

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(92) 544 final

Brussels, 21 December 1992

Proposal for a

COUNCIL REGULATION (EEC)

replacing Regulation (EEC) No 1468/81

on mutual assistance

between the administrative authorities

of the Member States and cooperation between the latter

and the Commission to ensure the correct application

of the law on customs or agricultural matters

(presented by the Commission)

COMMISSION OF THE EUROPEAN COMMUNITIES

CORRIGENDUM

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(CONCERNE TOUTES LES

VERSIONS LINGUISTIQUES)

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EXPLANATORY MEMO

1. INTRODUCTION

This proposal replaces Council Regulation (EEC) No 1468/81 of 19 May 1981 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs or agriculture matters established close cooperation between the said authorities and the Commission, as amended by Regulation (EEC) No 945/87.

Experience suggests that certain aspects of Regulation (EEC) No 1468/81 no longer correspond to the situation in today's Community. With the completion of the internal market and in view both of the experience acquired during the application of Regulation 1468/81 and the needs encountered, this proposal is aimed at strengthening cooperation between Member States and between the latter and the Commission in combating customs and agricultural fraud and improving the flow of information from the Member States to the Commission.

This proposal does not affect the respective powers of the Member States and the Commission as currently defined by Regulation 1468/81. Primary responsibility for the measures necessary for the proper working of the customs union and the common agricultural policy rests with the Member States, while the Commission plays a coordinating and stimulating role in the field and ensures the application of the Treaty and the provisions taken pursuant to it. This proposal lays down the rules required at Community level to guarantee the uniform and effective working of administrative cooperation with due regard for the respective powers of the Member States and the Commission, .

An update of Regulation (EEC) No 1468/81 is also needed to bring it into line with current practice in administrative cooperation and to take account of other developments in Community law, notably Regulation (EEC) No 1552/89 on own resources and Regulation (EEC) No 595/91 on irregularities in the context of the EAGGF.

In the light of the powers accorded to Commission officials by the above Regulations, this proposal provides for the presence of Commission officials during national enquiries where necessary and useful in order to guarantee the proper coordination by the Commission of a Community-level enquiry. The proposal sets out in detail the practical arrangements for such a presence without infringing the fundamental principles governing administrative cooperation; today's overall balance is maintained.

This proposal is meant to ensure the proper working of mutual administrative assistance by defining the concept of administrative enquiry and stipulating the Member States' obligations in areas where administrative enquiries and legal procedures might overlap. Too strict an interpretation of the current provisions can prevent or impede the return of information to other Member States' administrative authorities or the Commission and can consequently adversely affect the prevention and prosecution of fraudulent practices. The objective is to ensure, without impinging on national rules governing the criminal process, the communication to the Member States and the Commission, within the framework of administrative cooperation, of information intended to put a stop to a fraudulent practice, even in cases where legal proceedings have been initiated or where certain acts are carried out by, or with the authorization of, the judicial authorities.

This proposal also ensures that the findings of officials of one Member State and the information exchanged in the course of mutual administrative assistance can be used in legal or administrative proceedings in another. The same applies to the use of findings and information obtained in the course of missions to third countries by officials of a Member State or the Commission in legal or administrative proceedings in Member States which did not take part in those missions.

In the interests of the regular and systematic exchange of information, this proposal provides for the establishment of a central database - the customs information system (CIS) - comprising information entered by the Member States and the Commission and accessible on a need-to-know basis to the Member States and the Commission. In particular, this proposal takes account of developments in mutual administrative assistance in areas that remain the exclusive province of the Member States. It parallels the Convention between the Member States concerning the use of information technology for customs purposes, which supplements the Convention on the provision of mutual assistance by the customs authorities (the Naples Convention), and provides for the establishment of a customs information system.

The technical objective of the Commission and the Member States, with whose cooperation the CIS was designed, is the establishment of a single system to be used by the relevant authorities for the transfer of both Community and national data. In view of the different types of information exchanged, this uniform technical system will be used for two different processing operations: one, governed by the Convention on the use of information technology for customs purposes, for data in the province of the Member States and another, governed by this proposal, for data in the province of the Community.

This proposal draws on the data protection provisions laid down in the amended proposal for a Council Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data.¹ Where necessary, it makes specific provisions.

The protection of data and the confidentiality of the data exchanged, and in particular personal data, is guaranteed by references to the proposed Directive where it covers the same aspects and by detailed provisions on matters specific to the customs information system.

The data to be exchanged within the framework of the CIS will be destined primarily for operational purposes. It will in no way affect the Member States' obligation to inform the Commission under Regulations (EEC) No 1552/89 and 595/91, nor the established use of the fraud information sheets used under Regulation (EEC) No 1468/81 to circulate information of Community interest.

1 COM(92) final - SYN 287, 15.10.1992.

Lastly, the proposal provides for the Commission to be notified of the sanctions applied by the Member States.

2. CONTENT OF THE PROPOSAL

2.1 General

Article 1

This article defines the scope of the Regulation, pointing out the existence of specific regulations, notably Regulation (EEC) No 595/91 concerning irregularities relating to the EAGGF and Regulation (EEC) No 1552/89 on own resources.

Article 2

The definition of "customs legislation" used in Regulation (EEC) No 1468/81 has been adjusted in the light of the completion of the internal market and the abolition of controls at the Community's internal frontiers.

A definition of "administrative enquiry" has been introduced in view of differences in status between officials of the administrative authorities in different Member States, and in particular of the fact that some have police powers.

A definition of "personal data" has also been introduced; it is based on the amended proposal for a Council Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

Article 3

This article is aimed at ensuring that information obtained in the course of a judicial enquiry is communicated in order to prevent or put an end to a fraudulent practice, while at the same time reconciling compliance with the principles of criminal law and the Member States' obligations to enforce Community law.

2.2 Title I: Assistance on request

Articles 4 to 8

These articles are taken over unchanged from the present Regulation (EEC) No 1468/81, the sole difference being the deletion of the reference to Article 235 of the Treaty.

