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To: Permanent Representatives Committee

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Subject: 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

- Political agreement

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Delegations will find in Annex the text of the above proposal, which was agreed in substance<sup>1</sup> following the trilogue meeting which took place on 18 December 2014 between the European Parliament, the Italian Presidency and the Commission.

This text is annexed to the letter addressed on 23 March 2015 by the Chair of the Committee on the Internal market and Consumer Protection to the Chair of the Permanent Representatives Committee, and stating that the European Parliament would approve the Council's position without amendments at its second reading

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<sup>1</sup> A number of outstanding technical issues were subsequently addressed in January 2015 by the Latvian Presidency.

**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**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 33 and 325 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the Court of Auditors<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure<sup>3</sup>,

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<sup>2</sup> OJ C 94, 31.3.2014, p. 1

<sup>3</sup> Position of the European Parliament of 15 April 2014

Whereas:

- (1) In order to ensure that Council Regulation (EC) No 515/97<sup>4</sup> covers all possible movements of goods in relation to the customs territory of the Union, it is appropriate to clarify the definition of customs legislation and carriers with regard to the concepts of entry and exit of goods.
- (2) With a view to further enhancing administrative and criminal procedures for dealing with irregularities, it is necessary to ensure that evidence obtained through mutual assistance can be considered as admissible in proceedings before the administrative and judicial authorities of the Member State of the applicant authority.
- (3) With a view to increasing clarity, consistency and transparency, it is necessary to define in more concrete terms the authorities which should have access to the directories established on the basis of this Regulation; for that purpose a uniform reference to competent authorities will be established. Direct access for these authorities is considered to be an important condition for the effective implementation of the 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.

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<sup>4</sup> 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 (OJ L 82, 22.3.1997, p. 1)

- (4) Data concerning container movements make it possible to identify fraud with regard to goods that are moved in and out of the customs territory of the Union. Such data serve to assist in preventing, investigating and prosecuting operations which are or appear to constitute breaches of customs legislation. In order to collect and use a set of data as complete as possible, while avoiding potential negative impacts on small and medium sized enterprises in freight forwarding sector, it is necessary that carriers submit to the Member States data concerning container movements in so far as they collect such data in electronic formats via their equipment tracking systems or have such data stored on their behalf. Such data should be directly transmitted to a single directory established by the Commission for that purpose.
- (5) In order to ensure a high level of consumer protection, the Union has a duty to combat customs fraud and thus contribute to the internal market's objective of having safe products with genuine certificates of origin.
- (6) The detection of fraud depends significantly on the identification and cross-analysis of relevant operational data sets. It is necessary therefore to establish, at European Union level, a directory containing data on import, export and transit of goods including transit of goods within the Member States and direct export. For that purpose, Member States should allow systematic replication of data on import, export and transit of goods from the systems operated by the Commission and may supply to the Commission data relating to transit of goods within a Member State and direct export, depending on the availability of data and Member States IT infrastructure.

- (7) The introduction of the e-Customs in 2011, by which documents supporting imports and exports are no longer kept by the customs administrations but by the economic operators, has led to delays in the conduct of European Anti-fraud Office (OLAF) investigations in the customs area, as OLAF needs the intermediation of these administrations to obtain such documents. Moreover, the 3-year limitation period applicable to customs documents held by the administration, puts additional constraints to the successful conduct of investigations. In order to accelerate the conduct of investigations in the area of customs, in addition to the other possibilities for the Commission to obtain information concerning declarations, the procedure according to which the Commission may request from Member States documents supporting import and export declarations should be specified.
- (8) In order to ensure confidentiality and greater security of the inserted data, provision should be made for limiting access to inserted data to specific users and for defined purposes only.

