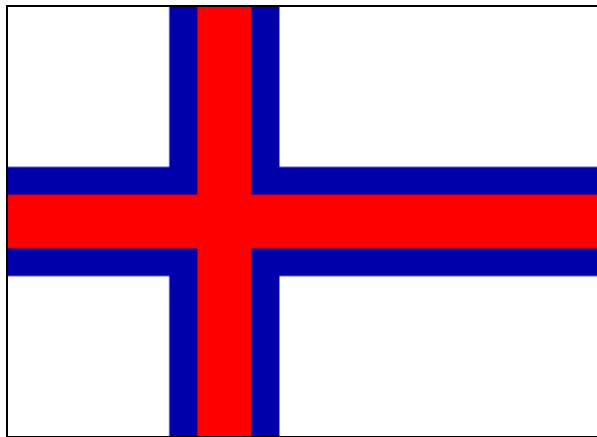


FAROE ISLANDS



Decision of 6.12.96
[OJ L 53/1 of 22.2.97](#)

Agreement: art. 18
[OJ L 53/5](#)

Protocol No 5
[OJ L 53/129](#)

COUNCIL DECISION of 6 December 1996 concerning the conclusion of an agreement between the European Community, of the one part, and the Government of Denmark and the Home Government of the Faroe Islands, of the other part (97/126/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 113 in conjunction with the first sentence of Article 228 (2) thereof,

Having regard to the proposal from the Commission,

Whereas the Commission has negotiated on behalf of the Community a new agreement, replacing the Agreement between the European Economic Community of the one part and the Government of Denmark and the Home Government of the Faroe Islands of the other part (1), signed on 2 December 1991, as amended by the Agreement (2) in the form of an Exchange of Letters between the European Community of the one part and the Government of Denmark and the Home Government of the Faroe Islands of the other part, signed on 8 March 1995,

Whereas this new Agreement should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community, of the one part, and the Government of Denmark and the Home Government of the Faroe Islands, of the other part, is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorized to designate the persons empowered to sign the Agreement in order to bind the Community and to give the notification provided for in Article 40 of the Agreement.

Done at Brussels, 6 December 1996.

For the Council

The President

D. SPRING

(1) OJ No L 371, 31. 12. 1991, p. 1.

(2) OJ No L 54, 10. 3. 1995, p. 25.

AGREEMENT

**between the European Community, of the one part, and the Government of Denmark
and the Home Government of the Faroe Islands, of the other part**

THE EUROPEAN COMMUNITY,

of the one part, and

THE GOVERNMENT OF DENMARK AND THE HOME GOVERNMENT OF THE
FAROE ISLANDS,

of the other part,

RECALLING the status of the Faeroes as a self-governing integral part of one of the Member States of the Community;

RECALLING the resolution of the Council of 4 February 1974 on the problems of the Faeroes;

CONSIDERING the vital importance for the Faeroes of fisheries, which constitute their essential economic activity, fish and fishery products being their main export articles;

CONSIDERING the importance of the fisheries relationship laid down in the Agreement on fisheries between the Contracting Parties, who confirm that the trade aspects of this Agreement should not affect the functioning of the Fisheries Agreement and that, consequently, the volume of the mutual fisheries possibilities under that Agreement should continue to be maintained at a satisfactory level;

DESIRING to consolidate and to extend the economic relations existing between the Community and the Faeroes and to ensure, with due regard for fair conditions of competition, the harmonious development of their commerce for the purpose of contributing to the work of constructing Europe;

RESOLVED progressively to eliminate the obstacles to substantially all their trade, in accordance with the provisions of the General Agreement on Tariffs and Trade (GATT) 1994 concerning the establishment of free trade areas;

DECLARING their readiness to examine, in the light of any relevant factor, and in particular of developments in the Community, the possibility of developing and deepening their relations where it would appear to be useful in the interests of their economies to extend them to fields not covered by this Agreement;

CONSIDERING that, to this end, an Agreement between the European Economic Community, of the one part, and the Government of Denmark and the Home Government of the Faroe Islands, of the other part (hereafter referred to as the 'initial Agreement') was signed on 2 December 1991;

CONSIDERING that an Agreement in the form of an Exchange of Letters between the European Community, of the one part, and the Government of Denmark and the Home

Government of the Faroe Islands, of the other part, amending Tables I and II of the Annex to Protocol 1 of the initial Agreement (hereafter referred to as the 'Agreement in the form of an Exchange of Letters') was signed on 8 March 1995;

CONSIDERING that, pursuant to the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union on 1 January 1995, the arrangements applicable to trade in fish and fishery products between the Faeroes and the Community should be adjusted in order to maintain trade flows between the Faeroes, on the one hand, and the new Member States, on the other;

CONSIDERING that, as a result of the adoption by the Community of a common definition of origin for petroleum products, it is necessary to make adjustments to the provisions affecting these products;

CONSIDERING that, in order to take account of certain developments in trade between the Community and the Member States of EFTA, it is necessary to make adjustments to the provisions concerning the definition of the concept of 'originating products' and methods of administrative cooperation;

CONSIDERING that, in order to take account of the specific production of fish feed on the Faeroes, it is necessary to make adjustments to the provisions applicable to imports of certain agricultural products;

CONSIDERING that, in order to help ensure its correct functioning, a Protocol on mutual administrative assistance in customs matters should be incorporated into this Agreement;

