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REPORT

on the proposal for a European Parliament and Council regulation amending Council Regulation (EEC) No 2913/92 establishing the Community Customs Code
(COM(2003) 452 – C5-0345/2003 – 2003/0167(COD))

Committee on Legal Affairs and the Internal Market

Rapporteur: Janelly Fourtou

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 24 July 2003 the Commission submitted to Parliament, pursuant to Articles 251(2) and 26, 95, 133 and 135 of the EC Treaty, the proposal for a European Parliament and Council regulation amending Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (COM(2003) 452 – 2003/0167(COD)).

At the sitting of 1 September 2003 the President of Parliament announced that he had referred the proposal to the Committee on Legal Affairs and the Internal Market as the committee responsible and the Committee on Budgets, Committee on Budgetary Control, the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the Committee on Industry, External Trade, Research and Energy for its opinion (C5-0345/2003).

The Committee on Legal Affairs and the Internal Market appointed Janelly Fourtou rapporteur at its meeting of 11 September 2003.

The committee considered the Commission proposal and draft report at its meetings of 2 December 2003, 26 January 2004, 23 February 2004, 17 March 2004 and 6 April 2004.

At the latter/last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Giuseppe Gargani (chairman), Willi Rothley, Ioannis Koukiadis and Bill Miller (vice-chairmen), Janelly Fourtou (rapporteur), Uma Aaltonen, Ward Beysen, Bert Doorn, Giovanni Claudio Fava (for Maria Berger, pursuant to Rule 153(2)), Marie-Françoise Garaud, Evelyne Gebhardt, Fiorella Ghilardotti, Malcolm Harbour, Kurt Lechner, Klaus-Heiner Lehne, Sir Neil MacCormick, Manuel Medina Ortega, Angelika Niebler (for Lord Inglewood), Marcelino Oreja Arburúa (for Marianne L.P. Thyssen), Elena Ornella Paciotti (for Carlos Candal), Anne-Marie Schaffner, Francesco Enrico Speroni (for Alexandre Varaut), Ian Twinn (for Rainer Wieland), Diana Wallis, Stefano Zappalà and François Zimeray.

The opinion of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs is attached. The Committee on Budgets decided on 11 September 2003 not to deliver an opinion. The Committee on Budgetary Control decided on 24 September 2003 not to deliver an opinion. The Committee on Industry, External Trade, Research and Energy decided on 2 October 2003 not to deliver an opinion.

The report was tabled on 7 April 2004.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a European Parliament and Council regulation amending Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (COM(2003) 452 – C5-0345/2003 – 2003/0167(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2003) 452)¹,
 - having regard to Articles 251(2) and 26, 95, 133 and 135 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0345/2003),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the Internal Market and the opinion of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0255/2004),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1
RECITAL 2

(2) It should be specified under which conditions information provided by economic operators to customs may be disclosed to other authorities in the same Member State, other Member States, to the Commission, or to authorities in third countries.

deleted

Justification

Text integrated with related new text recommended by Parliament in new Recital (4a).

¹ Not yet published in OJ.

Amendment 2
RECITAL 3

(3) It is necessary to establish an *equal* level of customs controls *in* the Community and to ensure a harmonised application of customs controls by the Member States. *It should be reminded that Member States* are mainly responsible for these controls. Such controls should be based on commonly agreed standards and risk criteria for the selection of goods and economic operators in order to minimise the occurrence of risks to the Community and its citizens. Member States and the Commission should therefore introduce an EU risk management framework to support a common approach so that priorities are set effectively and resources are allocated efficiently with the aim of maintaining a proper balance between customs controls and the facilitation of legitimate trade. Such a framework should also provide for common criteria and harmonised requirements for authorised operators and ensure a harmonised application of such criteria and requirements. The establishment of a risk management framework common to all Member States should not prevent them from controlling goods by spot-checks.

(3) It is necessary to establish an *equivalent* level of *protection in* customs controls *on goods brought into* the Community. *In order to achieve this objective, it is necessary to establish an equivalent level of customs control in the Community* and to ensure a harmonised application of customs controls by the Member States, *which* are mainly responsible for *the application of* these controls. Such controls should be based on commonly agreed standards and risk criteria for the selection of goods and economic operators in order to minimise the occurrence of risks to the Community and its citizens *and to the Community's trading partners*. Member States and the Commission should therefore introduce an EU risk management framework to support a common approach so that priorities are set effectively and resources are allocated efficiently with the aim of maintaining a proper balance between customs controls and the facilitation of legitimate trade. Such a framework should also provide for common criteria and harmonised requirements for authorised *economic* operators and ensure a harmonised application of such criteria and requirements. The establishment of a risk management framework common to all Member States should not prevent them from controlling goods by spot-checks.

Amendment 3
RECITAL 4

(4) Risk-related information on import and export goods should be shared between the competent administrations of the Member States and the Commission. *The information to be exchanged will be general control information related to goods rather than operator or consignment specific information.* To this end, a common, secure system should be

(4) Risk-related information on import and export goods should be shared between the competent administrations of the Member States and the Commission. To this end, a common, secure system should be set up, enabling the competent authorities to access, transfer and exchange this information in a timely and effective manner. Such information may also be

set up, enabling the competent authorities to access, transfer and exchange this information in a timely and effective manner. Such information may also be shared with third countries where an international agreement provides for this.

shared with third countries where an international agreement provides for this.

Justification

Deleted sentence not in line with risk analysis needs.

