



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.12.2006
COM(2006) 866 final

2006/0290 (COD)

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

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. SUBJECT

The corollary of trade facilitation, which is an essential component of the commercial policy of an enlarged European Union for gaining access to new markets, is the emergence of international economic and financial crime undermining the financial interests of the European Communities and the prohibition, restriction and control measures imposed in the context of certain Community policies.

Fraud groups have been focusing much of their attention on transactions in breach of customs and agricultural regulations among the various forms of fraud and other illegal activities to the detriment of the Community's financial interests, on account of the amounts concerned. Customs duties on imports, agricultural levies and VAT on imports, which are charged by Member States when customs formalities are completed, generate almost a quarter of the revenue in the Community budget. There is a great temptation for fraud organisations to evade controls or the payment of duties or to benefit from reduction or suspension of duties without being properly entitled.

On the expenditure side, fraud organisations are very interested in the Community budget for the payment of export refunds on agricultural products and processed products, which the customs authorities verify when customs export formalities are completed and the goods leave the Community customs territory.

And the concern to maximise profits leads such organisations to circumvent anti-dumping measures and bans or restrictions. Even where circumventing these measures has no direct impact on the Community budget, it can have detrimental consequences for the economy, employment and consumer health and therefore indirectly harm the Community budget (e.g. BSE crisis).

To gain a better picture of irregularities in these fields and to supplement the preventive aspect, linked to better organisation of customs controls, the European Community enacted Council 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.

This Regulation is the legal basis for requests for assistance between these authorities to combat irregularities and fraud against Community legislation having a financial impact on the Community budget or affecting the Community commercial policy.

It also is within the framework of this legal mechanism that a specific database was developed – the Customs Information System (CIS). This system, which came on stream on 24 March 2003, enables the relevant administrative authorities to alert their European partners to risks of irregular operations, by transmitting information for the purposes of sighting, reporting, discreet surveillance or specific controls.

2. MAIN PROVISIONS

Despite the good results obtained in the prevention of fraud against Community customs and agricultural legislation, there are many reasons for amending Regulation (EC) No 515/97.

- The need for more operational cooperation

As enlargement has shifted and extended the European Union's land and sea borders, with a dual trend for fraudulent activities to both intensify and diversify, the existing legal mechanism must be adapted, as otherwise fraud organisations are likely to take advantage of the situation. Given the transnational and versatile nature of economic and financial crime, the only approach that will make it possible to limit fraud as much as possible is to strengthen cooperation between the Member States and between them and the Commission, the accent being more strongly on the operational dimension. New needs for coordination and support at the European level have been identified by those actively involved in fraud prevention, and a solid and adequate legal basis should now be supplied.

- Changes in the legal context and the institutional balance

When Regulation (EC) No 515/97 was adopted, there was no Treaty Article devoted specifically to Community customs cooperation. The Member States' general duty to cooperate under Article 5 of the EC Treaty and the coordination of action by the Member States to protect the Community's financial interests under Article 209A of that Treaty likewise did not give the Community the power to adopt measures in the area of Community customs cooperation.

Article 135 of the EC Treaty, relating to customs cooperation, and Article 280, relating to the protection of the Community's financial interests, now confer powers on the Community in these matters. But these powers must be exercised in accordance with Article 5 of the Treaty, i.e. if and in so far as action taken at Community level offers clear advantages, by reason of its scale or effects, over action at Member State level. The proposal for a Regulation satisfies these criteria.

The new draft Regulation also aims to provide a legal basis for the Community customs files identification database (FIDE) and for other projects developed on the basis of needs expressed by the Member States and the European Commission, with a view to strengthening cooperation between administrative authorities responsible for the sound application of customs and agricultural legislation.

The draft must also take account of a number of institutional developments, in particular the strengthening of cooperation with European Union bodies and agencies and with international organisations.

Subsidiarity

The national administrations are not individually in a position to set up a Community technical infrastructure and ensure full and integrated European coordination of mutual administrative assistance in customs and agricultural matters. It is therefore necessary to create a platform of services to improve operational cooperation

between them. Apart from Community missions in third countries, administrative investigations are actually carried out by the Member States alone.

Proportionality

The aim of the draft regulation remains unchanged. Like Regulation (EC) No 515/97, which it amends, the objective pursued by the draft regulation is the sound application of Community customs and agricultural legislation, where the Commission has well-defined powers of action, in the same way as the Member States' customs and other authorities.

3. CONTENT OF THE PROPOSAL

3.1. Alignment of the definition of customs legislation on the Naples II Convention (Article 2(1), 1st indent)

The definition of customs legislation in Regulation (EC) No 515/97 has been brought into line with the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on mutual assistance and cooperation between customs administrations (the "Naples II Convention") so as to make Community instruments more consistent with instruments under Title VI of the Union Treaty regarding prosecutions for offences against Community customs rules.

Without prejudice to Council Regulation (EC) No 1798/2003 of 7 October 2003 concerning administrative cooperation in the field of VAT,¹ customs legislation continues to apply on entry and exit of goods in Community customs territory even if they are exempt from customs duties or zero-rated. When applying Community prohibition, restriction and external border control measures, in particular for the detection of counterfeit alcohol and cigarettes or illicit dealings in dual-use assets or precursors, the customs authorities should be able to exchange information making it possible to check quickly with another Member State whether the company established in the latter Member State still exists or is in business, thanks to the VAT identifier. Moreover, the customs authorities, which are also responsible for formalities and/or the collection of VAT and/or excise duties when customs formalities are completed, should be able to prevent and detect fictitious exports of highly-taxed products to third countries by effective customs cooperation.

The central liaison offices and the liaison departments responsible for VAT-related administrative cooperation ensure effective cooperation with their counterparts in other Member States. But horizontal cooperation between these central liaison offices and liaison departments and the authorities responsible for applying Regulation (EC) No 515/97 is not possible for organisational reasons or because of the material or operational powers conferred in each Member State and for reasons related to the communications network and the absence of stand-by officers (nights and weekends). On the other hand, the customs authorities have a minimum of information concerning the existence and VAT status of an economic operator to satisfy urgent requests from the customs authorities of the other Member States.

¹ OJ L 264, 15.10.2003, p. 1.

3.2. Automatic data exchange (Article 15)

The current spontaneous case-by-case exchange mechanism has been supplemented by an automatic and/or structured information exchange mechanism without a prior request from the receiving Member State. This mechanism is similar to that set up under Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax² and Council Regulation (EC) No 2073/2004 of 16 November 2004 on administrative cooperation in the field of excise duties³.

3.3. Setting-up a platform of services in the customs sector

3.3.1. European data directory (Article 18a)

The computerisation of customs clearance procedures and the real-time satellite monitoring of means of transport generate an increasing dematerialisation of the information exchanged between customs authorities and/or economic operators. The result is a proliferation of databases managed by public or private service providers doing business in the field of logistics and the carriage of goods.

