



COMMISSION OF THE EUROPEAN COMMUNITIES

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-

Proposal for a

COUNCIL DECISION

establishing the Community position within the EU-Mexico Joint Council with a view to the adoption of an Annex to Decision 2/2000 on mutual administrative co-operation in customs matters

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. The Economic Partnership, Political Co-ordination and Co-operation Agreement between the European Community and its Member States of the one part, and the United Mexican States of the other part, (the Co-operation Agreement) was signed on 8th December 1997¹. It includes among its objectives, closer and more extensive co-operation to increase and diversify trade and pave the way for progressive and reciprocal liberalisation of that trade.
2. Article 17(3) of the Decision 2/2000 of the EU-Mexico Joint Council established by the above-mentioned Agreement envisages that the administrations of both Parties shall provide mutual administrative assistance in customs matters in accordance with the provisions of an Annex on Mutual Administrative Assistance on Customs Matters to be adopted by the Joint Council no later than one year from the entry into force of Decision 2/2000.
3. On this basis, negotiations took place between the Commission and Mexico. They have produced the Annex and the Agreement in the form of an Annex initialled in Brussels on 26th March 2001.
4. The purpose of the Annex is the prevention, detection, and prosecution, through mutual assistance by the parties' competent authorities, of activities breaching customs legislation. This assistance mainly involves the forwarding of information and documents on investigations and the surveillance of specific individuals, goods, places or means of transport.
5. The Annex is in conformity with the terms of the standard version drawn up in 1997 by the Council Working Party on Economic Questions.
6. This Annex now needs to be concluded, so as to:
 - establish the position to be taken by the Community within the EU/Mexico Joint Council with a view to implement Article 17(3) of Decision 2/2000.

¹ OJ L 276, 28.10.2000.

Proposal for a

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establishing the Community position within the EU-Mexico Joint Council with a view to the adoption of an Annex to Decision 2/2000 on mutual administrative co-operation in customs matters

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 in conjunction with the first sentence of Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) Article 17(3) of the Decision 2/2000 of the EU/Mexico Joint Council established by the Economic Partnership, Political Co-operation and Co-operation Agreement between the European Community and its Member States of the one part, and the United Mexican States, of the other part,² provides that the administrations of both Parties shall provide mutual administrative assistance in customs matters in accordance with the provisions of an Annex on Mutual Administrative Assistance on Customs matters to be adopted by the Joint Council no later than one year from the entry into force of Decision 2/2000,
- (2) It is necessary to establish the position to be taken by the Community with the EU/Mexico Joint Council with a view to the adoption of the above mentioned Annex.

HAS DECIDED AS FOLLOWS:

² OJ.L 276, 28.10.2000.

Sole Article

The position to be taken by the Community within the EU/Mexico Joint Council with a view to implement Article 17(3) of Decision 2/2000 is contained in the draft decision of the EU/Mexico Joint Council annexed to this decision.

Done at Brussels,

*For the Council
The President*

ANNEX

DECISION No ----- 2001 OF THE EU-MEXICO JOINT COUNCIL

of

The Joint Council

Having regard to the Economic Partnership, Political Co-ordination and Co-operation Agreement between the European Community and its Member States, of the one part, and the United Mexican States, of the other part,

Having regard to the EU/Mexico Joint Council Decision 2/2000, and in particular to Article 17.3 thereof,

Whereas Article 17.3 of Decision 2/2000 envisages that the administrations of both Parties shall provide mutual administrative assistance in customs matters in accordance with the provisions of an Annex on Mutual Administrative Assistance on Customs matters to be adopted by the Joint Council no later than one year from the entry into force of Decision 2/2000.

HAS DECIDED AS FOLLOWS

Article 1

The “Annex on mutual administrative co-operation” to Council Decision 2/2000 set out in the annex to this decision is hereby approved.

