



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.04.2000  
COM(2000) 138 final

2000/0053 (ACC)

Proposal for a

**COUNCIL DECISION**

**concerning the conclusion of an Agreement in the form of an Exchange of Letters between the European Community and the Republic of Chile adding a Protocol on mutual administrative assistance in customs matters to the Framework Cooperation Agreement between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

1. The Framework Cooperation Agreement of 21 June 1996<sup>1</sup>, for which the Council approved negotiating directives on 21 December 1995, includes, among its objectives, closer and more extensive cooperation to increase and diversify trade and pave the way for progressive and reciprocal liberalisation of that trade.
2. In Article 7 of the Agreement, which provides for customs cooperation with a view to improving and consolidating the legal framework for trade relations, the parties expressly affirm their intent to consider the conclusion of a mutual assistance Protocol on customs matters.
3. On this basis, negotiations took place between the Commission and Chile. They produced the Protocol and the Agreement in the form of an Exchange of Letters initialled in Brussels on 13 July 1999.
4. The purpose of the Protocol is the prevention, detection and prosecution, through mutual assistance by the parties' competent authorities, of activities breaching customs legislation. This assistance mainly involves the forwarding of information and documents on investigations and the surveillance of specific individuals, goods, places or means of transport.
5. The Protocol is almost identical to the standard version drawn up by the Council's Working Party on Economic Questions in 1997. The only differences are the specific reference to the legal and regulatory framework for assistance and the fixing of deadlines for confirming verbal requests for assistance in writing and for responding to requests.
6. Annexed to the Protocol, there is also a declaration providing for the Joint Committee established under Article 35 of the Framework Agreement to set up a working party to help administer the Protocol.
7. This Agreement now needs to be signed and concluded:
  - to approve, on behalf of the Community, the Agreement in the form of an Exchange of Letters between the Community and Chile adding a Protocol on mutual assistance in customs matters to the Framework Cooperation Agreement;
  - to designate a person authorised to sign the Agreement.

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<sup>1</sup> OJ L 209, 19.8.1996.

Proposal for a

## COUNCIL DECISION

**concerning the conclusion of an Agreement in the form of an Exchange of Letters between the European Community and the Republic of Chile adding a Protocol on mutual administrative assistance in customs matters to the Framework Cooperation Agreement between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 in conjunction with the first sentence of Article 300(2) thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Whereas:

- (1) To allow mutual administrative assistance in customs matters between the two parties, as provided for in Article 7(3) of the Framework Cooperation Agreement leading ultimately to the establishment of a political and economic association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part<sup>2</sup>, a Protocol should be added to that Agreement.
- (2) Negotiations to that effect have taken place with Chile and have led to an Agreement in the form of an Exchange of Letters which it is in the Community's interest to approve,

HAS DECIDED AS FOLLOWS:

### *Article 1*

The Agreement in the form of an Exchange of Letters between the European Community and the Republic of Chile adding a Protocol on mutual administrative assistance in customs matters to the Framework Cooperation Agreement leading ultimately to the establishment of a political and economic association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part, is hereby approved on behalf of the Community.

The text of the Agreement in the form of an Exchange of Letters is attached to this Decision.

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<sup>1</sup> OJ C

<sup>2</sup> OJ L 42, 16.2.1999, p. 46.

*Article 2*

The President of the Council is hereby authorised to designate the persons authorised to sign the Agreement in the form of an Exchange of Letters referred to in Article 1<sup>3</sup>.

*Article 3*

The President of the Council shall, on behalf of the Community, give the notification provided for by the Agreement in the form of an Exchange of Letters.

Done at Brussels,

*For the Council  
The President*

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<sup>3</sup> The date of entry into force of the Protocol will be published in the *Official Journal of the European Communities* by the General Secretariat of the Council.