In fraud prevention, activities aiming specifically to detect consignments of goods that may be in breach of customs or agricultural legislation and/or means of transport, including containers, used for this purpose, service providers are generally open to the idea of giving the competent authorities access if they ask for it only on a limited basis and do not create additional workload. Consequently, the idea of giving the Commission (OLAF) a single general access to certain databases or sites is likely to reassure the service providers that they will not be receiving multiple repeated requests from the Member States. Consequently, the proper solution, in economic terms also, was felt to be to empower the Commission (OLAF) to negotiate with service providers for the pooling of data in a single directory accessible to the Member States or to channel access to sites managed by such providers.

The aim of this directory is to collect data commonly used in international trade for analysis purposes with a view to detecting, upstream of physical checks on goods, operations presenting risks of irregularity in relation to customs and agricultural legislation.

In this directory, the Commission should be empowered to transfer the contents of the databases in whole or in part, with the consent of the holders of rights in the information, free of charge or for a consideration, and in compliance with the applicable legal environment as regards intellectual property rights. The information thus extracted could be indexed and analysed.

The European directory would be made available to the Member States' liaison officers assigned to the permanent coordination unit, and to the relevant authorities referred to in Article 1(1) of Regulation (EC) No 515/97.

3.3.2. Coordination structure for operational cooperation (Article 18b)

² OJ L 264, 15.10.2003, p. 1.

³ OJ L 359, 4.12.2004.

The establishment of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union by Council Regulation (EC) No 2007/2004 of 26 October 2004⁴, the extension of Europol's mandate to the fight against serious forms of international crime (Council Decision of 6 December 2001) and the operational activities of certain international or regional organisations all call for closer cooperation between the Commission, the Member States and the other European Union bodies or agencies.

The aim of the new draft is to promote the idea of development by the Commission of an interface allowing better coordination of operational cooperation between the Member States and between them and the Commission and closer operational association with European, regional or international organisations and agencies within the limits of the powers conferred on each of the authorities concerned.

In its Resolution of 2 October 2003 on a strategy for customs cooperation, the Council of the European Union recognised that an integrated approach towards combating crime, including a contribution to the fight against terrorism, within an area of freedom, security and justice should include, besides customs cooperation, close and efficient multilateral cooperation between customs and other law enforcement authorities as well as other European Union bodies and agencies, for example OLAF, Europol and Eurojust.

In this context, the resources and developments established at Community level could be re-used for the purposes of customs cooperation under Title VI of the Treaty on European Union, without prejudice to the mandates of Europol and of Eurojust.

In these circumstances, a directly applicable legal instrument such as a regulation could provide a valuable impetus in the customs sector without necessarily conferring new powers on Commission staff. The new Article 18b of Regulation (EC) No 515/97 would enable Member States to involve Commission (OLAF) staff as experts and to use the Commission platform of services for cases started under Regulation (EC) No 515/97 for which a common joint team should be set up.

3.4. Article 19 (third countries)

In the current situation, if a Member State receives information from another Member State and that information then has to be communicated to a third country under an agreement or protocol on mutual administrative assistance in customs matters, the receiving Member State must seek the agreement of the supplier Member State within the framework of a joint action even if the supplier Member State has already given its prior consent enabling the receiving Member State to use the information.

It is therefore proposed that the current procedure be supplemented by a measure to permit the Commission or a Member State to communicate to a third country information received from another Member State, provided the latter Member State gives its prior consent. In such a case, it would no longer be necessary to exchange

⁴ OJ L349, 25.11.2004.

consents within the framework of a joint action. That would apply only in the event of an exchange of information treated by more than two Member States.

3.5. Article 20(2)(d)

The provisions of Article 20(2)(d), concerning the payment of the expenses of the Community missions carried out in the third countries, have been taken over with others in the new Article 42a (financing).

3.6. Title V: Articles 23 to 37 (Updating of the provisions of the Regulation on the control of personal data under the Customs Information System)

Implementation of Parliament and Council Directive 95/46/EC of 24 October 1995 by the Member States requires an amendment of the provisions of the Regulation on the national processing of personal data. The adoption of Parliament and Council Regulation No 45/2001 and the establishment of an independent supervisory authority, the European Data Protection Supervisor, likewise affects the Articles of Regulation (EC) No 515/97 relating to the processing of such data by Community institutions and bodies.

All the provisions of Regulation (EC) No 515/97 dealing with questions concerning the protection of personal data have been adapted to changes in the legal environment since it entered into force, in particular the data-protection rules applicable to the Community institutions under Article 286 of the Treaty and Parliament and Council Regulation (EC) No 45/2001 of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁵ and the rules applicable to Member States on the basis of Parliament and Council Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁶.

3.7. Use of CIS data for analysis purposes (Article 27)

In view of the current purposes of the customs information system, it cannot achieve all the objectives which were set for it by the Regulation, namely to assist prevention, detection and prosecution of operations in breach of customs and agricultural legislation. In the current mechanism, the information entered in the CIS only makes it possible to strengthen the effectiveness of controls. Consequently, only the fraud prevention objective is achieved. On the other hand, the objectives of assisting the detection and prosecution of operations in breach of customs and agricultural legislation require the development of new objectives and functionalities, and that alone requires an amendment of Regulation (EC) No 515/97.

Article 27 must accordingly be amended to make analysis, whether it be strategic or operational, a new purpose of the system.

⁵ OJ L 8, 12.01.2001, p.1.

⁶ OJ L 281, 23.11.1995, p.31. Directive as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p.1).

To match the extended functionalities of the system, a new category of information available is created, relating to goods detained, seized or confiscated.

3.8. Title Va, Articles 41a to 41d – Creation of the Community Customs Files Identification Database

To optimise the effectiveness of the cooperation mechanisms, the administrative authorities of the Member States should have access to a file enabling them to better target the recipients of requests for administrative assistance. That is the objective of FIDE, which records references to past or current investigations in each Member State and enables any competent authority which so requests to find out which other authorities have conducted investigations on a similar subject.

The purpose of introducing the FIDE into the draft Regulation amending Regulation (EC) No 515/97 is to supplement a comparable intergovernmental initiative formalised in the Council Act of 8 May 2003 drawing up the Protocol amending the Convention on the use of information technology for customs purposes.

3.9. Title VI: Article 42 (Data protection)

Without prejudice to the specific measures to protect individuals in relation to personal data processing in Title V (Articles 23 to 40) of Regulation (EC) No 515/97 as regards the use of CIS and FIDE, it is felt necessary to refer to Regulation (EC) No 45/2001 and Directive 95/46 concerning data exchange and processing, whether or not automatic, under Titles I to IV of Regulation (EC) No 515/97.

3.10. Title VIa: Article 42a (Financing)

The second subparagraph of Article 23(3) of Council 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,⁷ as amended by Regulation (EC) No 807/2003 of 14 April 2003 adapting to Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in Council instruments adopted in accordance with the consultation procedure (unanimity)⁸, was regarded as being the basic act for the purposes of Article 49(1) of the Financial Regulation as regards operating expenditure relating to the Anti-Fraud Information System (AFIS).

This act covers the financing of AFIS activities coming under both the first pillar (Regulation No 515/97) and the third pillar (Convention drawn up on the basis of Article K3 of the Treaty on European Union on the use of information technology for customs purposes (CIS Convention⁹)) when these activities are inseparable.