- (9) Regulation (EC) No 515/1997, as amended by this Regulation, provides for the processing of data. Such processing may also cover personal data and should be carried out in accordance with Union law. In particular, the processing of personal data should be carried out in a manner compatible with the purpose of that Regulation and in accordance with Directive 95/46/EC<sup>5</sup> of the European Parliament and of the Council and Regulation (EC) No 45/2001<sup>6</sup> of the European Parliament and of the Council and, in particular, with Union requirements relating to data quality, proportionality, purpose limitation, and rights to information, access, rectification of data, erasure and blocking, organisational and technical measures and international transfers of personal data. Specific provision should be made for limiting access to inserted data to specific users only, in order also to ensure confidentiality of the inserted data.
- (10) The Commission and Member States should respect confidential business information and they should ensure the confidential treatment of information exchanged by means of the data directory.
- (11) In order to ensure up-to-date information and to secure the transparency and information right of data subjects as enshrined in Regulation (EC) No 45/2001 and Directive 95/46/EC, the possibility of publishing on the internet updates of the lists of competent authorities designated by the Member States and the Commission departments to have access to the Customs Information System (CIS) should be introduced.

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<sup>5</sup> 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, OJ L 8, 12.01.2001, p 1

<sup>6</sup> 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, OJ L 281, 23/11/1995, p. 31.

- (12) The processing of personal data for the purposes of Regulation (EC) No 515/1997, as amended by this Regulation, and any delegated and implementing acts adopted pursuant thereto should respect the fundamental right to respect for private and family life recognised by Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms as well as the rights to respect for private and family life, and the right to the protection of personal data recognised, respectively, by Articles 7 and 8 of the Charter of Fundamental Rights of the European Union. The delegated and implementing acts should also ensure that any processing of personal data takes place in accordance with Directive 95/46/EC and Regulation (EC) No 45/2001.
- (13) In order to improve consistency of data protection supervision, the European Data Protection Supervisor needs to cooperate closely with the Joint Supervisory Authority established under Council Decision 2009/917/JHA<sup>7</sup>, with a view to achieving coordination of the audits of the CIS.

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<sup>7</sup> Council Decision 2009/917/JHA of 30 November 2009 on the use of information technology for customs purposes, OJ L 323, 10/12/2009, p. 20

- (14) The provisions governing the storage of data in the CIS frequently result in unjustifiable loss of information; this is because Member States do not systematically carry out the yearly reviews due to the administrative burden involved and the lack of appropriate resources. It is therefore necessary to simplify the procedure governing the storage of data in the CIS by removing the obligation to review data annually and by setting maximum retention period of five years increased, subject to justification, by an additional period of two years, corresponding to periods provided for the directories established on the basis of this Regulation. This period is necessary due to the long procedures for processing irregularities and because these data are needed for the conduct of joint customs operations and of investigations.
- (15) In order to further enhance the possibilities for analysis of fraud and facilitate the conduct of investigations, data concerning current investigation files stored in the Files Identification Database (FIDE) should be rendered anonymous, after one year since the last observation, and retained in a form in which identification of the data subject is no longer possible.
- (16) Since the objective of enhancing customs risk management as defined in Article 4 points 25 and 26, and Article 13(2) of Regulation (EEC) No 2913/92 laying down the Community Customs Code<sup>8</sup>, and of improving detection, investigation and prevention of customs-related fraud in the Union cannot be sufficiently achieved by the Member States themselves, the Union may act in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve the stated objective.

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<sup>8</sup> Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, OJ L 302, 19.10.1992 p. 1



- (17) Carriers who, at the time of the entry into force of this Regulation, are bound by private contract obligations as regards the supply of data on container movements, should be entitled to benefit from a deferred application of Article 18a (4) in order to renegotiate their contracts and ensure that future contracts are compatible with the obligation to provide data to the Member States.
- (18) Regulation (EC) No 515/97 confers powers on the Commission to implement some of the provisions of that Regulation; as a consequence of the entry into force of the Treaty of Lisbon, the powers conferred on the Commission under that Regulation need to be aligned to Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFEU).
- (19) In order to supplement certain non-essential elements of Regulation (EC) No 515/97 and in particular to specify the information to be inserted into the CIS, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of the events for which CSMs should be reported, the minimum data elements to be reported in CSMs and the frequency of reporting determining the operations concerning the application of agricultural legislation for which information has to be introduced into the central database of the CIS.

