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*****II**

RECOMMENDATION FOR SECOND READING

on the common position established by the Council with a view to the adoption of a European Parliament and Council decision amending Decision n° 210/97/EC adopting an action programme for customs in the Community (Customs 2000) and repealing Council Decision 91/341/EEC (9601/1/1999 – C5-0183/1999 – 1998/0314(COD))

Committee on Legal Affairs and the Internal Market

Rapporteur: Claude Moraes

Symbols for procedures

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

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

Abbreviations for committees

- I. AFET Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy
- II. BUDG Committee on Budgets
- III. CONT Committee on Budgetary Control
- IV. LIBE Committee on Citizens' Freedoms and Rights, Justice and Home Affairs
- V. ECON Committee on Economic and Monetary Affairs
- VI. JURI Committee on Legal Affairs and the Internal Market
- VII. INDU Committee on Industry, External Trade, Research and Energy
- VIII. EMPL Committee on Employment and Social Affairs
- IX. ENVI Committee on the Environment, Public Health and Consumer Policy
- X. AGRI Committee on Agriculture and Rural Development
- XI. PECH Committee on Fisheries
- XII. REGI Committee on Regional Policy, Transport and Tourism
- XIII. CULT Committee on Culture, Youth, Education, the Media and Sport
- XIV. DEVE Committee on Development and Cooperation
- XV. AFCO Committee on Constitutional Affairs
- XVI. FEMM Committee on Women's Rights and Equal Opportunities
- XVII. PETI Committee on Petitions

CONTENTS

	Page
Procedural page.....	4
DRAFT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT	7

PROCEDURAL PAGE – CODECISION (2d READING)

At its sitting on 15 April 1999 Parliament delivered its opinion at first reading on the proposal for a European Parliament and Council Decision amending Council Decision 210/97/EEC adopting an action programme for customs in the Community (Customs 2000) and repealing Council Decision 91/341/EEC (COM(1998) 644 – 1998/0314(COD)).

At the sitting on 7 October 1999 the President of Parliament announced that the common position had been received and referred to the Committee on Legal Affairs and the Internal Market (9601/1/1999 – C5-0183/1999).

The committee appointed Claude Moraes rapporteur at its meeting on 21, 22 and 23 September 1999.

It considered the common position and the draft recommendation for second reading at its meetings on 11, 12 and 13 October, 8 and 9 November 1999, 22 and 23 November 1999 and 29 and 30 November 1999.

At the last meeting it adopted the draft legislative resolution.

The following were present for the vote: Wieland, acting chairman; Rothley and Beysen, vice-chairmen; Moraes, rapporteur; Berger, Echerer, Fourtou, Garaud, Grossetête, Hager, Harbour, Inglewood, Lechner, Lehne, Miller, MacCormick, Niebler, Oomen-Ruijten, Wallis, Zacharakis, Zimeray, Zimmerling.

The recommendation for second reading was tabled on 30 November 1999.

The deadline for tabling amendments to the common position will be indicated in the draft agenda for the relevant part-session.

DRAFT LEGISLATIVE RESOLUTION

Legislative resolution of the European Parliament on the Council common position with a view to the adoption of a European Parliament and Council decision amending Decision n° 210/97/EC adopting an action programme for customs in the Community (Customs 2000) and repealing Council Decision 91/341/EEC (9601/1/1999 – C5-0183/1999 – 1998/0314(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (9601/1/1999 – C5-0183/1999),
- having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(1998) 644²),
- having regard to the Commission's amended proposal (COM(1999) 253³),
- having regard to Article 251(2) of the EC Treaty,
- having regard to Rule 80 of its Rules of Procedure,
- having regard to the recommendation for second reading of the Committee on Legal Affairs and the Internal Market (A5-0085/1999),

1. Amends the common position as follows;
2. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 219, 30.7.99, p. 409

² OJ C 396, 19.12.98, p. 13

³ OJ C 247, 31.8.99, p. 28

(Amendment 1)

Article 1 (b) 2a ~~Note to the FR translation: please replace the 2d word "démarche" by "approche"~~

2a. The customs policy strategy shall be drawn up in partnership between the Commission and the Member States in the Customs Policy Committee, composed of Heads of Customs Administrations from the Commission and the Member States or their representatives. The Commission shall keep the Committee regularly informed of measures relating to the implementation of the programme.

2a. A common approach regarding the customs policy shall be drawn up in partnership between the Commission and the Member States in a Customs Policy Group, composed of Heads of Customs Administrations from the Commission and the Member States or their representatives. The Commission shall keep the Customs Policy Group regularly informed of measures relating to the implementation of the programme.