CONSIDERING that, in order to conform with certain modifications to the nomenclature of the customs tariffs of the Contracting Parties affecting products referred to in the initial Agreement, it is necessary to update the tariff nomenclature of these products;

CONSIDERING that, in order to provide for more flexibility, it is appropriate to empower the Joint Committee to decide on amendments to the provisions of the Protocols to this Agreement;

CONSIDERING that, for the sake of clarity, the initial Agreement and the Agreement in the form of an Exchange of Letters should be replaced by a composite new text in the form of this Agreement;

TAKING INTO ACCOUNT that the bilateral trade Agreements between Finland and Sweden and the Faeroes cease to be in force on the entry into force of this Agreement;

HAVE DECIDED, in pursuit of these objectives and considering that no provisions of this Agreement may be interpreted as exempting the Contracting Parties from the obligations which are incumbent on them under other international agreements,

TO CONCLUDE THIS AGREEMENT:

(...)

Article 18

Protocol 5 lays down the provisions on mutual assistance between administrative authorities in customs matters.

PROTOCOL 5

on mutual assistance between administrative authorities in customs matters

Article 1

Definitions

For the purposes of this Protocol:

- (a) ‘customs legislation’ shall mean any legal or regulatory provision adopted by the Contracting Parties governing the import, export, and transit of goods and their placing under any customs procedure, including measures of prohibition, restriction and control;
- (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 all information relating to an identified or identifiable individual.

Article 2

Scope

1. The Contracting Parties shall assist each other, in the areas within their jurisdiction, in the manner and under the conditions laid down in this Protocol, in ensuring that the customs legislation is correctly applied, in particular by the prevention, detection and investigation of 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 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 the judicial authorities, except where communication of such information has the prior authorization of the said authorities.

Article 3

Assistance on request

1. At the request of the applicant authority, the requested authority shall furnish it with all relevant information which may enable it to ensure compliance with

customs legislation, including information regarding operations noted or planned which are or might be in breach of 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 applied to the goods.

3. At the request of the applicant authority, the requested authority shall, within the framework of its laws, take the necessary steps to ensure special surveillance of:

- (a) natural or legal persons of whom there are reasonable grounds for believing that they are or have been in breach of customs legislation;
- (b) places where goods are stored in a way that gives grounds for suspecting that they are intended to supply operations in breach of customs legislation;
- (c) movements of goods notified as possibly giving rise to breaches of customs legislation;
- (d) means of transport for which there are reasonable grounds for believing that they have been, are or may be used in operations in breach of customs legislation.

Article 4

Spontaneous assistance

The Contracting Parties shall provide each other, at their own initiative and 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 are or appear to be in breach of such legislation and which may be of interest to the other Contracting Party,
- new means or methods employed in carrying out such operations,
- goods known to be subject to breaches 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 all documents,
- to notify all decisions,

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

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 necessary to enable compliance with 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 who are 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 that authority.
4. If a request does not meet the formal requirements, its correction or completion may be requested; precautionary measures may, however, be ordered.

Article 7

Execution of requests

1. In order to comply with a request for assistance, the requested authority or, when the latter cannot act on its own, the administrative department to which the request has been addressed by this 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, by carrying out appropriate enquiries or by arranging for them to be carried out.
2. Requests for assistance shall be executed in accordance with the laws, rules and other legal instruments of the requested Contracting Party.
3. Duly authorized officials of a Contracting Party may, with the agreement of the other Contracting Party involved and subject to 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 operations which are or may be in breach of 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 subject to 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 computerized information produced in any form for the same purpose.
3. Original files and documents shall be requested only in cases where certified copies would be insufficient. Originals which have been transmitted shall be returned at the earliest opportunity.

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 the sovereignty of the Faeroes or that of a Member State of the Community which has been asked to provide assistance under this Protocol; or
 - (b) be likely to prejudice public policy, security or other essential interests, in particular in the cases referred to under Article 10 (2); or
 - (c) involve currency or tax regulations other than customs legislation; or
 - (d) violate an industrial, commercial or professional secret.
2. Where the applicant authority requests 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 for the requested authority to decide how to respond to such a request.
3. If assistance is refused, the decision and the reasons therefor must be notified to the applicant authority without delay.

Article 10

Information exchange 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 which received it and the corresponding provisions applying to the Community institutions.

2. Personal data may be exchanged only where the receiving Contracting Party undertakes to protect such data in at least an equivalent way to the one applicable to that particular case in the supplying Contracting Party.

3. Information obtained shall be used solely for the purposes of this Protocol. Where one of the Contracting Parties requests the use of such information for other purposes, it shall ask for the prior written consent of the authority which furnished the information. Such use shall then be subject to any restrictions laid down by that authority.

4. Paragraph 3 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 supplied that information shall be notified of such use.

5. 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 11

Experts and witnesses

An official of a requested authority may be authorized to appear, within the limitations of the authorization granted, as an 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.

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 to experts and witnesses and to interpreters and translators who are not public service employees.

Article 13

Application

1. The application of this Protocol shall be entrusted to the central customs authorities of the Faeroes 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 of the European Community on the other. They shall decide on all practical measures and arrangements necessary for its application, taking into consideration the rules in force in the field of data protection.
2. The Contracting Parties shall consult each 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 14

Complementarity

Without prejudice to Article 10, any agreements on mutual assistance which have been or may be concluded between one or more Member States of the European Community and the Faeroes 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.