

European Communities

EUROPEAN PARLIAMENT

Working Documents

1973-1974

10 December 1973

DOCUMENT 265/73

Report

drawn up on behalf of the Committee on Economic and Monetary Affairs

on the proposal from the Commission of the European Communities to the Council (Doc. 65/73) for a regulation on mutual assistance between competent authorities of the Member States and between the latter and the Commission for ensuring the correct application of Community customs and agriculture regulations

Rapporteur : Mr H. K. ARTZINGER

CV 1110 1117. 863

By letter of 16 May 1973 the President of the Council of the European Communities requested the European Parliament, pursuant to Articles 43 and 235 of the EEC Treaty, to deliver an opinion on the proposal from the Commission of the European Communities to the Council for a regulation on mutual assistance between competent authorities of the Member States and between the latter and the Commission for ensuring the correct application of Community customs and agriculture regulations.

On 24 May 1973 the President referred this proposal to the Committee on Economic and Monetary Affairs as the committee responsible and to the Committee on Agriculture and the Committee on Budgets for their opinions.

The Committee on Economic and Monetary Affairs appointed Mr ARTZINGER rapporteur on 15 June 1973.

It discussed the proposal at its meeting of 29 November 1973.

On 29 November 1973 the committee unanimously adopted the motion for a resolution.

The following were present: Mr Lange, chairman; Mr Notenboom, vice-chairman; Sir Brandon Rhys Williams, vice-chairman; Mr Artzinger, rapporteur; Mr Flämig (deputizing for Mr Arndt), Mr Leenhardt, Mr Mitterdorfer, Mr Normanton, Mr Scholten and Mr Yeats.

The opinions of the Committee on Agriculture and the Committee on Budgets are attached to this report.

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The Committee on Economic and Monetary Affairs hereby submits to the European Parliament the following motion for a resolution:

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a regulation on mutual assistance between competent authorities of the Member States and between the latter and the Commission for ensuring the correct application of Community customs and agriculture regulations.

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council¹
 - having been consulted by the Council pursuant to Articles 43 and 235 of the Treaty (Doc. 65/73),
 - having regard to the report of the Committee on Economic and Monetary Affairs and the opinions of the Committee on Budgets and the Committee on Agriculture (Doc. 265/73);
1. Notes that, pursuant to Articles 43 and 235 of the EEC Treaty and Regulation No. 279/70, the application of the rules of the common agricultural policy, the common customs tariff and the other Community customs provisions is to be improved by the creation of a system of mutual assistance between the authorities of the Member States responsible for customs and agricultural matters, in which the Commission's involvement will be confined to the provision of information in the context of a consultation procedure;
 2. Welcomes the fact that the Commission wishes to achieve a uniform judicial interpretation of Community law through a regulation and intends to ensure control of the proper application of the whole body of Community law at present in force;
 3. Criticizes the fact that, in view of the irregularities in agricultural trade, of which the public has long been aware, which constitute infringements of Community law and cause a loss of revenue to the Community budget, the Commission has not submitted appropriate proposals to the Council for adoption at a much earlier date;

¹ OJ No. C 100, 22 November 1973, p.30

4. Views the proposal for a regulation as the minimum action necessary to prevent future fraud in Community agricultural trade; the Council should adopt it at the earliest possible date without toning it down;
5. Requests the Commission to report to Parliament annually on experience of the application of this regulation;
6. Reserves the right, on the basis of such information, to ask the Commission to submit further, more stringent provisions;
7. Approves the proposal for this regulation under these conditions;
8. Instructs its President to forward this resolution to the Council and Commission of the European Communities.

OPINION OF THE COMMITTEE ON AGRICULTURE

Draftsman: Miss Astrid LULLING

At its meeting of 17/18 May 1973 the Committee on Agriculture appointed Miss Lulling draftsman for an opinion.

The opinion was discussed and unanimously adopted by the Committee at its meeting of 25/26 October 1973.

The following were present: Mr Houdet, Chairman; Miss Lulling, draftsman of the opinion; Mr Frehsee, Mr Fröh, Mr Gibbons, Mr John Hill, Mr Jakobsen, Mr Laban, Lord St. Oswald, Mr Scelba (deputizing for Mr Ligios) and Mr Scott-Hopkins.

1. Since 1 January 1971 revenue derived from agricultural levies and, to an increasing extent, from customs duties has gone towards financing the Community budget. This revenue is raised under Community and national legislation in the agriculture and customs sectors. The body responsible for supervising the application of this legislation is the Commission of the Communities, whose task it is to ensure that the revenue is collected by the competent national authorities correctly and in accordance with uniform criteria. This makes it necessary for the departments of the Commission to be involved in the regular exchange of information between the national administrations and the practical assistance they give one another.

