

DECISION No 3/92 OF THE EEC-SAN MARINO COOPERATION COMMITTEE

of 22 December 1992

on the arrangements for the provision of mutual assistance pursuant to Article 13 of the Agreement between the Community and San Marino

(93/103/EEC)

THE COOPERATION COMMITTEE

Having regard to the Interim Agreement between the European Economic Community and the Republic of San Marino, and in particular Article 13 (8) thereof,

Whereas the proper functioning of the Agreement requires close collaboration between the authorities of the Contracting Parties responsible for implementing the provisions of that Agreement,

HAS DECIDED AS FOLLOWS:

TITLE I

GENERAL PROVISIONS

Article 1

The administrative authorities of the Parties shall assist each other in accordance with the terms of this Protocol.

TITLE II

Article 2

Definitions

Within the meaning of this Decision:

- (a) 'customs legislation' shall be all the provisions applicable in the territories of the Parties to import, export and transit of goods and the placing of goods under any other customs procedure, including measures relating to prohibition, restriction or monitoring;
- (b) 'customs duties' shall be all the varieties of duty, charge, fee and tax charged and collected in the territories of the Contracting Parties pursuant to the terms of customs legislation, with the exception of fees and charges commensurate with the approximate cost of services rendered;
- (c) 'requesting authority' shall be an administrative authority, suitably empowered by one of the Contracting Parties, which submits a request for assistance;

(d) 'receiving authority' shall be an administrative authority, suitably empowered by one of the Contracting Parties, which receives a request for assistance;

(e) 'violation' shall be any attempted or actual infringement of this legislation.

Article 3

Scope

1. The Contracting Parties shall assist each other in the manner and according to the conditions laid down in this Protocol, to ensure that customs legislation is correctly implemented, notably by preventing and detecting violations of that legislation, and by conducting investigations in that connection.

2. Assistance with customs-related matters, as provided for in this Protocol, shall be the concern of any administrative authority of the Contracting Parties which is responsible for the implementation of this Protocol. It shall not affect any provisions regulating mutual assistance in criminal matters. It shall furthermore not apply to information gathered under the powers which the authorities exercise at the request of the judicial authorities, unless those authorities give their assent.

Article 4

Assistance in response to a request

1. The receiving authority shall provide the requesting authority, at its request, with all information likely to help it to ensure that customs legislation is implemented correctly. This shall apply in particular to information concerning operations detected or planned which constitute or appear to constitute a violation of that legislation.

2. The receiving authority shall inform the requesting authority, at its request, if goods exported from the territory of one of the Contracting Parties are regularly brought into the territory of the other Contracting Party, and shall give details, where applicable, of the customs procedure by which such goods are covered.

3. At the request of the requesting authority, the receiving authority shall take steps to establish surveillance of:

- (a) natural or legal persons, in cases in which there are reasonable grounds for believing that they are violating or have violated customs legislation;
- (b) movements of goods indicated as being the object of potential serious violations of customs legislation;
- (c) means of transport, in cases in which there are reasonable grounds for believing that they have been used, are being used or have been used in violating customs legislation.

Article 5

Spontaneous assistance

The Contracting Parties shall assist each other in the matters for which they are responsible in cases in which they consider such action necessary to the correct implementation of customs legislation, particularly if they receive information relating to:

- operations which have violated, are violating or may violate that legislation, and which may be of interest to other Contracting Parties;
- new ways or means of carrying out such operations;
- goods known to be connected with a serious violation of customs legislation governing imports, transit or any other customs procedure.

Article 6

Forwarding/notification

At the request of the requesting authority, the receiving authority shall take all the necessary steps, in conformity with its legislation:

- to forward any document, or
- to provide notification of any decision

which falls within the scope of implementation of this Protocol to an addressee who is resident or established in its territory. In such cases, Article 7 (3) shall apply.

Article 7

Form and content of requests for assistance

1. Requests pursuant to this Protocol shall be made in writing. The request shall be accompanied by the documents needed for a reply to be provided. If the urgency of a particular situation so demands, the request may be made verbally, but it must be confirmed immediately in writing.

2. Requests made in accordance with the terms of paragraph 1 shall be accompanied by the following information:

- (a) details of the requesting authority submitting the application;
- (b) the measure requested;
- (c) the grounds for and aim of the request;
- (d) the relevant legislation, rules and other legal documents;
- (e) particulars of the natural or legal persons to which an investigation relates, in as full and accurate a form as possible;
- (f) a summary of the pertinent facts, except in the cases referred to in Article 6.

3. Requests shall be drawn up in one of the official languages of the requesting authority or in a language which suits that authority.

4. If a request does not comply with the formal requirements, a call may be made for it to be corrected or added to. Precautionary measures may be ordered, however.

Article 8

Replying to requests

1. In response to a request for assistance, the receiving authority, or, in cases in which that authority cannot act alone, the administrative department to which the authority has referred the request, shall supply information already at its disposal and carry out or commission the appropriate inquiries as though acting on its own account or on behalf of another authority of the same Contracting Party.