In this connection, there was a reference to the first subparagraph of Article 22(2) of the CIS Convention and to the joint declaration of the Council and of the

⁷ OJ L 82, 22.3.1997.

⁸ OJ L 122, 16.5.2003.

⁹ OJ C 316, 27.11.1995.

Commission of 13 July 1995 concerning Article 22(2) of the Convention¹⁰ and the list of inseparable IT expenses established by the Commission in document SEC(94) 813 of 6 May 1994 on the budgetary implications of the use of the technical infrastructure of the Community CIS under the Convention on the use of information technology for customs.

To clearly meet the requirements of the Financial Regulation, an article should be inserted determining that Regulation (EC) No 515/97 is a basic act for the implementation of operational expenditure defined in that article.

3.11. Title VII: Article 43 (Committee procedures)

Article 43 devoted to committee procedures has been adapted in line with the proposed amendments to the previous Articles. Moreover, the European Ombudsman, designated by the Council in accordance with Article 286 of the Union Treaty to supervise the Community institutions and organisations as regards protection of individuals in relation to personal data processing pending the designation of an authority created expressly for the purpose, has now been replaced by the European Data Protection Supervisor since Regulation (EC) 45/2001 entered into force. Article 43(5) is amended accordingly.

¹⁰ 7273/2/95 ENFOCUSTOM 17.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 135 and 280 thereof,

Having regard to the proposal from the Commission¹¹.

Having regard to the opinion of the Economic and Social Committee¹²,

Having regard to the opinion of the Committee of the Regions¹³,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

- (1) Council Regulation (EC) No 515/97¹⁴ improved the earlier legal mechanism in particular by allowing information to be stored in the Community database Customs Information System (CIS).
- (2) 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 fully achieve the system's objective, which is to assist in preventing, investigating and prosecuting operations that are in breach of customs and agricultural legislation.
- (3) In addition to the current defects of Regulation (EC) No 515/97, the changes introduced when the European Union was enlarged to 25 Member States impose the need to

¹¹ OJ C [...], [...], p.[...]

¹² OJ C [...], [...], p.[...]

¹³ OJ C [...], [...], p.[...]

¹⁴ OJ L 82, 22.3.1997, p. 1; Regulation amended by Council Regulation (EC) No 807/2003 of 14 April 2003 (OJ L 122, 16.5.2003).

reconsider Community customs cooperation in a broader framework and with modernised mechanisms.

- (4) Article 1 of Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999 establishing the European Anti-Fraud Office (OLAF)¹⁵ and the Convention on the use of information technology for customs purposes¹⁶, established by Council Act of 26 July 1995¹⁷, modified the general framework for cooperation between the Member States and the Commission as regards preventing, investigating and prosecuting offences against Community legislation.
- (5) The results of strategic analysis should help those responsible at the highest level to determine projects, objectives and policies for combating fraud, to plan activities and to deploy the resources needed to achieve the operational objectives laid down.
- (6) The result of an operational analysis concerning the activities, resources and intentions of certain persons or companies that do not comply with the legislation should help the investigation services take the appropriate measures in specific cases to achieve the objectives laid down as regards fraud prevention.
- (7) Under the current mechanism, personal data entered by a Member State can be copied from CIS into other data-processing systems only with the prior authorisation of the CIS partner which entered them and subject to the conditions imposed by it in accordance with Article 30(1). The amendment of the Regulation is designed to derogate from this principle of prior authorisation solely where the data are to be processed by the competent authorities charged with risk management with a view to targeting controls on movements of goods.
- (8) The current mechanism needs to be supplemented by a legal framework establishing a Customs Files Identification Database covering past and current files. The creation of such a database follows up the intergovernmental customs cooperation initiative which led to the adoption of the Council Act of 8 May 2003 drawing up the Protocol amending, as regards the creation of a customs files identification database, the Convention on the use of information technology for customs purposes¹⁸.
- (9) This Regulation should also apply, without prejudice to the provisions of Council Regulation (EC) No 1798/2003 of 7 October 2003 concerning administrative cooperation in the field of VAT¹⁹, to all Community provisions relating to revenue from the application of a uniform rate valid for all the Member States to the harmonised basis of assessment for value added tax regarding imports and exports, and the national provisions implementing them.

¹⁵ OJ L 136, 31.5.1999, p. 20.

¹⁶ OJ C 316, 27.11.1995, p. 34.

¹⁷ OJ C 316, 27.11.1995, p. 33.

¹⁸ OJ C 139, 13.6.2003, p. 1.

¹⁹ OJ L 264, 15.10.2003, p. 1. Regulation as amended by Regulation (EC) 885/2004 (OJ L 168, 1.5.2004).

- (10) In addition, it is necessary to ensure greater complementarity with action in the context of intergovernmental customs cooperation and of cooperation with other European Union bodies and agencies and other international or regional organisations. Such action follows on from Council Resolution of 2 October 2003 concerning a strategy for customs cooperation²⁰ and the Council Decision of 6 December 2001 extending the mandate of Europol to the fight against the serious forms of international crime listed in the Annex to the Europol Convention²¹.
- (11) The conditions should be created under Regulation (EC) No 515/97 for the implementation of joint customs operations in the Community context. The Committee provided for by Article 43 of Regulation (EC) No 515/97 should be empowered to determine the mandate for Community joint customs operations.
- (12) A permanent infrastructure must be created within the Commission so that joint customs operations can be conducted 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.
- (13) The Member States must have the possibility of re-using this infrastructure for joint customs operations organised by way of customs cooperation as provided for by Articles 29 and 30 of the Treaty on European Union, without prejudice to the role of Europol. In this case, the joint customs operations should be conducted under the mandate determined by the relevant Council working party as regards customs cooperation under Title VI of the Treaty on European Union.
- (14) In addition, the development of new markets, the increasing internationalisation of trade and its rapid expansion, combined with the acceleration in the carriage of goods, mean that the customs administrations should keep up with the movement so as not to harm the development of the European economy. To that end, the Commission presented proposals back in November 2005 to modernise customs procedures and create the legal basis for computer systems making it possible to achieve full electronic customs clearance throughout the European Union (COM(2005) 608 and 609).
- (15) The long-term objective is that all operators should be able to provide all necessary documentation in advance and to fully computerise their connections with the customs authorities. Meanwhile, the current situation will continue to exist with various levels of development of national computer systems, and anti-fraud mechanisms must be improved since deflections of trade can still occur.
- (16) In terms of fraud prevention, it is therefore necessary, together with the reform and modernisation of customs systems, to seek information at the furthest point upstream possible. Moreover, to help the competent authorities of the Member States detect

²⁰ OJ C 247, 15.10.2003, p. 1.

²¹ OJ C 362, 18.12.2001, p. 1.

consignments of goods, including containers and/or means of transport, that may be in breach of customs or agricultural legislation, it is worthwhile pooling in a European central data directory data from the principal service suppliers worldwide, public or private, that are active in the international carriage of goods and containers.