2. Appropriate rules governing expenditure resulting from the financing of the common agricultural policy have already been issued.¹

3. The proposed regulation represents a further step in the development of Community customs legislation. It is required not only as the logical next step to enable the body responsible for Community law to ensure that the competent national authorities apply Community rules strictly and uniformly, but also as part of the general effort to prosecute those who infringe customs and agricultural regulations and to facilitate the prevention of infringements. The intention of the Commission's proposal is to provide the legal basis for so doing.

At this point, the Committee on Agriculture would like to ask the committee responsible, the Committee on Economic and Monetary Affairs, to make it clear in the motion for a resolution that the European Parliament expects the Member States to abandon their reluctant not to say negative attitude, to having customs regulations embodied in Community Law and to refrain from making any cuts in the proposed regulation.

4. To illustrate the views of the Member States and to stress the urgency of positive decisions in this field, the following briefly outlines the attitude that the Council has adopted on the interpretation of Community customs and agriculture regulations.

¹ See Regulation No. 283/72 of 7 February 1972, OJ No. L 36, 10 February 1972; report by Mr Aigner and opinion drafted on behalf of the Committee on Agriculture by Mr Radoux, Doc. 197/70; Directive No. 278/72 with report by Mr Durand and opinion drafted on behalf of the Committee on Agriculture by Mr Vredeling, Doc. 337/72

As the intention is that Community law should be applied in the same way in each Member State,¹ uniform interpretation of Community law is essential. In other words, a binding interpretation of this legislation can only be given by the Community. With Regulation No. 97/69,² the Council therefore set up the Committee on Common Customs Tariff Nomenclature as the administrative committee responsible for laying down any provisions needed to ensure the uniform application of the nomenclature. When the nature and classifications of goods is being established, this Community procedure should therefore also apply to the explanations given in the Common Customs Tariff.

5. In a statement of the minutes of the meeting at which the abovementioned regulation was adopted, the Council, however, expressly points out that as matters stand, it is not necessary for all the Common Customs Tariff explanations to be compiled by the Committee procedure. In contrast, the Court of Justice of the European Communities has stated on the question of the definition of individual tariff items that 'even where provisions as to definition have not been laid down by the Community, explanations of Common Customs Tariff sub-headings provided by national authorities may not be regarded as a binding definition of such tariff sub-headings'.³ The Court similarly points out 'that where difficulties arise in connection with the classification of goods (in this particular case, the Court was referring to products subject to market organizations), Member States may not themselves define the range of goods to be included under a given tariff heading'.⁴

6. It cannot of course be the task of the Committee on Agriculture to examine this problem in depth. Your committee would merely like to draw attention to this loophole and the uncertainty it causes in the legal, budgetary and, not least, trade policy sectors. It would undoubtedly be advisable for the appropriate committees to go into this question in greater detail.

¹ See 'Sammlung der Rechtsprechung des Gerichtshofes der EG', Vol. XVI - 1970-8, p.1001.

² Regulation No. 97/69 of 16 January 1969 on measures to be taken for uniform application of the nomenclature of the Common Customs Tariff OJ L 14 21.9.69, p.1.

³ See 'Sammlung der Rechtsprechung des Gerichtshofes der EG' Vol. XVI - 1970-8, p. 1001.

⁴ See 'Sammlung der Rechtsprechung des Gerichtshofes der EG' Vol. XVI - 1970-5, pp. 451 ff.

7. It is difficult to understand why the Commission is willing to accept so restrictive an interpretation of Regulation No. 97/69, which after all is supposed to provide it with the additional means without which the proposed regulation on mutual assistance between competent authorities for ensuring the correct application of Community customs and agriculture regulations cannot become fully effective.

8. The proposed regulation largely transposes to a Community level the procedures laid down in the Convention for mutual assistance between national customs authorities¹ concluded by the original Member States. The Commission thus becomes involved in this system of mutual information and assistance. The proposed regulation therefore represents the logical conclusion of the creation of the customs union and the common agricultural policy.

9. While in favour of the proposed regulation, the Committee on Agriculture would like to urge that it be adopted in its present form and that in addition the Commission itself provide binding explanations of Common Customs Tariff nomenclature in the foreseeable future.

¹ Signed in Rome on 7 September 1967

OPINION OF THE COMMITTEE ON BUDGETS

Draftsman: Mr R. POUNDER

By letter of 16 May 1973, the President of the Council of the European Communities consulted the European Parliament, pursuant to Article 43 and 235 of the EEC Treaty, on a proposal for a regulation on mutual assistance between competent authorities of the Member States and between the latter and the Commission for ensuring the correct application of Community customs and agriculture regulations (Doc. 65/73).

