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COMMISSION OF THE EUROPEAN COMMUNITIES

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#### **ANNEX 4**

### **PROTOCOL 1: MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS MATTERS**

# **PROTOCOL 1: MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS MATTERS**

## *ARTICLE 1*

### **Definitions**

For the purposes of this Protocol

- a) "customs legislation" shall mean any legal or regulatory provisions governing the import, export and transit of products and their placing under any other customs regime or procedure, including measures of prohibition, restriction and control;
- b) "applicant authority" shall mean a competent administrative authority which has been designated by one of the Contracting Parties for this purpose and which makes a request for assistance on the basis of this Protocol;
- c) "requested authority" shall mean a competent administrative authority which has been designated by one of the Contracting Parties for this purpose and which receives a request for assistance on the basis of this Protocol;
- d) "personal data" shall mean all information relating to an identified or identifiable individual;
- e) "operation in breach of customs legislation" shall mean any violation or attempted violation of customs legislation.

## *ARTICLE 2*

### **Scope**

- 1. The Contracting Parties shall assist each other, in the areas within their competence, in the manner and under the conditions laid down in this Protocol, to ensure the correct application of the customs legislation, in particular in order to prevent, investigate and combat 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 responsible 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 a judicial authority, except where communication of such information is authorised by that authority.
- 3. Assistance to recover duties, taxes or fines shall not be covered by this Protocol.

## *ARTICLE 3*

### **Assistance on request**

- 1. At the request of the applicant authority, the requested authority shall provide it with all relevant information which may enable it to ensure that customs legislation is correctly applied, including information regarding activities noted or planned which are or could be operations in breach of customs legislation.
- 2. At the request of the applicant authority, the requested authority shall inform it:

- a) whether products 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 products;
  - b) whether products imported into the territory of one of the Contracting Parties have been properly exported from the territory of the other Party, specifying, where appropriate, the customs procedure applied to the products.
3. At the request of the applicant authority, the requested authority shall, within the framework of its legal or regulatory provisions, take the necessary steps to ensure surveillance 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 in breach of customs legislation;
  - (b) places where stocks of products have been or may be assembled in such a way that there are reasonable grounds for believing that these products are intended to be used in operations in breach of customs legislation;
  - (c) products that are or may be transported in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation;
  - (d) means of transport that are or may be used in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation.

#### *ARTICLE 4*

##### **Spontaneous assistance**

The Contracting Parties shall assist each other, on their own initiative and in accordance with their legal or regulatory provisions, if they consider that to be necessary for the correct application of customs legislation, particularly by providing information obtained pertaining to:

- activities which are or appear to be operations in breach of customs legislation and which may be of interest to another Contracting Party;
- new means or methods employed in carrying out operations in breach of customs legislation;
- products known to be involved in operations in breach of customs legislation,
- natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation;
- means of transport for which there are reasonable grounds for believing that they have been, are or might be used in operations in breach of customs legislation.

#### *ARTICLE 5*

##### **Delivery / notification**

At the request of the applicant authority, the requested authority shall, in accordance with the legal or regulatory provisions applicable to the latter, take all necessary measures to:

- deliver any documents or
- notify any decisions

emanating from the applicant authority and falling within the scope of this Protocol, to an addressee residing or established in the territory of the requested authority.

Requests for delivery of documents and notification of decisions shall be made in writing in an official language of the requested authority or in a language acceptable to that authority.

## *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 deemed necessary to enable compliance with the request. Where 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;
  - (b) the measure requested;
  - (c) the object of and the reason for the request;
  - (d) the legal or regulatory provisions and other legal elements involved;
  - (e) indications as exact and comprehensive as possible on the natural or legal persons who are the subject of the investigations;
  - (f) a summary of the relevant facts and of the enquiries already carried out.
3. Requests shall be submitted in an official language of the requested authority or in a language acceptable to that authority. This requirement shall not apply to any documents that accompany the request under paragraph 1.
4. If a request does not meet the formal requirements set out above, its correction or completion may be requested; in the meantime, precautionary measures may be ordered.

## *ARTICLE 7*

### **Execution of requests**

1. In order to comply with a request for assistance, the requested 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 and by carrying out appropriate enquiries or arranging for them to be carried out. This provision shall also apply to any other authority to which the request has been addressed by the requested authority in application of this Protocol where the latter cannot act on its own.
2. Requests for assistance shall be met in accordance with the legal or regulatory provisions of the requested Contracting Party.
3. Duly authorised officials of one of the Contracting Parties may, with the agreement of the other Party involved and subject to the conditions laid down by the latter, be

present to obtain, in the offices of the requested authority or any other authority concerned in accordance with paragraph 1, information relating to activities that are or may be operations in breach of customs legislation and which the applicant authority needs for the purposes of this Protocol.