Article 9

To Article 9 of Regulation (EEC) No 1468/81 is added a new paragraph 2 governing administrative enquiries carried out in a Member State by its own officials in the presence of officials from another Member State. These provisions are aimed at providing a legal framework for the development of joint administrative enquiries by several Member States and are based on Article 6 of Regulation (EEC) No 595/91 and Article 16 of the 1967 Convention on the provision of mutual assistance by the customs authorities (the Naples Convention).

Article 10

This article is identical to Article 10 of Regulation (EEC) No 1468/81.

Article 11

This article is aimed at preventing information obtained by officials of one Member State and transmitted to another from being rejected in the course of an administrative or judicial proceeding in the latter Member State solely because it was obtained by officials of another Member State. The wording takes up the idea expressed in Article 14 of Regulation (EEC) No 2048/89 establishing general rules for checks in the wine sector. The same text provides the basis for Articles 15 and 21 of this proposal.

2.3 Title II: Spontaneous assistance

Articles 12 to 14

These articles correspond to Articles 11 and 13 of Regulation (EEC) No 1468/81, with a few changes in the wording.

Article 15

See Article 11.

2.4 Title III: Relations with the Commission

Article 16

This article corresponds to Article 14 of Regulation (EEC) No 1468/81. However, a third indent has been added to letter (a) of paragraph 1 to ensure that the Commission is informed wherever it might serve the prevention or suppression of fraudulent practices.

Article 17

This article extends to the Commission the scope for assistance on request offered by Title I of this proposal. The Commission may ask a Member State to carry out an administrative enquiry and, if necessary, suggest that Commission staff be associated with the enquiry. Their presence is governed by Article 9 of this proposal.

Article 18

The wording of this article corresponds to that of Article 18 of Regulation (EEC) No 1468/81, with the addition of a final indent providing for the organization by the Commission of meetings to examine measures taken to safeguard the confidentiality of information exchanged. It should, however, be noted that the confidentiality of the information exchanged under the customs information system is dealt with separately at the meetings for which Article 26 of this proposal provides.

2.5 Title IV: Relations with third countries

Articles 19 and 20

These articles repeat, without amendment, the wording of Articles 15a and 15b of Regulation (EEC) No 1468/81.

Article 21

To Article 15c of Regulation (EEC) No 1468/81 has been added a second paragraph safeguarding the use in an administrative or legal action of documents and findings obtained in a third country by officials of another Member State or the Commission. This addition meets a genuine need arising from the administrative cooperation missions and enquiries carried out in third countries by Commission or Member States' officials acting on behalf of the Community. See also Articles 11 and 15 of this proposal.

Article 22

This article introduces an obligation for the Member States to notify the Commission of information exchanged with third countries wherever relevant to the purposes of this proposal.

2.6 Title V: Customs Information System

The articles of Title V are based on the amended proposal for a Council Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data, which applies to any processing of personal data in relation to activities covered by Community law. Title V contains specific provisions setting out the provisions of the proposed Directive wherever relevant to the customs information system.

Establishment of a computerized system

Article 23

This article provides for the establishment of the customs information system (CIS) and lays down the procedures for access via terminals in the Member States and at the Commission to the database, which consists of a central computer at the Commission.

Article 24

This article lists the categories of data that may be entered in the database.

Article 25

This article defines the purposes of the CIS.

Operation and use

Article 26

This article provides for the Member States and the Commission to notify each other of the national authorities and Commission departments responsible for the implementation of, or access to, the CIS. It also provides for the publication of this information in the Official Journal.

The last paragraph concerns the access, to be determined by the Commission, of third countries and international or regional organizations to the CIS.

Article 27

This article gives a detailed list of the information that may be entered in the CIS.

Article 28

This article indicates the type of information that may be transmitted following specific operations carried out at the behest of another Member State (tracking, surveillance, special checks - see Article 25). It also stipulates that such operations are always to be carried out in accordance with the national law of the Member State in which they take place.

Article 29

This article determines the law governing the entry and processing of data applicable to the Member State which entered it. Where information has been entered by the Commission, the corresponding provisions apply.

Article 30

This article forbids Member States to copy into another national database information entered by another Member State. This prohibition applies mutatis mutandis to the Community institutions.

Amendment of data

Article 31

This article contains provisions on the amendment, addition, correction or deletion of data entered in the CIS. These operations are governed by the provisions applicable to the Member State that initially entered the data in the CIS. Provision is made for the notification of the other Member States and the Commission.

Article 32

This article provides for an annual review of data stored by the Member State or the Commission that entered them in the CIS. The data which is not retained are transferred to a limited-access section of the CIS, where they are stored for a period of one year, at the end of which they are deleted.

Exercise of individual rights

Article 33

For the purposes of the exercise of individual rights the CIS is considered as a national processing subject to the national provisions implementing the proposed Directive, save where this Regulation provides otherwise.

Article 34

This article concerns the rights of individuals with regard to the CIS, and in particular access, requests for corrections or amendments and complaints to the national authorities. These rights are exercised under the national law of the Member State in which such rights are invoked or the corresponding measures applicable to the Commission. When data has been entered by another Member State or the Commission, that Member State or the Commission shall be consulted by the Member State in which a person invokes his or her rights.

Security of the customs information system

Article 35

This article determines the administrative and technical measures to be taken by the Member States and the Commission to ensure the security of the CIS. It also stipulates the minimum checks to be performed.

Supervising the protection of individuals with regard to the processing of personal data

Article 36

The supervision of the protection of personal data is carried out by independent national supervisory authorities. This article provides that a supervisory authority may ask the Commission to convene other Member States' supervisory authorities to examine issues connected with the protection of personal data. This article also provides that any person shall have the right to ask any national supervisory authority to check the accuracy of data in the CIS.

Publicizing the customs information system

Article 37

This article provides for the publication in the Official Journal of a communication concerning the implementation of the CIS. It also provides for the inclusion of the CIS in the processing registers kept by the national supervisory authorities.

Responsibilities and obligations

Article 38

This article establishes the principle whereby responsibility for the data rests with whoever entered it, be it a Member State or the Commission. The article also lays down the procedure to be followed where one Member State is the object of an action in respect of information entered by another.

2.7 Title VI: Final provisions

Article 39

This article corresponds to Article 18 of Regulation (EEC) No 1468/81 and concerns all exchanges of information other than those expressly referred to in Title V on the CIS.

