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In accordance with Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community (OJ L 43, 15.2.1983, p. 1), as amended by Regulation (EC, Euratom) No 1700/2003 of 22 September 2003 (OJ L 243, 27.9.2003, p. 1), this file is open to the public. Where necessary, classified documents in this file have been declassified in conformity with Article 5 of the aforementioned regulation.

In Übereinstimmung mit der Verordnung (EWG, Euratom) Nr. 354/83 des Rates vom 1. Februar 1983 über die Freigabe der historischen Archive der Europäischen Wirtschaftsgemeinschaft und der Europäischen Atomgemeinschaft (ABl. L 43 vom 15.2.1983, S. 1), geändert durch die Verordnung (EG, Euratom) Nr. 1700/2003 vom 22. September 2003 (ABl. L 243 vom 27.9.2003, S. 1), ist diese Datei der Öffentlichkeit zugänglich. Soweit erforderlich, wurden die Verschlussachen in dieser Datei in Übereinstimmung mit Artikel 5 der genannten Verordnung freigegeben.

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(73) 538 final

Brussels, 10 April 1973

Proposal for a
REGULATION OF THE COUNCIL

on mutual assistance between competent authorities of
the Member States and between the latter and the Commission
for ensuring the correct application of Community customs
and agriculture regulations

(submitted to the Council by the Commission)

EXPLANATORY MEMORANDUM

Although most of the provisions necessary for the functioning of the customs union are identical or at least harmonised in all the Member States, experience shows that their application may be seriously hindered, even totally prevented, without administrative assistance at European level. The same situation arises in the application of common agricultural policy provisions.

In fact, the geographical size of the EEC and the differences between the States who are its members make it essential to have close cooperation between the competent authorities, responsible for collection of "customs duties" and agricultural levies within the meaning of Article 2 (a) and (b) of the Council Decision of 21 April 1970, or for the implementation of provisions governing the grant of amounts financed by EAGGF (export refunds, aids of all kinds). Such cooperation is even more necessary in order to take effective measures to combat possible irregularities in the latter two areas.

It is imperative to have a Community rule particularly in respect of irregularities which are infringements of Community provisions. Indeed, according to the provisions of Council Decision of 21 April, 1970 the revenue liable to be evaded is part of the own resources shown in the Community budget. In addition the large number of Regulations, Directives and Decisions adapted by the Council and the Commission on customs and agricultural matters results in the fact, that in future most of the provisions on the application of the Common Community Tariff as well as most of the measures adapted under the Common Agricultural Policy draw attention to Community law. Thus it is important to ensure that this law is implemented as clearly as possible in accordance with the conditions and procedures laid down.

Certainly a first step was taken towards administrative cooperation by the Governments of the Member States of the Community as originally constituted who concluded the Convention for mutual assistance between their respective customs authorities, signed in Rome on 7 September 1967. Nevertheless that Convention, drawn up in a period when Customs rules were primarily national, does not afford the same legal safeguards of uniform implementation as a Community regulation. The aim of that Convention, as defined in Article 1 thereof, is, however, only "to ensure the correct collection of customs duties and other import and export taxes and to anticipate, investigate and punish offences against customs laws" (customs laws, within the meaning of Article 2, mean laws and regulations relating to imports, exports and transit, whether they concern customs duties and any other taxes, or preventive measures, restrictions or inspection).

Because of its limited scope, that Convention, whilst certainly an important instrument, is nevertheless inadequate to ensure supervision of the correct implementation of Community provisions in all the aforementioned fields. This is more apparent when it is appreciated that the mutual assistance established by that Convention is limited to national authorities.

However close cooperation between national authorities may be, it should obviously be coupled with cooperation with the Commission, one of whose basic functions - defined in Article 155 of the EEC Treaty - is to ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied. The Commission can only fulfil its task and, using the powers conferred on it by the Treaty, play an effective role in eliminating deflections of trade and fraudulent practices in so far as it is regularly informed of the difficulties faced by national authorities.