Article 2

This decision shall enter into force on

ANNEX

ON MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS MATTERS

Article 1

Definitions

For the purposes of this Annex:

- (a) "customs legislation" shall mean any legal or regulatory provisions adopted by the European Community and Mexico governing the import, export, and transit of goods and their placing under any other customs regime or procedure, including measures of prohibition, restriction and control;
- (b) "applicant authority" shall mean a competent customs authority which has been designated by a Party for this purpose and which makes a request for assistance on the basis of this Annex;
- (c) "requested authority" shall mean a competent customs authority which has been designated by a Party for this purpose and which receives a request for assistance on the basis of this Annex;
- (d) "customs authority" shall mean for the European Community, the competent services of the Commission of the European Communities and the customs authorities of its Member States; and for Mexico, the Secretaria de Hacienda y Crédito Público or its successor;
- (e) "personal data" shall mean all information relating to an identified or identifiable individual;
- (f) "operation in breach of customs legislation" shall mean any violation or attempted violation of customs legislation;
- (g) "information" shall mean any data, documents, reports, certified or authenticated copies thereof or other communications, including information which has been processed and/or analysed to provide an indication relevant to an operation in breach of customs legislation.

Article 2

Scope

1. This Annex is intended solely for the mutual administrative assistance between the Parties, the provisions of this Annex shall not give rise to a right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of a request.

2. The Parties shall assist each other, in the areas within their competence, in the manner and under the conditions laid down in this Annex, to ensure the correct application of the customs legislation, in particular by preventing, investigating and combating operations in breach of that legislation.
3. Assistance in customs matters, as provided for in this Annex, shall apply to any administrative authority of the Parties which is competent for the application of this Annex. It shall not prejudice the rules governing mutual assistance in criminal matters. Nor shall it cover information obtained under powers exercised at the request of a judicial authority, except where communication of such information is authorised by that authority.
4. Assistance to recover duties, taxes or fines is not covered by this Annex.

Article 3

Assistance on request

1. At the request of the applicant authority, the requested authority shall provide it with all relevant information which may enable it to ensure that customs legislation is correctly applied, including information regarding activities noted or planned which are or could be operations in breach of customs legislation.
2. At the request of the applicant authority, the requested authority shall inform it:
 - (a) whether goods exported from the territory of one of the Parties have been properly imported into the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods;
 - (b) whether goods imported into the territory of one of the Parties have been properly exported from the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods.
3. At the request of the applicant authority, the requested authority shall, within the framework of its legal or regulatory provisions, take the necessary steps to ensure special surveillance of:
 - (a) natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation;
 - (b) places where stocks of goods have been or may be assembled or subject to operations in such a way that there are reasonable grounds for believing that these goods are intended to be used in operations in breach of customs legislation;
 - (c) goods in transport or in storage in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation;
 - (d) means of transport that are, have been or may be used in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation.

Article 4

Spontaneous assistance

1. The Parties shall assist each other, at their own initiative and in accordance with their legal or regulatory provisions, if they consider that to be necessary for the correct application of customs legislation, particularly by providing information obtained pertaining to:
 - activities, which are or appear to be operations in breach of customs legislation and which may be of interest to the other Party;
 - new means or methods employed in carrying out operations in breach of customs legislation;
 - goods known to be subject to operations in breach of customs legislation;
 - natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation;
 - means of transport in respect of which there are reasonable grounds for believing that they have been, are, or may be used in operations in breach of customs legislation.

Article 5

Delivery, Notification

At the request of the applicant authority, the requested authority shall, in accordance with legal or regulatory provisions applicable to the latter, take all necessary measures in order:

- to deliver any documents, or
- to notify any decisions,

emanating from the applicant authority and falling within the scope of this Annex, to an addressee residing or established in the territory of the requested authority.

Requests for delivery of documents or notification of decisions shall be made in writing in an official language of the requested authority or in a language acceptable to that authority.

Article 6

Form and substance of requests for assistance

1. Requests pursuant to this Annex shall be made in writing. They shall be accompanied by the documents necessary to enable compliance with the request. When required because of the urgency of the situation, oral requests may be accepted, but must be confirmed in writing immediately.