Article 40

This article deals with the confidentiality of information exchanged in the course of administrative cooperation, identifying the persons to whom such information may be transmitted and its use in legal action or proceedings.

Paragraph 2 places a blanket restriction on the transmission of personal data; it is based on Article 14a of Regulation (EEC) No 1468/81 and Article 10(3) of Regulation (EEC) No 595/91.

The fourth paragraph uses the same wording as Article 10(6) of Regulation (EEC) No 595/91.

The provisions of this article are general in scope and supplement the provisions of Title V specifically concerning the customs information system.

Article 41

This article adds a letter (d) to Article 16 of Regulation (EEC) No 1468/81. This letter (d) encourages the Member States, in the light of the change in circumstances represented by the internal market, to make it possible, in so far as national legislation permits, for a surveillance operation started on the territory of one Member State to be continued in another by bilateral arrangement.

Article 42

In view of the new situation represented by the single market and the Member States obligations thereunder, this article tends to restrict the right of Member States to refuse assistance, a right which is, however, maintained.

Article 43

Like Article 3 of Regulation (EEC) No 595/91, this article introduces the obligation for the Member States to notify the Commission, for its information, of the administrative or legal sanctions imposed as a result of the irregularities found. A summary is considered quite sufficient.

Article 44

This article concerns the waiving by the Member States and the Commission of the costs of implementing administrative cooperation, save for the financial liability of the Member States and the Commission under Title V on the customs information system.

Article 45

This article uses the same wording as Article 1(3) of Regulation (EEC) No 595/91 and concerns the criminal procedure (independence of the judiciary, organization of judicial enquiries, etc.) and legal cooperation (application of letters rogatory between Member States and between the latter and non-member countries, etc.). This article must be read in conjunction with the fifth indent of Article 2(1) and Article 3 of this proposal which, with due regard for the above principles, seek to facilitate the application of the Community measures to combat customs and agricultural fraud.

Article 46

This article repeals Regulation (EEC) No 1468/81 and covers references made to it.

Article 47

This article is the final article dealing with the implementation of the Regulation.

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 43, 100a and 113 thereof,

Having regard to Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy (1), as last amended by Regulation (EEC) No 2048/88 (2), and in particular Article 8(3) thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the economic and social committee,

(1) OJ No L94, 28.4.1970, p.13

(2) OJ No L185, 15.7.1988, p. 1

Whereas the effectiveness of the customs union and the common agricultural policy, particularly in the light of the completion of the internal market, calls for close cooperation between the administrative authorities responsible in each Member State for the application of provisions adopted in those fields; whereas it also calls for appropriate cooperation between these national authorities and the Commission, which is responsible for ensuring the application of the Treaty and the provisions adopted by virtue thereof;

Whereas rules should therefore be drawn up whereby the Member States' administrative authorities assist each other and cooperate with the Commission in order to guarantee the proper application of customs or agricultural regulations, in particular by preventing and investigating breaches of these regulations and by investigating actions which are or appear contrary to those regulations; whereas in order to ensure the effectiveness and uniform application of such a system, the rules should be laid down at Community level;

Whereas Regulation (EEC) No 1468/81 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs or agriculture matters established close cooperation between the said authorities and the Commission; whereas that system has proved effective;

Whereas, in the light of the changes brought about in the context of the internal market and in particular the abolition of customs controls at internal Community borders, it is nevertheless necessary, in the light of the experience gained, to amend the provisions of Regulation (EEC) No 1468/81 in order to strengthen the cooperation between the administrative authorities of the Member States responsible for the application of the provisions adopted in the field of customs union and the common agricultural policy; whereas in view of the scale of these changes, Regulation (EEC) 1468/81 should be replaced;

Whereas the introduction of Community provisions on mutual assistance between Member States' administrations and their cooperation with the Commission in order to guarantee the proper application of customs or agricultural regulations is without prejudice to the application of the 1967 Convention for mutual assistance between customs administrations in fields which remain the sole province of the Member States; whereas these common provisions are not such as to affect the application in the Member States of rules on judicial cooperation in criminal cases;

Whereas furthermore the general Community rules establishing a system of mutual assistance and cooperation among the administrative authorities of the Member States and between them and the Commission do not apply where they overlap with those laid down by specific regulations, save where the general rules reinforce or improve administrative cooperation; whereas in particular, the implementation of the customs information system in no way affects the Member States' obligations to provide information to the Commission, inter alia under Regulations (EEC) No 1552/89 and No 595/9, or the established use of fraud information sheets to circulate information of Community interest;

Whereas greater cooperation between the Member States requires the coordination of enquiries and other activities carried out by the bodies concerned; whereas it is therefore essential that the Commission should be given more detailed information concerning such activities by the Member States;

Whereas the Commission must ensure that all economic operators are treated equally and that the application by the Member States of the mutual administrative assistance system does not lead to discrimination between economic operators in different Member States;

Whereas it is appropriate to define the Member States' obligations under the mutual administrative assistance system in respect of cases in which representatives of the Member States' national administrations conduct enquiries concerning the application of customs or agricultural legislation with a mandate from, or under the authority of the legal authorities;

Whereas national rules concerning criminal proceedings are not affected by this Regulation; whereas the implementation of such national rules should not have the effect of delaying or hindering the application of mutual administrative assistance; whereas measures must therefore be taken to secure the latter;

Whereas the powers of national representatives conducting enquiries in other Member States should be defined; whereas provision should also be made for Commission representatives to be associated, where necessary, with national enquiries, and their powers defined;

Whereas in order to ensure the effectiveness of the system, findings established and information obtained in other Member States or in third countries in the course of an investigation carried out under the mutual administrative assistance arrangements must not be accorded lesser weight simply because they do not come from the Member State concerned;

Whereas it is necessary for the functioning of the administrative cooperation that relations with third countries be established and that means of action are provided for the Community;

Whereas, with a view to securing the rapid and systematic exchange of information forwarded to the Commission, there is a need for a special computer network; whereas sensitive data concerning frauds and irregularities in the customs and agricultural domains should be stored in a central database and accessible to the Member States, though care should be taken to respect the confidential nature of the information exchanged, and in particular data of a personal nature; whereas, given the justifiable sensitivity of the issue, there should

be clear and transparent rules to protect the freedom of the individual;