Amendment 4
RECITAL 4 A (NEW)

(4 a) It should be specified under which conditions information provided by economic operators to customs may be disclosed to other authorities in the same Member State, other Member States, to the Commission, or to authorities in third countries. For this purpose, it must be clearly indicated that Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995, on the protection of individuals with regard to the processing of personal data and on the free movement of such data¹, and Regulation (EC)45/2001 of the European Parliament and of the Council of 18th December 2000, on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data², applies to the processing of personal data by the competent authorities as well as by any other authority receiving data pursuant to the Community Customs Code.

¹ OJ L 281, 23.11.1995, p. 31.

² OJ L 8, 12.1.2001, p.1

Justification

First sentence is original Recital (2) . New text recommended by Parliament, justified thus- The Commission writes in the explanatory memorandum that "the provisions on data protection in force at Community and national level will, of course, apply." The relevant European data protection Directive and Regulation should therefore be mentioned in a recital following the example of the proposal amending the Convention implementing the Schengen

Agreement of 14 June 1985 on the gradual abolition of checks at common borders as regards access to the Schengen Information System by the services in the Member States responsible for issuing registration certificates for vehicles (COM (2003) 510).

Amendment 5
RECITAL 5

(5) In order to allow for appropriate risk-based controls, it is necessary to establish the requirement of pre-arrival or pre-departure information for all goods entering into or leaving the Community customs territory, except for goods passing through by air or ship without a stop within this territory. Such information should be available before the goods enter into or leave the Community customs territory. Different timeframes and rules can be set according to types of goods, types of transport **and types of economic operator**. This requirement must also be introduced with regard to goods brought into or out of a free zone in order to avoid security loopholes.

(5) In order to allow for appropriate risk-based controls, it is necessary to establish the requirement of pre-arrival or pre-departure information for all goods entering into or leaving the Community customs territory, except for goods passing through by air or ship without a stop within this territory. Such information, **which is normally supplied by international transporters**, should be available before the goods enter into or leave the Community customs territory. Different timeframes and rules can be set according to types of goods **and types of transport, for authorised economic operators, or where an international agreement provides for special security arrangements**. This requirement must also be introduced with regard to goods brought into or out of a free zone in order to avoid security loopholes. **Controls relating to security matters should normally be carried out at the customs offices of entry at the entry points to the Community, whereas those for duty collection or similar purposes should normally be carried out at inland offices of import.**

Justification

International transport operators necessarily have the information required for risk analysis of the goods they transport. They also now use information technology in their business for accepting declarations and exchanging data.

Knowledge of the modernisation tools needed to reinforce security and to transmit the required information reliably and rapidly will therefore allow them to fulfil risk analysis requirements effectively and efficiently.

It is clear that security controls intended to protect the European Union are only relevant to import customs.

Amendment 6
ARTICLE 1, POINT – 1 (new)
Article 4, points 4a, 4b, 4c, 4d (new) (Regulation (EEC) No 2913/92)

-1. In Article 4 the following points shall be added:

“(4a) 'customs office of entry' means the customs office to which goods brought into the customs territory of the Community must be conveyed without delay and at which they will be subject to appropriate risk-based entry control;

(4b) 'customs office of import' means the customs office where the formalities for assigning goods brought into the customs territory of the Community to a customs-approved treatment or use are to be carried out;

(4c) 'customs office of export' means the customs office where the formalities for assigning goods leaving the customs territory of the Community to a customs approved treatment or use are to be completed;

(4d) 'customs office of exit' means the customs office to which goods must be presented before they leave the customs territory of the Community and at which they will be subject to customs controls relating to the application of exit formalities;

Justification

In the context of customs harmonisation, it is essential not to allow proliferating administrative borders to impede customs administration interoperability, when different structures, responsibilities and cultures already make cooperation difficult.

Thus on import, security controls should operate only at the point of entry onto European Community territory. The formalities and controls in connection with customs clearance can be carried out at points of entry into the European Union and also at internal customs offices.

In the light of the provisions of Article 161(5) of the Community Customs Code, control of customs clearance is the sole responsibility of the exporter's customs office.

Amendment 7
ARTICLE 1, POINT (1)
Article 4, number 14 (Regulation (EEC) No 2913/92)

1. Article 4 No 14 is replaced by the following:
"(14) 'Customs controls' mean specific acts performed by the customs authorities *or co-ordinated with them*, in order to ensure the correct application of customs *legislation* and other legislation *relating to the import or export of goods*, such as examining goods, verifying the existence and authenticity of documents, examining the accounts of undertakings and other records, inspecting means of transport, inspecting luggage and other goods carried by or on persons and carrying out official inquiries and other similar acts *with a view to ensuring that customs rules and, where appropriate, other provisions applicable to goods subject to customs supervision are observed*.

1. Article 4 No 14 is replaced by the following:
"(14) 'Customs controls' mean specific acts performed by the customs authorities in order to ensure the correct application of customs *rules* and other legislation *governing the entry, exit, transit, transfer and end-use of goods moved between the customs territory of the Community and third countries and the presence of goods that do not have Community status*; such *acts may include* examining goods, verifying *declaration data and* the existence and authenticity of *electronic or written* documents, examining the accounts of undertakings and other records, inspecting means of transport, inspecting luggage and other goods carried by or on persons and carrying out official inquiries and other similar acts.