4. Duly authorised officials of a Contracting Party may, with the agreement of the other Contracting Party involved and under 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 the results of enquiries to the applicant authority in writing, together with relevant documents, certified copies or other items.
2. This information may be supplied in computerised form.
3. Original documents shall be transmitted only upon request in cases where certified copies would be insufficient. These originals shall be returned at the earliest opportunity.

#### *ARTICLE 9*

##### **Exceptions to the obligation to provide assistance**

1. Assistance may be refused or may be subject to the satisfaction of certain conditions or needs, where a Party is of the opinion that assistance under this Agreement would:
  - (a) be likely to prejudice the sovereignty of a signatory Central African State or that of a Member State of the European Community whose assistance has been requested pursuant to this Protocol; or
  - (b) be likely to be detrimental to public order, security or other essential interests, in particular in the cases referred to in Article 10(2); or
  - (c) violate an industrial, commercial or professional secret. (\*)
2. Assistance may be postponed by the requested authority on the ground that it would interfere with an ongoing investigation, prosecution or proceeding. In such a case, the requested authority shall consult with the applicant authority to determine whether assistance can be given subject to such terms or conditions as the requested authority may require.
3. Where the applicant authority seeks assistance which it would itself be unable to provide if so requested, 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.
4. In the cases referred to in paragraphs 1 and 2, the decision of the requested authority and the reasons for it must be communicated to the applicant authority without delay.

#### *ARTICLE 10*

##### **Exchange of information 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 that received it and the corresponding provisions applying to the Community authorities.

2. Personal data may be exchanged only where the Contracting Party which may receive them undertakes to protect such data in a manner at least equivalent to that applying to the particular case in the Contracting Party that may supply them. To that end, the Contracting Parties shall inform each other of their applicable rules, including, where appropriate, legal provisions in force in the Member States of the Community.
3. The use, in judicial or administrative proceedings instituted in respect of operations in breach of customs legislation, of information obtained under this Protocol is considered to be for the purposes of this Protocol. The Contracting Parties may therefore, 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. The competent authority which supplied that information or gave access to those documents shall be notified of such use.
4. Information obtained shall be used solely for the purposes of this Protocol. Where one of the Contracting Parties wishes to use such information for other purposes, it shall obtain the prior written consent of the authority which provided the information. Such use shall then be subject to any restrictions laid down by that authority.

#### *ARTICLE 11*

##### **Experts and witnesses**

An official of a requested authority may be authorised to appear, within the limitations of the authorisation granted, as an expert or witness in judicial or administrative proceedings regarding the matters covered by this Protocol, and to produce such objects, documents or certified copies thereof as may be needed for the proceedings. The request for appearance must indicate specifically before which judicial or administrative authority the official will have to appear, 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 relating to experts and witnesses and to interpreters and translators who are not public service employees.

#### *ARTICLE 13*

##### **Implementation**

1. The implementation of this Protocol shall be entrusted to the customs authorities of the signatory Central African States and to the competent services of the Commission of the European Communities and, where appropriate, the customs

authorities of the Member States. They shall decide on all practical measures and arrangements necessary for its application, taking into consideration rules in the field of data protection in particular. They may recommend to the competent bodies amendments which they consider should be made to this Protocol.

2. The Contracting Parties shall consult each other and keep each other informed of the detailed rules of implementation which are adopted in accordance with the provisions of this Protocol.

#### *ARTICLE 14*

##### **Other agreements**

1. Taking into account the respective powers of the European Community and its Member States, the provisions of this Protocol shall:
  - not affect the obligations of the Contracting Parties under any other international agreement or convention;
  - be deemed complementary to agreements on mutual assistance which have been or may be concluded between individual Member States of the European Community and signatory Central African States;
  - not affect Community provisions governing the communication between the competent services of the Commission of the European Communities and the customs authorities of the Member States of any information obtained in the areas covered by this Protocol which could be of interest to the Community.
2. Notwithstanding the provisions of paragraph 1, the provisions of this Protocol shall take precedence over the provisions of any bilateral agreement on mutual assistance which has been or may be concluded between individual Member States of the European Community and signatory Central African States, insofar as the provisions of the latter are incompatible with those of this Protocol.
3. In respect of questions relating to the application of this Protocol, the Contracting Parties shall consult each other to resolve the matter within the EPA Committee.