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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 1468/81

of 19 May 1981

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 or agricultural matters

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 43 and 235 thereof,

Having regard to Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy (1), as last amended by Regulation (EEC) No 3509/80 (2), and in particular Article 8 (3) thereof,

Having regard to the proposal from the Commission (3),

Having regard to the opinion of the European Parliament (4),

Whereas the proper functioning of the customs union and the common agricultural policy requires close cooperation between the administrative authorities responsible in the Member States for the implementation of the provisions adopted in these two fields; whereas it also requires appropriate cooperation between the national authorities and the Commission, which is responsible for ensuring that the provisions of the Treaty and the measures taken pursuant thereto are applied;

Whereas it is therefore appropriate to lay down rules according to which the administrative authorities of the Member States must mutually provide each other with assistance and cooperate with the Commission so as to ensure the proper application of the law on customs or agricultural matters, in particular by the prevention and detection of infringements of such law and detection of any activity which is or seems to be contrary thereto; whereas these rules must not be applied in so far as they overlap with Council Regulation (EEC) No 283/72 of 7 February 1972 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organization of an information system in this field (5), or with Council Regulation (EEC) No 359/79 of 5 February 1979 on direct cooperation between the bodies designated by Member States to verify compliance with Community and national provisions in the wine sector (6);

Whereas, in the absence of Community rules on the subject, Member States concluded in 1967 a Convention on mutual assistance between their respective customs authorities; whereas the practical arrangements made for the implementation of that Convention should not be significantly modified by the introduction of the Community rules which have now become necessary in this field; whereas these Community rules should therefore be drawn up as far as possible on the basis of the provisions of that Convention; so as to allow full use to be made of the machinery devised for its implementation;

Whereas the introduction of Community provisions on mutual assistance between the administrative authorities of the Member States and on cooperation between the latter and the Commission so as to ensure the proper application of the law on customs or agricultural matters is without prejudice to application of the 1967 Convention in those areas which continue to come within the exclusive competence of the Member States; whereas, moreover, these Community provisions shall have no effect on the implementation in the Member States of the rules relating to judicial cooperation in criminal matters;

Whereas the provisions of this Regulation cover the application both of the rules governing the common agricultural policy and the common customs tariff and

(1) OJ No L 94, 28. 4. 1970, p. 13.
(2) OJ No L 367, 31. 12. 1980, p. 87.
(3) OJ No C 100, 22. 11. 1973, p. 30.
(4) OJ No C 2, 9. 1. 1974, p. 22.
(5) OJ No L 36, 10. 2. 1972, p. 1.
(6) OJ No L 54, 5. 3. 1979, p. 136.

other customs legislation ; whereas, with regard to the latter sector, the specific provisions of the Treaty do not confer on the Community institutions the power to adopt binding provisions regarding mutual assistance ; whereas it therefore appears necessary to base the provisions of this Regulation on Article 235 also,

HAS ADOPTED THIS REGULATION :

Article 1

1. This Regulation lays down the ways in which the administrative authorities responsible in the Member States for the application of the law on customs or agricultural matters shall cooperate with those in the other Member States and with the Commission in order to ensure compliance with the law.

2. The provisions of this Regulation shall not apply to the extent that they overlap with those of Regulations (EEC) No 283/72 and (EEC) No 359/79.

Article 2

1. For the purposes of this Regulation :

— 'the law on customs matters' shall mean all Community provisions and provisions which contribute to the application of Community rules governing the import, export, transit and presence of goods forming the subject of trade between the Member States and between the latter and third countries,

— 'the law on agricultural matters' shall mean all provisions adopted in the context of the common agricultural policy and all specific rules adopted, pursuant to Article 235 of the Treaty, with regard to goods resulting from the processing of agricultural products,

— 'applicant authority' shall mean the competent authority of a Member State which makes a request for assistance,

— 'requested authority' shall mean the competent authority of a Member State to which a request for assistance is made.

2. Each Member State shall communicate to the other Member States and to the Commission a list of the competent authorities which are appointed to act as correspondents for the purposes of applying this Regulation.

