Regulation (EC) No 766/2008 of the European Parliament and of the Council of 9 July 2008 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

REGULATION (EC) No 766/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 9 July 2008

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

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 Commission,

Having regard to the opinion of the Court of Auditors[(1)],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(2)],

Whereas:

(1) Council Regulation (EC) No 515/97[(3)] 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 achieve fully the system's objective, which is to assist in preventing, investigating and prosecuting operations that are in breach of customs or agricultural legislation.

(3) The changes introduced when the European Union was enlarged to include 27 Member States require a reconsideration of Community customs cooperation in a broader framework and with modernised mechanisms.

(4) Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999 establishing the European Anti-Fraud Office (OLAF)[(4)] and the Convention on the use of information technology for customs purposes[(5)], drawn up by Council Act of 26 July 1995[(6)], modified the general framework for cooperation between the Member States and the Commission as regards preventing, investigating and prosecuting offences under 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 businesses that do not comply or appear not to comply with customs or agricultural legislation should help the customs authorities and the Commission take the appropriate measures in specific cases to achieve the objectives laid down as regards the fight against fraud.

(7) Under the current mechanism set out in Regulation (EC) No 515/97, 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 that principle of prior authorisation only where the data are to be processed by the national authorities and the Commission services responsible for 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 purposes[(7)].

(9) It is necessary to ensure that, in order to strengthen customs cooperation between Member States and between Member States and the Commission, and without prejudice to other provisions of Regulation (EC) No 515/97, certain data may be exchanged in pursuit of the objectives of that Regulation.

(10) In addition, it is necessary to ensure greater complementarity with action in the context of intergovernmental customs cooperation and of cooperation with the other bodies and agencies of the European Union and other international and regional organisations. Such action follows on from the Council Resolution of 2 October 2003 concerning a strategy for customs cooperation[(8)] 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 Convention[(9)].

(11) In order to promote coherence between the action taken by the Commission, the other bodies and agencies of the European Union and other international and regional organisations, the Commission should be authorised to provide training and all forms of assistance other than financial assistance for the liaison officers of third countries and of European and international organisations and agencies, including the exchange of best practice with those bodies, and, for example, with Europol and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex).

(12) 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.

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

(14) In order to address CIS-related supervision issues, the European Data Protection Supervisor should convene a meeting with national data protection supervisory authorities at least once a year.

(15) The Member States must have the possibility of reusing that infrastructure for joint customs operations organised by way of customs cooperation as provided for in Articles 29 and 30 of the Treaty on European Union, without prejudice to the role of Europol. In that event, 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.

(16) In addition, the development of new markets, the increasing internationalisation of trade and the rapid expansion thereof, combined with the increase in the speed of the carriage of goods, require customs administrations to keep up with movement so as not to harm the development of Europe's economy.

(17) The ultimate objectives are that all operators should be able to provide all necessary documentation in advance and 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.

(18) For the purpose of the fight against fraud, it is therefore necessary, together with the reform and modernisation of customs systems, to seek information at the furthest possible point upstream. In addition, in order to help the competent authorities of the Member States to detect movements of goods that are the object of operations in potential breach of customs or agricultural legislation and means of transport, including containers, used for that purpose, data from the principal service suppliers worldwide, public or private, that are active in the international supply chain should be pooled in a European central data directory.

(19) The protection of natural persons in the processing of personal data is governed by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[10] and by Directive 2002/58/EC of the European Parliament and of the Council 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)[11], which are fully applicable to information society services. Those 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 accordance with the rules on the protection of personal data, in particular as regards the exchange and storage of information in support of action to prevent and detect fraud.

(20) The exchange of personal data with third countries should be subject to prior verification that data protection rules in the receiving country offer a degree of protection equivalent to that provided by Community law.

(21) As Directive 95/46/EC has been transposed by the Member States since the adoption of Regulation (EC) No 515/97, and 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 of the European Parliament and of the Council 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 data[12], the personal 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.

(22) The measures necessary for the implementation of Regulation (EC) No 515/97 should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[13].

(23) In particular, the Commission should be empowered to decide on items to be included in the CIS and to determine operations concerning the application of agricultural legislation in respect of which information is to be entered therein. Since those measures are of general scope and are designed to amend non-essential elements of Regulation (EC) No 515/97, *inter alia*, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(24) The report on the implementation of Regulation (EC) No 515/97 should be integrated in the report submitted each year to the European Parliament and to the Council on the measures taken in implementation of Article 280 of the Treaty.

(25) Regulation (EC) No 515/97 should be amended accordingly.

(26) Since the objective of this Regulation, 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 its scale and effects, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out 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 necessary in order to achieve that objective.

(27) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union[14]. 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).

(28) The European Data Protection Supervisor has been consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion on 22 February 2007[15],

HAVE ADOPTED THIS REGULATION:

Article 1

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

1. in Article 2(1), the following indents shall be added:
   - "operational analysis" means analysis of operations which constitute, or appear to constitute, breaches of customs or agricultural legislation, involving the following stages in turn:
     (a) the collection of information, including personal data;
     (b) evaluation of the reliability of the information source and the information itself;
     (c) research, methodical presentation and interpretation of links between these items of information or between them and other significant data;
     (d) the formulation of observations, hypotheses or recommendations directly usable as risk information by the competent authorities and by the Commission to prevent and detect other operations in breach of customs and agricultural legislation and/or to identify with precision the person or businesses implicated in such operations,
   - "strategic analysis" means research and presentation of the general trends in breaches of customs and agricultural legislation 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. Only data from which identifying factors have been removed may be used for strategic analysis,
   - "regular automatic exchange" means the systematic communication of predefined information, without prior request, at pre-established regular intervals,
   - "occasional automatic exchange" means the systematic communication of predefined information, without prior request, as and when that information becomes available.;
2. the following Article shall be inserted: