

TRANSLATION

Document from: CORTES GENERALES (Spanish Parliament)

REASONED OPINION 1/2014 OF THE JOINT COMMITTEE FOR THE EUROPEAN UNION OF 21 JANUARY 2014 ON THE BREACHING OF THE PRINCIPLE OF SUBSIDIARITY BY THE 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 [COM (2013) 796 FINAL] [2013/0410 (COD)] {SWD (2013) 482 FINAL} {SWD (2013) 483 FINAL}

BACKGROUND

A. The Protocol on the application of the principles of subsidiarity and proportionality annexed to the 2007 Lisbon Treaty, in force since 1 December 2009, laid down a procedure for scrutiny by the national parliaments to ensure that European legislative measures comply with the principle of subsidiarity. This Protocol was implemented in Spain by means of Law 24/2009 of 22 December 2009 amending Law 8/1994 of 19 May 1994. In particular, the new Articles 3 j), 5 and 6 of Law 8/1994 constitute the legal basis for this Reasoned Opinion.

B. The Proposal for a Regulation of the European Parliament and of the Council amending 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 was approved by the European Commission and sent to the national Parliaments, which have eight weeks to check whether the proposal complies with the principle of subsidiarity. This period ended on 29 January 2014.

C. The Bureau and the Spokespersons for the Joint Committee for the European Union agreed on 19 December 2013 to proceed with an examination of the European proposal in question, appointing José Cruz Pérez Lapazarán as rapporteur and asking the Government for the report provided for in Article 3 j) of Law 8/1994.

D. The Government report has been received. It concludes that the proposal contains an element that does not comply with the principle of subsidiarity and that it is not necessary or proportionate to the nature and extent of the objectives to be achieved. The element concerns the fact that the European Anti-Fraud Office (OLAF) can directly ask economic operators for documents and information in order to carry out its investigations.

In agreement with governments, the Commission can currently obtain this information via the Member States' competent authorities, therefore this step by the Commission is not essential. Moreover, this interference by the Commission, which is justified in the proposal by the need to speed up OLAF's investigations, can affect the secrecy of investigations in progress at national level. In the Government's view, this problem could be solved by procedural measures such as informing

the Member State of the urgency of the request or improving the liaison between contact bodies and national authorities.

E. Documents have been received from the Parliaments of Galicia, La Rioja, Aragon and Cantabria, stating that the matter has been closed, the proposal has been noted or a reasoned opinion is not being issued.

F. At its meeting on 21 January 2014, the Joint Committee for the European Union approved this

REASONED OPINION

1. - Article 5(1) of the Treaty on European Union states that 'the use of Union competences is governed by the principles of subsidiarity and proportionality'. Under Article 5(3) of the same Treaty, 'under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level'.

2. - The proposal is based on Articles 33 and 325 of the Treaty on the Functioning of the European Union, which run as follows:

'Article 33

Within the scope of application of the Treaties, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall take measures in order to strengthen customs cooperation between Member States and between the latter and the Commission.'

'Article 325

1. The Union and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Union through measures to be taken in accordance with this Article, which shall act as a deterrent and be such as to afford effective protection in the Member States, and in all the Union's institutions, bodies, offices and agencies.

2. Member States shall take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests.

3. Without prejudice to other provisions of the Treaties, the Member States shall coordinate their action aimed at protecting the financial interests of the Union against fraud. To this end they shall organise, together with the Commission, close and regular cooperation between the competent authorities.

4. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, after consulting the Court of Auditors, shall adopt the necessary measures in the fields of the prevention of and fight against fraud affecting the financial interests of the Union with a view to affording effective and equivalent protection in the Member States and in all the Union's institutions, bodies, offices and agencies.

5. The Commission, in cooperation with Member States, shall each year submit to the European Parliament and to the Council a report on the measures taken for the implementation of this Article.'

3. Proposal to amend Regulation No 515/97

BACKGROUND AND GROUNDS FOR THE PROPOSAL

Customs infringements, in particular in relation to imports into the EU, have become more frequent as a result of failure to comply with the current regulations, which contain some loopholes.

Some practices carried out during the movement of goods, both inwards and outwards, affect markets. Imports that exceed quotas, goods in transit that are then brought into the internal market and other similar actions affect markets and give rise to unfair competition with operators functioning in line with the law.

The current regulation is flawed and needs to be changed to ensure the proper application of customs and agricultural regulations throughout the EU.

Trade is global and the Member States cannot take action individually in an efficient way in relation to the risks associated with breaches of customs regulation or other risks relating to customs management.

Effective action involves similar, complementary action in all customs authorities and countries of the EU, which would considerably facilitate investigations, particularly in cases of crossborder movement of goods.

Many customs risks are of a transnational nature. Illegal supply chains can adapt rapidly to improvements in risk management at a specific point of entry and focus on other points of entry with lower levels of protection. To solve this problem, action must be coordinated at EU level to guarantee an equivalent level of protection from customs risks at all external border posts, in accordance with Regulation (EC) No 648/2005.