In this Regulation 'competent authorities' shall mean those authorities appointed to act as correspondents under the first subparagraph.

Article 3

The obligation to provide assistance laid down by this Regulation shall not cover the provision of information or documents obtained by the administrative authorities referred to in Article 1 (1) under powers exercised by them at the request of the judicial authority.

However, in the case of an application for assistance, such information or documents shall be provided in all cases where the judicial authority, which must be consulted to that effect, gives its consent.

TITLE I

Assistance on request

Article 4

1. At the request of the applicant authority, the requested authority shall communicate to it all information likely to enable the former to ensure compliance with the provisions laid down by the law on customs or agricultural matters and in particular those concerning :

— the application of customs duties and charges having equivalent effect as well as agricultural levies and other charges laid down within the framework of the common agricultural policy or of the specific arrangements applicable, pursuant to Article 235 of the Treaty, to certain goods resulting from the processing of agricultural products,

— operations forming part of the system of financing by the European Agricultural Guidance and Guarantee Fund.

2. In order to obtain this information, the requested authority or the administrative authority which it has addressed shall proceed as though it were acting on its own account or at the request of another authority in its own country.

Article 5

At the request of the applicant authority, the requested authority shall supply to it any attestation, document or official copy of a document which it has or which it obtains in the manner referred to in Article 4 (2) and which relates to operations covered by the law on customs or agricultural matters.

Article 6

1. At the request of the applicant authority, the requested authority shall, while observing the rules in force in the Member State in which it is situated, notify the addressee or have him notified of all instruments or decisions which emanate from the administrative authorities and concern the application of the law on customs or agricultural matters.

2. Requests for notification, mentioning the subject of the act or decision to be communicated, shall be accompanied by a translation in the official language or one of the official languages of the Member State in which the requested authority is situated, without prejudice to the latter's right to waive such a translation.

Article 7

At the request of the applicant authority, the requested authority shall as far as possible keep a special watch or arrange for a special watch to be kept within its operational area :

(a) on persons of whom there are reasonable grounds for believing that they are contravenors of the law on customs or agricultural matters and, more particularly, on the movements of such persons ;

(b) on places where stocks of goods have been assembled in such a way that there are reasonable grounds for supposing that they are intended as supplies for operations contrary to the law on customs or agricultural matters ;

(c) on movements of goods notified as possibly constituting operations contrary to the law on customs or agricultural matters ;

(d) on means of transport for which there are reasonable grounds for believing that they are used for carrying out operations contrary to the law on customs or agricultural matters.

Article 8

At the request of the applicant authority, the requested authority shall supply to it any information in its possession or which it can obtain as prescribed in Article 4 (2), in particular in the form of reports and other documents or official copies of or extracts from such reports or documents, concerning operations detected or planned which are or appear to the applicant authority to be contrary to the law on customs or agricultural matters.

However, such communication shall be in the form of original documents and property only if the provisions in force in the Member States in which the requested authority has its headquarters do not preclude this.

Article 9

1. At the request of the applicant authority, the requested authority shall carry out appropriate enquiries or arrange for such enquiries to be carried out concerning operations which are or appear to the applicant authority to be contrary to the law on customs or agricultural matters.

In order to carry out these enquiries the requested authority or the administrative authority which it has addressed shall proceed as though it were acting on its own account or at the request of another authority in its own country.

The requested authority shall communicate the results of these enquiries to the applicant authority.

2. By agreement between the applicant authority and the requested authority, officials designated by the applicant authority may be present at the enquiries referred to in paragraph 1.

Article 10

By agreement between the applicant authority and the requested authority and in accordance with the arrangements laid down by the latter, officials duly authorized by the applicant authority may obtain, from the offices where the administrative authorities of the Member State in which the requested authority is situated exercise their functions, information concerning the application of the law on customs or agricultural matters which is needed by the applicant authority and which is derived from documentation to which the staff of those officies have access. These officials shall be authorized to take copies of the said documentation.

TITLE II

Spontaneous assistance

Article 11

The competent authorities of each Member State shall, as laid down in Articles 12 and 13, provide assistance to the competent authorities of the other Member States without prior request of the latter.