Justification

The words 'import and export of goods' replaced with 'entry, exit, transit, transfer and end-use of goods moved between the customs territory of the Community and third countries and the presence of goods that do not have Community status', in line with other Regulations.

Amendment 8
ARTICLE 1, POINT 2
Article 4, points 25, 26 and 27 (Regulation (EEC) No 2913/92)

“(25) ‘Risk’ means: the likelihood of an event that may occur *in* the international movement *and trade* of goods *threatening the Community’s security and safety, posing a risk to public health, environment and consumers, including prevention of the correct application of Community or national measures concerning the goods entering into or exiting from the Community*.

“(25) ‘Risk’ means the likelihood of an event that may occur, *with regard to* the international movement of goods *moved between the customs territory of the Community and third countries and the presence of goods that do not have Community status, which*
- *prevents the correct application of Community or national measures, or*
- *compromises the financial interests of the Community and its Member States; or*
- *poses a threat to the Community's security and safety, to public health, to the*

(26) 'Risk management' means: the systematic identification and implementation of all measures necessary for limiting exposure of risks. This includes activities such as collecting data and information, analysing and assessing risk, prescribing and taking action and regular monitoring and review of the process and its outcomes, based on international, Community and national sources and strategies.

(27) 'Authorised economic operator means an actor in the trade supply chain authorised by the customs authorities who meets the criteria specified by the procedure of the Committee, including having an appropriate record of compliance with customs requirements, a satisfactory system of managing his commercial records and appropriate physical security measures. In this way, the authorised operator offers every guarantee necessary for the proper and secure conduct of operations and can thus benefit from certain simplifications, provided specific conditions are met. The status of the authorised economic operator will be granted for a certain period and will be periodically reviewed.'

environment or to consumers.

(26) 'Risk management' means: the systematic identification and implementation of all measures necessary for limiting exposure of risks. This includes activities such as collecting data and information, analysing and assessing risk, prescribing and taking action and regular monitoring and review of the process and its outcomes, based on international, Community and national sources and strategies.

Amendment 9
ARTICLE 1, POINT 2 A (new)
Section IA and Article 5 a (new) (Regulation (EEC) No 2913/92)

2a. A new Section 1A and new Article 5a shall be inserted;

"Section 1 A

Authorised Economic Operators

Article 5a

1. Customs authorities, if necessary following consultation with other competent authorities, shall grant, subject

to the criteria provided for in paragraph 2, the status of 'authorised economic operator' to any economic operator established in the customs territory of the Community who makes application to benefit from facilitations with regard to safety and security-related customs controls and from facilitations provided for elsewhere in the customs rules.

Except where, in accordance with the customs rules, the facilitation is limited to one or more Member States, the status of 'authorised economic operator' shall, subject to the conditions laid down in paragraph 2, be recognised by the customs administrations in all Member States.

2. The criteria for the accreditation of authorised economic operators shall include:

- an appropriate record of compliance with customs requirements;*
- a satisfactory system of managing commercial and, where appropriate, commercial records, which allows appropriate customs controls; and*
- appropriate security and safety standards.*

The committee procedure shall be used to determine

- the rules for the granting of authorisations and the facilitations to be accorded under paragraph 1;*
- the rules laying down which customs authority is competent for the granting of an authorisation;*
- the rules for consultation with and provision of information to other customs authorities;*
- the rules under which an authorisation for facilitations with regard to safety and security-related customs controls may be suspended, in exceptional circumstances, by a customs authority;*
- the conditions under which the status of 'authorised economic operator' may be withdrawn; and*
- the conditions under which the*

requirement of being established in the Community may be waived for specific categories of authorised economic operators, taking into account, in particular, international agreements.

Justification

General provision introduced for authorised traders in line with policy under the authorised economic operator programme, in order to allow facilitations within this new legislation, both with regard to pre-arrival and pre-departure declarations and with regard to all other types of facilitation.

Amendment 10
ARTICLE 1, POINT 3
Article 13 (Regulation (EEC) No 2913/92)

3. ***In Article 13 the following subparagraph shall be added:***

3. Article 13 ***shall be replaced by the following:***

"Article 13

1. The customs authorities may, in accordance with the conditions laid down by the provisions in force, carry out all of the controls they deem necessary to ensure that customs rules and other legislation governing the international movement of goods moved between the customs territory of the Community and third countries and the presence of goods that do not have Community status are correctly applied. Customs controls for the purpose of verifying the correct application of Community legislation may be carried out in a third country where an international agreement authorises this.

“Customs controls ***should*** be based on risk analysis, with the purpose of identifying and quantifying the risks and developing the necessary measures to assess the risks, on the basis of criteria developed at national ***and, where available***, Community ***or*** international level. ***A*** common risk

2. Customs controls, ***other than spot-checks***, ***shall*** be based on risk analysis ***using automated data processing techniques***, with the purpose of identifying and quantifying the risks and developing the necessary measures to assess the risks, on the basis of criteria developed at national, Community

management framework *shall be determined according to the Committee procedure, laying down the organisational framework and the procedure for establishing* common criteria and priority control areas. Member States *and* the Commission shall *set up co-ordinated and inter-linked automated support systems* for the implementation of risk management. *Customs controls for the purpose of the correct application of Community legislation may be carried out in a third country where an international agreement provides for this."*

and, where available, international level.

The implementing regulation shall determine a common risk management framework, common criteria and priority control areas. Member States, in cooperation with the Commission, shall *establish an electronic system* for the implementation of risk management.