- (17) The protection of natural persons with regard to the processing of personal data is governed by European Parliament and Council Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data²² and by European Parliament and Council Directive 2002/58/EC of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)²³ and repealing European Parliament and Council Directive 97/66/EC of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector²⁴, which are fully applicable to information society services. These Directives already establish a Community legal framework in the field of personal data and therefore it is not necessary to cover the issue in this Regulation in order to ensure the smooth functioning of the internal market, in particular the free movement of personal data between Member States. This Regulation must be implemented and applied in conformity with the data protection rules, in particular as regards the exchange and storage of information in support of action to prevent and detect fraud.
- (18) Given that Directive 95/46/EC has been transposed in the Member States since Regulation (EC) No 515/97 was adopted and given that the Commission has established an independent authority to ensure that freedoms and fundamental rights of persons are respected by Community institutions and bodies in the processing of personal data in accordance with Regulation (EC) No 45/2001, the data protection control measures should be aligned and the reference to the European Ombudsman should be replaced by a reference to the European Data Protection Supervisor, without prejudice to the powers of the Ombudsman.
- (19) Regulation (EC) No 515/97 should be amended accordingly.
- (20) Since the objectives of the proposed action, namely the coordination of the fight against fraud and any other illegal activity to the detriment of the Community's financial interests, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is required to achieve those objectives.

²² OJ L 281, 28.11.1995, p. 31.

²³ OJ L 201, 31.7.2002, p. 37.

²⁴ OJ L 24, 30.1.1998, p. 1.

- (21) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union²⁵. In particular, this Regulation aims to ensure full respect for the right to the protection of personal data (Article 8 of the Charter of Fundamental Rights of the European Union),

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 515/97 is amended as follows:

1) The first indent of Article 2(1) is replaced by the following:

– “customs legislation”:

(a) the body of Community provisions and 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 23(2) of the Treaty establishing the European Community or goods subject to additional controls or investigations for the purpose of establishing their Community status;

(b) the body of Community provisions governing income from application of a uniform rate valid for all the Member States to the harmonised basis of assessment for value added tax as regards national imports and exports, and associated implementing provisions.

2) The following is added at the end of Article 2(1):

– "operational analysis":

analysis of operations which are or appear to be in breach of customs and agricultural legislation, involving the following stages in turn:

- the collection of information, including personal data;
- evaluation of the reliability of the information source and the information itself;
- research, methodical presentation and interpretation of links between these items of information or between them and other significant data;
- the formulation of observations, hypotheses or recommendations directly usable by the competent authorities and by the Commission to detect other operations in breach of customs and agricultural regulations and/or to identify with precision the natural or legal person(s) implicated in such operations;

²⁵ OJ C 364, 18.12.2000, p. 1.

– "strategic analysis":

research and presentation of the general trends in irregularities and fraud in customs and agricultural matters through an evaluation of the threat, scale and impact of certain types of operation in breach of customs and agricultural legislation, with a view to subsequently setting priorities, gaining a better picture of the phenomenon or threat, reorienting action to prevent and detect fraud and reviewing departmental organisation. This purpose shall be achieved on the basis exclusively of data from which personal information has been removed.

3) The following paragraph is added to Article 15:

"2. The competent authorities of each Member State may also communicate information concerning operations which are or appear to be in breach of customs or agricultural legislation, progressively or at regular intervals, in a structured or unstructured format."

4) Article 18 is amended as follows:

(a) The first indent of paragraph 1 is replaced by the following:

"- when they have, or might have, ramifications in other Member States or in third countries, or";

(b) The following paragraph 7 is added:

"7. Without prejudice to the provisions of the Community Customs Code relating to the establishment of a common framework for risk management, the data exchanged between the Commission and the Member States pursuant to Articles 17 and 18 may be stored and used for the purpose of strategic and operational analysis. Where these data comprise personal data, the individual measures for the protection of natural persons in relation to personal data processing referred to in Title VI of this Regulation shall apply."

5) The following Articles 18a and 18b are added to Title III:

"Article 18a

1. To help the relevant authorities referred to in Article 1(1) detect movements of goods that are the object of operations in potential breach of customs and agricultural legislation and means of transport, including containers, used for that purpose, the Commission shall establish and manage a directory of data received from public or private service providers active in the international logistical chain or in the carriage of goods.

2. In managing that directory, the Commission is empowered:

(a) to access or extract, with the consent of the rights holder, all or a substantial part of the contents of the data, by any means or in any form, and re-use data in compliance with legislation applicable to intellectual property rights in the Member State or in the country where the operating headquarters of the service providers is established; in appropriate cases, the terms and procedures for data access shall be governed by a contract between the Commission, acting on behalf of the Community, and the service provider;

(b) to compare and contrast data that are accessible in or extracted from the directory, to index them, to enrich them from other data sources and to analyse them in compliance with Regulation (EC) No 45/2001;

(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.

3. The data referred to in this Article concern in particular the movements of containers and/or means of transport and goods and persons concerned with these movements. These include:

(a) for movements of containers, the following data:

- number of container;
- container loading status;
- date of movement;
- type of movement (loaded, unloaded, transhipped, entered, left, etc.);
- name of vessel or registration of means of transport;
- number of voyage/journey;
- place;
- freight bill or other transport document;

(b) for movements of means of transport:

- name of vessel or registration of means of transport;
- freight bill or other transport document;
- number of container;
- weight of load;
- description and/or coding of goods;
- reservation number;
- number of seals;
- place of first loading;
- place of final unloading;

- place of transshipment;
- expected date of arrival at place of final unloading;

(c) for natural or legal persons involved in the movements to which points (a) and (b) apply, the personal data referred to in this Article shall comprise no more than the name, maiden name, forenames, aliases, date and place of birth, nationality, sex and address of the owners, shippers, consignees, transit agents, carriers and other intermediaries or persons involved in the international logistical chain and carriage of goods.

4. Only designated analysts in Commission departments shall be empowered to process personal data to which points 2(b) and 2(c) apply.

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 one year.

Article 18b

Wherever the Commission is in a position to make expertise, technical or logistical assistance, a training or communication activity or any other operational support available to the Member States for the attainment of the objectives of this Regulation, Member States shall ask the Commission to use, as far as possible, its platform of services, notably within the framework of the customs cooperation provided for by Title VI of the Treaty on European Union."

(6) Article 19 is replaced by the following:

"Article 19

Provided that the third country concerned has legally committed itself to providing the assistance necessary to assemble all the evidence of the irregular character of operations which appear to be in breach of customs or agricultural legislation or to determine the extent of the operations which have been found to be in breach of such legislation, information obtained pursuant to this Regulation may be communicated to it:

- by the Commission or by the Member State concerned, subject, in appropriate cases, to the prior agreement of the competent authorities of the Member State which provided it; or
- by the Commission or the Member State concerned within the framework of a joint action if information is the result of a data analysis provided by more than one Member State, subject to the prior agreement of the competent authorities of the Member States which provided it.

These communications shall be made in compliance with their domestic provisions applicable to the transfer of personal data to third countries.

In all cases, appropriate steps shall be taken in the third country concerned to ensure a degree of protection equivalent to that laid down by Article 45(1) and (2).

7) In Article 7(2), point (d) is deleted.

