

PROTOCOL 5**on mutual assistance in customs matters between the administrative authorities***Article 1***Definitions**

For the purposes of this Protocol:

- (a) 'customs legislation' shall mean any statutory or regulatory provision applicable in the territory of the Contracting Parties governing the import, export, transit of goods and their placing under any customs procedure, including measures of prohibition, restriction and control adopted by the Parties concerned;
- (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 any data relating to an identified or identifiable natural person.

*Article 2***Scope**

1. The Contracting Parties shall assist each other, within their areas of responsibility, according to the procedures and under the conditions laid down in this Protocol, with a view to the prevention, investigation and detection of operations that contravene customs legislation.

2. Assistance in customs matters, as provided for in this Protocol, applies 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 judicial authorities, unless those authorities so agree.

*Article 3***Assistance on request**

1. At the request of the applicant authority, the requested authority shall furnish it with all relevant information to enable it to ensure that customs legislation is correctly applied, in particular information regarding detected or projected operations which contravene or would contravene 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 applying to the goods.

3. At the request of the applicant authority, the requested authority shall undertake surveillance, in accordance with its own legislation, of:

- (a) natural or legal persons in respect of whom there are reasonable grounds for believing that they are engaging in or have engaged in operations which contravene customs legislation;
- (b) places where stocks of goods have been assembled in such a way that there are reasonable grounds for supposing that they are intended as supplies for operations contrary to the legislation of the other Contracting Parties;
- (c) movements of goods notified as possibly involving operations that contravene customs legislation;
- (d) means of transport for which there are reasonable grounds for believing that they have been, are or may be, used for the purpose of contravening customs legislation.

*Article 4***Spontaneous assistance**

The Contracting Parties shall provide each other, 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 contravene or which they believe to be contravention of such legislation and which may be of interest to the other Contracting Parties,
- new means or methods employed in realising such operations,
- goods known to be involved in operations contravening customs legislation,
- natural or legal persons in respect of whom there are reasonable grounds for believing that they are engaging in or have engaged in operations which contravene customs legislation,
- means of transport for which there are reasonable grounds for believing that they have been, are or may be used in the contravening 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 any document,
- to notify any decision,

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

*Article 6***Form and substance of requests for assistance**

1. Requests pursuant to this Protocol shall be made in writing. Documents deemed useful to help respond to such requests shall accompany 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 being 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 such authority.

4. If a request does not meet the formal requirements, its correction or completion may be demanded; the ordering of precautionary measures may, however, take place.

*Article 7***Execution of requests**

1. In order to comply with a request for assistance, the requested authority shall proceed, within 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. This provision shall apply also to the administrative department to which the request has been addressed by the requested authority when the latter cannot act on its own.

2. Requests for assistance shall be executed in accordance with the laws, rules and other legal instruments of the requested Contracting Party.

3. Duly authorised officials of a Contracting Party may, with the agreement of the other Contracting Party involved and within 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 the operations contravening or likely to contravene 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 within 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 computerised information produced in any form for the same purpose.

*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 Morocco's sovereignty or that of a Member State of the Community whose assistance has been requested pursuant to this Protocol; or
- (b) be likely to prejudice their public policy, security or other essential interests; or
- (c) involve legislation other than customs legislation; or
- (d) violate an industrial, commercial or professional secret.

2. Where the applicant authority asks for 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 left to the requested authority to decide how to respond to such a request.

3. If assistance is denied, the decision and the reasons therefor must be notified to the applicant authority without delay.

Article 10

Obligation to observe confidentiality

1. Any information communicated in whatsoever form pursuant to this Protocol shall be of a confidential nature. It shall be covered by the obligation of official secrecy and shall enjoy the protection extended to like information under the relevant legislation of the Contracting Party which received it and the corresponding provisions applying to the Community authorities.

2. Personal data may be communicated only where the level of protection granted to persons laid down in the legislation of the Contracting Parties is equivalent. The Contracting Parties must ensure at least a level of protection based on the principles contained in the Annex to this Protocol.