3. Where controls are performed by authorities other than the customs authorities, such controls shall be performed in close coordination with the customs authorities, wherever possible at the same time and place.

4. In the framework of the controls provided for in this Article, customs and other competent authorities, such as veterinary and police authorities, may communicate data received, in the context of the international movement of goods moved between the customs territory of the Community and third countries and the presence of goods that do not have Community status, between themselves, between the customs authorities of Member States, and the Commission where this is required for the purposes of the correct application of the legislation concerned, in order to protect the security of citizens and businesses, or to detect or prevent irregularities. Communication of confidential data to the customs and other administrations (e.g. security agencies) of third countries is only admitted in the framework of an international agreement, provided that the data protection provisions in force, in particular Directive 95/46/EC¹ and Regulation (EC) No 45/2001², are respected."

¹ OJ L 281, 23.11.1995, p. 31.

² OJ L 8, 12.1.2001, p. 1.

Amendment 11
ARTICLE 1, POINT (4)
Article 15 (Regulation (EEC) No 2913/92)

4. Article 15 shall be replaced by the following:

“Article 15

1. All information which is by nature confidential or which is provided on a confidential basis shall be covered by the obligation of professional secrecy. It shall not be disclosed by the competent authorities without the express permission of the person or authority providing it. The communication of information shall, however, be permitted where the competent authorities are obliged *or authorised* to do so pursuant to the provisions in force, particularly *in respect of data protection, or* in connection with legal proceedings.

2. Customs, fiscal and other competent authorities may communicate data received in the context of importation or exportation of goods between themselves, between Member States, and the Commission where this is required for the purposes of the procedure concerned, in order to protect the security of citizens and businesses, or to detect or prevent irregularities. Communication of confidential data to administrations of third countries is only admitted in the framework of an international agreement.”

4. Article 15 shall be replaced by the following:

“Article 15

1. All information which is by nature confidential or which is provided on a confidential basis shall be covered by the obligation of professional secrecy. It shall not be disclosed by the competent authorities without the express permission of the person or authority providing it. The communication of information shall, however, be permitted where the competent authorities are obliged to do so pursuant to the provisions in force, particularly in connection with legal proceedings. *The disclosure or communication of information shall take place in full respect of data protection provisions in force, in particular Directive 95/46/EC¹ and Regulation (EC)No 45/2001².*

¹ OJ L 281, 23.11.1995, p.31.

² OJ L 82, 22.03.1997, p.7

Justification

The amendment seeks to increase the legal clarity of the text. The Commission proposal does

not clearly distinguish between 'obligation' and 'authorisation'.

Para 2 now included in Article 13

On 18 November 2003, the European Commission initialled an agreement with the United States to include transport security cooperation within the scope of the EU/US customs agreement. So far no concrete sets of data have been discussed yet. This will be done by a working group established by the agreement. Possibly the only personal data concern the name and address of the consignor, consignee and carrier. In this context it should be made clear that the data protection provisions in force apply for this exchange as well.

Amendment 12

ARTICLE 1, POINT (4 A) (new)

Article 16 (Regulation (EEC) No 2913/92)

4a. In Article 16 the words "control by the customs authorities" shall be replaced with the words "customs controls".

Justification

Amendment made for consistency with definition in Article 4(14) .

Amendment 13

ARTICLE 1, POINT 5

Article 36a (Regulation (EEC) No 2913/92)

“Article 36a

1. ***Before goods are*** brought into the customs territory of the Community, a summary declaration ***must be lodged at the customs office of entry. The lodging of a notification and access to the summary declaration data in the operator's electronic system may replace the lodging of a summary declaration, notwithstanding the legal obligation of the declarant to lodge a customs declaration. Where another customs office than the customs office of entry receives such a declaration, it communicates it without delay and electronically to the customs office of entry.***

2. ***Where a customs declaration is required following the entry of the goods into the customs territory of the Community, the electronic customs declaration replaces the summary declaration, provided it is lodged***

“Article 36a

1. ***Goods*** brought into the customs territory of the Community ***shall be covered by a summary declaration, with the exception of goods carried on means of transport only passing through the territorial waters or the airspace of the customs territory without a stop within this territory.***

2. ***The summary declaration shall be lodged at the customs office of entry.***

Customs authorities may allow the lodging of the summary declaration at

within the timeframe stipulated for the summary declaration. Where an incomplete or simplified declaration is used, it must contain the necessary data.

another customs office, provided that this office immediately communicates or makes available electronically, the necessary particulars to the customs office of entry.

Customs authorities may allow that the lodging of a summary declaration be replaced by the lodging of a notification and access to the summary declaration data in the operator's electronic system.

3. The normal deadline for lodging a summary declaration is 24 hours before the goods are presented to customs, except where transport time is shorter or where an international agreement provides for a different timeframe. The procedure of the Committee shall be used to determine
- a common data set and format of the summary declaration, using wherever possible international standards,
- special deadlines for certain types of traffic and economic operators, and
- the conditions under which such requirement may be waived, notably with regard to authorised economic operators.

3. The summary declaration shall be lodged before the goods are brought into the customs territory of the Community.

4. The goods cannot be released before the summary declaration or the customs declaration has been presented.

4. The committee procedure shall be used to establish
- the time limit by which the summary declaration shall be lodged before the goods are brought into the customs territory of the Community.
- the rules for exceptions from and variations to the time limit referred to above; and
- the conditions under which the requirement for a summary declaration may be waived or adapted,
according to special circumstances and applying to certain types of goods traffic, modes of transport or economic operators or where international agreements provide for special security arrangements.