Whereas Council Directive No [] on the protection of individuals with regard to the processing of personal data and on the free movements of such data applies to all processing of personal data, computerized or otherwise, undertaken in the course of activities coming within the scope of Community law; whereas the Directive will be applicable to exchanges of information under the mutual administrative assistance arrangements; whereas reference should therefore be made to the Directive and the national provisions implementing it; whereas this Regulation should give effect, within its scope, to the principles of protection of individuals with regard to the processing of their personal data;

Whereas the Commission, in close cooperation with the Member States, should facilitate the installation and management of computer systems in the Member States;

Whereas the Commission should be notified of legal or administrative proceedings brought for infringements of the law on customs or agricultural matters;

Whereas customs administrations must in the course of their daily work apply both Community and non-Community provisions; whereas there is consequently a need to ensure that the provisions on mutual administrative assistance, be it in the context of the Community or otherwise, evolve as far as possible in parallel, in particular where new methods of exchanging or storing data on frauds and irregularities are concerned,

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation lays down the ways in which the administrative authorities responsible in the Member States for the application of customs and agricultural legislation shall cooperate with those in the other Member States and with the Commission in order to ensure compliance with such legislation.

2. Where specific regulations provide for mutual assistance between Member States' administrative authorities and between those authorities and the Commission, this Regulation shall not apply unless it improves or reinforces administrative cooperation.

Article 2

1. For the purposes of this Regulation:

- "customs legislation" shall mean the body of Community provisions and the associated implementing provisions governing the import, export, transit and presence of goods traded between Member States and third countries, and between Member States in the case of goods that do not have Community status within the meaning of Article 9(2) of the Treaty or goods subject to additional controls or investigations for the purposes of establishing their Community status;
- "agricultural legislation" shall mean the body of provisions adopted under the common agricultural policy and the special rules adopted with regard to goods resulting from the processing of agricultural products,
- "applicant authority" shall mean the competent authority of a Member State which makes a request for assistance,
- "requested authority" shall mean the competent authority of a Member State to which a request for assistance is made,

- "administrative enquiry" shall mean all controls, checks and other action taken by the administrative authorities specified in Article 1(1) in the performance of their duties with a view to ensuring the proper application of customs and agricultural legislation and, where necessary, bringing to light breaches of these regulations, except action taken at the request of or under a direct mandate from the legal authorities,

- "personal data" shall mean the data defined in Article 2(a) of Directive No [].

2. Each Member State shall transmit to the other Member States and the Commission a list of the competent authorities it has appointed for the purposes of applying this Regulation.

For the purposes of this Regulation "competent authorities" shall mean the authorities appointed in accordance with the preceding subparagraph.

Article 3

Where national authorities decide, in response to a request for administrative assistance or a communication based on this Regulation from another Member State or the Commission, to initiate a legal enquiry or take action involving measures coming under national criminal law any information thus obtained concerning the application of customs and agricultural legislation, or at least that part of the file required to put a stop to a fraudulent practice, shall be transmitted as part of the administrative cooperation provided for by this Regulation, save where the competent legal authorities, which must be consulted for this purpose in every case, oppose this.

TITLE I

ASSISTANCE ON REQUEST

Article 4

1. At the request of the applicant authority, the requested authority shall transmit to it any information which may enable it to enforce the provisions of customs or agricultural legislation, and in particular those concerning:

- the application of customs duties and charges having equivalent effect together with agricultural levies and other charges provided for under the common agricultural policy or the special arrangements applicable to certain goods resulting from the processing of agricultural products,
- operations forming part of the system of financing by the European Agricultural Guidance and Guarantee Fund.

2. In order to obtain the information sought, the requested authority or the administrative authority which it has in turn addressed shall proceed as though acting on its own account or at the request of another authority in its own country.

Article 5

At the request of the applicant authority, the requested authority shall supply it with any attestation, document or certified true copy of a document in its possession or obtained in the manner referred to in Article 4(2) and which relates to operations covered by customs or agricultural legislation.

Article 6

1. At the request of the applicant authority, the requested authority shall, while observing the rules in force in the Member State in which it is based, notify the addressee or have it notified of all instruments or decisions which emanate from the administrative authorities and concern the application of customs or agricultural legislation.

2. Requests for notification, mentioning the subject of the act or decision to be transmitted, shall be accompanied by a translation in the official language or an official language of the Member State in which the requested authority is based, without prejudice to the latter's right to waive such a translation.

Article 7

At the request of the applicant authority, the requested authority shall as far as possible keep a special watch or arrange for a special watch to be kept within its operational area:

- (a) on persons, and more particularly their movements, where there are reasonable grounds for believing that they are breaching customs or agricultural legislation;
- (b) on places where goods are stored in a way that gives grounds to suspect that they are intended to supply operations contrary to customs or agricultural legislation;
- (c) on the movements of goods indicated as being the object of potential breaches of customs or agricultural legislation;
- (d) on means of transport, where there are reasonable grounds for believing that they are being used to carry out operations in breach of customs or agricultural legislation.

Article 8

At the request of the applicant authority, the requested authority shall make available any information in its possession or obtained in the circumstances described in Article 4(2), and particularly reports and other documents or certified true copies or extracts thereof, concerning operations detected or planned which constitute, or appear to the applicant authority to constitute, breaches of customs or agricultural legislation.

However, original documents and items shall be provided only where this is not contrary to the legislation in force in the Member State in which the requested authority is based

Article 9

1. The requested authority shall at the request of the applicant authority carry out, or arrange to have carried out, the appropriate administrative enquiries concerning operations which constitute, or appear to the applicant to constitute, breaches of customs or agricultural legislation.

The requested authority, or the administrative authority to which it has recourse, shall conduct administrative enquiries as though acting on its own account or on behalf of another authority in its own country.

The requested authority shall transmit the results of such administrative enquiries to the applicant authority.

2. By agreement with the requested authority, officials appointed by the applicant authorities may be present at the administrative enquiries referred to in paragraph 1.