2. Requests for assistance shall be answered in accordance with the legislation, rules and other legal instruments of the receiving Contracting Party.

3. By agreement between a Contracting Party and the other Contracting Party concerned, and in the manner established by the latter, officials duly authorized by the second Contracting Party may collect at the offices of the receiving authority, or another authority under its responsibility, information concerning violations of customs legislation which is needed by the requesting authority for the purposes of this Protocol.

4. Officials of one Contracting Party, by agreement with the other Contracting Party, may be present during the inquiries carried out on the territory of the latter.

*Article 9***Forwarding of information**

1. The receiving authority shall forward the results of the inquiries to the requesting authority in the form of documents, certified true copies of documents, reports and other similar written material.
2. The material described in paragraph 1 may be replaced by computerized information produced in any form for the same purpose.

*Article 10***Derogations from the obligation to provide assistance**

1. The Contracting Parties may refuse assistance under this Protocol if such assistance :
 - (a) is likely to harm their sovereignty, public order, security or other vital interests ;
 - (b) invokes a rule or regulation concerning taxes or exchange which is not part of the rules and regulations concerning customs duties ;
 - (c) or would entail a violation of industrial, commercial or professional secrecy.
2. If the requesting authority asks to be provided with information which it would not itself be in a position to supply if requested, it shall draw attention to this fact in its request. It is then the responsibility of the receiving authority to decide how to respond to that request.
3. If assistance is refused, the requesting authority must be informed immediately of the decision and grounds for that decision.

*Article 11***Safeguarding of secrecy**

1. The information communicated pursuant to this Protocol in any form whatsoever shall be confidential. It shall be covered by professional confidentiality and enjoy the protection provided by the laws in force in the territory of the Contracting Party receiving the information and the protection of corresponding rules applying to Community bodies.
2. Personal data shall not be passed on in instances in which there are reasonable grounds for belief that supplying or using such information would conflict with the fundamental legal principles of one of the Parties, especially if the individual in question would suffer unjustified harm as a result. If so requested, the Party receiving the information shall provide the Party supplying the

information with details of the use to which it is put and the results obtained.

3. Personal data may only be communicated to the administrative authorities, and in cases in which they are needed for legal proceedings, to the national ministry of justice and to the judicial authorities. No other individual or authority may collect such information without prior permission from the authority supplying that information.

4. The Party supplying the information shall check its accuracy. If it becomes apparent that the information provided is inaccurate or should be destroyed, the receiving Party shall be informed without delay, and shall be expected to correct or destroy the information.

5. The individual in question may request information on the data held and the ends to which it is held. This shall be without prejudice to cases in which the public interest is an overriding consideration.

*Article 12***Use of information**

1. The information collected must be used only for the purposes of this Protocol. It may be used by the Contracting Parties for other purposes only with prior written permission from the administrative authority supplying that information, and shall moreover be subject to the restrictions imposed by that authority. These provisions shall not apply to information concerning crimes connected with narcotic drugs and psychotropic substances ; information of this type may be passed on the authorities directly involved in combating the trafficking of drugs, within the bounds of Article 3.
2. The terms of paragraph 1 shall not preclude the use of information in administrative or legal proceedings subsequently instituted in connection with infringements of customs legislation.
3. Information collected and documents consulted pursuant to the terms of this Protocol may be cited as proof in a Contracting Party's statements, reports and evidence and during legal proceedings and procedures.

*Article 13***Experts and witnesses**

An agent of a receiving authority may be permitted, within the bounds of the authorization he has received, to appear as an expert or witness in legal or administrative proceedings instituted within the fields covered by this Protocol, within the jurisdiction of another Contracting Party, and to produce items and documents or certified true copies of documents needed for those proceedings. The summons must provide clear details of the case concerned and state in what connection and capacity the agent will be questioned.

*Article 14***Cost of assistance**

No Contracting Party shall submit any claim for refunds of costs incurred as a result of the implementation of this Protocol except, where appropriate, for fees paid to experts and witnesses and to interpreters and translators not connected with the authorities.

*Article 15***Implementation**

1. Implementation of this Protocol shall be the responsibility of the national administrative authorities of the Republic of San Marino and of the appropriate departments of the Commission. They shall decide on all the practical steps required in this connection, taking into account current data-protection rules. They may propose to the relevant bodies such alterations to this Protocol as they consider necessary.

2. The Contracting Parties shall consult each other on and subsequently notify each other about implementing rules, which shall be adopted in accordance with the procedures laid down in this Article.

*Article 16***Complementarity**

1. This Protocol shall supplement and shall not prevent the implementation of actual or potential mutual assistance agreements between one or more Community Member States and San Marino. It shall likewise do nothing to prevent mutual assistance of wider scope being provided under those agreements.

2. Without prejudice to the terms of Article 12, the agreements shall not affect Community provisions governing the passing between the appropriate departments of the Commission and the customs authorities of the Member States of any customs-related information likely to be of interest to the Community.

Article 17

This Decision shall enter into force on 1 January 1993.

Done at Brussels, 22 December 1992.

For the Cooperation Committee

The Chairman

Pietro GIACOMINI