The EU has exclusive powers in the area of fraud prevention and customs union and is in the best position to lead such collective action since it already has the necessary experience and the systems and knowledge required to compile, communicate and exchange data rapidly and cost-effectively. This would be the best solution provided that respect is shown to the national authorities and the investigations that might take place in this domain, which OLAF could get round if this Regulation were approved.

CONTENT AND PURPOSE OF THE PROPOSAL

The change to which the principles of proportionality and subsidiarity are subjected ... the Joint Committee for the European Union...¹ are contained in the Regulation of the European Parliament and of the Council amending 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 [COM (2013) 796 FINAL] [2013/0410 (COD)] {SWD (2013) 482 FINAL} {SWD (2013) 483 FINAL}.

The Proposal to amend Regulation (EC) No 515/97 of the Council concerns matters such as:

1. The need to address loopholes in the existing systems for the detection of customs-related fraud, mainly relating to duties, taxes, rates and quantitative limits.
2. The need to enhance customs risk management and supply chain security at national and EU levels.
3. The need to address delays in OLAF investigations.
4. The need for clarification on the possibility to restrict visibility of data in the IT system to combat fraud (AFIS), which includes data bases on customs matters and issues relating to cooperation in the context of monitoring compliance with the law.
5. The need for streamlined data protection supervision.
6. The need for clarification on the admissibility of evidence collected under mutual assistance.
7. In accordance with the Proposal for a Regulation establishing the European Public Prosecutor's Office, the latter will have access to the databases operated by the Commission or the Member States under this Regulation.

Focusing on these seven issues, breaches of customs regulations could be solved efficiently and countered. The problems detected could be solved by means of the necessary extensive exchange of information between Member States and the Commission in the context of cooperation.

To this end, several sections of Regulation (EC) No 517/97 would be amended.

LEGAL BACKGROUND TO THE PROPOSAL

Regulation (EC) No 515/97 of the Council 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, an area in which the EU has exclusive powers, and Council Decision 2009/917/JHA on the use of information technology for customs purposes, which is related to the area of freedom, security and justice, a competence shared between the Union and Member States, are the main legal instruments applicable to breaches of customs regulations in this context. Communication COM (2012) 793 on customs risk management and supply chain security identified a number of areas to be improved.

The Proposal contains an element that does not comply with the principle of subsidiarity and is not necessary or proportionate to the nature and extent of the objectives to be achieved. The element concerns the fact that OLAF can directly ask economic operators for documents and information in order to carry out its investigations. This means that the European Commission could obtain these directly without having to go through Member States.

Consideration of the risk of undermining a national investigation should take precedence over the need to speed up a procedure in order to obtain data that can, in fact, be provided by the authority of the Member State in question, as is currently the case.

The Commission's objective could be achieved by procedural measures such as informing the Member State of the urgency of the request or improving the liaison between contact bodies and national authorities.

ASSESSMENT OF THE PROPOSAL FROM THE POINT OF VIEW OF SPAIN

The Proposal for a Regulation contains elements that improve on the current situation and are interesting, such as obtaining CSMs (Container Status Messages), the possibility of restricting access to the AFIS system (currently under-used), clarification of the admissibility of evidence collected on the basis of mutual assistance in criminal proceedings and streamlining of data protection supervision, but there are two issues that are of particular concern to Spain. First, the establishment of a data base containing all imports and exports at EU level, managed by OLAF and available to EU services, and second the possibility that OLAF can ask economic operators directly for documents and information.

Spain is not in favour of these two points as set out in the Commission's Proposal.

SUBSIDIARITY AND PROPORTIONALITY

It can be concluded that the EU action aimed at gathering, storing, processing, using and making available to Member States the data covered by this Regulation in order to combat fraud and other customs risk is, in essence, a good idea; however the current proposal involves interference by OLAF in national powers.

If the two above-mentioned matters which pose a problem for Spain are eliminated or amended, then we could consider that the proposal is acceptable and as a result it would comply with the principles of subsidiarity and proportionality, but this is not the case as it stands at the moment.

In order for a measure to comply with the principle of subsidiarity it must concern a competence that is shared by the European Union and the Member States. This is clear in the case of customs and agricultural regulations, as is obvious from our comments above, but the part relating to information must be worded differently.

In view of this Reasoned Opinion and by way of a

CONCLUSION

For the reasons set out above, the Joint Committee for the European Union considers that the Proposal for a Regulation of the European Parliament and of the Council amending 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 does not comply with the principle of subsidiarity set out in the current Treaty on European Union.

This Opinion will be sent to the European Parliament, the Council and the European Commission in the context of the political dialogue between the national Parliaments and the European Union institutions.

ⁱ Translator's note: there is something missing in the Spanish original.