Justification

Article 36a redrafted for clarity and consistency with other provisions. The time limits for the

lodging of a declaration will now be defined in accordance with the committee procedure, given the complexity of their application to various modes of transport, types of traffic etc. The provisions of former paragraph (2) now contained within proposed Article 36c. The provisions of the first indent to former paragraph (3) now contained within proposed Article 36b. Former paragraph (4) removed as already provided for under Article 47 CC.

Amendment 14
ARTICLE 1, POINT 5
Article 36b (Regulation (EEC) No 2913/92)

Article 36b

Article 36b

1. The summary declaration shall be made *in electronic form according to the specification determined under the procedure of the Committee*. Commercial, port or transport information may be used, provided it contains the *required data*. Customs authorities may accept paper-based summary declarations in exceptional circumstances *and only within a period of two years after the entry into force of the present regulation*.

2. The summary declaration shall be lodged by

- (a)** *the person who brings the goods into the customs territory of the Community or by any person who assumes responsibility for carriage of the goods following such entry; or*
- (b)** *the person in whose name the persons referred to in subparagraph (a) act; or*
- (c)** *a representative within the meaning*

1. *The committee procedure shall be used to establish a common data set and format of the summary declaration, containing the particulars necessary for risk analysis and the proper application of customs controls, primarily for security and safety purposes, using, where appropriate, international standards and commercial practices.*

2. The summary declaration shall be made *using a data processing technique*. Commercial, port or transport information may be used, provided it contains the *necessary particulars*. Customs authorities may accept paper-based summary declarations in exceptional circumstances, *provided that they apply the same level of risk management as that applied to summary declarations made using a data processing technique*.

3. The summary declaration shall be lodged by *the person who brings the goods, or who assumes responsibility for the carriage of the goods, into the customs territory of the Community*.

of Article 5 of one of the persons referred to in subparagraphs (a) and (b).”

4. Notwithstanding the obligations of the person described in paragraph (3), the summary declaration may be lodged instead by

(a) the person in whose name the persons referred to in paragraph 3 act; or

(b) any person who is able to present the goods in question or to have them presented to the competent customs authority; or

(c) a representative of one of the persons referred to in paragraph 3 or points 4(a) or (b).

5. The person referred to in paragraph (3) and (4) shall, at his request, be authorised to amend one or more particulars of the summary declaration after it has been lodged. However, no amendment shall be possible after the customs authorities

(a) have informed the person who lodged the summary declaration that they intend to examine the goods; or,

(b) have established that the particulars in questions are incorrect; or,

(c) have allowed the removal of the goods.

Justification

Article 36b redrafted for clarity.

Former Article 36b(1); - time scale withdrawn, but requirement included in new 36b(2) to subject data to the same levels of risk analysis as would automatically be performed on electronic data by customs systems included.

Former 36b(2) redrafted as 36b (3), (4) and (5) to clearly define the person primarily responsible for the summary declaration.

New 36b(5) consistent with existing rules for customs declarations.

Amendment 15 ARTICLE 1, POINT (5)

" Article 36 c

1. The customs office of entry may waive the lodging of a summary declaration in respect of goods for which, prior to the expiry of the time limit referred to in Article 36a (3) or (4), a customs declaration is lodged. In this case, the customs declaration shall contain at least the necessary data for the summary declaration and, until such time as the former is accepted in accordance with Article 63, it shall have the status of a summary declaration.

2. Customs authorities may allow the lodging of the customs declaration at a customs office of import which is not the customs office of entry, provided that this office immediately communicates or makes available electronically, the necessary particulars to the customs office of entry.

3. Where the customs declaration is lodged other than by use of data processing technique, the customs authorities shall subject the data to the same level of risk management applied to electronic summary declarations."

Justification

New Article 36c proposed for clarity regarding the replacement of a summary declaration by the lodging of the customs declaration. This provision, Article 36c(1), is now in alignment with present Article 45 CC, as a waiver.

36c.(2) provides for where the customs declaration is made at an inland office and for the transfer of data between those offices, in step with the future roles of inland and border offices set out in the Commission's communication on a simple and paperless environment for customs and trade. [OJ C 305 , 16/12/2003 P. 0001 – 0002].

36c.(3) Requirement in former 36a(2) for customs declaration to be 'electronic' has been removed as unrealistic and impracticable, as change in regulation will pre-date full electronic interface with traders. Provision for risk management added but requirement included to subject data to the same levels of risk analysis as would automatically be performed on electronic data by customs systems included

Amendment 16

ARTICLE 1, POINT (5 A) (new)
Articles 37 (1) and 38(3) (Regulation (EEC) No 2913/92)

5 a. In Articles 37(1) and 38 (3) the words "control by the customs authority" shall be replaced with the words "customs controls".

Justification

Amendment made for consistency with definition in Article 4(14) .

Amendment 17
ARTICLE 1, POINT (6)
Chapter I, Title III (Regulation (EEC) No 2913/92)

6. Title III of Chapter 3 shall be changed to "Unloading of goods presented to customs". *deleted*

Justification

Out of logical order. This chapter heading follows Article 42 CC.