Justification:

The text of the Common Position gives the impression that two Committees are set up pursuant to the Decision, contrary to what is duly said on Recital 15. In reality one single Committee under the meaning of Council Decision (1999/468/EC) of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred to the Commission (OJ L 184, 17.07.1999, p. 23) is set up, pursuant to Article 16b. Using the word Committee in Article 1 (b) 2a is therefore misleading. Wording must be amended in order to obviate any ambiguity.

EXPLANATORY STATEMENT

I. THE ORIGINAL PROPOSAL AND PARLIAMENT'S FIRST READING

This legislative proposal was introduced by the Commission on 11 November 1998 with the objective of amending Decision No 210/97/EC of the European Parliament and of the Council of 19 December 1996 (OJ L33, 04.02.97, p24-32) adopting an action programme for customs in the European Union, called Customs 2000. The programme aimed to improve the work of the customs' administrations in the EU member states and to foster co-operation to guarantee that Community law is applied at every point of the Community customs territory, achieving equivalent results in order:

- to avoid distortions likely to prejudice the proper functioning of the internal market,
- to protect the Community's (in particular financial) interests, including the fight against fraud, and
- to sustain an equivalent level of protection to the Community's citizens and economic operators, wherever in the Community's territory the customs clearance formalities are carried out.

The programme aimed to support the improvement of working methods, in particular by fostering risk-analysis, using audit techniques, simplifying procedures, expanding computerisation, and co-operating with economic operators.

Actions under the programme were aimed particularly at:

- computerisation and linking databases of the different national administrations,
- training of customs officials,
- monitoring of specific areas of the customs administration, and
- promotion of exchanges between the national administrations responsible for the implementation of the EU customs policy.

The amendments proposed by the Commission on 11 November 1998 - which came after a first proposal of 4 September 1997 (COM/97/0433, OJ C310, 11.11.97, p. 3) which was stopped by the Parliament on the ground that the implementation report foreseen in Article 17 of Decision 210/97/EC should have been presented before the Commission present a proposal to amend such Decision - aimed combining all operations relating to EU customs administration. In particular:

- actions covered by the existing Customs 2000 Decision, particularly joint operations with the Member States in order to develop new and to improve existing working methods, by monitoring, by seminars, through exchanges etc. (The management of seminars and the exchange of officials is explicitly enforced through the new Article 16 (now Article 14a in the Common Position): Exchanges of officials and seminars),
- computerisation, currently covered by Customs 2000 and IDA (new article 14 (now Article 13a in the Common Position): Information exchange and communication systems, manuals and guides),

- training schemes, partly still covered by the Matthaëus programme (modified article 14: Training actions); this modification implies the complete incorporation of the Matthaëus Programme in Customs 2000; Council Decision 91/341/EEC on the Matthaëus Programme will be repealed on the publication of the new adopted decision,
- co-operation with third countries, currently managed in the framework of PHARE, TACIS and MEDA (new article 19 (now Article 16a in the Common Position) provides for the participation of the applicant countries of Central and Eastern Europe, Cyprus, Turkey, and Malta in the programme, extending the provision of the current article 15 which ensures only the implementation of training and technical assistance and cooperation actions for third countries' administrations).

The duration of the decision was extended to 2002. The financial framework consequently was increased from 50 MECU in Decision 210/97/EC (and 85 MECU in a 1997 Commission proposal) to €142.3 million for the period 1996 to 2002 of which €90.7 million are foreseen for the period 1996 to 2000. The increase was due to the inclusion of the computerisation measures from the IDA Programme and of the training measures currently under the Matthaëus programme.

The creation of an advisory committee was proposed, to take over the comitology committee responsibilities of that for the Matthaëus Programme.

At first reading on 10 February 1999, the Parliament moved twenty amendments, the most significant being those related to the creation of one single Committee superseding the Customs Policy Committee established under Decision 210/97/EC, this existing "Committee" being not a Committee as per the Comitology Decision applicable at the time, i.e. Decision 87/373/EEC of 13 July 1987⁴, related to budgetary transparency and financial control and related to the emphasis on the prevention of fraud.

II. THE AMENDED PROPOSAL

The Commission amended proposal of 1 June 1999 took on board twelve of the twenty amendments of the Parliament. The amendment to the recitals aiming to create one single Committee is among these rejected amendments, the reason being that the Commission wanted to preserve the functions of the Customs Policy notwithstanding the creation of a new committee. This new committee would indeed provide the right setting for managing the programme but not give a consultative arrangement to discuss broader policy issues, which could be fed into the programme. Nevertheless, the Commission took on board Parliament amendment to Article 3 in order to delete all reference to the Customs Policy Committee. Commission's approach was therefore one of keeping the partnership opportunity alive without detailing it in the proposal with the consequence that no mention of such Customs Policy Committee could then be found in any legislative text !

