Basic information

2006/0290(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
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 Amending Regulation (EC) No 515/97 1992/0450(CNS) **Subject** 2.10.01 Customs union, tax and duty-free, Community transit 2.80 Cooperation between administrations 3.10.03 Marketing and trade of agricultural products and livestock 8.70.04 Protecting financial interests of the EU against fraud	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
IMCO Internal Market and Consumer Protection	NEWTON DUNN Bill (ALDE)	01/03/2007

Committee for opinion	Rapporteur for opinion	Appointed
INTA International Trade	The committee decided not to give an opinion.	
BUDG Budgets	The committee decided not to give an opinion.	
CONT Budgetary Control (Associated committee)	AUDY Jean-Pierre (PPE-DE)	27/03/2007
AGRI Agriculture and Rural Development	The committee decided not to give an opinion.	

Council of the European Union

Council configuration	Meetings	Date
Agriculture and Fisheries	2881	2008-06-23

European Commission

Commission DG	Commissioner
European Anti-Fraud Office (OLAF)	KALLAS Siim

Key events

Date	Event	Reference	Summary
22/12/2006	Legislative proposal published	COM(2006)0866	Summary
15/02/2007	Committee referral announced in Parliament, 1st reading		
24/05/2007	Referral to associated committees announced in Parliament		
22/11/2007	Vote in committee, 1st reading		Summary
04/12/2007	Committee report tabled for plenary, 1st reading	A6-0488/2007	
18/02/2008	Debate in Parliament		
19/02/2008	Decision by Parliament, 1st reading	T6-0050/2008	Summary
19/02/2008	Results of vote in Parliament		
23/06/2008	Act adopted by Council after Parliament's 1st reading		
09/07/2008	Final act signed		
09/07/2008	End of procedure in Parliament		
13/08/2008	Final act published in Official Journal		

Technical information

Procedure reference	2006/0290(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Amending Regulation (EC) No 515/97 1992/0450(CNS)
Legal basis	EC Treaty (after Amsterdam) EC 280 EC Treaty (after Amsterdam) EC 135
Stage reached in procedure	Procedure completed
Committee dossier	IMCO/6/44497

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE390.543	06/06/2007	
Amendments tabled in committee		PE392.030	16/07/2007	
Committee opinion	CONT	PE388.541	18/07/2007	
Committee report tabled for plenary, 1st reading/single reading		A6-0488/2007	04/12/2007	

Text adopted by Parliament, 1st reading/single reading		T6-0050/2008	19/02/2008	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	03616/2008/LEX	09/07/2008	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2006)0866	22/12/2006	Summary
Commission response to text adopted in plenary	SP(2008)1767	31/03/2008	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EDPS	Document attached to the procedure	N6-0008/2007 OJ C 094 28.04.2007, p. 0003	22/02/2007	Summary
CofA	Document attached to the procedure	N6-0023/2007 OJ C 101 04.05.2007, p. 0004	21/03/2007	Summary

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Regulation 2008/0766
OJ L 218 13.08.2008, p. 0048 Summary

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

2006/0290(COD) - 09/07/2008 - Final act

PURPOSE: to co-ordinate the fight against fraud by updating the “Customs Information System (CIS).

LEGISLATIVE ACT: Regulation (EC) No 766/2008 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

CONTENT: Council Regulation (EC) No 515/97 allowed information to be stored in the Community database Customs Information System (CIS). However, experience gained since Regulation (EC) No 515/97 entered into force has shown that the use of the CIS for the sole purposes of sighting and reporting, discreet surveillance or specific checks does not make it possible to achieve fully the system's objective, which is to assist in preventing, investigating and prosecuting operations that are in breach of customs or agricultural legislation. The changes introduced when the European Union was enlarged to include 27 Member States require a reconsideration of Community customs cooperation in a broader framework and with modernised mechanisms. In addition, the development of new markets, the increasing internationalisation of trade and the rapid expansion thereof, combined with the increase in the speed of the carriage of goods, require customs administrations to keep up with movement so as not to harm the development of Europe's economy.

This Regulation makes the following amendments to Regulation (EC) No 515/97:

Automatic data exchange: the Regulation supplements the spontaneous case-by-case exchange mechanism with an automatic and structured information exchange mechanism, without requiring a prior request from the receiving Member State.

European data directory: in order to help the competent authorities of the Member States to detect movements of goods that are the object of operations in potential breach of customs or agricultural legislation and means of transport, including containers, used for that purpose, data from the principal service suppliers worldwide, public or private, that are active in the international supply chain will be pooled in a European central data directory.

Training: the Commission is authorised to provide training and all forms of assistance other than financial assistance for the liaison officers of third countries and of European and international organisations and agencies, including the exchange of best practice with those bodies, and, for example, 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).