Amendment 18
ARTICLE 1, POINT 6 A (new)
Article 38, paragraph 5 (Regulation (EEC) No 2913/92)

6 a. Article 38 (5) shall be replaced by the following:

"5. Paragraphs 1 to 4 and Articles 36a to 36c and 39 to 53 shall not apply to goods which have temporarily left the customs territory of the Community while moving between two points in that territory by sea or air, provided that the carriage has been effected by a direct route and by regular air or shipping service without a stop outside Community customs territory."

Justification

Reference to proposed new Articles relating to summary declarations necessary to maintain exemption of regular services from requirement for summary declaration. Existing 2nd

subparagraph of Article 38(5) deleted as unnecessary and duplicative; regular services cannot, by definition, call at third country (air)ports or free zones.

Amendment 19
ARTICLE 1, POINT (7)
Article 40 (Regulation (EEC) No 2913/92)

7. Article 40 shall be replaced by the following:

“Article 40

Goods entering into the customs territory of the Community shall be presented to customs by the person who brought them into that territory or, if appropriate, by the person who assumes responsibility for carriage of the goods following such entry, with the exception of means of transport only passing through the territorial waters or the airspace of the customs territory without a stop within this territory. ***Authorised economic operators can be relieved from the requirement to present goods to customs, provided they have lodged a summary declaration or a customs declaration in accordance with Articles 36a and 36b.***”

7. Article 40 shall be replaced by the following:

“Article 40

Goods entering into the customs territory of the Community shall be presented to customs by the person who brought them into that territory or, if appropriate, by the person who assumes responsibility for carriage of the goods following such entry, with the exception of means of transport only passing through the territorial waters or the airspace of the customs territory without a stop within this territory. ***The person presenting the goods shall make a reference to the summary declaration or customs declaration previously lodged in respect of the goods.***”

Justification

Final sentence of former proposal deleted as non presentation by authorised economic operators is already provided for within the customs rules for local clearance procedure. New requirement for presentation to include reference to prior summary declaration, for operational practicality.

Amendment 20
ARTICLE 1, POINT (7 A) (new)
Chapter 3, Title III (Regulation (EEC) No 2913/92)

7a. Title III, Chapter 3 shall be re-titled "Unloading of goods presented to customs"

Justification

Change of heading previously out of logical order, preceding Article 40. This chapter

heading follows Article 42 CC.

Amendment 21
ARTICLE 1, POINT (9)
Article 170, paragraph 2, point (d) (Regulation (EEC) No 2913/92)

(d) they enter into a free zone or free warehouse directly from outside the Community customs territory, ***except where an operator has been authorised not to present the goods and has lodged a summary declaration or a customs declaration in accordance with Articles 36a and 36b.***”

(d) they enter into a free zone or free warehouse directly from outside the Community customs territory. ”

Justification

The last sentence has been deleted in order to align it with Article 40 CC .

Amendment 22
ARTICLE 1, POINT (11)
Article 181 (Regulation (EEC) No 2913/92)

11. Article 181 shall be replaced by the following:

“Article 181

The customs authorities shall satisfy themselves that the rules governing exportation ***or*** re-exportation as well as the provisions of Title V are respected where goods are ***exported or re-exported*** from a free zone or free warehouse.”

11. Article 181 shall be replaced by the following:

“Article 181

The customs authorities shall satisfy themselves that the rules governing exportation, ***outward processing***, re-exportation, ***suspensive procedures or the internal transit procedure***, as well as the provisions of Title V, are respected where goods are ***to leave the customs territory of the Community*** from a free zone or free warehouse.”

Justification

Amendments made to ensure application to all relevant customs approved treatments or uses and for consistency with other proposed changes.

Amendment 23
ARTICLE 1, POINT 13
Article 182a (Regulation (EEC) No 2913/92)

“Article 182a

1. Before goods are brought out of the customs territory of the Community, a summary declaration must be lodged at the customs office of export 24 hours before the goods are presented at the customs office of export, except where an international agreement provides for a different timeframe. The lodging of a notification and access to the summary declaration data on the economic operator's electronic system may replace the lodging of a summary declaration, notwithstanding the legal obligation of the declarant to lodge a customs declaration.

2. Where a customs declaration is required for the export or re-export of goods, the electronic customs declaration replaces the summary declaration, provided it is lodged within the timeframe stipulated for the summary declaration. Where an incomplete or simplified declaration is used, it must contain the necessary data.

3. The procedure of the Committee shall be used to determine

- a common data set and format of the summary declaration, using wherever possible international standards,*
- special deadlines for certain types of traffic and authorised economic operators, and*
- the conditions under which it must be lodged, and the conditions under which such requirement may be waived, notably with regard to authorised economic operators.*

"Article 182a

1. Goods leaving the customs territory of the Community, with the exception of goods carried on means of transport only passing through the territorial waters or the airspace of the customs territory without a stop within this territory, shall be covered either by a customs declaration or, where a customs declaration is not required, a summary declaration.

2. The committee procedure shall be used to establish

- the time limit by which the customs declaration or a summary declaration shall be lodged at the customs office of export before the goods are brought out of the customs territory of the Community;*
- the rules for exceptions from and variations to the above-mentioned time limit and the conditions under which the requirement for a summary declaration may be waived; and*
- the cases in which and the conditions under which goods leaving the customs territory of the Community are not subject to either a customs declaration or a summary declaration,*
according to special circumstances and

applying to certain types of goods traffic, modes of transport or authorised economic operators or where international agreements provide for special security arrangements.