8) Article 23 is amended as follows:

(a) Paragraph 2 is replaced by the following:

"2. The aim of the CIS, in accordance with the provisions of this Regulation, shall be to assist in preventing, investigating and prosecuting operations which are in breach of customs or agricultural legislation by making information available more rapidly and thereby increasing the effectiveness of the cooperation and control procedures of the competent authorities referred to in this Regulation."

(b) In paragraph 3, "in Article K.1(8)" is replaced by: "in Articles 29 and 30".

(c) Paragraph 5 is deleted.

9) The following points (g) and (h) are added to Article 24:

"(g) goods detained, seized or confiscated;

(h) cash as defined in Article 2 of Parliament and Council Regulation (EC) No 1889/2005²⁶ detained, seized or confiscated."

(10) Article 25 is replaced by the following:

"Article 25

1. The items to be included in the CIS relating to each of categories (a) to (h) in Article 24 shall be determined in accordance with the procedure provided for in Article 43(2) to the extent that this is necessary to achieve the aim of the System. Personal data may under no circumstances appear in category (e).

In categories (a) to (d) the items of information to be included in respect of personal data shall comprise no more than:

(a) name, maiden name, forenames and aliases;

(b) date and place of birth;

(c) nationality;

(d) sex;

(e) number and place and date of issue of the identity document;

(f) address;

(g) any particular objective and permanent physical characteristics;

²⁶ OJ L 309, 25.11.2005, p. 9

- (h) reason for data entry;
- (i) suggested action;
- (j) a warning code indicating any history of being armed, violent or escaping;
- (k) registration number of the means of transport.

2. Regarding the category referred to in Article 24, point (f), the items of information to be included in respect of personal data shall comprise no more than the experts' names and forenames.

3. Regarding the category referred to in Article 24, points (g) and (h), the items of information to be included in respect of personal data shall comprise no more than:

- (a) name, maiden name, forenames and aliases;
- (b) date and place of birth;
- (c) nationality;
- (d) sex;
- (e) address.

In all cases, personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership and data concerning the health or sex life of an individual shall not be included.”

11) Article 27 is replaced by the following:

"Article 27

1. Personal data which are included in the categories referred to in Article 24 shall be included in the CIS solely for the purposes of the following suggested actions: sighting and reporting, discreet surveillance, specific checks or operational analysis.

2. Personal data which are included in the categories referred to in Article 24 may be included in the CIS only if, mainly on the basis of prior illegal activities or of information provided by way of spontaneous assistance, there is real evidence that the person in question has carried out, is carrying out or is about to carry out operations in breach of customs or agricultural legislation which are of individual interest at the Community level."

12) Article 34(3) is replaced by the following:

"Article 34

3. To ensure the correct application of the data protection provisions of this Regulation, each Member State and the Commission shall regard the CIS as a personal data processing system which is subject to:

- national provisions implementing Directive 95/46/EC;
- Regulation (EC) No 45/2001;
- any more stringent provisions of this Regulation."

(13) Article 35 is replaced by the following:

"Article 35

1. Subject to Article 30(1), CIS partners shall be prohibited from using personal data from the CIS other than for the purpose stated in Article 23(2).

2. Data may be duplicated only for technical purposes, provided that such duplication is necessary for searching by the authorities referred to in Article 29.

3. Personal data included in CIS by a Member State or the Commission may not be copied in data processing systems for which the Member States or the Commission are responsible, except in systems of risk management used to direct national customs controls or in an operational analysis system used to direct coordination actions at Community level.

In this case, only the analysts designated by the national authorities of each Member State and those designated by Commission departments shall be empowered to process personal data obtained from the CIS within the framework either of a risk management system used to direct customs controls or of an operational and/or strategic analysis system used to direct coordination actions at Community level.

Each Member State shall send the Commission a list of the risk management departments whose analysts are authorised to extract and process personal data entered in the CIS. The Commission shall inform the other Member States accordingly. It shall also provide all the Member States with the corresponding information regarding its own departments responsible for operational and/or strategic analysis.

The list of national authorities and Commission departments thus designated shall be published for information by the Commission in the *Official Journal of the European Communities*.

Personal data extracted from the CIS may be stored for no more than one year. Personal data which are not necessary for the continuation of the analysis shall be immediately deleted or identifying factors shall be removed."

14) The last sentence of Article 36(2) is replaced by the following:

"In any event, access shall be denied to any person whose data are or are not 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 investigation is ongoing."

15) Article 37 is amended as follows:

(a) Paragraph 2 is replaced by the following:

"2. Any person may ask any national supervisory authority provided for by Article 28 of Directive 95/46/EC or the European Data Protection Supervisor provided for by Article 41(2) of Regulation (EC) No 45/2001, depending whether the data were included in the CIS by a Member State or the Commission, to have access to the personal data concerning him in order to check that they are accurate and what use has been or is being made of them. This right shall be governed by the laws, regulations and procedures of the Member State in which the request is made or by Regulation (EC) No 45/2001, as the case may be. If the data were included by another Member State or by the Commission, they shall be checked in close cooperation with the national supervisory authority of that other Member State or with the European Data Protection Supervisor."

(b) Paragraph 4 is deleted.

16) Article 38(1) is replaced by the following:

"1. All appropriate technical and organisational measures necessary to maintain security shall be taken:

(a) by the Member States and the Commission, each insofar as it concerns them, in respect of the terminals of the CIS located on their respective territories and in the Commission's offices;

(b) by the Committee referred to in Article 43 in respect of the CIS and the terminals located on the same premises as the CIS and used for technical purposes and the checks required by paragraph 3;

(c) the Commission for the Community elements of the common communication network."

17) The following Title is inserted:

“TITLE Va

CUSTOMS FILES IDENTIFICATION DATABASE

Chapter 1

Establishment of a customs files identification database

Article 41a

1. The CIS shall also include a specific database called the “Customs files identification database” (“FIDE”). Subject to the provisions of this Title, all the provisions of this Regulation

relating to the CIS shall also apply to the FIDE, and any reference to the CIS includes that database.

2. The objective of the FIDE shall be to help to prevent, facilitate and accelerate the detection and prosecution of operations in breach of customs and agricultural legislation.

3. The purpose of the FIDE shall be to allow the Commission, when it opens a coordination file within the meaning of Article 18 or prepares a Community mission in a third country within the meaning of Article 20, and the competent authorities of a Member State designated as regards investigations in accordance with Article 29, when they open an investigation file or investigate one or more persons or companies, to identify the competent authorities of the other Member States or the Commission departments which are or have been investigating the persons or companies concerned, in order to attain the objectives specified in paragraph 2 by means of information on the existence of investigation files.

4. If the Member State or the Commission making a search in the FIDE needs fuller information on the investigation files on persons or companies, it shall ask for the assistance of the supplier Member State on the basis of this Regulation.

5. The customs authorities of the Member States may use the FIDE within the framework of customs cooperation provided for by Title VI of the Treaty on European Union. In such a case, the Commission shall ensure the technical management of the database.