- (20) It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level and, where appropriate with business representatives. The Commission, when preparing and drawing-up delegated acts, should ensure simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.
- (21) In order to ensure uniform conditions for implementation of Regulation (EC) 515/97, implementing powers should be conferred on the Commission in respect of the frequency of reporting CSMs, the format of the CSM data and the method of transmission of the CSMs. Those powers should be exercised in accordance with Regulation (EU) No 182/2011<sup>9</sup> of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers. The examination procedure should be used for the adoption of implementing acts.
- (22) In order to ensure uniform conditions for implementation of Regulation (EC) 515/97, implementing powers should be conferred on the Commission in respect of the specific elements to be included in the CIS under each of the categories referred to under items (a) to (h) in Article 24. Those powers should be exercised in accordance with Regulation (EU) No 182/2011. The examination procedure should be used for the adoption of implementing acts. The specific elements to be included in the CIS will be based on those listed in the Annex to the Commission Regulation (EC) No 696/98<sup>10</sup>.

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<sup>9</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, OJ L 55, 28.2.2011, p. 13

<sup>10</sup> Commission Regulation (EC) No 696/98 of 27 March 1998 implementing 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, OJ L 96, 28.3.1998, p. 22

(23) The European Data Protection Supervisor has been consulted and issued an opinion on 11 March 2014,

HAVE ADOPTED THIS REGULATION:

*Article 1*

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

1. In Article 2, paragraph 1 is amended as follows:

(a) The first indent is replaced by the following:

'– ‘customs legislation’ means the body of legislation within the meaning of Article 5(2) of Regulation (EU) 952/2013.'

(b) The following indents are added:

'– ‘customs territory of the Union’ means the custom territory of the Union as defined in article 4 of Regulation (EU) 952/2013.'

'– ‘carriers’ means the persons within the meaning of Article 5 (40) of Regulation (EU) 952/2013.'

2. Article 12 is replaced by the following:

'Without prejudice to Article 51, documents, certified true copies of documents, attestations, all instruments or decisions which emanate from the administrative authorities, reports and any other intelligence obtained by the staff of the requested authority and communicated to the applicant authority in the course of the assistance provided for in Articles 4 to 11 may constitute admissible evidence in the same way as if they had been obtained in the Member State where the proceedings take place:

- a) in administrative proceedings of the Member State of the applicant authority, including subsequent appeal procedures;
- b) in judicial proceedings of the Member State of the applicant authority, unless otherwise explicitly stated by the requested authority at the time of communication of the documents.'

3. Article 16 is replaced by the following:

'Without prejudice to Article 51, documents, certified true copies of documents, attestations, all instruments or decisions which emanate from the administrative authorities, reports and any other intelligence obtained by the staff of the communicating authority and communicated to the receiving authority in the course of the assistance provided for in Articles 13 to 15 may constitute admissible evidence in the same way as if they had been obtained in the Member State where the proceedings take place:

- a) in administrative proceedings of the Member State's authority receiving the information, including subsequent appeal procedures;

- b) in judicial proceedings of the Member State's authority receiving the information, unless otherwise explicitly stated by the communicating authority at the time of communication of the documents.'

4. Article 18a is amended as follows:

- (a) Paragraph 1 is replaced by the following:

'1. Without prejudice to the competences of the Member States and with a view to assisting the authorities referred to in Article 29 to detect movements of goods that are the object of operations in potential breach of customs and agricultural legislation and means of transport, including containers, used for that purpose, the Commission shall establish and manage a directory of data reported by carriers. That directory shall be directly accessible to those authorities. They may use the directory, including for the analysis of data and the exchange of information, only for the purposes of this Regulation.'

