



Brussels, 27.03.2014  
C(2014) 2098 final

*Dear President,*

*The Commission would like to thank the Congreso de los Diputados and the Senado for its Reasoned Opinion concerning the proposal for a Regulation 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 {COM (2013) 796 final}.*

*The Commission welcomes the support of the Congreso de los Diputados and the Senado in respect of a number of elements of the proposal such as the creation of a central Container Status Messages (CSMs) directory, the introduction of restricted visibility as a new technical feature, the clarification on the possibility to use evidence obtained via mutual assistance in national judicial proceedings and streamlining data protection supervision of the systems established on the basis of Regulation (EC) No 515/97.*

*The Commission takes due note of the Congreso de los Diputados and the Senado's opposition to empowering the Commission to request documents supporting import and export declarations directly from the economic operators and to the establishment of a centralised database containing import and export data. The Commission considers, however, that these elements of the proposal duly comply with the principles of proportionality and subsidiarity and does not share the view of the Congreso de los Diputados and the Senado as expressed in the Reasoned Opinion. The Commission would like to provide the following comments:*

*1) The Congreso de los Diputados and the Senado express the opinion that the Commission's right to request documents supporting import and export declarations directly from the economic operators is not necessary given the fact that there is a procedure for obtaining this information from the Member States.*

*The Commission does not agree with this assessment. The possibility of addressing economic operators directly already exists by virtue of the Council Regulation (Euratom, EC) 2185/96 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities. The proposal should be seen as an improvement of the already existing procedures. The proposed right of direct access is designed to render the procedure for obtaining documents more effective and efficient and, above all, faster in order to avoid time-barring of the cases.*

*Mr Jesús POSADA MORENO  
President of the Congreso de los Diputados  
Floridablanca s/n  
E-28071 MADRID*

*Mr Pío GARCÍA-ESCUADERO MÁRQUEZ  
President of the Senado  
Plaza de la Marina Española, 8  
E-28071 MADRID*

*The option of requesting relevant documentation directly from the economic operators is indispensable in order to prevent unnecessary losses to the EU budget, which are currently being incurred as a result of delayed responses from the Member States.*

*2) The Congreso de los Diputados and the Senado further advance the opinion that the power of the Commission to request documents supporting import and export declarations directly from the economic operators can affect the secrecy of national investigations.*

*The Commission would like to note that the exact scope of cooperation between the Commission and the Member States would be clarified during the ongoing discussions at the Council in order to ensure that the proposed right does not adversely affect national investigations.*

*3) The Congreso de los Diputados and the Senado also express their concern about the establishment of a centralised database containing import and export data.*

*The Commission would like to underline that one of the key objectives of the proposal is to facilitate effective detection, investigation and ultimately prosecution of customs fraud both at the EU and national level. In order to realise this aim, the proposal provides for, inter alia, the establishment of a centralised database on import, export and transit related information. As demonstrated in the Commission's Impact Assessment accompanying the proposal, central gathering and analysis of import, export and transit data would significantly contribute to the detection of customs fraud in the form of mis-declaration of origin, mis-description of goods and misuse of the transit system. The cost analysis, carried out by the Commission, confirms that the creation of 28 separate databases would impose an unjustified burden on the Member States. Taking into account that the customs fraud by its very nature is considered as a cross-border phenomenon, the establishment of an EU database would be not only more efficient but also more effective. For these reasons, the Commission is of the opinion that the proposed database is necessary and proportionate to the aim to be achieved by this proposal.*

*The Commission hopes that these clarifications address the concerns raised by the Congreso de los Diputados and the Senado and looks forward to continuing the political dialogue in the future.*

*Yours faithfully,*

*Maroš Šefčovič  
Vice-President*