Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty (codified version)

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(codified version)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 26, 37 and 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament[(1)],

Whereas:

(1) Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty[(2)] has been substantially amended several times[(3)]. In the interests of clarity and rationality the said Regulation should be codified.

(2) In the absence of a specific measure of derogation adopted in accordance with the provisions of the Treaty, Common Customs Tariff duties are applicable to all goods imported into the Community. The same is true in the case of agricultural levies and all other import charges laid down under the common agricultural policy or the specific arrangements applicable to certain goods resulting from the processing of agricultural products.

(3) However, in certain well-defined circumstances, where by virtue of the special conditions under which goods are imported the usual need to protect the economy is absent, such taxation is not justified.

(4) It is desirable that in such circumstances arrangements be made, as they have been traditionally in most systems of customs rules, to allow goods to enjoy relief from the application of import duties to which they would normally be liable.

(5) Such relief arrangements may also be the result of multilateral international conventions to which all or some of the Member States are contracting parties. While the Community should apply such conventions, this presupposes the introduction of Community rules on reliefs from customs duties designed, in accordance with the requirements of the Customs Union, to eliminate differences in the aim, scope and conditions for application of the reliefs contained in those conventions, and to enable all those concerned to enjoy the same advantages throughout the Community.

(6) Certain reliefs applied in the Member States stem from specific conventions concluded with third countries or international organisations. Such conventions, given their

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purpose, concern only the signatory Member State. It does not appear necessary to define, at Community level, conditions for granting such reliefs, but appears sufficient simply to authorise the Member State in question to grant those reliefs, where necessary, by means of an appropriate procedure instituted for this purpose.

(7) The implementation of the common agricultural policy means that in certain circumstances export duties may be charged on some goods. It is therefore also necessary to specify at Community level the cases in which relief from such duties may be granted.

(8) In the interests of legal clarity, the provisions of Community Acts containing certain relief measures not affected by this Regulation should be listed.

(9) This Regulation does not preclude the application by Member States of import or export prohibitions or restrictions which are justified on grounds of public morality, public policy or public security, protection of health and life of humans, animals or plants, protection of national treasures possessing artistic, historical or archaeological value or protection of industrial or commercial property.

(10) With regard to the reliefs granted within the amounts fixed in euro, rules for the conversion of such amounts into national currencies should be drawn up,

HAS ADOPTED THIS REGULATION:

TITLE I

SCOPE AND DEFINITIONS

Article 1

This Regulation sets out those cases in which, owing to special circumstances, relief from import duties, export duties and measures adopted on the basis of Article 133 of the Treaty shall be granted when goods are released for free circulation or are exported from the customs territory of the Community.

Article 2

1 For the purposes of this Regulation:

a ‘import duties’ means customs duties and charges having equivalent effect and also agricultural levies and other import charges provided for under the common agricultural policy or under specific arrangements applicable to certain goods resulting from the processing of agricultural products;

b ‘export duties’ means agricultural levies and other export charges provided for under the common agricultural policy or under specific arrangements applicable to certain goods resulting from the processing of agricultural products;

c ‘personal property’ means any property intended for the personal use of the persons concerned or for meeting their household needs.

The following, in particular, shall constitute ‘personal property’:

(i) household effects;

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(ii) cycles and motor cycles, private motor vehicles and their trailers, camping caravans, pleasure craft and private aeroplanes.

Household provisions appropriate to normal family requirements, household pets and saddle animals, as well as the portable instruments of the applied or liberal arts, required by the person concerned for the pursuit of his trade or profession, shall also constitute 'personal property'. Personal property must not be such as might indicate, by its nature or quantity, that it is being imported for commercial reasons;

d 'household effects' means personal effects, household linen, furnishings and equipment intended for the personal use of the persons concerned or for meeting their household needs;

e 'alcoholic products' means products (beer, wine, aperitifs with a wine or alcohol base, brandies, liqueurs or spirituous beverages, etc.) falling within heading Nos 2203 to 2208 of the Combined Nomenclature.

2 Save as otherwise provided in this Regulation for the purpose of applying Title II, 'third countries' also includes those parts of Member States' territories excluded from the customs territory of the Community by virtue of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code[(4)].

TITLE II

RELIEF FROM IMPORT DUTY

CHAPTER I

Personal property belonging to natural persons transferring their normal place of residence from a third country to the Community

Article 3

Subject to Articles 4 to 11, personal property imported by natural persons transferring their normal place of residence from a third country to the customs territory of the Community shall be admitted free of import duties.

