

**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 16 June 1999 (02.07)  
(OR. fin)**

**SEMDOC**

Statewatch European Documentation &  
Monitoring Centre on justice and home  
affairs in the European Union

PO Box 1516, London N16 0EW, UK  
tel: 0181 802 1882 (00 44 181 802 1882)  
fax: 0181 880 1727 (00 44 181 880 1727)

9189/99

**LIMITE**

**ENFOCUSTOM 30**

**NOTE**

from :	Presidency
to :	Customs Cooperation Working Party
No. prev. doc.:	OJ L 327, 28.11.1997, pp. 1 and 3
Subject :	Development of customs cooperation in third pillar matters in the framework of the Partnership and Cooperation Agreement concluded between the European Union and the Russian Federation

**1. Introduction**

The Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Russian Federation, of the other part (PCA) (OJ L 327, 28.11.1997) entered into force on 1 December 1997. The objective of the Agreement is to strengthen mutual cooperation between the European Union and Russia through the approximation of legislation and the development of practical cooperation.

According to the common strategy of the European Union on Russia which was approved at the meeting of the European Council in Cologne, development of customs cooperation is considered as one area of action in the fight against crime. The European Union and its Member States shall work closely together with Russia to implement the common strategy, in particular through the Partnership and Cooperation Agreement and its institutions.

## **2. Customs cooperation in the Partnership and Cooperation Agreement**

The Agreement includes concrete provisions for developing closer customs cooperation between the European Communities and their Member States and Russia. Article 78 deals with customs. It states that "the aim of cooperation shall be to achieve compatibility of the customs systems of the Parties". Thus, only customs cooperation falling within the competence of the Community comes within the scope of Article 78.

In addition, the PC Agreement contains provisions on strengthening cooperation in fields of customs activities which fall within the competence of the EU Member States. Further, a protocol on mutual administrative assistance for the correct application of customs legislation (Protocol 2) is annexed to the Agreement.

## **3. Customs cooperation in III pillar matters**

The following Articles of the PC Agreement contain provisions which partly deal with customs cooperation in third pillar matters:

### *Article 81: Money laundering*

- 1. The Parties agree on the necessity of making efforts and cooperating in order to prevent the use of their financial systems for laundering of proceeds from criminal activities in general and drug offences in particular.*
- 2. Cooperation in this area shall include administrative and technical assistance with the purpose of establishing suitable standards against money laundering equivalent to those adopted by the Community and international fora in this field, including the Financial Action Task Force (FATF).*

## Article 82: Drugs

The Parties shall cooperate in increasing the effectiveness and efficiency of policies and measures to counter the illicit production, supply and traffic of narcotic drugs and psychotropic substances, including the prevention of diversion of precursor chemicals, as well as in promoting drug demand prevention and reduction. The cooperation in this area shall be based on mutual consultation and close coordination between the Parties over the objectives and measures in the various drug-related fields, and shall, inter alia, provide for exchange of training programmes and include, where available, technical assistance from the Community.

## Title VIII, Article 84: Cooperation on prevention of illegal activities

The Parties shall establish cooperation aimed at preventing illegal activities such as:

- illegal immigration and illegal presence of physical persons of their nationality on their respective territories, taking into account the principle and practice of readmission,
- illegal activities in the sphere of economics, including corruption,
- illegal transactions of various goods, including industrial waste,
- counterfeiting,
- the illicit traffic of narcotic drugs and psychotropic substances.

The cooperation in the abovementioned areas will be based on mutual consultations and close interactions and will provide technical and administrative assistance, including:

- drafting of national legislation in the sphere of preventing illegal activities,
- creation of information centres,
- increasing the efficiency of institutions engaged in preventing illegal activities,
- training of personnel and development of research infrastructures,
- elaboration of mutually acceptable measures impeding illegal activities.

#### 4. Protocol on customs cooperation

Paragraph 3 of Article 78, dealing with customs cooperation within Community competence, states:

*"Without prejudice to further cooperation foreseen in this Agreement and in particular Articles 82 and 84, the mutual assistance between administrative authorities in customs matters of the Parties shall take place in accordance with the provisions of Protocol 2".*

The scope of the Protocol on mutual administrative assistance for the correct application of customs legislation is defined in Articles 1 and 2 thereof.

The scope of the Protocol is defined in Article 2 as follows:

##### Article 2 Scope

1. *The Parties shall assist each other, within their competences, in the manner and under the conditions laid down in this Protocol, in ensuring that customs legislation is correctly applied, in particular by the prevention, detection and investigation of contraventions of this legislation.*
2. *Assistance, in customs matters, as provided for in this Protocol, applies to any administrative authority of the 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, including documents obtained under powers exercised at the request of the judicial authority, unless those authorities so agree.*

The term "customs legislation" is defined in Article 1(a) of the Protocol as follows:

## Article 1 Definitions

*For the purposes of this Protocol:*

- (a) *"customs legislation" shall mean provisions applicable in the territories of the Parties and governing the import, export, transit of goods and their placing under any customs procedure including measures of prohibition, restriction and control and adopted by the said Parties.*

Thus, the scope of Protocol 2 includes national customs legislation. Its scope therefore also includes customs cooperation within the competence of the Member States.

### **5. Development in the sectors relating to customs cooperation under the third pillar**

Practical measures to develop cooperation are discussed in subcommittees set up by the Cooperation Committee referred to in Article 92 of the PC Agreement. Customs matters falling within Community competence as referred to in Article 78 are dealt with in Subcommittee 7, which has convened twice. Subcommittee 7 last met in Moscow on 30 April 1999. Customs matters to be dealt with in Subcommittee 7 have been coordinated within the Working Group on Economic Questions/Customs Union.

Areas of cooperation covered by Articles under the third pillar are discussed in Subcommittee 6, which held its first meeting in Moscow on 27 and 28 January 1999. The agenda items included narcotic drugs and closer relations between the Russian law enforcement authorities and Europol. Subcommittee 6 is due to convene for the second time in July 1999.

## **6. Present situation and conclusions**

So far, customs aspects of matters under the third pillar have not been discussed within Subcommittee 6. Yet customs administrations have a significant role in the fight against money laundering, drug-related crime and other illegal activities referred to in the PC Agreement. Cooperation cannot be comprehensive in the said sectors if customs administrations are excluded. It is therefore important to initiate the development of customs cooperation in third pillar matters. In order to maximise efficiency, the positions of the Member States on III pillar customs issues should be coordinated in the Customs Cooperation Working Party.

## **7. Proposal of the Customs Cooperation Working Party**

The CCWP proposes that the Eastern Europe and Central Asia Working Party include an item on customs cooperation on the future agenda of Subcommittee 6. The CCWP will later make a joint proposal on which customs cooperation issues Subcommittee 6 should deal with.