**ANNEX**

**AGREEMENT IN THE FORM OF AN EXCHANGE OF LETTERS**

**between the European Community and the Republic of Chile adding a Protocol on  
mutual administrative assistance in customs matters to the  
Framework Cooperation Agreement**

A. Letter from the European Community

Brussels,

Sir,

I have the honour to refer to the negotiations between the representatives of the European Community and the Republic of Chile with a view to concluding an Agreement on mutual administrative assistance in customs matters adding a Protocol to the Framework Cooperation Agreement of 21 June 1996, which entered into force on 1 February 1999.

This Protocol, the text of which is attached, will form an integral part of the Agreement of 21 June 1996 and will enter into force on the first day of the second month following the date of notification that the necessary procedures have been accomplished.

I should be grateful if you would confirm the agreement of the Republic of Chile to the foregoing.

Please accept, sir, the assurance of my highest consideration.

On behalf of the European Community

B. Letter from the Republic of Chile

Santiago,

Sir,

I have the honour to acknowledge receipt of your letter of today's date with the following content:

"I have the honour to refer to the negotiations between the representatives of the European Community and the Republic of Chile with a view to concluding an Agreement on mutual administrative assistance in customs matters adding a Protocol to the Framework Cooperation Agreement of 21 June 1996, which entered into force on 1 February 1999.

This Protocol, the text of which is attached, will form an integral part of the Agreement of 21 June 1996 and will enter into force on the first day of the second month following the date of notification that the necessary procedures have been accomplished.

I should be grateful if you would confirm the agreement of the Republic of Chile to the foregoing."

I can confirm the agreement of the Republic of Chile to the foregoing.

Please accept, sir, the assurance of my highest consideration.

On behalf of the Republic of Chile

Hecho en ....., el

Udfærdiget i ....., den

Geschehen zu ..... am

Έγινε, .....

Done at ....., on

Fait à ..... le

Fatto a ..... il

Gedaan te .....

Feito no .....

Tehty .....

Utfærdat i ..... den

En nombre de la Comunidad Europea

På vegne af Det Europæiske Fællesskab

Im Namen der Europäische Gemeinschaft

Εξ ονόματος της Ευρωπαϊκής Κοινότητας

On behalf of the European Community

Au nom de la Communauté européenne

A nome della Comunità europea

Namens de Europese Gemeenschap

Em nome da Comunidade Europeia

Euroopan yhteisön puolesta

På Europeiska gemenskapens vägnar

POR LA REPÚBLICA DE CHILE

POUR LA RÉPUBLIQUE DU CHILI

FOR THE REPUBLIC OF CHILE

FÜR DIE REPUBLIK CHILE

A REPÚBLICA DO CHILE

CHILEN TASAVALLALLE

TIL DEN CHILENSKE REPUBLIK

TILL DEN CHILENSKA REPUBLIKEN

PER LA REPUBBLICA DEL CILE

ΓΙΑ ΤΗ ΔΗΜΟΚΡΑΤΙΑ ΤΗΣ ΧΙΛΗΣ

VOOR DE REPUBLIEK CHILI

**PROTOCOL  
ON MUTUAL ADMINISTRATIVE ASSISTANCE  
IN CUSTOMS MATTERS**

ARTICLE 1

Definitions

For the purposes of this Protocol:

"customs legislation" shall mean any legal or regulatory provisions adopted by the Community or by Chile governing the import, export and transit of goods and their placing under any other customs regime or procedure, including measures of prohibition, restriction and control;

"applicant authority" shall mean a competent administrative authority which has been designated by a Contracting Party for this purpose and which makes a request for assistance on the basis of this Protocol;

"requested authority" shall mean a competent administrative authority which has been designated by a Contracting Party for this purpose and which receives a request for assistance on the basis of this Protocol;

"personal data" shall mean all information relating to an identified or identifiable individual;

"operation in breach of customs legislation" shall mean any violation or attempted violation of customs legislation;

"information" shall mean all data, documents, certified report copies or corresponding certified copies or other communications whatever the support may be.