Joint customs operations: this Regulation also creates conditions for the implementation of joint customs operations in the Community context. A permanent infrastructure is created within the Commission so that joint customs operations can be coordinated throughout the calendar year and representatives of the Member States and, if necessary, liaison officers from third countries or European or international organisations and agencies, in particular Europol and the World Customs Organisation (WCO) and Interpol, can be hosted for the time needed to carry out one or more individual operations.

Co-ordination structure for operational co-operation: the purpose of this amendment is to promote the idea of developing an interface which allows enhanced coordination and co-operation between the Member States and the Commission. It should also improve co-ordination activities with European, regional and other international organisations and agencies.

Third countries: the current procedure is supplemented by a measure allowing the Commission, or a Member State, to enter into communication with a third country - on condition that the Member State from which information is received gives their prior consent.

The creation of a Community Customs Files Identification Database: in a bid to optimise the effectiveness of the co-operation mechanisms, the administrative authorities of the Member States will have access to files enabling them to target those who are requesting administrative assistance. That is the objective of FIDE, which records references to past or current investigations in each Member State. This system will allow competent authorities to find out whether other Member States are undertaking similar investigations to that of their own.

ENTRY INTO FORCE: 16/08/2008.

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

2006/0290(COD) - 19/02/2008 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a legislative resolution based on the report drafted by Bill **NEWTON DUNN** (ADLE, UK), and amended, in the first reading of the codecision procedure, the proposal to amend Council Regulation (EC) No 515/97 on mutual assistance between the administrative authorities of Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters.

The main amendments are as follows:

-Parliament inserted definitions for "regular automatic exchange" and "occasional automatic exchange";

-where no customs declaration or simplified declaration is presented or where it is incomplete or where there is a reason to believe that the data contained therein are false, the Commission and the competent authorities of each Member State may exchange with the competent authority of any other Member State and the Commission certain prescribed data: the business name; the name used by the company in its activity; the address of the business; the VAT identification number of the business; the excise duties identification number, information whether the VAT identification number and /or the excise duties identification number is in use; the names of the managers, directors and, if available, principal shareholders of the business; the number and the date of issue of the invoice and the value invoiced;

This article does not apply to movements of goods other than those referred to in the text;

-the competent authorities of each Member State may also, by regular automatic exchange or occasional automatic exchange, communicate to the competent authority of any other Member State concerned information received in the context of the entry, exit, transit, storage and end-use of goods, including postal traffic, moved between the customs territory of the Community and other territories, and the presence and movement within the customs territory of non-community and end-use goods, where necessary to prevent or detect operations which constitute, or appear to constitute, breaches of customs or agricultural legislation;

-not later than six months following the receipt of the information conveyed by the Commission, the competent authorities of Member States shall forward to the Commission a summary of the anti-fraud measures taken by them on the basis of that information. The Commission shall, on the basis of these summaries, regularly prepare and convey to Member States reports on the results of measures taken by the Member States;

-Member States and the Commission may exchange the results of operational and strategic analyses carried out under the Regulation;

-Parliament made some amendments to the data requirements concerning in particular the movements of containers and/or means of transport and goods and persons concerned with these movements. Personal data which are not necessary to achieve the aim in view shall be immediately deleted or shall have identifying factors removed. In any event, they may be stored for no more than three years;

-the Commission will be authorised to provide training and all forms of assistance other than financial assistance to the liaison officers of third countries and of European or international organisations and agencies;

- personal data copied from the CIS shall be kept only for the time necessary to achieve the purpose for which they were copied. The need for their retention shall be reviewed at least annually by the copying CIS partner. The storage period shall not exceed ten years. Personal data which are not necessary for the continuation of the analysis shall be immediately deleted or identifying factors shall be removed;

-in any event, access may (rather than “shall”) be denied to any person whose data are processed during the period in which actions are carried out for the purposes of sighting and reporting or discreet surveillance and during the period in which the operational analysis of the data or administrative enquiry or criminal investigation is ongoing;

-two amendments aim to recognise the role of the European Data Protection Supervisor (EDPS): in order to address CIS related supervision issues, the European Data Protection Supervisor (EDPS) should convene a meeting with national data protection supervisory authorities at least once a year; and the EDPS shall supervise CIS compliance with Regulation (EC) No 45/2001;

-the objective of the FIDE shall be to help to prevent operations in breach of customs legislation and of agricultural legislation applicable to goods entering or leaving the customs territory of the Community and to facilitate and accelerate their detection and prosecution;

-the excise duties identification number must be included in the FIDE. For persons, data must include former surnames:

-the committee shall examine all problems with the operation of the CIS which are encountered by the national supervisory authorities. The committee shall meet in its ad hoc formation at least once a year.