III. COMMON POSITION OF THE COUNCIL (C5-0183/1999 - 1998/0314 (COD))

⁴ OJ L 197, 18.07.1987, p. 33

The Common Position adopted by the Council on 13 September 1999 incorporates most of the amendments presented by the Parliament in first reading.

A. COMITOLOGY ISSUES

The Common Position nevertheless reinstates the wording of Article 3 mentioning the Customs Policy Committee while in meantime introducing a recital 15 indicating that a Committee should be set up, being the “comitology” Committee (Article 16b) as proposed by the Commission and agreed on by the Parliament.

1) Article 16b Committee

This “comitology” Committee becomes in the Common Position a management Committee in the Common Position while it was an advisory Committee in the proposal. The advisory type Committee was indeed unanimously rejected by the Member States partly because they established a parallel with the Fiscalis programme (the tax equivalent of Customs 2000), which is managed by management Committee. Pursuant to recital 6 of new Comitology Decision, “the management procedure should be followed as regards management measures such as those relating to (...) the implementation of programmes with substantial budgetary implications”. The Committee on Legal Affairs and the Internal Market believes that the budget of this Customs 2000 programme, i.e. €142.3 million, makes it a programme with substantial budgetary implications.

2) Article 3 “Committee”

Regarding the reinstatement of reference to the Customs Policy Committee in Article 3, nonetheless, the Committee on Legal Affairs and the Internal Market believes that this may be read as indicating that two Committees are set up pursuant to the Decision while in reality one single Committee is set up under the meaning of the comitology Decision, pursuant to Article 16b. Using the word Committee in Article 1 (b) 2a is therefore misleading. Wording must therefore be amended in order to obviate any ambiguity. The Committee on Legal Affairs and the Internal Market nevertheless agrees on the necessity to keep alive the Customs Policy Committee as its mission is different but not less essential than the one granted to the management committee set out in Article 16b. Indeed the partnership forum gives the Commission the possibility to consult Member States without the risk of creating problems with the implementation of the programme.

As it is clear from the amended proposal from the Commission, mentioned above, the Commission's interest was in retaining the functions rather than the name of the committee.

The Committee on Legal Affairs and the Internal Market agrees with the Commission on this issue: the term “Committee” as a clear legal understanding under European law and such “Customs Policy Committee”, being not a “Committee” under the narrow meaning of the Comitology Decision, cannot be called as such.

The Committee on Legal Affairs and the Internal Market has nevertheless been informed that, given that the “Customs Policy Committee” is a Director General level meeting, any attempts to change the name for form's sake would lead into conciliation as the Customs Policy Committee is an area where the fifteen Member States are unanimously hostile to change.

The Committee on Legal Affairs and the Internal Market wants to point out that this issue is a

matter of legal form and not of substance. It would therefore not be acceptable that such a “non issue” would lead into conciliation. As party to the Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation⁵, the Council is bound by Article 6 of such Agreement which reads “*the terminology used in a given act shall be consistent both internally and with acts already in force, especially in the same field. Identical concepts shall be expressed in the same terms, as far as possible without departing from their meaning in ordinary, legal or technical language.*”

The Committee on Legal Affairs and the Internal Market wants to insist on the risks that would be posed by conciliation and on the fact that Council and Parliament respective behaviour must be drawn up having such risk on mind.

If this matter goes to conciliation, no funding would be available for computerisation projects from 1.1.2000. This will damage the transit actions in particular and will mean that new Article 8 (b) would have to be reconsidered which fixes a date on which the New Computerised Transit system will be completed. Effectively the conciliation process will delay the implementation of the recommendations of the work of the Parliament’s “Committee of Enquiry into the Common Transit System” over this formal issue. If new contracts are delayed, the Commission will not be in a position to provide the support necessary to help Member States meet these deadlines.

The Committee on Legal Affairs and the Internal Market appreciates that the Commission's interest lies not in the name of the Committee but its function as a partnership organ. It is therefore important to avoid a situation in which the implementation of the work, which the Parliament’s “Committee of Enquiry into the Common Transit System” has pushed for, would be blocked for just a drafting issue.

B. BUDGET

On the budget, the Council reduced it up to €135 million in the Common Position. As the Parliament agreed in first reading on an amount of €142.3 million and as the Commission approved the reduction of such amount as per the Common Position, the Committee on Legal Affairs and the Internal Market is of opinion that the Parliament cannot do but agree on this new financial envelope.

C. CONCLUSION

The Committee agrees to the Common proposal, with one amendment trying to stay as close as possible to the text as in the Common Position, with the confidence that the Council would adopt a reasonable attitude which could avoid conciliation.

⁵ OJ C 73, 17.03.1999, p.1