

PROTOCOL 5

on mutual assistance between administrative authorities in customs matters

Article 1

Definitions

For the purposes of this Protocol:

- (a) ‘customs legislation’ shall mean any legal or regulatory provision adopted by the Contracting Parties governing the import, export, and transit of goods and their placing under any customs procedure, including measures of prohibition, restriction and control;
- (b) ‘applicant authority’, shall mean a competent administrative authority which has been appointed by a Contracting Party for this purpose and which makes a request for assistance in customs matters;
- (c) ‘requested authority’, shall mean a competent administrative authority which has been appointed by a Contracting Party for this purpose and which receives a request for assistance in customs matters;
- (d) ‘personal data’, shall mean all information relating to an identified or identifiable individual.

Article 2

Scope

1. The Contracting Parties shall assist each other, in the areas within their jurisdiction, in the manner and under the conditions laid down in this Protocol, in ensuring that the customs legislation is correctly applied, in particular by the prevention, detection and investigation of operations in breach of that legislation.
2. Assistance in customs matters, as provided for in this Protocol, shall apply to any administrative authority of the Contracting Parties which is competent for the application of this Protocol. It shall not prejudice the rules governing mutual assistance in criminal matters. Nor shall it cover information obtained under powers exercised at the request of the judicial authorities, except where communication of such information has the prior authorization of the said authorities.

Article 3

Assistance on request

1. At the request of the applicant authority, the requested authority shall furnish it with all relevant information which may enable it to ensure compliance with customs legislation, including information regarding operations noted or planned which are or might be in breach of such legislation.
2. At the request of the applicant authority, the requested authority shall inform it whether goods exported from the territory of one of the Contracting Parties have been properly imported into the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods.
3. At the request of the applicant authority, the requested authority shall, within the framework of its laws, take the necessary steps to ensure special surveillance of:
 - (a) natural or legal persons of whom there are reasonable grounds for believing that they are or have been in breach of customs legislation;
 - (b) places where goods are stored in a way that gives grounds for suspecting that they are intended to supply operations in breach of customs legislation;
 - (c) movements of goods notified as possibly giving rise to breaches of customs legislation;
 - (d) means of transport for which there are reasonable grounds for believing that they have been, are or may be used in operations in breach of customs legislation.

Article 4

Spontaneous assistance

The Contracting Parties shall provide each other, at their own initiative and in accordance with their laws, rules and other legal instruments, with assistance if they consider that to be necessary for the correct application of customs legislation, particularly when they obtain information pertaining to:

- operations which are or appear to be in breach of such legislation and which may be of interest to the other Contracting Party,
- new means or methods employed in carrying out such operations,
- goods known to be subject to breaches of customs legislation.

Article 5

Delivery/notification

At the request of the applicant authority, the requested authority shall, in accordance with its legislation, take all necessary measures in order:

- to deliver all documents,
- to notify all decisions,

falling within the scope of this Protocol to an addressee, residing or established in its territory. In such a case, Article 6 (3) shall apply.

Article 6

Form and substance of requests for assistance

1. Requests pursuant to this Protocol shall be made in writing. They shall be accompanied by the documents necessary to enable compliance with the request. When required because of the urgency of the situation, oral requests may be accepted, but must be confirmed in writing immediately.
2. Requests pursuant to paragraph 1 shall include the following information:
 - (a) the applicant authority making the request;
 - (b) the measure requested;
 - (c) the object of and the reason for the request;
 - (d) the laws, rules and other legal elements involved;
 - (e) indications as exact and comprehensive as possible on the natural or legal persons who are the target of the investigations;
 - (f) a summary of the relevant facts and of the enquiries already carried out, except in cases provided for in Article 5.
3. Requests shall be submitted in an official language of the requested authority or in a language acceptable to that authority.
4. If a request does not meet the formal requirements, its correction or completion may be requested; precautionary measures may, however, be ordered.

Article 7

Execution of requests

1. In order to comply with a request for assistance, the requested authority or, when the latter cannot act on its own, the administrative department to which the request has been addressed by this authority, shall proceed, within the limits of its competence and available resources, as though it were acting on its own account or at the request of other authorities of that same Contracting Party, by supplying information already possessed, by carrying out appropriate enquiries or by arranging for them to be carried out.