Taking particular account of the Commission's responsibilities in the formulation and application of Community provisions relating to its own resources, it is important that the Commission should take part in administrative cooperation at European level so as to enable it to take, or rapidly to propose, suitable protective measures and, where appropriate, to coordinate the research work of national authorities.

For these reasons a system of mutual assistance should be established in order to ensure that Community customs and agriculture regulations are correctly implemented and to provide for cooperation between the competent national authorities and between the latter and the Commission.

Such is the aim of this draft Regulation which, based in particular on Article 43 and 235 of the EEC Treaty, requires the Opinion, of the European Parliament.

This proposal was drawn up after consultation with the acceding States and takes account of their observations.

PROPOSAL FOR A REGULATION OF THE COUNCIL

on mutual assistance between competent authorities
of the Member States and between the latter and the
Commission for ensuring the correct application of
Community customs and agriculture regulations

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

HAVING REGARD to the Treaty establishing the European Economic Community,
and in particular Articles 43 and 235 thereof;

HAVING REGARD to Council Regulation (EEC) 729/70 (1) of 21 April 1970
on the financing of the common agricultural policy, and in particular
Article 8 (3);

HAVING REGARD to the proposal from the Commission;

HAVING REGARD to the Opinion of the European Parliament;

WHEREAS the collection of the own resources of the Community and the
proper functioning of the Customs Union and the Common Agricultural
Policy, require coordination in the struggle against the irregularities
liable to be committed in these respects;

WHEREAS such a situation calls not only for closer cooperation between
the competent authorities of the Member States, but also between the
latter and the Commission, which is specially entrusted with the task
of ensuring that the provisions of the EEC Treaty and the measures
taken pursuant thereto are applied;

(1) OJ No L 94, 28 April 1970, p. 13.

.../...

WHEREAS therefore rules should be laid down under which the competent authorities of the Member States and the Commission should assist each other in order to ensure the proper collection of customs duties, taxes of equivalent effect and agricultural levies within the meaning of the Council Decision of 21 April 1970 (2) on the replacement of financial contributions from Member States by the Communities' own resources, to prevent and investigate infringements of regulations applicable to customs and agriculture without prejudice to the provisions of Council Regulation (EEC) No. 283/72 (3) of 7 February 1972 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organisation of an information system in this field.

WHEREAS the provisions of this Regulation cover both the application of regulations governing the common agricultural policy and the Common Customs Tariff policy as well as Community customs regulations; whereas, with regard to the latter, the specific provisions of the EEC Treaty do not confer on the Communities' institutions the power to draw up binding provisions regarding mutual assistance; whereas, consequently, it appears necessary also to base the provisions of this Regulation on Article 235;

HAS ADOPTED THIS REGULATION :

.../...

(2) OJ No L 94, 28 April 1970, p. 19

(3) OJ No L 36, 10 February 1972, p. 1.

Article 1

1. This Regulation fixes the rules according to which the authorities of the Member States competent in customs and agricultural matters - hereinafter called "competent authorities" - shall cooperate with each other and with the Commission in order to :

(a) ensure the proper collection of customs duties and agricultural levies within the meaning of Article 2 (a) and (b) of the Council Decision of 21 April 1970;

(b) prevent and investigate infringements of customs and agriculture regulations.

2. The provisions of this Regulation shall also apply to the agricultural field without prejudice to the provisions of Regulation (EEC) No. 283/72

Article 2

1. The competent authorities of the Member States shall, when requested, forward all information likely to ensure:

- the proper collection of the customs duties and levies referred to in Article 1 (1) (a) and, more particularly, such information as will help to determine the nature, value or origin of goods;

.../...

- compliance with the conditions under which the amounts financed wholly or partly by the European Agricultural Guidance and Guarantee Fund are granted.

Such information shall also be forwarded to the Commission where it has a bearing on the proper functioning of the customs union as a whole or on the Common Agricultural Policy.

2. When the information required is not available from the authority to which the request is addressed, that authority shall make enquiries into the relevant laws and regulations. If the Commission so requests, it may take part in such inquiries.

