



Council of the  
European Union

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**ENFOCUSTOM 33**  
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### **DRAFT STATEMENT OF THE COUNCIL'S REASONS**

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Subject: Position of the Council at first reading with view to the adoption of a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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  
– Draft Statement of the Council's reasons

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## I. INTRODUCTION

1. On 26 November 2013, the Commission submitted to the Council the above proposal, based on Article 33 and 325 of the Treaty on the Functioning of the European Union, and aiming at improving the functioning of the antifraud system in the customs field.
2. The Court of Auditors transmitted its opinion on 18 March 2014.
3. On 15 April 2014, the European Parliament adopted its position at first reading<sup>1</sup>.
4. The Working Party on Customs Union examined the proposal at various meetings during the Greek and Italian Presidencies, and at its meeting on 9 September 2014 reached a large agreement on the Presidency compromise text as laid down in doc. 13179/14, with AT and DE voting against and ES abstaining.
5. On 23 September 2014, the Permanent Representatives Committee gave a mandate to the Presidency for initiating trilogue meetings with the European Parliament.
6. Three trilogue meetings took place on 10 November, 10 December and 18 December 2014<sup>2</sup>. The compromise reached on that occasion was endorsed by the Permanent Representatives Committee. Subsequently, by letter of 23 March 2015, the European Parliament informed the Council that the European Parliament would approve the Council's position without amendments at its second reading.

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<sup>1</sup> 8658/14 CODEC 1023 UD 112 AGRI 294 ENFOCUSTOMS 46 PE 250.

<sup>2</sup> A number of outstanding technical issues were subsequently addressed in January 2015 by the Latvian Presidency.

7. Against that background, at its meeting on 20 April 2015, the Council adopted a political agreement, as laid down in doc. 7565/15,

## **II. OBJECTIVE**

8. This Regulation lays down amendments to Regulation (EC) No 515/97. These amendments aim at addressing loopholes in the existing systems for the detection of customs-related fraud, and delays in OLAF investigations, at streamlining data protection supervision, and at bringing clarification on the possibility to restrict the visibility of data and on the rules on the admissibility of evidence collected under mutual assistance.

## **III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING**

### **A. General**

9. The Council has introduced a number amendments to the original proposal and has substantially modified the structure of the text. In parallel, the European Parliament voted 53 amendments to the Commission proposal

The Council's position at first reading, therefore, amends the original Commission proposal by partially redrafting it on the basis of the agreement reached with the European Parliament.

## **B. Key policy issues**

### 10. Definitions

The definition of "customs legislation" was amended in line of Regulation (EU) No 952/2013 and the definitions of "customs territory of the Union" and of "carriers" were added.

### 11. Admissible evidence

The Council clarified the rules on the admissibility of evidence in administrative and judicial proceedings.

### 12. Directories

The objective, content and use of the directories established under this Regulation has been clarified. The Council provided that Member States should have the same level of access than the Commission to the CSM Directory and that data concerning export of shipments of sensitive goods, such as tobacco and tobacco products, alcohol and alcoholic beverages and energy products, should be reported by carriers in the Container Status Messages (CSMs) directory. The possibility to transfer selected data from the "import, export and transit directory" to international organisations or EU agencies has been withdrawn.

### 13. Third country to third country movements of containers

The Council provided for a clarification of the rules related to those movements of containers that should not be reported in the CSM Directory.

14. Data protection

References to data protection rules have been streamlined, in accordance with Regulation (EC) No 45/2011.

15. Request of documents by the Commission to Member States

The Council clarified that documents supporting import and export declarations should be provided by Member States, upon request by the Commission, and that such request should be dealt with within a period of four weeks.

16. Data storage

Data included in the Customs Information System (CIS) should be stored for a period of maximum five years, with an additional two years if justified.

17. Assessment

The Council provided for an assessment by the Commission, two years after the entry into force of the Regulation, of the necessity to extend the export data and the data on land and air movements in the relevant directories.

18. Date of application

The date of application was set on 1 September 2016, taking into account the delegated and implementing acts to be adopted, and the preparatory tasks to be completed by Member States

19. Recitals

The recitals have been amended by the Council to correlate with the modified operational parts of the Regulation and to reflect certain concerns expressed by the European Parliament.

**IV. CONCLUSION**

In establishing its Position, the Council has taken full account of the proposal of the Commission and of the European Parliament's position at first reading.

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