2. Requests for assistance shall be executed in accordance with the laws, rules and other legal instruments of the requested Contracting Party.
3. Duly authorized officials of a Contracting Party may, with the agreement of the other Contracting Party involved and subject to the conditions laid down by the latter, obtain from the offices of the requested authority or other authority for which the requested authority is responsible, information relating to operations which are or may be in breach of customs legislation which the applicant authority needs for the purposes of this Protocol.
4. Officials of a Contracting Party may, with the agreement of the other Contracting Party involved and subject to the conditions laid down by the latter, be present at enquiries carried out in the latter's territory.

Article 8

Form in which information is to be communicated

1. The requested authority shall communicate results of enquiries to the applicant authority in the form of documents, certified copies of documents, reports and the like.
2. The documents provided for in paragraph 1 may be replaced by computerized information produced in any form for the same purpose.
3. Original files and documents shall be requested only in cases where certified copies would be insufficient. Originals which have been transmitted shall be returned at the earliest opportunity.

Article 9

Exceptions to the obligation to provide assistance

1. The Contracting Parties may refuse to give assistance as provided for in this Protocol, where to do so would:
 - (a) be likely to prejudice the sovereignty of the Faeroes or that of a Member State of the Community which has been asked to provide assistance under this Protocol; or
 - (b) be likely to prejudice public policy, security or other essential interests, in particular in the cases referred to under Article 10 (2); or
 - (c) involve currency or tax regulations other than customs legislation; or
 - (d) violate an industrial, commercial or professional secret.

2. Where the applicant authority requests assistance which it would itself be unable to provide if so asked, it shall draw attention to that fact in its request. It shall then be for the requested authority to decide how to respond to such a request.
3. If assistance is refused, the decision and the reasons therefore must be notified to the applicant authority without delay.

Article 10

Information exchange and confidentiality

1. Any information communicated in whatsoever form pursuant to this Protocol shall be of a confidential or restricted nature, depending on the rules applicable in each of the Contracting Parties. It shall be covered by the obligation of official secrecy and shall enjoy the protection extended to similar information under the relevant laws of the Contracting Party which received it and the corresponding provisions applying to the Community institutions.
2. Personal data may be exchanged only where the receiving Contracting Party undertakes to protect such data in at least an equivalent way to the one applicable to that particular case in the supplying Contracting Party.
3. Information obtained shall be used solely for the purposes of this Protocol. Where one of the Contracting Parties requests the use of such information for other purposes, it shall ask for the prior written consent of the authority which furnished the information. Such use shall then be subject to any restrictions laid down by that authority.
4. Paragraph 3 shall not impede the use of information in any judicial or administrative proceedings subsequently instituted for failure to comply with customs legislation. The competent authority which supplied that information shall be notified of such use.
5. The Contracting Parties may, in their records of evidence, reports and testimonies and in proceedings and charges brought before the courts, use as evidence information obtained and documents consulted in accordance with the provisions of this Protocol.

Article 11

Experts and witnesses

An official of a requested authority may be authorized to appear, within the limitations of the authorization granted, as an expert or witness in judicial or administrative proceedings regarding the matters covered by this Protocol in the jurisdiction of the other Contracting Party, and produce such objects, documents or authenticated copies thereof, as may be needed for the proceedings. The request for an appearance must indicate specifically on what matters and by virtue of what title or qualification the official will be questioned.

Article 12

Assistance expenses

The Contracting Parties shall waive all claims on each other for the reimbursement of expenses incurred pursuant to this Protocol, except, as appropriate, for expenses to experts and witnesses and to interpreters and translators who are not public service employees.

Article 13

Application

1. The application of this Protocol shall be entrusted to the central customs authorities of the Faeroes on the one hand and the competent services of the Commission of the European Communities and, where appropriate, the customs authorities of the Member States of the European Community on the other. They shall decide on all practical measures and arrangements necessary for its application, taking into consideration the rules in force in the field of data protection.
2. The Contracting Parties shall consult each other and subsequently keep each other informed of the detailed rules of implementation which are adopted in accordance with the provisions of this Protocol.