Article 11

Use of information

1. Information obtained, including information relating to personal data, shall be used solely for the purposes of this Protocol and may be used within each Contracting Party for other purposes only with the prior written consent of the administrative authority which furnished the information and shall be subject to any restrictions laid down by that authority. These provisions shall not be applicable when the information obtained for the purposes of this Protocol could also be used for the purposes of fighting against illicit trafficking of narcotic drugs and psychotropic substances. Such information may be communicated to other authorities directly involved in combating illicit drug traffic, within the limits of Article 2.

2. Paragraph 1 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 provided the information shall be informed immediately of such use.

3. 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 12

Experts and witnesses

1. An official of a requested authority may be authorised to appear, within the limitations of the authorisation granted, as 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.

2. The authorised official shall enjoy the protection guaranteed by existing legislation to officials of the applicant authority on its territory.

Article 13

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, witnesses, interpreters and translators who are not dependent upon public services.

Article 14

Implementation

1. The implementation of this Protocol shall be entrusted to the national customs authorities of Morocco 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 on the other. They shall decide on all practical measures and arrangements necessary for its application, taking into consideration rules in the field of data protection. They may, through the Customs Cooperation Committee set up by Article 40 of Protocol 4, recommend to the Association Council, amendments which they consider should be made to this Protocol.

2. The Contracting Parties shall consult 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 15***Complementarity**

1. This Protocol shall complement and not impede the application of any agreements on mutual assistance which have been concluded or may be concluded by individual or several Member States of the European Union and Morocco.

Nor shall it preclude more extensive mutual assistance granted under such agreements.

2. Without prejudice to Article 11, these agreements 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.

ANNEX

FUNDAMENTAL PRINCIPLES APPLICABLE TO DATA PROTECTION

1. Personal data undergoing computer processing must be:
 - (a) obtained and processed fairly and lawfully;
 - (b) kept for explicit and legitimate purposes and not further used in a way incompatible with those purposes;
 - (c) appropriate, relevant and not excessive in relation to the purposes for which they are collected;
 - (d) accurate and, where necessary, kept up to date;
 - (e) kept in a form which permits identification of the person concerned for no longer than is necessary for the procedure for which the data were collected.
 2. Personal data revealing racial origin, political or religious opinions or other beliefs, and data concerning a person's health or sex life, may not undergo computer processing except where suitable safeguards are provided by national law. These provisions apply also to personal data relating to criminal convictions.
 3. Appropriate security measures must be taken to ensure that personal data recorded in computer filing systems are protected against unlawful destruction or accidental loss and against unauthorised alteration, disclosure or access.
 4. Any person must have the right to:
 - (a) establish whether personal data relating to him are kept in a computer filing system, the purposes for which they are mainly used and the identity and normal place of residence or work of the person responsible for the filing system;
 - (b) obtain at reasonable intervals, and without excessive delay or expense, confirmation as to the existence of a computer filing system containing personal data relating to him and communication of such data in an intelligible form;
 - (c) obtain, as appropriate, the rectification or erasure of such data where they have been processed in violation of the provisions laid down by the national legislation applying the fundamental principles contained in paragraphs 1 and 2 of this Annex;
 - (d) have access to legal remedies if no action is taken on a request for communication or, where appropriate, the communication, rectification or erasure referred to in points (b) and (c) above.
 - 5.1. Derogations from the provisions of paragraphs 1, 2 and 4 of this Annex are allowed only in the cases below.
 - 5.2. Derogations from the provisions of paragraphs 1, 2 and 4 of this Annex may be allowed where provided for in the legislation of the Contracting Party and where such derogation constitutes a necessary measure in a democratic society and is intended to:
 - (a) safeguard national security, public order or a State's financial interests or prevent criminal offences;
 - (b) protect the data subjects or the rights and freedoms of others.
 - 5.3. In the case of computerised filing systems containing personal data used for statistical purposes or scientific research, the rights referred to in paragraphs 4(b), (c) and (d) of this Annex may be restricted by law where such use is clearly unlikely to constitute an invasion of privacy of the data subjects.
 6. No provision in this Annex is to be interpreted as restricting or prejudicing a Contracting Party's power to grant data subjects wider protection than that provided for in this Annex.
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