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Committee on Budgetary Control

2006/0290(COD)

18.7.2007

OPINION

of the Committee on Budgetary Control

for the Committee on the Internal Market and Consumer Protection

on the proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 515/97 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 and agricultural matters
(COM(2006)0866 – C6-0033/2007 – 2006/0290(COD))

Draftsman(*): Jean-Pierre Audy

(*): Enhanced cooperation between committees – Rule 47 of the Rules of Procedure

PA_Legam

SHORT JUSTIFICATION

This Commission proposal seeks to adapt Council Regulation No 515/97 of 13 March 1997 to the new customs cooperation powers laid down in Article 135 of the Treaty establishing the European Community and in Article 280 of that Treaty on protection of the Community's financial interests. The Court of Auditors¹ and the European Data Protection Supervisor² have delivered opinions on the draft.

This opinion of the Committee on Budgetary Control is presented under an enhanced cooperation procedure with the Committee on the Internal Market and Consumer Protection in accordance with Rule 47 of the Rules of Procedure.

The proposal's principal objective is to enhance cooperation between Member States and between the latter and the Commission with a view to continuously stepping up the fight against fraud in the context of the customs union and the common agricultural policy.

The correct application of the law on customs and agricultural matters plays a decisive role in ensuring that the internal market functions properly. It also forms a substantial part of an effective international trade strategy, particularly with regard to correct application of trade defence instruments. Furthermore, it is essential to protecting the financial interests not only, clearly, of the Community but also, more generally, of European economic operators and citizens.

The extension of the Community's land and maritime borders following enlargements associated with the reunification of the European continent and the fact that, with the exception of Croatia, the borders will probably not change significantly in the coming years mean that there is an opportunity to use this period to strengthen European customs arrangements. However, the legal instruments for this cooperation are particularly complex because the legal bases are divided between the first and third pillars. The draftsman welcomes the Commission's attempts to facilitate practical cooperation between the various actors. The draftsman also welcomes the fact that protection of natural persons has been taken into account with regard to the processing of personal data and protection of privacy.

1. FIDE

The customs files identification database (FIDE) allows the Member States' relevant authorities and the Commission to identify persons or companies that are subject to investigation or to an administrative or judicial penalty for an operation in breach, or potentially in breach, of customs or agricultural legislation. The FIDE therefore makes it possible for the various services to cooperate more effectively. In 2002 Parliament welcomed what was then an innovative plan to create such a database within the third pillar³. The draftsman is therefore pleased with the Commission's proposal to locate the FIDE within the first pillar. Some of the amendments are aimed at implementing the Court of Auditors' proposals with a view to making the FIDE more useful to the services concerned.

¹ Opinion No 3/2007, OJ XXX.

² Opinion of 22 February 2007.

³ Legislative resolution of 18 December 2002, OJ C31 E, 5.2.2004, p. 171.

The draftsman shares the Court's concerns about the integrated approach to managing the various databases relating to the fight against fraud, but considers this to be a discussion going beyond the bounds of this Regulation and therefore one which should be conducted in a different context.

2. Coherent cooperation at European level

The draftsman supports the Commission's proposals aiming to promote the added value of cooperation at European level, in particular the European data directory and the platform of services. However, in the interests of improving the effectiveness of OLAF and its cooperation with the other actors responsible for combating fraud, he believes that the legislator should take note of recent institutional developments at European level. Without wishing to claim new powers for the Community in this field, he suggests that the legislator should express clearly its support for the exchange of best practice between OLAF and the other European and international bodies responsible for combating fraud. In the absence of a more uniform legal framework, the exchange of best practice is necessary to ensure that the various bodies adopt an increasingly coherent approach in the medium term.

3. Financing

On the question of financing, the draftsman emphasises that expenditure must be directly related to the tasks given to the Commission and to the national authorities referred to in this Regulation so as to avoid an overlap between this proposal and other instruments, such as the Hercule II programme. Finally, the draftsman would like to keep the legislative procedure – including the mandatory opinion of the Court of Auditors – for the decision on other communication and information exchange systems rather than apply the 'comitology' procedure.

The draftsman would like to emphasise the need for the Commission to consolidate this Regulation with the one it modifies by adapting the recitals. The draftsman has not drafted such an amendment because that is not within the remit of the European Parliament's Committee on Budgetary Control. However, he considers that the Commission should be asked to consolidate amended Community texts systematically to make it easier for users to understand and apply Community law.

AMENDMENTS

The Committee on Budgetary Control calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

¹ OJ C 0000, 11.5.2007, p. 00.