Staff of the requested authority present at administrative enquiries in another Member State must at all times be able to furnish proof of their official capacity. They shall enjoy in the territory of the

said Member State the protection accorded to staff of the requested authority in accordance with national laws and regulations. They shall be treated in the same way as those officials as regards penal sanctions for offences committed against them or by them.

Administrative enquiries shall at all times be carried out by staff of the requested authority. The applicant authority's staff may not, of their own initiative, assume supervisory powers vested in the representatives of the requested authority; they shall, however, have access to the same places and the same documents.

In so far as national provisions on criminal proceedings reserve certain acts to officials specifically designated by national law. The applicant authority's staff shall not take part in such acts. In any event, they shall not participate in particular in any event in searches of premises or the formal questioning of persons under national criminal law. They shall, however, have access to the information thus obtained.

Article 10

By agreement with the requested authority and according to the procedures laid down by it, officials duly authorized by the applicant authority may obtain, at government offices in the Member State in which the requested authority is based, information on the application of customs or agricultural legislation needed by the applicant authority and available in documentation accessible to the staff of those offices. These officials shall be authorized to take copies of the said documentation.

Article 11

Findings, certificates, information, documents, certified true copies and any intelligence obtained by the staff of the requested authority and transmitted to the applicant authority in the course of the assistance provided for in Articles 4 to 10 of this Regulation may be invoked by the competent body of the applicant authority. In that event they shall not be accorded lesser weight by virtue solely of the fact that they do not come from staff of the applicant authority.

TITLE II

SPONTANEOUS ASSISTANCE

Article 12

The competent authorities of each Member State shall, as laid down in Articles 13 and 14 of this Regulation, provide assistance to the competent authorities of the other Member States without prior request.

Article 13

Where they consider it serves the enforcement of customs or agricultural legislation, each Member State's competent authorities shall:

- (a) as far as is possible keep, or have kept, the special watch described in Article 7 of this Regulation;
- (b) transmit to the competent authorities of the other Member States concerned all information in their possession, and in particular reports and other documents or certified true copies or extracts thereof, concerning operations which constitute, or appear to them to constitute, breaches of customs or agricultural legislation.

Article 14

The competent authorities of each Member State shall immediately send to the competent authorities of the other Member States all relevant information concerning operations which constitute, or appear to them to constitute, breaches of customs or agricultural legislation, and

in particular information concerning the goods involved and new ways and means of carrying out such operations.

Article 15

Information obtained by staff of one Member State and transmitted to another Member State in the course of the spontaneous assistance provided for in Articles 12 to 13 of this Regulation may be invoked by the competent bodies of the Member State receiving the information. In that event it shall not be accorded lesser weight by virtue solely of the fact that it does not come from staff of the recipient Member State.

TITLE III

RELATIONS WITH THE COMMISSION

Article 16

1. The competent authorities of each Member State shall transmit to the Commission as soon as it is available to them:

(a) any information they consider relevant concerning:

- goods which have been or are suspected of having been the object of breaches of customs or agricultural legislation;
- methods or practices used or suspected of having been used to breach customs or agricultural legislation;
- requests for assistance, action taken and information exchanged in application of Articles 4 to 15 of this Regulation;

(b) any information on flaws or gaps in the customs or agricultural legislation that become apparent or may be deduced from the application of that legislation.

2. The Commission shall transmit to the competent authorities in each Member State, as soon as it becomes available, any information that would help them to enforce customs or agricultural legislation.

Article 17

1. Where a Member State's competent authorities become aware of operations which constitute, or appear to constitute, breaches of customs or agricultural legislation that are of particular relevance at Community level, and especially:

- where they have, or might have, ramifications in other Member States, or
- where it appears likely to the above authorities that similar operations have also been carried out in other Member States,

they shall transmit to the Commission as soon as possible, either on their own initiative or in response to a reasoned request from the Commission, any relevant information, be it in the form of documents or certified true copies or extracts thereof, needed to determine the facts in order that the Commission might coordinate the steps taken by the Member States.

The Commission shall pass this information on to the competent authorities of the other Member States.

2. Where a Member State's competent authorities invoke paragraph 1, they need not transmit information as provided in Article 13(b) and Article 14 of this Regulation to their counterparts in the other Member State concerned.

3. In response to a reasoned request from the Commission, the Member States' competent authorities shall act in the manner laid down in Articles 4 to 8 of this Regulation.

4. Where the Commission considers that operations constitute or appear to constitute breaches of customs or agricultural legislation, it shall inform the Member State or States concerned, which shall as soon as possible carry out an enquiry, with which Commission staff may be associated. They shall participate, once the Member State or States concerned have been informed, on the conditions laid down in the second and third subparagraphs of Article 9 (2) of this Regulation.

The Member State concerned shall notify the Commission of the conclusions reached by this enquiry.

5. Representatives of the Commission may collect the information specified in Article 10 of this Regulation on the conditions laid down in that Article.

6. This Article is without prejudice to the Commission's right to information and scrutiny by virtue of other legislation in force.

Article 18

The Commission shall organize meetings with the representatives of the Member States, at which they shall:

- examine the general working of the mutual assistance arrangements provided for in this Regulation;
- make practical provisions for forwarding the information referred to in Articles 16 and 17 of this Regulation;
- examine information sent to the Commission pursuant to Articles 16 and 17 of this Regulation to see if anything can be learnt from it, decide on the measures required to put an end to practices found to be in breach of customs or agricultural

legislation and, where necessary, suggest amendments to existing Community provisions or the drafting of new ones;

- prepare joint enquiries coordinated by the Commission to be carried out in application of this Regulation;
- examine measures taken to safeguard the confidentiality of information, in particular personal data, exchanged under this Regulation, other than that provided for in Title V.

TITLE IV

RELATIONS WITH THIRD COUNTRIES

Article 19

1. Provided the third country concerned has give a legal undertaking to provide the assistance required to gather proof of the irregular nature of operations which appear to be contrary to customs or agricultural legislation or to determine the scope of operations which have been found to be contrary to that legislation, information obtained under this Regulation may be transmitted to that third country, subject to the agreement of the competent authorities of the Member State or the Commission, as the case may be, supplying the information in accordance with national provisions implementing Directive No [], and in particular Chapter IV thereof, or the corresponding provisions applying to the Commission, and if necessary subject to the agreement of the person concerned, in so far as this does not jeopardize the successful outcome of the enquiry.