Justification

Articles 182 a and 182 b re-drafted as Articles 182a to 182d to establish a requirement for customs declarations for goods leaving the Community under a customs approved treatment or use (export, re-export, outward processing, transit) to be lodged well prior to shipment, rather than to introduce an additional, electronic summary declaration, seen as an unnecessary imposition on traders, notably SMEs. Summary declarations will be required only in circumstances where a customs declaration is not required e.g. exports from free-zones. This places the responsibility for the pre-departure declaration upon the consignor/exporter, which is not only in line with the policy for export controls primarily to take place at the place where the exporter is established, but also with recent WCO documents on the responsibilities of parties in an end-to-end international supply chain. Also, unlike with imports, it is simply unrealistic primarily to require the carrier to make such a declaration, other than in circumstances where he does so on behalf of the exporter.

182a (1) sets out the requirement for a pre-departure declaration in this context. The time limits for the lodging of a declaration will now be defined in accordance with the committee procedure, as with imports, to give flexibility to their application to various modes of transport, types of traffic etc. Second sentence of former proposed CC Article 182a now to be Article 182c(3) ; former Article 182a(2) withdrawn and overtaken by new Article 182b and 182c ; 1st indent to former Article 182a(3) now to be Article 182d(1) .

Amendment 24
ARTICLE 1, POINT 13
Article 182b (Regulation (EEC) No 2913/92)

- 1. The summary declaration shall be made in electronic form according to the specifications determined under the procedure of the Committee. Customs authorities may accept paper based summary declarations in exceptional circumstances and only within a period of two years after the entry into force of the present regulation. Commercial port or transport data including access to the operator's electronic system may be used provided it contains the required data.*** ***deleted***
- 2. Where no customs declaration is made, a summary declaration shall be lodged by:***

(a) the person who brings the goods out of the customs territory of the Community or by any person who assumes responsibility for carriage of the goods; or

(b) the person in whose name the persons referred to in subparagraph (a) act; or

(c) a representative of one of the persons referred to in subparagraphs (a) and (b).”

Justification

Security controls on exports do not have to be systematic.

They only concern:

- exports to countries which have imposed an obligation on the exporter of providing security information,

- European obligations in relation to air freight exports (Council Regulation No 2320/2002)

Security control measures therefore require exporters to adapt their procedures to each individual case, and they cannot be standardised in the Community Customs Code.

Amendment 25

ARTICLE 1, POINT 10

Article 176(2) (Regulation (EEC) No 2913/92)

“2. Where goods are transhipped within a free zone, the documents relating to the operation shall be kept at the disposal of the customs authorities. The short-term storage of goods in connection with such transhipment shall be considered to be an integral part of the operation.

For goods brought into a free zone directly from outside the Community customs territory or out of a free zone directly leaving the Community customs territory, a summary declaration must be lodged in accordance with Articles 36a *and 36b or 182a and 182b.*”

“2. Where goods are transhipped within a free zone, the documents relating to the operation shall be kept at the disposal of the customs authorities. The short-term storage of goods in connection with such transhipment shall be considered to be an integral part of the operation.

For goods brought into a free zone directly from outside the Community customs territory or out of a free zone directly leaving the Community customs territory, a summary declaration must be lodged in accordance with Articles 36a *to 36c.*”

Justification

Clarification

Amendment 26
ARTICLE 2

Article 2

This Regulation shall enter into force on the seventh day following that of its publication in the Official Journal of the European Union.

Electronic declaration and automated support systems for the implementation of risk management, as stipulated in Articles 13, 36a, 36b, 182a and 182b, as well as implementing provisions to the present regulation must be in place two years after the entry into force of this Regulation.

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

Article 2

This Regulation shall enter into force on the seventh day following that of its publication in the Official Journal of the European Union.

Article 5a(2), Article 13(2) 2nd subparagraph, Article 36a(4), Article 36b(1), Article 182a(2) and Article 182d(1) shall be applicable at the date of entry into force of this Regulation.

All other provisions shall be applicable once the implementing provisions on the basis of the above Articles have entered into force. However, electronic declaration and automated systems for the implementation of risk management and for the electronic exchange of data between customs offices of entry, import, export and exit, as stipulated in Articles 13, 36a, 36b, 36c, 182b, 182c and 182d, shall be in place three years after these provisions have become applicable.

Not later than two years after the application of these provisions, the Commission shall evaluate any request from Member States for a deferral of the date specified in the previous subparagraph for electronic declaration and automated systems for the implementation of risk management and for the electronic exchange of data between customs offices. The Commission shall submit a report to the Council and the Parliament and propose, where appropriate, a modification of the date specified in the second sentence of subparagraph 3.

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

Justification

Redrafted to allow for the application of certain Articles to coincide with the entry into force of the necessary implementing provisions and to allow the opportunity for reasonable delay, at the request of Member States, in the implementation of those Articles dependent upon electronic systems.

23 January 2004

**OPINION OF THE COMMITTEE ON CITIZENS' FREEDOMS AND RIGHTS,
JUSTICE AND HOME AFFAIRS**

for the Committee on Legal Affairs and the Internal Market

on the proposal for a European Parliament and Council regulation amending Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (COM(2003) 0452 – C5-0345/2003 – 2003/0167(COD))

Draftsman: Ole Sørensen

PROCEDURE

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Ole Sørensen draftsman at its meeting of 7 October 2003.

It considered the draft opinion at its meetings of 25 November 2003, 16 December 2003 and 22 January 2004.

At the last meeting it adopted the following amendments unanimously.