2. Requests pursuant to paragraph 1 shall include the following information:
 - (a) the applicant authority;
 - (b) the measure requested;
 - (c) the object of and the reason for the request;
 - (d) the legal or regulatory provisions and other legal elements involved;
 - (e) indications as exact and comprehensive as possible on the natural or legal persons who are the target of the investigations;
 - (f) a summary of the relevant facts and of the enquiries already carried out.
3. Requests shall be submitted in an official language of the requested authority or in a language acceptable to that authority. This requirement shall not apply to any documents that accompany the request under paragraph 1.
4. If a request does not meet the formal requirements set out above, its correction or completion may be requested; in the meantime precautionary measures may be ordered.

Article 7

Execution of requests

1. In order to comply with a request for assistance, the requested authority shall proceed, within the limits of its competence and available resources, as though it were acting on its own account or at the request of other authorities of that same Party, by supplying information already possessed, by carrying out appropriate enquiries, including verifications, inspections and the examination of records, or by arranging for them to be carried out. This provision shall also apply to any other authority to which the requested authority has addressed the request when the latter cannot act on its own.
2. Requests for assistance shall be executed in accordance with the legal or regulatory provisions of the requested Party.
3. Duly authorised officials of a Party may, with the agreement of the other Party and subject to the domestic law of the requested authority and within the conditions laid down by the latter, be present to obtain from the offices of the requested authority, or any other authority as laid down in paragraph (1), the relevant books, registers and other documents or data media held in those offices, make copies thereof, or extract any information or particulars relating to operations in breach of customs legislation which the applicant authority needs for the purposes of this Agreement.
4. Subject to the domestic law of the requested authority and to the conditions laid down by the latter, duly authorised officials of a Party may, with the agreement of the other Party and subject to the conditions laid down by the latter, be present at enquiries carried out in the latter's territory.

5. A request by either customs authority that a certain procedure be followed shall be complied with, subject to the national legal and administrative provisions of the requested authority.

Article 8

Form in which information is to be communicated

1. The requested authority shall communicate results of enquiries and provide any information requested subject to Article 9, to the applicant authority in writing together with relevant documents, certified copies or other items and may, where appropriate, include any relevant information for interpreting or using it.
2. This information may be in computerised form.
3. Originals of files, documents and other materials, or certified or authenticated copies thereof, shall be transmitted only in cases where copies would be insufficient.
4. Originals of files, documents and other materials that have been transmitted shall be returned at the earliest opportunity; rights of the Parties or of third parties relating thereto shall remain unaffected.

Article 9

Exceptions to the obligation to provide assistance

1. Assistance may be refused or may be subject to the satisfaction of certain conditions or requirements, in cases where a Party is of the opinion that assistance under this Annex would:
 - (a) be likely to prejudice the sovereignty of the Party which has been requested to provide assistance under this Annex; or
 - (b) be likely to prejudice public policy, security or other essential interests, in particular in the cases referred to under Article 10 (2); or
 - (c) violate an industrial, commercial or professional secret.
2. The requested authority may postpone assistance on the ground that it will interfere with an ongoing investigation, prosecution or proceeding. In such a case, the requested authority shall consult with the applicant authority to determine if assistance can be given subject to such terms or conditions as the requested authority may require.
3. Where the applicant authority seeks assistance which it would (itself) be unable to provide if so requested, it shall draw attention to that fact in its request. It shall then be for the requested authority to decide how to respond to such a request.
4. In the event that a request cannot be complied with, the applicant authority shall be promptly notified of that fact with a statement of the reasons and circumstances, which might be of importance for the further pursuit of the matter.

5. For the cases referred to in paragraphs 1 and 2; the decision of the requested authority and the reasons therefor must be communicated to the applicant authority without delay.