Amendment 1
PREAMBLE, CITATION 4 A (new)

having regard to the opinion of the Court of Auditors¹,

¹ *OJ C 101, 4.5.2007, p. 4.*

Justification

Consulting the Court of Auditors is compulsory in accordance with Article 280 of the Treaty establishing the European Community.

Amendment 2
RECITAL 10 A (new)

(10a) In order to promote coherence in the action taken by the Commission, the other bodies and agencies of the European Union and other international and regional organisations, the Commission should be authorised to exchange best practice with the aforementioned bodies, and in particular with Europol and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex).

Justification

This new recital allows an amendment on the same subject to be introduced.

Amendment 3
ARTICLE 1, POINT 5
Article 18a, paragraph 2 c (Regulation (EC) No 515/97)

(c) to make the data in this directory available to the relevant authorities referred to in Article 1(1), for the sole purpose of achieving the objectives of this Regulation and in full compliance with national provisions implementing Directive 95/46/EC

(c) to make the data in this directory available **using electronic data processing techniques** to the relevant authorities referred to in Article 1(1), for the sole purpose of achieving the objectives of this Regulation and in full compliance with national provisions implementing Directive 95/46/EC

Amendment 4
ARTICLE 1, POINT 5
Article 18 b, paragraph 1 a (new) (Regulation (EC) No 515/97)

The Commission shall be authorised to provide all forms of technical assistance and training to the liaison officers of third countries and of European or international organisations and agencies, including Europol and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex).

Amendment 5
ARTICLE 1, POINT 17
Article 41 b, paragraph 2, point b (Regulation (EC) No 515/97)

(b) for companies: business name, name used by the company in its activity, premises **and** VAT identifier.

(b) for companies: business name, name used by the company in its activity, premises, VAT identifier **and the excise duty identification number as provided for in Article 22(2)(a) of Council Regulation (EC) No 2073/2004 of 16 November 2004 on administrative cooperation in the field of excise duties¹ and Article 15a(2)(a) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products², as last amended by Directive 92/108/EEC³.**

¹ OJ L 359, 4.12.2004, p. 1.

² OJ L 76, 23.3.1992, p. 1.

³ OJ L 390, 31.12.1992, p. 124.

Justification

This amendment backs up the opinion of the Court of Auditors that including the excise duties identification number in the FIDE would further facilitate the investigations of the Commission and the competent national authorities, and controls in general.

Amendment 6
ARTICLE 1, POINT 17

Article 41 c, paragraph 2, point b (Regulation (EC) No 515/97)

(b) for companies: the business name, the name used by the company in its activity and/or the VAT identifier.

(b) for companies: the business name, the name used by the company in its activity and/or the VAT identifier **and the excise duty identification number as provided for in Article 22(2)(a) of Council Regulation (EC) No 2073/2004 of 16 November 2004 on administrative cooperation in the field of excise duties¹ and Article 15a(2)(a) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products², as last amended by Directive 92/108/EEC³.**

¹ OJ L 359, 4.12.2004, p. 1.

² OJ L 76, 23.3.1992, p. 1.

³ OJ L 390, 31.12.1992, p. 124.

Justification

This amendment backs up the opinion of the Court of Auditors that including the excise duties identification number in the FIDE would further facilitate the investigations of the Commission and the competent national authorities, and controls in general.

Amendment 7

ARTICLE 1, POINT 19

Article 42 a, paragraph 1 (Regulation (EC) No 515/97)

1. This Regulation is the basic act on which the financing of **the following expenditure** is based:

(a) all costs of installing and maintaining the permanent technical infrastructure making available to the Member States the logistical, office automation and IT resources to coordinate joint customs operations, in particular special surveillance operations provided for by Article 7;

(b) the reimbursement of transport, accommodation and daily allowance costs of representatives of the Member States taking part in the Community missions provided for by Article 20, joint customs operations organised by or jointly with the Commission

1. This Regulation is the basic act on which the financing **of all Community action provided for herein** is based, **including:**

(a) all costs of installing and maintaining the permanent technical infrastructure making available to the Member States the logistical, office automation and IT resources to coordinate joint customs operations, in particular special surveillance operations provided for by Article 7;

(b) the reimbursement of transport, accommodation and daily allowance costs of representatives of the Member States taking part in the Community missions provided for by Article 20, joint customs operations organised by or jointly with the Commission

and training courses, ad hoc meetings and preparatory meetings for administrative investigations or operational actions conducted by the Member States, where they are organised by or jointly with the Commission;

Where the permanent technical infrastructure referred to at (a) is used for the purposes of the customs cooperation provided for by Title VI of the Treaty on European Union, the transport, accommodation costs and the daily allowances of the representatives of the Member States shall be borne by the Member States;

(c) expenditure related to the acquisition, study, development and maintenance of the computer infrastructure (hardware) and the software and dedicated network connections for preventing and combating fraud ***and to the related production, support and training services***;

(d) expenditure related to the provision of information and expenditure on related actions allowing access to information, data and data sources for the purposes of ***fraud prevention in the field of the protection of the Community's financial or other interests***.