The information may be transmitted by the Commission, which shall then take appropriate steps to ensure a degree of protection equivalent to that laid down by Article 40(1) of this Regulation.

Article 20

1. The Commission is authorised to start negotiations with third countries for the conclusion of agreements establishing a system of administrative cooperation and investigation in order to obtain and to communicate the necessary information for the application of this regulation under the conditions established in article 19 and on condition that the third countries have taken the legal steps to do so.

2. In pursuit of the objectives of this Regulation, the Commission may, on the conditions laid down in Article 19 of this Regulation, conduct Community administrative and investigative missions in third countries in coordination and close cooperation with the competent authorities of the Member States.

3. The Community missions to third countries referred to in paragraph 1 shall be governed by the following conditions:

- (a) They may be undertaken at the Commission's initiative or at the request of one or more Member States.
- (b) They shall be carried out by Commission representatives appointed for that purpose and by officials appointed for that purpose by the Member State or Member States concerned.
- (c) They may also, by agreement with the Commission and the other Member States concerned, be carried out on behalf of the Community by officials of a Member State, in particular under a bilateral assistance agreement; in that event the Commission shall be informed of the results of the mission.
- (d) Mission expenses shall be paid by the Commission.

4. The Commission shall inform the Member States of the results of missions carried out pursuant to this Article.

Article 21

1. The findings and information obtained in the course of the Community missions referred to in Article 20 of this Regulation, and in particular documents passed on by the competent authorities of the third countries concerned, shall be handled in accordance with Article 40 of this Regulation.

2. Such findings and information may not be accorded lesser weight by virtue solely of the fact that they do not come from staff of the Member State using them in the course of administrative or legal action or proceedings brought for breaches of customs or agricultural legislation, or because they have been obtained outside the Community.

3. For such purposes, original documents obtained, or certified true copies thereof, shall be forwarded by the Commission to the competent authorities of the Member States if they so request.

Article 22

The Member States shall notify the Commission of information exchanged with third countries wherever relevant to the implementation of this Regulation or the effectiveness of customs or agricultural legislation.

TITLE V

CUSTOMS INFORMATION SYSTEM

Establishment of a computerized system

Article 23

1. A computerized information system shall be set up. It shall serve for data-processing designed to help prevent, investigate and prosecute breaches of customs and agricultural legislation, excluding operations financed by the european agricultural guidance and guarantee fund, by speeding up the dissemination of information and intelligence in order to strengthen the effectiveness of the cooperation and control procedures used by the competent authorities referred to in this Regulation.

2. The system referred to in paragraph 1, hereinafter referred to as the "customs information system" (CIS), shall consist of a central database accessible via terminals in each Member State and at the Commission.

3. Without prejudice to the provisions of Directive Nr [...] the provisions of the present title do not apply to articles 16 and 17 of this regulation.

Article 24

In accordance with its function, the CIS database shall contain data in the following categories:

- (i) goods,
- (ii) means of transport,
- (iii) businesses,
- (iv) persons,
- (v) trends in fraud,
- (vi) availability of expertise.

Article 25

1. Data in categories (i) to (iv) of Article 24 of this Regulation shall be included in the customs information system for the purposes applying customs or agricultural legislation, excluding operations financed by the European agricultural guidance and guarantee fund, including, in special circumstances, for requirements of tracking and identification, discreet surveillance or specific checks.

2. Information and intelligence shall comprise only such data, including personal data, as are necessary to achieve the end in view, as referred to in paragraph 1.

3. For the purposes requirements described in paragraph 1, personal data within any of the categories (i) to (iv) of Article 24 of this Regulation may be included in the customs information system only if, essentially on the basis of previous offences, there are real grounds for suspecting that the person in question has committed, is committing or is about to commit offences against customs or agricultural legislation.

Operation and use

Article 26

1. The customs information system shall be managed jointly by the Commission and the Member States. For that purpose the Commission shall organize meetings with the representatives of the Member States, at which they shall:

- examine the management and operation of the customs information system and all the measures required to ensure the security of the system;

- examine the necessity of storing information in the customs information system;
- examine measures taken to safeguard the confidentiality of information entered in the customs information system under this Regulation, particularly personal data, and to ensure compliance with the obligations incumbent on those responsible for processing.

The Member States and the Commission shall designate the staff who will have access to the customs information service via the terminals in each Member State and at the Commission.

2. Data in the customs information system shall be processed only by national authorities and Commission departments competent to do so by virtue of their duties, for the purposes of the objective set out in Article 23 and to the ends specified in Article 25(1).

3. Each Member State shall inform the Commission of the national authority responsible for managing the customs information system. Each Member State shall send the Commission a list of the competent authorities authorized to have direct access to the customs information system, specifying the data to which each authority shall have access and why.

The Commission nominates the services responsible for the working and the use of the system stipulating the data to which they shall have access and why. The Commission shall inform the other Member States thereof.

A list of national authorities and of the Commission services so nominated is published by the Commission in the Official Journal of the European Communities.

4. The Commission shall determine, and shall publish in the Official Journal of the European Communities, the list of third countries and international or regional organizations which may be linked to the customs information system for the purposes referred to in Article 27, taking into account inter alia existing bilateral arrangements and the opinion of the group of supervisory authorities

referred to in Article 36 of this Regulation regarding the level of protection to be enjoyed by individuals with respect to the processing of personal data.

Article 27

The Commission shall determine the items to be included in the customs information system relating to each of the categories (i) to (vi) of Article 24 to the extent that this is necessary to fulfil the aim of the system. No items of personal data may be included in categories (v) and (vi). Personal data entered under categories (i) to (iv) of Article 24 shall comprise no more than the following information:

- (a) the customs information system reference number,
- (b) name, maiden name, forenames and aliases,
- (c) date and place of birth,
- (d) nationality,
- (e) passport number,
- (f) identity card number,
- (g) sex,
- (h) distinguishing features,
- (i) address,
- (j) whether the Member State supplying the data has a photograph,
- (k) nature of the case,
- (l) intelligence on the goods, means of transport or businesses which, directly or indirectly, identify and individual,
- (m) grounds for the report,
- (n) recommended course of action,
- (o) code warning that the person concerned has been known to carry a weapon, use violence or escape from custody,
- (p) cross references to data in the customs information system concerning persons, businesses, goods or means of transport associated with the suspect,
- (q) routing,
- (r) customs offices notified,
- (s) modus operandi,

(t) details of the customs authorities to be contacted.