The following were present for the vote: Robert J.E. Evans (acting chairman), Johanna L.A. Boogerd-Quaak (vice-chairwoman), Giacomo Santini (vice-chairman), Ole Sørensen (draftsman), Christian Ulrik von Boetticher, Marco Cappato (for Mario Borghezio), Ozan Ceyhun, Carlos Coelho, Gérard M.J. Deprez, Adeline Hazan, Margot Keßler, Timothy Kirkhope, Eva Klamt, Ole Krarup, Lucio Manisco (for Giuseppe Di Lello Finuoli), Arie M. Oostlander (for Charlotte Cederschiöld), Marcelino Oreja Arburúa, Hubert Pirker, Bernd Posselt, Martine Roure, Heide Rühle, Olle Schmidt (for Bill Newton Dunn), Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco and Gianni Vattimo (for Michael Cashman).

SHORT JUSTIFICATION

I. The proposal

The amendments of the Council Regulation on the Community Customs Code seek to tighten security around goods crossing international borders. The proposed measures would:

- require traders to provide customs authorities with information on goods before they are imported into or exported from the European Union. This information would take the form of an electronic summary declaration. It would be used as a basis for selecting goods for checks even before they arrive at the border, thus enabling them to cross it more quickly when they do arrive. In the requirements it imposes, this measure is similar to the US's 24-hour rule;
- introduce a mechanism for the setting of risk-selection criteria that will apply throughout the Community;
- introduce a computerised support system to help with implementation of risk management.

II. Opinion of the draftsman

The draftsman fully acknowledges that the threats from terrorism, organised crime and dangerous goods are threats to the core values of our democratic societies. However, it should always be remembered that while combating these threats, respect for fundamental rights and freedoms of the individuals, including the right to privacy, must be ensured.

In this context your draftsman would like to stress that the individual's right to protection of personal data forms part of the fundamental rights and freedoms as set out in Directives 95/46/EC and 97/66/EC as well as in the rights protected by the European Convention on Human Rights, in particular article 8 thereof. Specific reference to these rights have therefore been made in the relevant amendments.

The draftsman believes that the protection of personal data must not be seen as a barrier to the efficient fight against terrorism or organised crime, but rather that a key element of this fight involves ensuring that we preserve the fundamental values which are the basis of our democratic societies.

AMENDMENTS

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs calls on the Committee on Legal Affairs and the Internal Market, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1

¹ Not yet published in OJ.

RECITAL 4 A (new)

(4a) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data¹ applies to the processing of personal data by the competent authorities as well as by any other authority receiving data pursuant to the Community Customs Code.

¹ *OJ L 281, 23.11.1995, p. 31.*

Justification

The Commission writes in the explanatory memorandum that "the provisions on data protection in force at Community and national level will, of course, apply." The relevant European data protection directive should therefore be mentioned in a recital following the example of the proposal amending the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders as regards access to the Schengen Information System by the services in the Member States responsible for issuing registration certificates for vehicles (COM (2003) 510).

Amendment 2

ARTICLE 1, POINT 4

Article 15, paragraph 1 (Regulation (EEC) No 2913/92)

1. All information which is by nature confidential or which is provided on a confidential basis shall be covered by the obligation of professional secrecy. It shall not be disclosed by the competent authorities without the express permission of the person or authority providing it. The communication of information shall, however, be permitted where the competent authorities are obliged ***or authorised*** to do so pursuant to the provisions in force, particularly ***in respect of data protection, or*** in connection with legal proceedings.

1. All information which is by nature confidential or which is provided on a confidential basis shall be covered by the obligation of professional secrecy. It shall not be disclosed by the competent authorities without the express permission of the person or authority providing it. The communication of information shall, however, be permitted where the competent authorities are obliged to do so pursuant to the provisions in force, particularly in connection with legal proceedings. ***The disclosure or communication of information shall take place in full respect of data protection provisions in force, in particular Directive 95/46/EC¹***

Justification

The amendment seeks to increase the legal clarity of the text. The Commission proposal does not clearly distinguish between 'obligation' and 'authorisation'.

Amendment 3

ARTICLE 1, POINT 4

Article 15, paragraph 2 (Regulation (EEC) No 2913/92)

2. Customs, fiscal and other competent authorities may communicate data received in the context of importation or exportation of goods between themselves, between Member States, and the Commission where this is required for the purposes of the procedure concerned, in order to protect the security of citizens and businesses, or to detect or prevent irregularities. Communication of confidential data to administrations of third countries is only admitted in the framework of an international agreement.

2. Customs, fiscal and other competent authorities, ***such as veterinary and police authorities***, may communicate data received in the context of importation or exportation of goods between themselves, between Member States, and the Commission where this is required for the purposes of the procedure concerned, in order to protect the security of citizens and businesses, or to detect or prevent irregularities. Communication of confidential data to ***the customs and other administrations (e.g. security agencies)*** of third countries is only admitted in the framework of an international agreement ***provided that the data protection provisions in force, in particular Directive 95/46/EC, are respected.***

Justification

For reasons of transparency and clarity the list of authorities given by the Commission in the explanatory memorandum should be included in the legal text.

On 18 November 2003, the European Commission initialled an agreement with the United States to include transport security cooperation within the scope of the EU/US customs agreement. So far no concrete sets of data have been discussed yet. This will be done by a working group established by the agreement. Possibly the only personal data concern the name and address of the consignor, consignee and carrier. In this context it should be made clear that the data protection provisions in force apply for this exchange as well.