Article 10

Information exchange and confidentiality

1. Any information communicated in whatsoever form pursuant to this Annex shall be of a confidential or restricted nature, depending on the rules applicable in each of the Parties. It shall be covered by the obligation of official secrecy and shall enjoy the protection extended to similar information under the relevant laws of the Party that received it and the corresponding provisions applying to the Community authorities.
2. Personal data may be exchanged only where the Party, which may receive them, undertakes to protect such data in at least an equivalent way to the one applicable to that particular case in the Party that may supply them. To this end, the Parties shall communicate to each other information on their applicable rules, including, where appropriate, legal provisions in force in the Member States of the Community, including any change therein occurring after the entry into force of this Annex.
3. The use, in judicial or administrative proceedings instituted in respect of operations in breach of customs legislation, of information obtained under this Annex, is considered to be for the purposes of this Annex. Therefore, the Parties may, in their records of evidence, reports and testimonies and in proceedings, and charges brought before the courts, use as evidence information obtained and documents consulted in accordance with the provisions of this Annex. The competent authority, which supplied that information or gave access to those documents, shall be notified of such use.
4. Information obtained shall be used solely for the purposes of this Annex. Where one of the Parties wishes to use such information for other purposes, it shall obtain the prior written consent of the authority, which provided the information. Such use shall then be subject to any restrictions laid down by that authority.

Article 11

Experts and witnesses

An official of a requested authority may be authorised to appear, within the limitations of the authorisation granted, as an expert or witness in judicial or administrative proceedings instituted in the territory of the other Party regarding the matters covered by this Annex, and produce such objects, documents or certified copies thereof, as may be needed for the proceedings. The request for appearance must indicate specifically before which judicial or administrative authority the official will have to appear, on what matters and by virtue of what title or qualification the official will be questioned.

Article 12

Assistance expenses

1. The Parties shall waive all claims on each other for the reimbursement of expenses incurred pursuant to this Annex, except, as appropriate, for expenses to experts and witnesses, and those to interpreters and translators who are not public service employees.
2. If expenses of a substantial and extraordinary nature are, or will be required to execute the request, the Parties may consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.

Article 13

Implementation

1. Without prejudice to the terms of Article 14(3) the Parties agree that any matter arising from the implementation of this Annex may be entrusted on the one hand, to the customs authority of Mexico, and on the other hand to the competent services of the Commission of the European Communities and the customs authorities of the Member States as appropriate. They shall decide on all practical measures and arrangements necessary for its application, taking into consideration the rules in force in particular in the field of data protection. They may recommend to the competent bodies' amendments, which they consider should be made to this Annex.
2. The Parties shall consult each other and subsequently keep each other informed of the detailed rules of implementation, which are adopted in accordance with the provisions of this Annex. In particular, before the entry into force of this Annex, the Parties shall communicate to each other the competent customs authority designated for the implementation of this Annex. Any changes thereafter shall be notified.

Article 14

Other agreements

1. Taking into account the respective competencies of the European Community and the Member States, the provisions of this Annex shall:
 - not affect the obligations of the Parties under any other international agreement or convention;
 - be deemed complementary to agreements on mutual assistance which have been or may be concluded between individual Member States and Mexico; and shall
 - not affect the Community provisions governing the communication between the competent services of the Commission of the European Communities and

the customs authorities of the Member States of any information obtained under this Annex which could be of interest to the Community.

2. Notwithstanding the provisions of paragraph 1, the provisions of this Annex shall take precedence over the provisions of any bilateral agreement on mutual assistance which has been or may be concluded between individual Member States and Mexico insofar as the provisions of the latter are incompatible with those of this Annex.
3. In respect of questions relating to the applicability of this Annex, the Parties shall consult each other to resolve the matter in the framework of the Special Committee on Customs Co-operation set up under Article 17 of the Decision 2/2000 of the EC-Mexico Joint Council.

FINANCIAL STATEMENT

1. TITLE OF OPERATION

Proposal for a Council Decision establishing the Community position within the EU-Mexico Joint Council with a view to the adoption of an Annex to Decision 2/2000 on mutual administrative co-operation in customs matters.