- (b) Paragraph 2 is replaced by the following:

2. In managing that directory, the Commission shall be empowered:

- a) to access or extract and store the contents of the data, by any means or in any form, and to use data in compliance with legislation applicable to intellectual property rights. The Commission shall put in place adequate safeguards, including technical and organisational measures and transparency requirements relating to data subjects. Data subjects shall be provided with the right to access and correct data;

- b) to compare and contrast data that are accessible in or extracted from the directory, to index them and to enrich them from other data sources and to analyse them in compliance with Regulation (EC) No 45/2001 of the European Parliament and of the Council;
- c) to make the data in this directory available to the authorities referred to in Article 29, using electronic data-processing techniques.'

(c) Paragraph 4 is replaced by the following:

'4. For the movement of containers referred to in Article 18a(3), the Commission shall establish and manage a subdirectory of reported Container Status Messages ('CSMs'), the 'CSM directory'. The carriers referred to in Article 18a(1) that store data on the movement and status of containers or have such data stored on their behalf shall report to the customs authorities of Member States 'CSMs' in either of the following situations:

- a) containers destined to be brought by maritime vessel into the customs territory of the Union from a third country, excluding:
  - containers destined to remain on board the same maritime vessel during its voyage and to leave the customs territory of the Union on board that maritime vessel; and

- containers destined to be unloaded and reloaded onto the same maritime vessel during its voyage in order to enable the unloading or loading of other goods and to leave the customs territory of the Union on board that maritime vessel;
- b) for shipments of physical goods in containers leaving the customs territory of the Union to a third country by maritime vessel and falling within the scope of:
- Article 2 of Council Directive 92/84/EC for alcohol and alcoholic beverages<sup>11</sup>;
  - Article 2 of Council Directive 2011/64/EU for tobacco and tobacco products<sup>12</sup>;
  - Article 2(1) of Council Directive 2003/96/EC on energy products<sup>13</sup>

Data shall be transmitted by the carriers directly to the CSM directory.

CSMs shall be reported:

- (i) from the moment when the container was reported empty before being brought into or before leaving the customs territory of the Union until the container is again reported empty; or

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<sup>11</sup> Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages, O.J L 316 of 31.10.1992, p. 29

<sup>12</sup> Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco, O.J L 176 of 5.7.2011, p. 24

<sup>13</sup> Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, O.J. L 283 of 31.10.2003, p. 51

- (ii) for at least three months prior to physical arrival to the customs territory of the Union until one month after the entry into the customs territory of the Union, in cases where specific CSMs needed to identify the relevant empty container events are not available in the carrier's electronic records; or
- (iii) for at least three months after exit from the customs territory of the Union, in case where specific CSMs needed to identify the relevant empty container events are not available in the carriers' electronic records.

The carriers shall report CSMs for the following or equivalent events, insofar as these are known to the reporting carrier and for which the data have been generated, collected or maintained in their electronic records:

- confirmation of booking,
- arrival at a loading or unloading facility,
- departure from a loading or unloading facility,
- loading on or unloading from a conveyance,
- instruction of stuffing or stripping,
- confirmation of stuffing or stripping,
- intra-terminal movements,
- terminal gate inspection,
- sending for heavy repair.

Each Member State shall provide for penalties for failure to comply with the obligation to provide data or for providing incomplete or false data. Such penalties shall be effective, proportionate and dissuasive.'



(d) The following paragraphs 5, 6 and 7 are added:

5. Within the Commission, only designated analysts shall be empowered to process personal data to which paragraphs 2(b) and 2 (c) apply.

Personal data which are not necessary for the purpose of achieving the aim in question shall be deleted immediately or have any identifying factors removed. In any event, they may be stored for no more than three years.