Chapter 2

Operation and use of the FIDE

Article 41b

1. The competent authorities shall enter data from investigation files in the FIDE for the purposes defined in Article 41a(3). The data shall cover only the following categories:

(a) persons and companies which are or have been the subject of an investigation by the relevant service of a Member State, and

– are suspected of committing, of having committed, of participating or of having participated in an operation in breach of customs or agricultural legislation; or

– have been the subject of an finding relating to one of these operations; or

– have been the subject of an administrative or judicial penalty for one of these operations;

(b) the field concerned by the investigation file;

(c) the name, nationality and details of the processing department in the Member State and the file number.

The data referred to in points (a), (b) and (c) shall be introduced separately for each person or company. The creation of links between these data shall not be allowed.

2. The personal data referred to in paragraph 1(i) shall consist only of the following:

(a) for persons: name, maiden name, forename and alias, date and place of birth, nationality and sex;

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

3. Data shall be entered for a limited period in accordance with Article 41d.

Article 41c

1. The introduction and consultation of data in the FIDE shall be reserved exclusively for the authorities referred to in Article 41a.

2. Any consultation of the FIDE must specify the following personal data:

(a) for persons: the forename and/or name and/or maiden name and/or alias and/or date of birth;

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

Chapter 3

Storage of data

Article 41d

1. The data storage period shall depend on the laws, regulations and procedures of the Member State supplying them. The following are the maximum periods, calculated from the date of entry of the data in the investigation file, which may not be exceeded:

(a) data concerning current investigation files may not be stored for more than three years without any irregular operation being observed; data must be deleted before that time-limit if one year has elapsed since the last observation;

(b) data concerning investigations in which an irregular operation has been established but which have not yet given rise to a conviction or an order to pay a criminal fine or an administrative penalty may not be stored for more than six years;

(c) data concerning investigations which have given rise to a conviction or an order to pay a criminal fine or an administrative penalty may not be stored for more than ten years.

2. At all stages of an investigation file as referred to in paragraph 1(a), (b) and (c), as soon as a person to whom Article 41b applies is cleared of suspicion under the laws, regulations and procedures of the supplier Member State, data concerning that person shall immediately be deleted.

3. The FIDE shall delete the data automatically as soon as the maximum storage period provided for in paragraph 1 has elapsed. In any event, the combined periods referred to in paragraph 1 may not exceed ten years."

18) Title VI is replaced by the following:

“Title VI

DATA PROTECTION

Article 42

1. When processing personal data under this Regulation, the Commission and the Member States shall ensure strict compliance with Community and national data protection provisions, in particular those of Directive 95/46/EC and Regulation (EC) No 45/2001.

The European Data Protection Supervisor shall be consulted before the implementing measures provided for by this Regulation are adopted.

2. The provisions applying to the automatic exchange and processing of data shall apply *mutatis mutandis* to non-automatic exchange and processing of data.”

19) The following Title VIa is inserted:

“TITLE VIa

FINANCING

Article 42a

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 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 1995²⁷, insofar as these instruments provide that this expenditure shall be borne by the Community budget.

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.

3. Expenditure related to the acquisition, study, development and maintenance of the Community components of the common communication network used by the systems referred to in the paragraph 1(c) shall also be borne by the Community budget. The Commission shall conclude the necessary contracts on behalf of the Community to ensure the operational nature of these components.

4. Without prejudice to the expenses related to the operation of the CIS and the amounts provided for by way of compensation by Article 40, the Member States and the Commission shall waive all claims for reimbursement of expenditure related to the supply of information or of documents or to the implementation of an administrative investigation or of any other operational action pursuant to this Regulation which are carried out at the request of a Member State or the Commission, except as regards the allowances (if any) paid to experts."

20) Article 43 is amended as follows:

(a) Paragraph 4 is replaced by the following:

" 4. The committee shall examine all matters relating to the application of this Regulation which may be raised by its chairman, either on his own initiative or at the request of the representative of a Member State, in particular concerning:

- the general working of the mutual assistance arrangements provided for in this Regulation;
- the adoption of practical arrangements for forwarding the information referred to in Articles 15 to 17;
- the information sent to the Commission pursuant to Articles 17 and 18 to ascertain if anything can be learnt from it, to decide on the measures required to put an end to practices found to be in breach of customs or agricultural legislation and, where appropriate, to suggest amendments to existing Community provisions or the drafting of additional ones;

²⁷ OJ C 316, 27.11.1995.

- the organisation of joint customs operations, in particular special surveillance operations, provided for by Article 7;
- the Community position in committees and working parties established by or under international agreements concerning mutual administrative assistance in customs matters;
- the preparation of investigations carried out by the Member States and coordinated by the Commission and Community missions as provided for by Article 20;
- measures taken to safeguard the confidentiality of information, in particular personal data, exchanged under this Regulation, other than that provided for by Title V;
- the implementation and proper operation of the CIS and all the technical and operational measures required to ensure the security of the system;
- the need to store information in the CIS;
- the measures taken to safeguard the confidentiality of information entered in the CIS under this Regulation, particularly personal data, and to ensure compliance with the obligations of those responsible for processing;
- the measures adopted pursuant to Article 38 (2).”;

(b) In the third sentence of paragraph 5, "the Ombudsman" is replaced by "the European Data Protection Supervisor provided for by Article 41(2) of Regulation (EC) No 45/2001".

21) In Articles 44 and 45(2), "in Title V on the CIS" is replaced by: "in Titles V and Va".

22) Article 53(2) is deleted.

Article 2

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities*.

It shall apply from ...

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

1. NAME OF THE PROPOSAL:

Proposal for a Regulation of the European Parliament and of the Council amending Council 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.

2 ABM / ABB FRAMEWORK

Policy Area(s) concerned and associated Activity/Activities:

24.02 Anti-fraud

3 BUDGET LINES

3.1. Budget lines (operational lines and related technical and administrative assistance lines (ex-BA lines)) including headings:

24.0203 AFIS

3.2. Duration of the action and of the financial impact:

Indefinite from date of entry into force.

3.3. Budgetary characteristics (add rows if necessary):

Budget heading	Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
24.0203	NC	DA	None	None	None	Subheading 1a

4. SUMMARY OF RESOURCES

4.1. Financial Resources

4.1.1. Summary of commitment appropriations (CA) and payment appropriations (PA)

EUR million (to 3 decimal places)

Type of expenditure	Section No		2007	2008	2009	2010	2011	2012-2013	Total
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Operational expenditure²⁸

Commitment appropriations (CA)	8.1	a	5,750	6,000	6,000	6,500	6,500	14,000	44,750
Payment appropriations (PA)		b	4,900	5,100	5,300	5,500	5,700	18,250	44,750

Administrative expenditure within reference amount²⁹

Technical and administrative assistance – ATA (NDA)	8.2.4	c							
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TOTAL REFERENCE AMOUNT

Commitment Appropriations		a+c	5,750	6,000	6,000	6,500	6,500	14,000	44,750
Payment Appropriations		b+c	4,900	5,100	5,300	5,500	5,700	18,250	44,750

Administrative expenditure not included in reference amount³⁰

Human resources and associated expenditure (NDA)	8.2.5	d	0,659	0,659	0,659	0,659	0,659	1,318	4,613
Administrative costs, other than human resources and associated costs, not included in reference amount (NDA)	8.2.6	e	0,850	0,850	0,850	0,850	0,850	1,700	5,950

²⁸ Expenditure that does not fall under Chapter xx 01 of the Title xx concerned.