-the Commission, in cooperation with Member States, shall each year report to the European Parliament and to the Council on the measures taken in implementation of the Regulation;

-lastly, a new recital states that the exchange of personal data with third countries should be subject to prior verification that data protection rules in the receiving country offer a degree of protection equivalent to that offered by Community law.

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

2006/0290(COD) - 22/12/2006 - Legislative proposal

PURPOSE: to co-ordinate the fight against fraud by updating the “Customs Information System (CIS).

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: in recent years, fraudsters have been focusing much of their attention on transactions which breach customs and agricultural regulations. They show a particular interest in defrauding the EU’s payment of export refunds on agricultural and processed products, which are verified by customs authorities once these products leave the Community’s territories. The trend for defrauding the Community has been exacerbated in recent years by the EU’s expansion eastwards.

The Customs Information System or CIS was established by Regulation 515/97/EC (for a summary see: CNS/1992/0450). It acts as a Community database, enabling the relevant administrative authorities to alert their European partners to risks of irregular operations, through the transmission of information and came into force in 2003.

However, since 2003, experience has shown that the use of the CIS is being undermined preventing it from fully achieving the system’s main objectives namely: to prevent, investigate and prosecute operations in breach of customs and agricultural legislation.

CONTENT: the purpose of this proposal, therefore, is to amend Regulation 515/97/EC and to roll out a new Anti-Fraud Information System, (AFIS) in a bid to improve its overall functionality. In summary the main provisions of the proposal are as follows:

Alignment of the definition of customs legislation on the Naples II Convention: The Commission is proposing to align the definition of “customs” legislation with that of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union or the Naples II Convention in order to make Community instruments more consistent with instruments under Title VI of the TEU – particularly in the field of prosecutions for offences against Community customs rules.

Automatic data exchange: The Commission is proposing to supplement the current spontaneous case-by-case exchange mechanism with an automatic and structured information exchange mechanism, without requiring a prior request from the receiving Member State.

European data directory: The Commission is proposing to establish a directory, the purpose of which is to collect data commonly used in international trade for analysis purposes with a view to detecting illegal activities.

Co-ordination structure for operational co-operation: The purpose of this proposed amendment is to promote the idea of developing an interface which allows enhanced coordination and co-operation between the Member States and between the Commission. It should also improve co-ordination activities with European, regional and other international organisations and agencies.

Third countries: The Commission is proposing that the current procedure be supplemented by a measure allowing the Commission, or a Member State, to enter into communication with a third country - on condition that the Member State from which information is received gives their prior consent.

Use of CIS data for analysis purposes: The current Regulation must be amended in order to make “analysis” a new strategy of the CIS – be it strategic or operational. To match the extended functionalities of the system, a new category of information is created relating to goods detained, seized or confiscated.

The creation of a Community Customs Files Identification Database: In a bid to optimise the effectiveness of the co-operation mechanisms, the administrative authorities of the Member States should have access to files enabling them to target those who are requesting administrative assistance. That is the objective of FIDE, which records references to past or current investigations in each Member State. This system will allow competent authorities to find out whether other Member States are undertaking similar investigations to that of their own.

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

2006/0290(COD) - 21/03/2007 - Document attached to the procedure

OPINION No 3/2007 of the Court of Auditors.

The Court considers that the proposal will contribute to achieving the objective pursued by the regulation provided that the Commission takes proper action in order to implement without further delay the IT infrastructure, databases and software applications needed for its practical operation. However, the proposed regulation does not address important issues already highlighted by the Court, namely:

- a potential overlap between the RIF (Risk Information Form) and MA (mutual assistance) communications;
- in the special case of the mutual assistance procedure in the customs and agriculture sectors, there is no systematic follow-up by OLAF; and
- the Commission should take measures to improve the reliability of sources of information on fraud, and should make better use of them by developing risk management strategies.

The following are the Court’s recommendations:

- for reasons of consistency with the definition of customs legislation contained in the Naples II Convention, the proposed regulation should also refer to the body of provisions adopted at Community level for harmonised excise duties on importation together with the associated implementing provisions;

- the option of communicating at regular intervals is in contradiction with the current obligation existing in Article 15 to immediately notify to the other Member States concerned information relating to operations which constitute, or appear to them to constitute, breaches of customs and agricultural legislation;

- although approving the possibility provided for MA communications to be used for the purpose of strategic analysis, the Court considers that the proposal should have gone further by giving the Commission full access to the information available in systems already implemented or foreseen for all kinds of goods (not only for sensitive goods);

- the draft regulation does not clearly provide the legal basis for a permanent infrastructure in order to ensure the coordination of joint customs operations open to the participation of representatives or liaison officers of competent international or regional organizations, European Union bodies or agencies and third countries;