The Commission shall implement appropriate technical and organisational measures to protect personal data against accidental or unlawful destruction, accidental loss or unauthorised disclosure, alteration and access or any other unauthorised form of processing.

6. Data received from carriers shall be kept only for the time necessary to achieve the purpose for which they were introduced and may not be stored for more than five years.
7. The Commission and Member States shall respect confidential business information received from carriers.

The Commission and each Member State shall apply the highest technical, organisational and personnel security rules of professional secrecy or other equivalent duties of confidentiality to their designated experts in accordance with national or Union legislation.

The Commission and Member States shall ensure that requests of other Member States for confidential treatment of information exchanged by means of the data directory referred to in this Article are respected.'

5. The following Article is inserted:

'Article 18f

The Commission shall adopt, by means of implementing acts, provisions regarding the frequency of reporting, the format of the data in the CSMs and the method of transmission of the CSMs.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 43a(2) by 29 February 2016.'

6. The following Articles are inserted:

'Article 18g

1. The Commission shall establish and manage a directory containing data on:

- import,
- transit, and
- exports of goods to the extent falling within the scope of
- Article 2 of Council Directive 92/84/EC for alcohol and alcoholic beverages;
- Article 2 of Council Directive 2011/64/EU for tobacco and tobacco products;

- Article 2(1) of Council Directive 2003/96/EC on energy products, as detailed in Annexes 37 and 38 of Commission Regulation (EEC) N° 2454/93, the "Import, export, transit directory".

The Commission shall systematically replicate those data from the sources operated by the Commission on the basis of Regulation (EEC) No 2913/92 establishing the Community Customs Code. The Member States may supply to the Commission data concerning the transit of goods within a Member State and direct export, depending on the availability of data and Member States' IT infrastructure.

The departments designated by the Commission and the national authorities referred to in Article 29 may use the directory to analyse data and compare data in the "Import, export, transit directory" with CSMs reported under the directory referred to in Article 18a (4), and may exchange information on the results, for the purposes of this Regulation.

2. The directory shall be accessible to the authorities referred to in Article 29. Within the Commission only designated analysts shall be empowered to process data contained in this directory.

Member States shall have direct access to:

- (i) data of all declarations established and lodged in the Member State concerned;
- (ii) data pertaining to economic operators with an EORI number assigned by the authorities of that Member State;
- (iii) transit data;
- (iv) all other data except personal data referred to in Article 41b(2).

The competent authorities having entered data in CIS or an investigation file in FIDE in accordance with Article 41b shall have access to all data in the directory pertaining to this entry or this investigation file.

3. Regulation (EC) No 45/2001 shall apply to the processing of personal data by the Commission in the context of data included in this directory.

The Commission shall be considered as data controller within the meaning of Article 2(d) of Regulation (EC) No 45/2001.

The import, export, transit directory shall be subject to prior checking by the European Data Protection Supervisor in accordance with Article 27 of Regulation (EC) No 45/2001.

Data contained in the import, export, transit directory may not be stored for more than 5 years, with an additional 2 year period if justified.

4. The import, export, transit directory shall not include the special categories of data within the meaning of Article 10(5) of Regulation (EC) No 45/2001.

The Commission shall implement appropriate technical and organisational measures to protect personal data against accidental or unlawful destruction, accidental loss or unauthorised disclosure, alteration and access or any other unauthorised form of processing.

5. The Commission and Member States shall respect confidential business information. The Commission and each Member State shall apply the highest technical, organisational and personnel security rules of professional secrecy or other equivalent duties of confidentiality to their designated experts in accordance with national or Union legislation.

The Commission and Member States shall ensure that requests of other Member States for confidential treatment of information exchanged by means of the data directory referred to in this Article are respected.

## Article 18h

The Commission may request Member States to provide documents supporting import and export declarations and for which supporting documents have been generated or collected by the economic operators, with respect to investigations related to the implementation of customs legislation as defined in Article 2 (1).