Article 12

Where they consider it useful in connection with compliance with the law on customs or agricultural matters, the competent authorities of each Member State shall :

(a) as far as possible keep the special watch provided for in Article 7 or arrange for such watch to be kept ;

(b) communicate to the competent authorities of the other Member States concerned all available information, in particular in the form of reports and other documents or copies of or extracts from such reports or documents, concerning operations which are or appear to be contrary to the law on customs or agricultural matters.

Article 13

The competent authorities of each Member State shall immediately send to the competent authorities of the other Member States concerned all information of use in connection with operations which are contrary or appear to them to be contrary to the law on customs or agricultural matters and in particular information concerning goods that are covered by it and new means or methods used to carry out such operations.

TITLE III

Final provisions

Article 14

1. The competent authorities of each Member State shall communicate to the Commission as soon as it is available to them :

(a) any information they consider useful concerning :
   — goods which have been or are suspected of having been the subject of transactions contrary to the law on customs or agricultural matters ;
   — the methods or processes used or suspected of having been used to contravene the law on customs or agricultural matters ;

(b) any information on deficiencies of, or lacunae in, the rules on customs or agricultural matters which their application has revealed or suggested.

2. The Commission shall communicate to the competent authorities of each Member State, as soon as it is available to it, any information which is such as to enable compliance with the law on customs or agricultural matters to be enforced.

Article 15

The Commission shall organize meetings with the representatives of the Member States in order to :

— examine, in general terms, the operation of the mutual assistance arrangements provided for in this Regulation ;
— lay down a practical procedure for forwarding the information referred to in Article 14 ;
— examine the information sent to the Commission pursuant to Article 14, with a view to drawing the relevant conclusions and, where necessary, suggest the necessary measures, in particular by the amendment of existing Community provisions or the drawing up of additional ones.

Article 16

For the purposes of applying this Regulation, Member States shall take all the necessary steps to :

(a) ensure sound internal coordination between the administrative authorities referred to in Article 1 (1) ;

(b) establish direct cooperation in their mutual relations as necessary, between the authorities specially empowered to this end ;

(c) decide jointly, to the extent necessary, on suitable arrangements for ensuring the smooth operation of the mutual assistance arrangements provided for in this Regulation.

Article 17

1. This Regulation shall not bind the administrative authorities of the Member States to grant each other assistance where to do so would be likely to prejudice public policy or any other fundamental interests of the State in which they are situated.

2. Reasons shall be stated for any refusal to grant assistance.

Article 18

The documents provided for in this Regulation may be replaced by computerized information produced in any form for the same purpose.

Article 19

1. Any information communicated in whatever form pursuant to this Regulation shall be of a confidential nature. It shall be covered by the obligation of professional secrecy and shall enjoy the protection extended to like information under both the national law of the Member State which received it and the corresponding provisions applying to the Community authorities.

The information referred to in the first subparagraph may not in particular be sent to persons other than those in the Member States or within the Community institutions whose duties require that they have access to it. Nor may it be used for purposes other than those provided for in this Regulation, unless the authority supplying it has expressly agreed and in so far as the provisions in force in the Member State where the authority which received it is situated do not preclude such communication or use.

2. Paragraph 1 shall not impede the use, in any legal actions or proceedings subsequently instituted in respect of non-compliance with the law on customs or agricultural matters, of information obtained pursuant to this Regulation.

The competent authority of the Member State which supplied this information shall be informed forthwith of such utilization.

Article 20

Member States shall communicate to the Commission the bilateral mutual assistance agreements between customs administrations concluded with third countries.

Article 21

Member States shall waive all claims for the reimbursement of expenses incurred pursuant to this Regulation except, as appropriate, in respect of fees paid to experts.

Article 22

This Regulation shall not affect the application in the Member States of the rules on mutual assistance in criminal matters.

Article 23

This Regulation shall enter into force on 1 July 1981.

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

Done at Brussels, 19 May 1981.

For the Council

The President

D. F. van der MEI