- the draft regulation should be better explained specifying that the effectiveness of the cooperation and control procedures of the competent authorities can now also be increased through operational and strategic analysis;

- the Court invites the Commission to include in the draft regulation the excise duties identification number (SEED identification number) foreseen in the Regulation on administrative cooperation in the field of excise duties and in the Directive 92/12/EEC in order to facilitate investigations by either the Commission or the competent authorities of a Member State;

- lastly, although the Commission indicated that the proposal has no financial impact on revenue, the Court considers that the proposal should have a positive impact on traditional and VAT resources through the reduction of fraud, and this impact should have been estimated in the legislative financial statement of the proposal.

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

2006/0290(COD) - 22/02/2007 - Document attached to the procedure

Opinion of the European Data Protection Supervisor 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 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 EDPS welcomes being consulted on the proposal, which foresees the creation or updating of various systems containing personal data: European Data Directory, Custom Information System (CIS) and Customs Files Identification Database (FIDE) in order to strengthen the cooperation and information exchanges both between Member States and between them and the Commission.

The creation and upgrading of the various instruments intended to strengthen Community cooperation, i.e. CIS, FIDES and the European Data Directory, entail an increase in the share of personal information that will be originally collected and further exchanged with Member States' administrative authorities and, in some cases, also with third countries. From this perspective, the proposal has important effects as far as the protection of personal data is concerned.

1) On the substance, the EDPS concludes:

- the proposal does not provide sufficient arguments supporting the need for the creation of the European Data Directory. The EDPS calls upon the Commission to carry out a proper assessment of the necessity of the creation of the Directory and report about its findings;

- a new paragraph should be inserted in Article 18a.1 recalling the application of Regulation (EC) No 45/2001 to the European Data Directory;

- it should be clarified that national provisions implementing Directive 95/46/EC apply to uses of the European Data Directory carried out by Member States;

- the proposal is silent as far as security measures of the European Data Directory are concerned. The EDPS considers that it would be appropriate to add a new paragraph to Article 18a2 providing for the adoption of complementary administrative rules setting forth specific measures to ensure the confidentiality of the information. In adopting these rules, the EDPS should be consulted;

- the proposal fails to completely recognise the EDPS supervisory role as to the Custom Information

System (CIS). To solve this problem, Article 37.3 should be amended to state that ‘The European Data

Protection Supervisor will supervise CIS compliance with Regulation (EC) No 45/2001’;

- the supervision activities of the national supervisory authorities and the EDPS should be coordinated to a certain extent, in order to ensure a sufficient level of consistency and overall effectiveness in CIS supervision. To this end, the EDPS suggests as a first option including a new section in Article 37, establishing that ‘The EDPS shall convene a meeting with all national supervisory authorities, at least once a year to address CIS related supervision issues. The members of national data protection authorities and EDPS shall be referred to as supervisory authorities’. However, a better solution would be to follow the more developed model recently adopted for the second generation Schengen Information System (SIS II). In line with this approach in each case, Article 43.5 should also be amended as follows: ‘The committee together with the supervisory group shall examine all problems with the operation of the CIS which are encountered by the supervisory authorities referred to in Article 37. The Committee shall meet in its ad hoc formation at least once a year’;

- under Article 36.2, second paragraph concerning access to personal data stored in CIS, ‘access shall be denied during the period when sighting, reporting operations analysis or investigation is ongoing’. To ensure consistency with Regulation (EC) No 45/2001 the EDPS would favour an amendment which would read ‘access may be denied’;

- regarding the procedure to request access, whether access must be requested with the EDPS or with national supervisory authorities, the EDPS considers that the proposed system ex Article 37.2 whereby the competent authority depends on whether the data were included in the CIS by a Member State or the Commission, to be very cumbersome. It would also contradict other articles of the proposal. In order to solve this problem, amendments have been made;

- the EDPS considers that it would be appropriate for Article 41a to recall the application of Regulation (EC) No 45/2001 to the Customs Files Identification Directory (FIDE) and the EDPS supervisory competences to monitor and ensure compliance with the provisions of the Regulation;

- to ensure that personal data not needed is purged from FIDE, the EDPS suggest stipulating that the need for the retention of data shall be reviewed at least annually by the supplying Member State.

2) As to procedure, the EDPS:

- recommends that an explicit reference to this Opinion is made in the preamble of the proposal as follows: 'After consulting the European Data Protection Supervisor';

- reminds that, as the processing operations of the European Data Directory, CIS, and FIDE present specific risks to the rights and freedoms of data subject, because of the purpose of the database and the nature of the data, the EDPS must prior check the three systems.