2. BUDGET HEADING(S) INVOLVED

A-3600 Item A-1300

3. LEGAL BASIS

The Annex in question was negotiated on the basis of Article 17(3) of the Decision 2/2000 of the EU/Mexico Joint Council established by the Economic Partnership, Political Co-operation and Co-operation Agreement between the European Community and its Member States of the one part, and the United Mexican States of the other part.

4. DESCRIPTION OF OPERATION

The purpose of the Annex is the prevention, detection and prosecution, through mutual assistance by the parties' competent authorities, of activities breaching customs legislation. This assistance mainly involves the forwarding of information and documents on investigations and the surveillance of specific individuals, goods, places or means of transport. The Annex is of indefinite duration and does not require renewal.

The Annex will be administered within the framework of the Special Committee on Customs Cooperation and Rules of Origin set up under Article 17 of the Decision 2/2000 of the EC-Mexico Joint Council.

5. CLASSIFICATION OF EXPENDITURE OR REVENUE

Non-compulsory expenditure.

6. TYPE OF EXPENDITURE OR REVENUE

- Cost of Community missions to Mexico every two years.
- Where required, any meeting costs not covered by the existing infrastructure.

7. FINANCIAL IMPACT

7.1 Method of calculating total cost of operation (relation between individual and total costs)

7.2 Itemised breakdown of cost

Commitment appropriations EUR million (at current prices)

Breakdown	year n	n+1	n+2	n+3	n+4	n+5 and subs. yrs	
Total							

7.3 Operational expenditure for studies, experts etc. included in Part B of the budget

Commitment appropriations EUR million (at current prices)

	year n	n+1	n+2	n+3	n+4	n+5 and subs. yrs	Total
– Studies							
– Meetings of experts							
– Information and publications							
Total							

7.4 Schedule of commitment and payment appropriations

EUR million

	year n	n+1	n+2	n+3	n+4	n+5 and subs. yrs	Total
Commitment appropriations							
Payment appropriations							
year n n+1 n+2 n+3 n+4 n+5 and subs. yrs							
Total							

8. FRAUD PREVENTION MEASURES

- Implementation of Community regulations.

9. ELEMENTS OF COST-EFFECTIVENESS ANALYSIS

Grounds for the operation :

The main aim is to protect the collection of traditional own resources. To that end, a system will be set up to transmit information between the competent authorities on transactions which are or appear to be against Community customs legislation.

10. ADMINISTRATIVE EXPENDITURE (SECTION III, PART A OF THE BUDGET)

Actual mobilisation of the necessary administrative resources will depend on the Commission's annual decision on the allocation of resources, taking into account the number of staff and additional amounts authorised by the budgetary authority.

10.1 Effect on the number of posts

Type of post		Staff to be assigned to managing the operation		Source		Duration
		Permanent posts	Temporary posts	Existing resources in the DG or department concerned	Additional resources	
Officials or temporary staff	A B C	0'1		0'1	Not determined.	
Other resources						
Total		0'1		0'1		

10.2 Overall financial impact of additional human resources

EUR

	Amounts	Method of calculation
Officials	10 800	0'1 man-years at EUR 108 000 (unit cost), Title A1, A-3600
Temporary staff		
Other resources (indicate budget heading)		
Total	10 800	

10.3 Increase in other administrative expenditure as a result of the operation

EUR

Budget heading	Amounts	Method of calculation
A-3600 Item A-1300	3 800	Working party meetings (once a year, alternately in Brussels and Mexico City) - meetings held in Mexico City: 4-day mission for one Commission official (... EUR per official)
A-3600 Item A-2500	p.m.	Working party: travel costs of Council representatives involved in the working party will be met by the General Secretariat of the Council.
Total	3 800	
A-3600 Item A-1300		In the years in which the working party meets in Mexico City.
A-3600 Item A-2500	p.m.	

The amounts given correspond to expenditure for 12 months (operation is indefinite).

NB Resources needed for missions undertaken by Commission officials will be obtained by redeploying existing resources.