The request shall be addressed to the competent authorities appointed for applying this Regulation referred to in Article 2(2). When more than one competent authority is designated by a Member State, the latter will have to specify the administrative department responsible for answering the request by the Commission.

The Member State shall, within a period of four weeks starting from the receipt of the request by the Commission, either:

- provide the requested documentation; subject to justification, within an additional period of six weeks; or
- notify the Commission that the request was impossible to satisfy due to the failure of the economic operator to provide the requested information; or
- decline the request as a consequence of a decision taken by a Member State's administrative or judicial authority according to Article 3 of this Regulation.'

7. Article 21(1) is replaced by the following:

'1. The findings and information obtained in the course of the Community missions referred to in Article 20 of this Regulation, and in particular documents passed on by the competent authorities of the third countries concerned, as well as the information obtained during the course of an administrative enquiry, including by the Commission's services, shall be handled in accordance with Article 45 of this Regulation.'

8. In Article 23, paragraph 4 is replaced by the following:

'4. The Commission shall be empowered to adopt delegated acts in accordance with Article 43 determining those operations in connection with the application of agricultural regulations which require the introduction of information into the CIS.

Those delegated acts shall be adopted by 29 February 2016.'

9. In Article 25, paragraph 1 is replaced by the following:

'1. The Commission shall adopt, by means of implementing acts, provisions regarding the items to be included in the CIS relating to each of the categories referred to in Article 24(a) to (h) to the extent that this is necessary to achieve the aim of the System. Personal data may not appear in the category referred to in Article 24(e). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 43a(2) by 29 February 2016.'

10. Article 29 is amended as follows:

(a) Paragraph 1 is replaced by the following:

- '1. Access to data included in the CIS shall be reserved exclusively for the national authorities designated by each Member State and the departments designated by the Commission. Those national authorities shall be customs administrations but may also include other authorities competent, according to the laws, regulations and procedures of the Member State in question, to act in order to achieve the aim stated in Article 23(2).

The supplying CIS partner shall have the right to determine which among those national authorities mentioned above may have access to data that it has included in the CIS.'

(b) Paragraph 2 is replaced by the following:

- '2. Each Member State shall send the Commission a list of its designated competent national authorities which have access to the CIS stating, for each authority, to which data it may have access and for what purposes.



The Commission shall verify with the Member States concerned the list of the designated national authorities against disproportionate designations. After this verification, the Member States concerned shall confirm or amend the list of the designated national authorities. The Commission shall inform the other Member States accordingly. It shall also inform all the Member States of the corresponding details concerning the Commission departments authorised to have access to the CIS.

The list of national authorities and Commission departments thus designated shall be published for information by the Commission in the Official Journal of the European Union and subsequent updates to the list shall be made public by the Commission on the internet.'

11. In Article 30(3), the third subparagraph is replaced by the following:

'The list of the national authorities or departments thus designated shall be published for information by the Commission in the Official Journal of the European Union and subsequent updates to the list shall be made public by the Commission on the internet.'

12. Article 30, paragraph 4 is replaced by the following:

- '4. Data obtained from the CIS may, with the prior authorisation of, and subject to any conditions imposed by, the Member State which included them in the System, be communicated for use by national authorities other than those referred to in paragraph 2, third countries and international or regional organisations and/or Union agencies which contribute to the protection of the financial interests of the Union and correct application of customs legislation. Each Member State shall take special measures to ensure the security of such data when they are being transmitted or supplied to departments located outside its territory.

The provisions referred to in the first subparagraph shall apply *mutatis mutandis* to the Commission where it has entered the data in the System.

13. The title of Chapter 4 is replaced by the following:

'Chapter 4  
Storage of data'.

14. Article 33 is replaced by the following:

'Data included in the CIS shall be kept only for the time necessary to achieve the purpose for which they were introduced and may not be stored for more than five years with an additional two year period if justified.'