Article 4

The relief shall be limited to personal property which:

(a) except in special cases justified by the circumstances, has been in the possession of and, in the case of non-consumable goods, used by the person concerned at his former normal place of residence for a minimum of six months before the date on which he ceases to have his normal place of residence in the third country of departure;

(b) is intended to be used for the same purpose at his new normal place of residence.

In addition, Member States may make relief conditional upon such property having borne, either in the country of origin or in the country of departure, the customs and/or fiscal charges to which it is normally liable.

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Article 5

1 Relief may be granted only to persons whose normal place of residence has been outside the customs territory of the Community for a continuous period of at least 12 months.

2 However, the competent authorities may grant exceptions to the rule in paragraph 1, provided that the intention of the person concerned was clearly to reside outside the customs territory of the Community for a continuous period of at least 12 months.

Article 6

No relief shall be granted for:

(a) alcoholic products;

(b) tobacco or tobacco products;

(c) commercial means of transport;

(d) articles for use in the exercise of a trade or profession, other than portable instruments of the applied or liberal arts.

Article 7

1 Except in special cases, relief shall be granted only in respect of personal property entered for free circulation within 12 months from the date of establishment, by the person concerned, of his normal place of residence in the customs territory of the Community.

2 The personal property may be released for free circulation in several separate consignments within the period referred to in paragraph 1.

Article 8

1 Until 12 months have elapsed from the date on which its entry for free circulation was accepted, personal property which has been admitted duty-free may not be lent, given as security, hired out or transferred, whether for a consideration or free of charge, without prior notification to the competent authorities.

2 Any loan, giving as security, hiring out or transfer before the expiry of the period referred to in paragraph 1 shall entail payment of the relevant import duties on the property concerned, at the rate applying on the date of such loan, giving as security, hiring out or transfer, on the basis of the type of property and the customs value ascertained or accepted on that date by the competent authorities.

Article 9

1 By way of derogation from the first paragraph of Article 7, relief may be granted in respect of personal property entered for free circulation before the person concerned establishes his normal place of residence in the customs territory of the Community, provided that he undertakes actually to establish his normal place of residence there within a period of six months. Such undertaking shall be accompanied by a security, the form and amount of which shall be determined by the competent authorities.

2 Where use is made of the provisions of paragraph 1, the period laid down in Article 4(a) shall be calculated from the date on which the personal property is brought into the customs territory of the Community.

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Article 10

1 Where, owing to occupational commitments, the person concerned leaves the third country where he had his normal place of residence without simultaneously establishing his normal place of residence in the customs territory of the Community, although having the intention of ultimately doing so, the competent authorities may authorise duty-free admission of the personal property which he transfers into the said territory for this purpose.

2 Duty-free admission of the personal property referred to in paragraph 1 shall be granted in accordance with the conditions laid down in Articles 3 to 8, on the understanding that:

a the periods laid down in Article 4(a) and the first paragraph of Article 7 shall be calculated from the date on which the personal property is brought into the customs territory of the Community;

b the period referred to in Article 8(1) shall be calculated from the date when the person concerned actually establishes his normal place of residence in the customs territory of the Community.

3 Duty-free admission shall also be subject to an undertaking from the person concerned that he will actually establish his normal place of residence in the customs territory of the Community within a period laid down by the competent authorities in keeping with the circumstances. The latter may require this undertaking to be accompanied by a security, the form and amount of which they shall determine.

Article 11

The competent authorities may derogate from Article 4(a) and (b), Article 6(c) and (d) and Article 8, when a person has to transfer his normal place of residence from a third country to the customs territory of the Community as a result of exceptional political circumstances.

CHAPTER II

Goods imported on the occasion of a marriage

Article 12

1 Subject to Articles 13 to 16, trousseaux and household effects, whether or not new, belonging to a person transferring his or her normal place of residence from a third country to the customs territory of the Community on the occasion of his or her marriage, shall be admitted free of import duties.

2 Subject to the same conditions, presents customarily given on the occasion of a marriage, which are received by a person fulfilling the conditions laid down in paragraph 1 from persons having their normal place of residence in a third country shall also be admitted free of import duties. The value of each present admitted duty-free may not, however, exceed EUR 1 000.

Article 13

The relief referred to in Article 12 may be granted only to persons:

(a) whose normal place of residence has been outside the customs territory of the Community for a continuous period of at least 12 months. However, derogations from this rule may be granted provided that the intention of the person concerned was clearly