²⁹ Expenditure within article xx 01 04 of Title xx.

³⁰ Expenditure within chapter xx 01 other than articles xx 01 04 or xx 01 05.

Total indicative financial cost of intervention

TOTAL CA including cost of Human Resources		a+c +d+ e	7,259	7,509	7,509	8,009	8,009	17,018	55,313
TOTAL PA, including cost of human resources		b+c +d+ e	6,409	6,609	6,809	7,009	7,209	21,268	55,313

Co-financing details

If the proposal involves co-financing by Member States, or other bodies (please specify which), an estimate of the level of this co-financing should be indicated in the table below (additional lines may be added if different bodies are foreseen for the provision of the co-financing):

EUR million (to 3 decimal places)

Co-financing body		2007	2008	2009	2010	2011	2012-2013	Total
.....	f							
TOTAL CA including co-financing	a+c+d +e+f							

4.1.2. Compatibility with financial programming

- Proposal is compatible with existing financial programming.
- Proposal will entail reprogramming of the relevant heading in the financial perspective.
- Proposal may require application of the provisions of the Interinstitutional Agreement³¹ (i.e. flexibility instrument or revision of the financial perspective).

Financial impact on revenue

- Proposal has no financial impact on revenue
- Financial impact - the effect on revenue is as follows:

Note: All details and observations relating to the method of calculating the effect on revenue should be shown in a separate annex.

³¹ See points 19 and 24 of the Interinstitutional agreement.

EUR million (to one decimal place)

Budget heading	Revenue	Prior to action [Year n-1]	Situation following action							
			[Year n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5] ³²		
	<i>a) Revenue in absolute terms</i>									
	<i>b) Change in revenue</i>	Δ								

(Please specify each revenue budget line involved, adding the appropriate number of rows to the table if there is an effect on more than one budget line.)

4.2. Human Resources FTE (including officials, temporary and external staff) - see detail under point 8.2.1.

	2007	2008	2009	2010	2011	2012-2013
Annual requirements						
Total number of human resources	6,1	6,1	6,1	6,1	6,1	6,1

5. CHARACTERISTICS AND OBJECTIVES

Details of the context of the proposal are required in the Explanatory Memorandum. This section of the Legislative Financial Statement should include the following specific complementary information:

5.1. Need to be met in the short or long term

AFIS's technical architecture (hardware and software) needs to be updated.

A customs files identification database (FIDE) enabling the competent departments to inform each other of files on investigations, whether under way or closed, without giving further details of their content or outcome needs to be developed and launched to complete the existing systems for exchanging and storing data (AFIS/CIS).

There is a need to develop a common interface for users of the AFIS/CIS applications and modules for mutual assistance communications (e-MA communication), user rights management

³² Additional columns should be added if necessary i.e. if the duration of the action exceeds 6 years.

(URT), cooperation (Virtual OCU), structured and unstructured exchanges (AFIS Mailing), data import/export functionalities, notification of seizures of goods and analysis of CIS data.

A system needs to be developed for accessing information, data and data sources for the purposes of fraud prevention in the field of the protection of the Community's financial and other interests.

5.2. Value-added of Community involvement and coherence of the proposal with other financial instruments and possible synergy

Value added by the Community intervention

In the fight against fraud affecting the European Union budget and other forms of trafficking, the lack of compatibility and interoperability of the IT architectures of the national competent authorities impeded the efficient functioning of the mechanisms for administrative cooperation and mutual assistance.

It was therefore important to find a common denominator for the national systems. To this end, a single technical infrastructure, the Anti-Fraud Information System (AFIS), was created to serve as the basis for various Community anti-fraud computer applications.

These computer applications, which are based on the law on customs and agricultural matters, thus provide a common interface with the national systems, making them easily accessible by the user authorities in the Member States.

Through these sectoral rules, this infrastructure is designed to assist the competent authorities in preventing, detecting and prosecuting operations which contravene the customs and agricultural regulations by means of more rapid dissemination of information, leading to more effective cooperation and monitoring procedures and better sharing of information between the national authorities and also between the authorities and the European Anti-Fraud Office (OLAF).

Coherence of the proposal with other financial instruments and possible synergy

All the appropriations entered in Article 24.0203 "Anti-fraud information system (AFIS)" of the EU budget are intended to finance the development and maintenance of AFIS's infrastructure, its use and the related production services.

5.3 Objectives, expected results and related indicators of the proposal in the context of the ABM framework

The objective is develop and roll out a new AFIS infrastructure combining new Internet-oriented hardware with new software applications.

Output indicators:

- The new AFIS portal and the associated management tools, e.g. User Registration Tool (URT), are launched (objective achieved: yes/no).

- The following new software applications are developed and launched (objective achieved: yes/no):
 - non-structured data exchange (AFIS mailing)
 - structured data exchange (MARINFO, YACHTINFO, CIGINFO, e-MA)
 - cooperation tools (Virtual OCU : CONSUR, MARSUR, VIASUR)
 - data storage (FIDE and CIS web) (objective achieved: yes/no).
- Updated versions are launched of the following software applications (objective achieved: yes/no):
 - the Mutual Information System (MIS)
 - the Electronic Communication Registry (ECR).
- The anti-fraud customs operational analysis system (COAS) is developed and launched, and the Customs Information System's remit is extended to controlling cash entering and leaving the EU (objective achieved: yes/no).
- AFIS's infrastructure and software applications undergo corrective and evolutionary maintenance (number of incidents and requests for changes).
- The groups of users of external databases are assessed (number of notifications).

Impact indicators:

- Cooperation within the network of AFIS users improves (number of messages exchanged or stored).
- The new infrastructure meets the requirements of users in the Member States (an application permits user satisfaction to be gauged).
- The added value of an approach based on EU-level intelligence is demonstrated.

5.4. Method of Implementation (indicative)

Show below the method(s)³³ chosen for the implementation of the action.

- Centralised management
 - X Directly by the Commission
 - Indirectly by delegation to:

³³ If more than one method is indicated please provide additional details in the “Remarks” section of this point.

- Executive Agencies
- bodies set up by the Communities as referred to in Article 185 of the Financial Regulation
- national public-sector bodies/bodies with public-service mission
- Shared or decentralised management
 - With Member States
 - With third countries
- Joint management with international organisations (please specify)

Remarks:

6. MONITORING AND EVALUATION

6.1. Monitoring system

Starting from the date of this Regulation's entry into force, the Commission will report every three years on the Regulation's application to the European Parliament, the Court of Auditors and the Council.

6.2. Evaluation

6.2.1. Ex-ante evaluation

The Commission's 2004 annual report on the protection of the Communities' financial interests focused heavily on the implementation of mutual administrative assistance in customs matters by the Member States and the Commission in the period 2002-2004. The proposed amendment is intended to take account of this evaluation.