On 24 May 1973 the Committee on Budgets was asked for its opinion on this proposal.

Mr POUNDER was appointed draftsman on 12 June 1973.

At its meeting of 12 November, the committee unanimously adopted the conclusions of this opinion.

The following were present: Mr Spénale, chairman; Mr Pounder, rapporteur; Mr Artzinger, The Earl of Bessborough, Mr Gerlach, Mr Memmel, Mr Notenboom, Mr Petre, Sir Brandon Rhys Williams, Mr Schmidt, Mr Walkhoff (deputizing for Mr Mueller).

Introduction

1. The purpose of this proposal for a regulation is to combat the irregularities and fraud which still occur in connection with the complex and numerous Community customs and agriculture regulations. It is essential to ensure that the duties and levies which constitute the Communities' own resources are applied according to a uniform system, if Community law is to prevail in the application of the Common Customs Tariff and the common agricultural policy. The grants financed by the EAGGF in the Community, such as exports refunds and aid of all kinds, have also given rise to irregularities, to the detriment of the Communities' budget. It was found that if the customs union and the common agricultural market were to function satisfactorily, mutual administrative assistance was required between the Member States and between the latter and the Commission.

2. In view of the current allocation of responsibilities among the committees it would have been more appropriate to appoint the Committee on Budgets as the committee responsible in this matter rather than simply ask for its opinion. In order not to hold up the work already in progress, the committee will confine itself to this observation, but would point out that if in future the same subject, which undoubtedly falls within the terms of reference of the Committee on Budgets, comes up again for consideration, it must be dealt with by the Committee on Budgets as the committee responsible.

A. Aims and content of the proposed regulation

3. According to Article 1, the purpose of the regulation is to lay down the rules according to which the competent authorities of the Member States shall cooperate with each other and with the Commission in order to :

- ensure the proper collection of customs duties and agricultural levies within the meaning of Article 2(a) and (b) of the Council Decision of 21 April 1970,
- prevent and investigate infringements of customs and agriculture regulations.

4. Articles 2 to 5 stipulate that Member States shall supply each other with information and, when requested, with any certificates relating to the application of regulations concerning customs and agriculture, in order to facilitate by this exchange of information, through direct contact, the prevention of infringements of customs and agriculture regulations.

5. Article 2 states that such information shall also be forwarded to the Commission at its request.
6. Article 6 sets out in detail the different types of surveillance to be maintained on request by the competent authorities of other Member States or by the Commission. They include :
- the surveillance of suspect persons,
 - unusually large depots of goods,
 - movement of goods reported by another Member State to constitute infringements of import regulations,
 - the surveillance of suspect vehicles, ships and aircraft.
7. Article 7 requires the competent authorities of the Member States to send each other any documentation which could help to track down any operations constituting an infringement of the Community customs and agriculture regulations.
8. Article 8 states that the competent authorities of a Member State shall, on request, carry out the necessary official enquiries and interview persons involved, witnesses or experts.
9. Article 9 requires the Member States to make available in particular the reports drawn up by the competent investigating authority, if they are likely to be of use in connection with infringements of Community customs and agriculture regulations.
10. Article 10 stipulates the exchange of lists of goods which are imported or exported under fraudulent conditions.
11. Article 11 states that the competent authorities of a Member State shall communicate without delay any irregularities which are liable to have effects outside its territory or which indicate the adoption of a new fraudulent practice.
12. Article 12 stipulates that the above information shall also be furnished to the Commission. The same article also provides for the organization of information meetings to enable representatives of the Member States to examine the information obtained with a view to preventing irregularities and taking legal proceedings when they occur.

B. Conclusions

13. The Commission cannot escape criticism for waiting so long before submitting what is really a very simple proposal for a regulation, now that agricultural frauds have already tarnished the Community's image considerably and helped to discredit the common agricultural policy. It is therefore all the more incomprehensible that this proposal should be submitted so late, in view of the proposals made in the same field concerning irregularities and the recovery of sums paid in error in connection with the financing of the common agricultural policy (Council Regulation (EEC) No. 283/72 of 7 February 1972) and the 1967 agreement on mutual assistance between the Member States' customs administrations.

14. Your draftsman feels that the individual provisions of the proposal will help to reduce infringements of customs and agriculture regulations considerably. The rapid exchange of information between the competent authorities of the Member States and access to reports of the investigating authorities of the national customs administrations will undoubtedly contribute to making irregularities the exception rather than the rule in the future.

15. Your draftsman welcomes in particular the Commission's intention to organize information meetings at Community level in order to profit from cooperation between the authorities of the Member States in respect of the exposed irregularities.

16. This proposal for a regulation is to be welcomed, and the Commission is requested to take steps to ensure that it is implemented at an early date.