Article 3

When requested, the competent authorities of the Member States shall supply each other with a certificate stating that goods exported from one Member State to another Member State have been properly imported into the second Member State and, where appropriate, giving details of the customs procedure or the administrative checks to which the goods have been subjected.

Article 4

At the request of the competent authorities of one Member State, the competent authorities of the Member State from whom information has been requested shall notify the parties concerned, or have them notified, of any acts or decisions of the competent authorities of the first Member State which relate to regulations concerning customs and agriculture.

.../...

Article 5

Member State shall take steps to ensure that their competent investigation authorities are in direct contact with each other in order to exchange information facilitating the prevention of and investigation into infringements of customs and agriculture regulations.

Article 6

In order to ensure that customs and agriculture regulations are properly applied, the competent authorities of each Member State shall, voluntarily or on request by the competent authorities of the other Member States or by the Commission, maintain a special surveillance, as appropriate, on :

- (a) the movement and, more particularly, the entry into and departure from their territories, of persons suspected of infringing professionally or frequently regulations on customs and agricultural matters ;
- (b) places where unusually large deposits of goods suggest further infringements of regulations on customs and agricultural matters ;
- (c) the movements of goods reported by another Member State as being part of a significant trade to that State which infringes regulations on customs and agricultural matters ;
- (d) vehicles, ships and aircraft which are suspected of being used in infringements of regulations on customs and agricultural matters ;

.../...

Article 7

The competent authorities of the Member States shall send each other, either voluntarily or when requested any available information in particular in the form of reports, accounts or certified copies of documents, of interest concerning completed or possible operations which appear to constitute infringements to Community regulations on customs and agricultural matters.

Article 8

At the request of the competent authorities of a Member State the competent authorities of another Member State, shall carry out official enquiries and shall in particular interview persons suspected of infringing regulations on customs and agriculture matters, as well as witnesses or experts. They shall communicate the results of such enquiries to the competent authorities who made the request.

Article 9

The competent authorities of the Member States shall send each other all information likely to be of use in connection with infringements of Community regulations on customs and agricultural matters; they shall forward copies of or extracts from reports drawn up by the competent investigating authorities giving details of the particular methods used by the offenders

.../...

Article 10

The competent authorities of the Member States shall exchange lists of goods which, when imported, exported or in transit, are known to be used in trade which infringes regulations on customs and agricultural matters.

Article 11

Without prejudice to Articles 9 and 10 of this Regulation, the competent authorities of each Member State shall communicate without delay to the competent authorities of the other Member States concerned any irregularities which are liable to have effects outside their territory or which indicate the adoption of a new fraudulent practice.

Article 12

1. The competent authorities of the Member States shall also furnish the Commission with the information referred to in Articles 9, 10 and 11 of this Regulation.

2. The Commission shall organise information meetings at Community level for the appropriate representatives of the Member States in order to examine with them information obtained under paragraph 1 above and in particular with regard to the lessons to be learned from such information in connection with irregularities, preventive measures and legal proceedings.

3. At the request of a Member State or, under the arrangements laid down in the preceding paragraph, of the Commission, the Member States shall consult each other, where appropriate within any other competent body, for the purpose of closing any gaps which become apparent in the course of the use of provisions in force and which prejudice Community interests.

.../...

Article 13

1. The competent authorities shall not be obliged by this Regulation to supply information obtained from banks or similar institutions.
2. The competent authorities of one Member State may refuse to communicate information which would violate industrial, commercial or professional secrets.
3. Information, communication and documents obtained may only be used for the purposes of this Regulation. They may not be disclosed to persons other than those required to use them unless the authority which provided them shall have expressly consented thereto.
4. Requests for information, reports by experts and other communications obtained by a Member State for the purpose of this regulation shall be protected under the national law that that Member State accords documents and information of a similar nature.

Article 14

This Regulation shall enter into force on the third day following that of its publication in the official Journal of the European Communities.

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

Done at Brussels,
For the Council
The President