15. Article 37 is amended as follows:

(a) Paragraph 3a is replaced by the following:

'3a. This Regulation particularises and complements Regulation (EC) No 45/2001.

The European Data Protection Supervisor shall supervise compliance of the CIS with Regulation (EC) No 45/2001.'

(b) The following paragraph 5 is added:

'5. The European Data Protection Supervisor shall co-ordinate with the Joint Supervisory Authority, established under Council Decision 2009/917/JHA, each acting within the scope of their respective competence, with a view to ensuring coordinated supervision and audits of the CIS.'

16. Article 38 is amended as follows:

(a) In paragraph 1, point b is deleted.

(b) Paragraph 2 is replaced by the following:

'2. In particular, both the Member States and the Commission shall take measures:

a) to prevent any unauthorised person from having access to installations used for the processing of data;

- b) to prevent data and data media from being read, copied, modified or deleted by unauthorised persons;
- c) to prevent the unauthorised entry of data and any unauthorised consultation, modification or deletion of data;
- d) to prevent data in the CIS from being accessed by unauthorised persons by means of data-transmission equipment;
- e) to guarantee that, with respect to the use of the CIS, authorised persons have right of access only to data for which they have competence;
- f) to guarantee that it is possible to check and establish to which authorities data may be transmitted by data-transmission equipment;
- g) to guarantee that it is possible to check and establish ex post facto what data have been introduced into the CIS, when and by whom, and to monitor interrogation;
- h) to prevent the unauthorised reading, copying, modification or deletion of data during the transmission of data and the transport of data media.'

17. Article 41d is amended as follows:

(a) Paragraph 1 is replaced by the following:

'1. The period for which data may be stored shall depend on the laws, regulations and procedures of the Member State supplying them. The maximum and non-cumulative periods, calculated from the date of entry of the data in the investigation file, which may not be exceeded are as follows:

- a) data concerning current investigation files may not be stored for more than three years without any operation in breach of customs and agricultural legislation being observed; data must be anonymised before that time limit if one year has elapsed since the last observation;
- b) data concerning administrative enquiries or criminal investigations in which an operation in breach of customs and agricultural legislation has been established but which have not given rise to an administrative decision, a conviction or an order to pay a criminal fine or an administrative penalty may not be stored for more than six years;
- c) data concerning administrative enquiries or criminal investigations which have given rise to an administrative decision, a conviction or an order to pay a criminal fine or an administrative penalty may not be stored for more than ten years.'

(b) Paragraph 3 is replaced by the following:

'3. The Commission shall make anonymous or delete the data as soon as the maximum storage period provided for in paragraph 1 has elapsed.'

18. Article 43 is replaced by the following:

- '1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 23(4) shall be conferred on the Commission for a period of five years from [OJ: insert date of entry into force of this Regulation]. The Commission shall draw up a report in respect of the delegation of power no later than nine months before the end of the five year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The power to adopt delegated acts referred to in Article 23(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 23(4) shall enter into force only if no objection has been expressed by either the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.'

19. The following article is inserted :

#### Article 43a

- '1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.'

By...\*, the Commission shall carry out an assessment of:

- the necessity of extending the export data contained in the directories referred in Articles 18a and 18g by including data on other goods than the ones laid down in Art. 18a(4)(b) and 18g,

- the feasibility of extending the data contained in the directory referred to in Article 18a by including data on import, export and transit of goods by land and air.

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\*OJ: please insert the date: two years after the entry into force of this Regulation.

## *Article 2*

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
2. It shall apply from 1 September 2016.
3. Notwithstanding paragraph 2, points 5, 8, 9, 18 and 19 of Article 1 shall apply from the date of entry into force of this Regulation.
4. For carriers who, at the time of the entry into force of this Regulation, are bound by private contracts that prevent them from fulfilling their obligation stipulated in Article 18a(4), this shall take effect one year after the Regulation has entered into force.

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

Done at Brussels,