	13	Article deleted

16	14 (2)	13 (2)
17	14 (3)	13 (3)(a)
18	15 (d) &(e)	14 (d)&(e)
20	16 (e)	15 (e)
21	22 (1)	21 (1)
22	27 (2), sub-par 1	25 (2), sub-par 1
23	32 (1)	30 (1), sub-par 1
24	32 (2)	30 (1), sub-par. 2
25	32 (2) (a)	30 (1), sub-par 2 (a)
26	35 (new 2a and 2b)	1 (3) [+ 116, 183 (2) (c)]
27	38 (not in EN)	35 (not in EN)
28	42 (new 5a)	39
29	56 (new 1a)	51 (paragraph deleted)
30	64 (1) (c)	59 (1) (c)
31	67 (2)	62 (2)
32	94 (new 4a)	88 (4)
33	101 (4) (c)	95 (4)
34/35	114 (1)	112 (1)
36	115 (2)	111 (2)
37	125	109 (1)
38	141	Article deleted
39	152 (1) (b)	144 (1) (b)
40	153 (2) (new f a)	145(2)
41	152 (3) (new f a)	144 (3)
42	155 (1) (c)	146 (1) (c)
43	157 (2) (b)	148 (1) (b)
44	158 (2)	149 (2) (phrase deleted)
45	160 (3)	151 (3)
46	172 (1), sub-par 2	162 (1) (a)

47	178 (1) (b)	168 (1) (b)
48	187 (2), sub-par 2	177 (1)
49	190 (1)	180 (1)
50	190 (2), sub-par 2 (new 2a)	180 (3)
51	190 (new 3a)	180
52	193	Article deleted
53	194 (a)	183 (1)
54	195 (new 1a)	Article deleted
55	196 (new 2a)	184 (4)
56	198	186

## **Annex 2**

### **JOINT STATEMENT BY THE COUNCIL AND COMMISSION ON EVALUATION OF THE FUNCTIONING OF THE CENTRALISED CLEARANCE SYSTEM**

The Council and the Commission agree that three years after the entry into force of the Modernized Customs Code the Commission should evaluate the functioning of the centralised clearance system.

On the basis of contributions from Member State, the Commission services will submit a report to the Council and the European Parliament and the Commission will, if appropriate, make any necessary proposal for legislative changes.