(e) expenditure related to use of the Customs Information System provided by the instruments adopted under Title VI of the Treaty on European Union and in particular the Convention on the use of information technology in customs matters established by Council Act of 26 July 1995¹, insofar as these instruments provide that this expenditure shall be borne by the Community budget.

and training courses, ad hoc meetings and preparatory meetings for administrative investigations or operational actions conducted by the Member States, where they are organised by or jointly with the Commission;

Where the permanent technical infrastructure referred to at (a) is used for the purposes of the customs cooperation provided for by Title VI of the Treaty on European Union, the transport, accommodation costs and the daily allowances of the representatives of the Member States shall be borne by the Member States;

(c) expenditure related to the acquisition, study, development and maintenance of the computer infrastructure (hardware) and the software and dedicated network connections ***and related production, support and training services for carrying out the actions provided for in this Regulation, in particular*** for preventing and combating fraud;

(d) expenditure related to the provision of information and expenditure on related actions allowing access to information, data and data sources for the purposes of ***carrying out the actions provided for in this Regulation, in particular for preventing and combating fraud***;

(e) expenditure related to use of the Customs Information System provided by the instruments adopted under Title VI of the Treaty on European Union and in particular the Convention on the use of information technology in customs matters established by Council Act of 26 July 1995¹, insofar as these instruments provide that this expenditure shall be borne by the Community budget.

Justification

Expenditure must correspond to the tasks provided for in this Regulation and the emphasis on combating fraud should be maintained.

Amendment 8

ARTICLE 1, POINT 19
Article 42 a, paragraph 2 (Regulation (EC) No 515/97)

2. The Commission, after consulting the committee provided for by Article 43, may decide to establish or acquire such other communication and information exchange systems as are considered necessary. *deleted*

Justification

Participation by the legislative bodies, particularly the European Parliament, in the creation of new information exchange systems must be ensured.

Amendment 9
ARTICLE 1, POINT 20, point -a (new)
Article 43, paragraph 2 (Regulation (EC) No 515/97)

(-a) Paragraph 2 is replaced by the following:

"2. Where reference is made to this paragraph, Article 5a (1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof."

Justification

Comitology amendment needed to introduce the new regulatory procedure with scrutiny, in line with the provisions of Council Decision 2006/512/EC.

Amendment 10
ARTICLE 1, POINT 20, point -aa (new)
Article 43, paragraph 3 (Regulation (EC) No 515/97)

(-aa) Paragraph 3 is deleted.

Justification

Legal clarity. Deletion of a circular reference, in accordance with Rule 16 of the 1998 Interinstitutional Agreement on Drafting Quality (Articles 23(4) and 25 already refer to Article 43 as to the comitology procedure to be followed, therefore there is no need for Article 43 to refer back to those Articles).

Amendment 11
ARTICLE 1, POINT 21 A (new)

Article 51 a (new) (Regulation (EC) No 515/97)

(21a) The following Article 51a is inserted:

"Article 51a

The Commission, in cooperation with the Member States, shall each year submit to the European Parliament and to the Council a report on the measures taken for the implementation of this Regulation."

Justification

This amendment seeks to clarify that, in accordance with Article 280 of the Treaty establishing the European Community, the Commission reports annually to Parliament and the Council on the measures taken to protect the Community's financial interests, including the implementation of this Regulation.

PROCEDURE

Title	Mutual assistance and cooperation between the administrative authorities of the Member States and the Commission concerning the application of the law on customs and agricultural matters
References	COM(2006)0866 - C6-0033/2007 - 2006/0290(COD)
Committee responsible	IMCO
Opinion by Date announced in plenary	CONT 15.2.2007
Enhanced cooperation - date announced in plenary	24.5.2007
Drafts(wo)man Date appointed	Jean-Pierre Audy 27.3.2007
Date adopted	16.7.2007
Result of final vote	+: 17 -: 0 0: 0
Members present for the final vote	Jean-Pierre Audy, Herbert Bösch, Mogens N.J. Camre, Paulo Casaca, Ingeborg Gräßle, Rodi Kratsa-Tsagaropoulou, Bogusław Liberadzki, Marusya Ivanova Lyubcheva, Jan Mulder, Francesco Musotto, José Javier Pomés Ruiz, Bart Staes
Substitute(s) present for the final vote	Valdis Dombrovskis, Salvador Garriga Polledo, Petre Popeangă, Pierre Pribetich, Petya Stavreva