In no circumstances whatsoever may the system include the personal data listed in Article 8(1) of Directive [].

Article 28

1. If activities are carried out in the special circumstances referred to in Article 25(1) of this Regulation, all or part of the following intelligence may be gathered by the competent national authorities and transmitted to the authority supplying the data:

- (a) the fact that the goods, means of transport, business or person concerned have been located,
- (b) the time and place of, and the reason for, the check,
- (c) the route and the destination of the journey,
- (d) persons accompanying the individual in question or the occupants of the means of transport,
- (e) the means of transport used,
- (f) the objects carried,
- (g) the circumstances surrounding the discovery of the product, means of transport, firm or person.

Where this type of intelligence has been gathered by discreet surveillance, steps should be taken to preserve the secrecy of the operation.

2. Where persons, means of transport and objects may be inspected in the special circumstances referred to in Article 25(1) of this Regulation, this shall be done in accordance with the laws, regulations and procedures of the Member State in which the inspection takes place. Special checks not authorized by the law of a Member State shall automatically be converted by that Member State into discreet surveillance.

Article 29

1. Save where this Regulation specifically provides otherwise, the entry of data into the customs information system shall be governed by the laws, regulations and procedures implementing Directive No [] in the Member State making the entry and to the corresponding provisions applicable to the Commission.

2. Save where this Regulation specifically provides otherwise, the processing of data from the customs information system, including the performance of any operation covered by Article 25 of this Regulation and mentioned by the Member State or Commission making the entry, shall be governed by the laws, regulations and procedures implementing Directive No [] in the Member State making the entry and to the corresponding provisions applicable to the Commission.

Article 30

Data transmitted by other Member States or by the Commission in accordance with the present title shall not be further processed by the Member States or by Community institutions other than in the Customs information system. Such data may be duplicated only for technical reasons and on condition that such duplication is necessary to the enquiries being carried out by the authorities designated by the Member States or the Commission.

Amendment of data

Article 31

1. The Member States and the Commission respectively shall be authorized to amend, supplement, correct or delete data only such data as they have themselves entered in the customs information system.

2. Where a Member State or the Commission finds that data it has entered is inaccurate or has been entered or stored in the system in breach of this Regulation or of national provisions implementing

Directive No [] or corresponding provisions applicable to the Commission, it shall amend, supplement, correct or delete that data, as appropriate, and shall notify the other Member States and the Commission accordingly.

3. Where a Member State or the Commission has evidence to suggest that an item of data is inaccurate or has been entered or stored in the database in breach of this Regulation, it shall notify the Member State or the Commission which entered it as soon as possible. That Member State or the Commission shall check the data concerned and, if necessary, correct or delete the offending item without delay. The said Member State or the Commission shall notify the other Member States and the Commission, as the case may be, of any correction or deletion.

4. Where a Member State or the Commission, on entering data into the customs information system, notices that its report conflicts with an earlier one in terms of the case or the action required, it shall immediately notify both the Member State responsible for the earlier report and the Commission. The Member States concerned and the Commission shall then attempt to resolve the contradiction. In the event of disagreement the first report will be retained but particulars of the new report which are not inconsistent with it will be entered in the system.

Data storage

Article 32

1. Data entered in the customs information system shall be kept in accordance with Article 6(e) of Directive [] and shall be reviewed at least once a year by the Member State which entered it or the Commission, as the case may be.

2. Without prejudice to Article 34 of this Regulation, data not stored by the Member State which entered it or the Commission, as the case may be, shall immediately be transferred to that part of the

customs information system to which access is restricted under paragraph 4.

3. The Member States and the Commission shall automatically be notified a month in advance of the transfer of data stored in the customs information system in accordance with paragraph 2 above.

4. Data transferred under paragraph 2 shall continue to be stored in the customs information system for a period of one year, but, without prejudice to Article 34 of this Regulation, shall be accessible only by the persons responsible for management referred to in Article 25 and the national supervisory authorities within the meaning of Article 36. During that period it may be consulted only to check its accuracy or legality, after which it must be deleted.

Exercise of individual rights

Article 33

Where this Regulation does not specifically provide otherwise and in order to ensure the proper application of this Regulation's provisions on the protection of individuals with regard to the processing of personal data, the customs information system, shall be regarded in every Member State as national processing subject to the national provisions implementing Directive [].

Article 34

1. The rights of individuals with regard to the processing of personal data in the customs information system shall be exercised in accordance with the laws, regulations or procedures of the Member State in which such rights are invoked and corresponding measures for the Commission.

2. A Member State receiving a request for access to personal data may refuse access if communication would be likely to prejudice the prevention, investigation or prosecution of breaches of customs or

agricultural legislation, excluding operations financed by the European agricultural guidance and guarantee fund, as provided for in Article 14(1) of Directive[].

Communication to the person concerned will be refused in every case throughout the period during which the data is introduced with a view to the actions mentioned in article 25 paragraph 1.

3. Where a Member State requests access to personal data entered by another Member State or the Commission, such access shall be accorded only if that Member State or the Commission has had the opportunity to state its position.

Security of the customs information system

Article 35

1. The Commission and the Member States shall take all measures necessary, pursuant to Article 17 of Directive [], to preserve the security of the customs information system. They shall take, in particular, the measures necessary to prevent any unauthorized reading, copying, alteration or deletion of data in the course of transmission or transport of data-storage media.

Such measures shall be taken:

- (i) in the case of customs information system terminals on Commission premises or in the Member States, by the Commission or the competent authorities of the Member States respectively;
- (ii) in the case of the customs information system and of terminals on premises used for technical reasons or for the checks referred to in paragraph 2, by the Commission or the Member States, as provided for in Article 24.

