Mutual assistance and cooperation between administrations to ensure the correct application of the law on customs and agricultural matters: antifraud system and customs risk management

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Opinion No 1/2014 of the Court of Auditors on the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 515/97 of 13 March 1997 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.

The objective pursued by the draft regulation is the sound application of Union legislation in the fields of customs and agriculture, providing in particular the Commission but also the Member States' customs and other authorities with more effective mechanisms to assist it in preventing, investigating and prosecuting operations that are in breach of customs and agricultural legislation.

The Court considers that the proposal will contribute to achieving the objectives pursued by the regulation, subject to the following specific remarks:

Directory of data: the proposal set out the arrangements by which the Commission will establish and analyse a directory of data received from public or private service providers active in the international supply chain and share this data with the Member States' authorities. The proposal limits access to this directory to certain Commission departments and national authorities and makes the transfer of data to other institutions subject to specific conditions.

The Court recommends stating, in the relevant Articles, that these provisions are "**without prejudice to the Court of Auditor's right of access to documents and information** under Article 287(3) TFEU". This would ensure that all parties involved in the implementation of the Regulation are aware of the audit powers of the Court and that these cannot be made subject to restrictive conditions. For the same reason, a reference to the Court of Auditors in Article 29, concerning access to the Customs Information System, would be useful.

Container movements: the proposal sets out the arrangements by which the Commission will obtain and process information about container movements into, inside and out of the customs territory of the Union. This information will be provided by public and private service providers, in effect the shipping companies.

The Court notes that there is no provision in the draft legislation for any verification of the completeness, reliability and timeliness of the data provided by the shipping companies. Furthermore, no resources are set aside in the legislative financial statement for such a procedure. **Completeness, reliability and timeliness of the data** are risks that need to be addressed, having due regard to the cost of any controls put in place.

Access to documents for investigative purposes: with a view to speeding up OLAF investigations, the Commission is empowered to obtain directly from economic operators documents supporting import and export declarations when these are required for investigations.

However, in the interest of sincere and effective cooperation between the Commission and the Member States, the proposal would provide that the Commission: (a) should inform the national authorities of the Member States concerned about any requests made to economic operators; and (b) may request **assistance from the competent national authorities** to obtain documents, particularly where economic operators do not comply immediately with its request.