6.2.2. Measures taken following an intermediate/ex-post evaluation (lessons learned from similar experiences in the past)

If necessary, the Committee will use the "comitology" procedure to adopt a regulation laying down the relevant implementing procedures.

6.2.3. Terms and frequency of future evaluation

Starting from the date of the Regulation's entry into force, the Commission will report every three years on the Regulation's application to the European Parliament, the Court of Auditors and the Council.

7. ANTI-FRAUD MEASURES

In order to protect the Communities' financial interests against fraud and other irregularities, the Commission may carry out on-the-spot checks and inspections under this Programme in accordance with Council Regulation (Euratom, EC) No 2185/96³⁴. Where necessary, investigations shall be conducted by the European Anti-Fraud Office (OLAF) and these shall be governed by Regulation (EC) No 1073/1999 of the European Parliament and of the Council³⁵.

The Commission will conduct regular document-based and on-the-spot checks.

³⁴ OJ L 292, 15.11.1996, p. 2.

³⁵ OJ L 136, 31.05.1999, p. 1.

8. DETAILS OF RESOURCES

8.1. Objectives of the proposal in terms of their financial cost

Commitment appropriations in EUR million (to 3 decimal places)

(Headings of Objectives, actions and outputs should be provided)	Type of output	Av. cost	2007		2008		2009		2010		2011		2012-2013		TOTAL	
			No of outputs	Total cost	No of outputs	Total cost	No of outputs	Total cost	No of outputs	Total cost	No of outputs	Total cost	No of outputs	Total cost	No of outputs	Total cost
OPERATIONAL OBJECTIVE No 1 ³⁶ Development and management of the technical infrastructure of the Anti-Fraud Information System (AFIS)																
Action 1 Feasibility studies, development, launch and maintenance of the AFIS technical infrastructure (hardware and software)																
Feasibility study and development of AFIS infrastructure, including acquisition of				1,850		2,000		2,000		2,150		2,150		4,600		14,750

³⁶

As described under Section 5.3.

communications systems																
Launch and maintenance of AFIS infrastructure, including support and training for users ³⁷				3,900		4,000		4,000		4,350		4,350		9,400		30,000
TOTAL COST				5,750		6,000		6,000		6,500		6,500		14,000		44,750

For information, the below table sets out the sums allocated to DG OLAF under the Commission proposal for a Decision of the European Parliament and of the Council establishing an action programme for customs in the Community (Customs 2013) (COM(2006) 201 final of 17 May 2006) to cover expenditure arising from the use of the common communications network/common systems interface (CCN/CSI) for AFIS applications:

Operational objective	2008	2009	2010	2011	2012	2013
Use of the CCN/CSI communications network for AFIS software applications	EUR 2.65 million	EUR 3.05 million	EUR 3.05 million	EUR 3.05 million	EUR 3.05 million	EUR 3.4 million

³⁷

This is additional to the expenditure arising from the use of the common communications network/common systems interface (CCN/CSI), which is already covered by the Commission Proposal for a Decision of the European Parliament and of the Council establishing an action programme for customs in the Community (Customs 2013) (COM(2006) final, 17.5.2006).

8.2. Administrative expenditure

8.2.1 Number and type of human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources (number of posts/FTEs)					
		2007	2008	2009	2010	2011	2012-2013
Officials or temporary staff ³⁸ (24 02 03)	A*/AD	2,1A	2,1A	2,1A	2,1A	2,1A	2,1A
	B*, C*/AST	3B 1C	3B 1C	3B 1C	3B 1C	3B 1C	3B 1C
Staff financed ³⁹ by Article XX 01 02							
Other staff financed ⁴⁰ by Article XX 01 04/05							
TOTAL		6,1	6,1	6,1	6,1	6,1	6,1

8.2.2. Description of tasks deriving from the action

Management of AFIS IT projects, in particular by acting as an interface between users ("Business owner") and outside contractors.

8.2.3. Sources of human resources (staff covered by the Staff Regulations)

(When more than one source is stated, please indicate the number of posts originating from each of the sources)

- Posts currently allocated to the management of the programme to be replaced or extended
- Posts pre-allocated within the APS/PDB exercise for year n
- Posts to be requested in the next APS/PDB procedure
- Posts to be redeployed using existing resources within the managing service (internal redeployment)

³⁸ Cost of which is NOT covered by the reference amount.

³⁹ Cost of which is NOT covered by the reference amount.

⁴⁰ Cost of which is included within the reference amount.

- Posts required for year n although not foreseen in the APS/PDB exercise of the year in question

8.2.4. *Other administrative expenditure included in reference amount*
(XX 01 04/05 – Administrative management expenditure)

EUR million (to 3 decimal places)

Budget heading (No and title)	2007	2008	2009	2010	2011	2012-2013	TOTAL
1. Technical and administrative assistance (including related staff costs)							
Executive agencies ⁴¹							
Other technical and administrative assistance.							
<i>intra muros</i>							
<i>extra muros</i>							
Total technical and administrative assistance.							

8.2.5. *Financial cost of human resources and associated costs not included in reference amount*

EUR million (to 3 decimal places)

Type of human resources	2007	2008	2009	2010	2011	2012-2013
Officials and temporary staff (XX 01 01)	0,659	0,659	0,659	0,659	0,659	1,318
Staff financed by Art XX 01 02 (auxiliary, END, contract staff, etc.) (specify budget line)						
Total cost of human resources and associated costs (NOT included in reference amount)	0,659	0,659	0,659	0,659	0,659	1,318

⁴¹ Reference should be made to the specific legislative financial statement for the Executive Agency(ies) concerned.

Calculation – **Officials and Temporary agents**

Reference should be made to Point 8.2.1, if applicable

6,1 x108 000 = EUR 658 800

Calculation – **Staff financed by Article XX 01 02**

Reference should be made to Point 8.2.1, if applicable

8.2.6. *Other administrative expenditure not included in reference amount*

EUR million (to 3 decimal places)

	2007	2008	2009	2010	2011	2012-2013	TOTAL
XX 01 02 11 01 – Missions							
XX 01 02 11 02 - Meetings and conferences							
24 01 06 0001 02 11 03 - Committees ⁴²	0,120	0,120	0,120	0,120	0,120	0,240	0,840
XX 01 02 11 04 - Studies & consultations							
XX 01 02 11 05 - Information systems							
2. Total other management expenditure (XX 01 02 11)							
3. Other expenditure of an administrative nature (specify including reference to budget line) 24 01 06 00 02 01 Controls, studies, analyses and activities specific to the European Anti-Fraud Office	0,600	0,600	0,600	0,600	0,600	1,200	4,200
Total administrative expenditure, other than human resources and associated costs (NOT included in reference amount)	0,720	0,720	0,720	0,720	0,720	1,440	5,040

Mutual Assistance Committee referred to in Article 43 of Regulation (EC) No 515/97 of 13 March 1997 (application of Articles 5 and 6 of Decision 1999/468/EC).

Calculation – **Other administrative expenditure not included in reference amount**

On the basis of execution in 2004 and 2005 and plans for 2006.

⁴² Specify the type of committee and the group to which it belongs.