2. The department designated by the Commission and the competent authorities of the Member State referred to in Article 24 shall monitor interrogation of the customs information system for the purpose of checking that searches made were admissible and carried out by authorized users. At least 1% of all searches shall be

checked. A record of such checks shall be kept in the system, used for that sole purpose by the department designated by the Commission and the competent authorities of the Member States referred to in Article 24, and deleted after six months.

Supervising the protection of individuals with regard to the processing of personal data

Article 36

1. The independent national supervisory authorities referred to in Article 30 of Directive [] shall supervise the protection of individuals with regard to the processing of personal data. To that end they shall inter alia be empowered to have access to the customs information system.

2. At the request of one of the national supervisory authorities referred to in paragraph 1, the Commission shall convene a meeting of the said authorities for the purpose of examining any issues concerning the supervision of the protection of individuals with regard to the processing of personal data in the customs information system.

These shall included supervision of operation of the customs information system, the examination of any difficulties of application or interpretation which may arise during its operation, the study of problems which may arise during the checks referred to in paragraph 1 or in the exercise of the right of access to the database, and the drafting of proposals aimed at finding common solutions to such problems.

3. Reports drafted after the meetings referred to in paragraph 2 shall be sent to the authorities to which the national supervisory authorities report.

4. Any person may, in accordance with the laws, regulations and procedures of the Member State in question, ask any national supervisory authority to check personal data concerning him in the customs information system and the use that is being made or has been made thereof, as provided for in Article 14(2) of Directive []. Where this data has been entered by another Member State, or by the Commission it shall be verified according to the laws, regulations and procedures of the Member State in question, or corresponding provisions applicable to the Commission, in close cooperation with the other Member State's national supervisory authority.

Publicizing the customs information system

Article 37

1. The Commission shall publish a communication in the Official Journal of the European Communities concerning the implementation of the customs information system.

2. Without prejudice to other national provisions concerning notification of processing under Directive [], the customs information system shall be included in the processing registers kept by the national supervisory authorities pursuant to Article 21 of the said Directive.

Responsibilities and obligations

Article 38

Where an action in respect of incorrect data is brought under Article 23 of Directive [] against a Member State or the Commission but the data was not entered by that Member State or the Commission, as the case may be, the said Member State or the Commission shall take steps to agree with the party which entered the data on the proportion of any damages awarded to be repaid to the other Member States or the Commission, as the case may be, by the

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party that entered the data. The sums agreed shall be repaid on request.

TITLE VI

FINAL PROVISIONS

Article 39

Without prejudice to the provisions in Title V on the customs information system, the documents provided for in this Regulation may be replaced by computerized information produced in any form for the same purpose.

Article 40

1. Regardless of the form, any information transmitted pursuant to this Regulation shall be of a confidential nature, including the data stored in the customs information system referred to in Article 23. It shall be covered by the obligation of professional secrecy and shall enjoy the protection extended to like information under both the national law of the Member States receiving it and the corresponding provisions applicable to the Community authorities.

In particular, the information referred to in the first subparagraph may not be sent to persons other than those in the Member States or within the Community institutions whose functions require them to know or use it. Nor may it be used for purposes other than those provided for in this Regulation, unless the Member State or the Commission, which supplied it or entered it in the customs information system referred to in Article 23 has expressly agreed and subject to the conditions laid down by that Member State or by the Commission and in so far as such communication or use is not prohibited by the provisions in

force in the Member State in which the recipient authority is based.

2. Without prejudice to the provisions in Title V on the customs information system, information about natural and legal persons shall be transmitted under this Regulation only where strictly necessary to prevent or discover operations contrary to customs and agricultural legislation.
3. Paragraphs 1 and 2 shall not preclude the use of information obtained under this Regulation in any legal action or proceedings subsequently initiated in respect of failure to comply with customs or agricultural legislation.

The competent authority of the Member State supplying that information shall be notified of such use forthwith.

4. Where the Commission is notified by a Member State that further enquiries have exonerated of involvement in irregularities a natural or legal person whose name was transmitted under this Regulation, the Commission shall forthwith notify all to whom this personal data has been transmitted. The person concerned shall then cease to be regarded as being involved in the irregularity that gave rise to the initial notice.

Where the identifying data relating to the person concerned are in the customs information system referred to in Article 23 they shall be removed from it.

Article 41

For the purposes of applying this Regulation, Member States shall take all necessary steps to:

- (a) ensure effective internal coordination between the administrative authorities referred to in Article 1(1);

- (b) establish in their mutual relations all necessary direct cooperation between the authorities empowered for that purpose;
- (c) decide jointly whether procedures are needed to ensure the smooth operation of the mutual assistance arrangements provided for in this Regulation;
- (d) determine, in so far as is necessary and national legislation permits, procedures whereby administrative authorities in one Member State that have launched a surveillance operation or are tracking goods or persons may continue this operation in the territory of another Member State, in close cooperation with the authorities of the latter, for the sole purpose of avoiding any interruption that might impede the detection of a breach of customs or agricultural legislation, until such time as the authorities of the Member State on whose territory the operation is taking place can take it over.

Article 42

- 1. This Regulation shall not bind the Member States' administrative authorities to grant each other assistance where that would be likely to be injurious to public order or other fundamental interests of the Member State in which they are based.

Considerations relation, inter alia to Member States' trade or commercial interests shall not be considered fundamental interests.

- 2. Reasons shall be stated for any refusal to grant assistance.

Article 43

Without prejudice to the Commission's right to be notified under other regulations in force, the Member States shall transmit to the Commission administrative or legal decisions or the main elements

thereof relating to the application of penalties for breaches of customs or agricultural legislation in cases which have been the subject of communications under Article 16 or 17 of this Regulation.

Article 44

Without prejudice to the expenses associated with the implementation of the customs information system referred to in Title V or damages under Article 38, Member States shall waive all claims for the reimbursement of expenses incurred under this Regulation, save, where appropriate, in respect of fees paid to experts.

Article 45

Without prejudice to the fifth indent of Article 2(1) or to Article 3, this Regulation shall not affect the application in the Member States of the rules on mutual assistance in criminal matters.

Article 46

1. Regulation (EEC) No 1468/81 is hereby repealed.

2. References made to Regulation (EEC) No 1468/81 shall be understood as referring to this Regulation.

Article 47

This Regulation shall enter into force on the third day following 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 :

46.

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