Article 14

Complementarity

Without prejudice to Article 10, any agreements on mutual assistance which have been or may be concluded between one or more Member States of the European Community and the Faeroes shall not prejudice Community provisions governing the communication between the competent services of the Commission and the customs authorities of the Member States of any information obtained in customs matters which could be of Community interest.

JOINT DECLARATION

concerning the review of the Agreement in keeping with the development of EC-EFTA trade relations

If the Community - in the context of the Agreement on the European Economic Area - grants concessions to the EFTA-EEA countries going beyond those granted to the Faeroes in areas covered by this Agreement, the Community will, on request from the Faeroes, consider in a positive spirit, case-by-case, to what extent and on what basis corresponding concessions could be offered to the Faeroes.

If agreements or arrangements are concluded between the Faeroes and the Member States of EFTA whereby the Faeroes grant concessions to EFTA countries going beyond those granted to the Community in areas covered by this Agreement, the Faeroes will, on request from the Community, consider in a positive spirit, case-by-case, to what extent and on what basis corresponding concessions could be offered to the Community.

JOINT DECLARATIONS

concerning Protocol 3 to the Agreement

I. Possibility to cumulate with materials from EFTA countries

The Contracting Parties agree to examine the feasibility and economic interest of including provisions in Protocol 3 concerning the possibility to cumulate with materials from EFTA countries.

II. Transitional period concerning the issuing or making out of documents relating to the proof of origin issues within the framework of the initial agreement signed on 2 December 1991

1. Until 31 December 1997, the competent customs authorities of the Community and of the Faeroes shall accept as valid proof of origin within the meaning of Protocol 3:
 - (i) EUR.1 movement certificates, endorsed beforehand with the stamp of the competent customs office of the exporting State;
 - (ii) EUR.1 movement certificates, issued within the context of this Agreement, endorsed by an approved exporter with a special stamp which has been approved by the customs authorities of the exporting State;
 - (iii) EUR.2 forms, issued within the context of this Agreement.
2. Requests for subsequent verification of documents referred to above shall be accepted by the competent customs authorities of the Community and of the Faeroes for a period of two years after the issuing and making out of the proof of

origin concerned. These verifications shall be carried out in accordance with Title VI of Protocol 3 to this Agreement.

III. Principality of Andorra

1. Products originating in the Principality of Andorra falling within Chapters 25 to 97 of the Harmonized System shall be accepted by the Faeroes as originating in the Community within the meaning of the Agreement.
2. Protocol 3 shall apply *mutatis mutandis* for the purpose of defining the originating status of the abovementioned products.

IV. Republic of San Mario

1. Products originating in the Republic of San Marino shall be accepted by the Faeroes as originating in the Community within the meaning of the Agreement.
2. Protocol 3 shall apply *mutatis mutandis* for the purpose of defining the originating status of the abovementioned products.

DECLARATION BY THE COMMUNITY

concerning Article 24 (1) of the Agreement

The Community declares that, in the context of the autonomous implementation of Article 24 (1) of the Agreement which is incumbent on the Contracting Parties, it will assess any practices contrary to that Article on the basis of criteria arising from the application of the rules of Articles 85, 86, 90 and 92 of the Treaty establishing the European Community.

DECLARATION BY THE COMMUNITY

concerning the regional application of certain provisions of the Agreement

The Community declares that the application of any measures it may take under Articles 24, 25, 26, 27 or 28 of the Agreement, in accordance with the procedure and pursuant to the arrangements set out in Article 29, or pursuant to Article 30, may be limited to one of its regions by virtue of Community rules.

DECLARATION BY DENMARK AND THE FAEROES

concerning Article 36 of the Agreement

In accordance with Article 36 of the Agreement, the Community will, at the request of the Faeroes, consider improving the access possibilities for specific products.

It is the view of the Faeroes that this Article needs a qualification to serve its purpose for a progressive development of trade between the parties and the Faeroes therefore appeals to the Community to undertake serious consideration of access possibilities when quotas and ceilings of such products are proved to be exhausted.