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 by preventing, investigating and combating 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 a judicial authority, except where communication of such information is authorised by that authority.
3. Without prejudice of the Article 10, all assistance given in the framework of this Protocol shall be executed in accordance with the legal and regulatory provisions of each Contracting Party.
4. Assistance to recover duties, taxes or fines is not 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 goods exported from the territory of one of the Contracting Parties have been properly imported into the territory of the other Contracting Party, specifying, where appropriate, the customs procedure applied to the goods;
  - (b) whether goods 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 goods.
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 special surveillance of:
  - (a) 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;
  - (b) places where stocks of goods have been or may be assembled in such a way that there are reasonable grounds for believing that these goods are intended to be used in operations in breach of customs legislation;
  - (c) goods 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, at 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 the other Contracting Party;
- new means or methods employed in carrying out operations in breach of customs legislation;

- goods known to be subject to 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 in respect of which there are reasonable grounds for believing that they have been, are, or may 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 legal or regulatory provisions applicable to the latter, take all necessary measures in order:

- to deliver any documents, or
- to 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 or 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 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 within seven days, failing which they are to be considered null and void.
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 target 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, by carrying out appropriate enquiries or by 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 when the latter cannot act on its own.
2. Requests for assistance shall be executed in accordance with the legal or regulatory provisions of the requested Contracting Party.
3. Duly authorised officials of a Contracting Party may, with the agreement of the other Contracting Party and subject to the conditions laid down by the latter, be present to obtain in the offices of the requested authority or any other concerned authority in accordance with paragraph 1, information relating to activities that are or may be operations in breach of customs legislation 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 and subject to the conditions laid down by the latter, be present at enquiries carried out in the latter's territory.
5. The reply to the request for assistance shall be made within two months of its receipt. When the requested authority is not in position to comply with a request for assistance in this period, it shall inform the applicant authority indicating when foresees that it might comply with the request.

## ARTICLE 8

### Form in which information is to be communicated

1. The requested authority shall communicate results of enquiries to the applicant authority in writing together with relevant documents, certified copies or other items.
2. This information may be 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 requirements, in cases where a Party is of the opinion that assistance under this Protocol would:
  - (a) be likely to prejudice the sovereignty of Chile or that of a Member State which has been requested 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) violate an industrial, commercial or professional secret.
2. Assistance may be postponed by the requested authority on the ground that it will interfere with an ongoing investigation, prosecution or proceeding. In such a case, the requested authority shall consult with the applicant authority to determine if 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. For the cases referred to in paragraphs 1 and 2, the decision of the requested authority and the reasons therefor must be communicated 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 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 at least an equivalent way to the one applicable to that particular case in the Contracting Party that may supply them. To that end, contracting parties shall communicate to each other information on 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. Therefore, 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. 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 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 to experts and witnesses, and those to interpreters and translators who are not public service employees.

#### ARTICLE 13

##### Implementation

1. The implementation of this Protocol shall be entrusted on the one hand to the customs authorities of Chile and on the other hand to the competent services of the Commission of the European Communities and the customs authorities of the Member States as appropriate. They shall decide on all practical measures and arrangements necessary for its application, taking into consideration the rules in force in particular in the field of data protection. 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 subsequently keep each other informed of the detailed rules of implementation which are adopted in accordance with the provisions of this Protocol. In particular, they shall exchange annually the list of competent authorities authorised to intervene in accordance with this Protocol.

## ARTICLE 14

### Other agreements

1. Taking into account the respective competencies of the European Community and the 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 and Chile and shall
  - not affect the 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 under 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 and Chile in so far as the provisions of the latter are incompatible with those of this Protocol.
3. In respect of questions relating to the applicability of this Protocol, the Contracting Parties shall consult each other to resolve the matter in the framework of the Joint Committee, set up under Article 35 of the Framework Agreement of Cooperation.

## **Joint Declaration**

The Parties agree that the Joint Committee should set up a Working Party to help it to implement the Protocol on mutual administrative assistance in customs matters.

## **FINANCIAL STATEMENT**

### **concerning a Protocol on mutual administrative assistance in customs matters with Chile**

**1. TITLE OF OPERATION**

Signing and conclusion of the Agreement in the form of an Exchange of Letters between the Community and Chile adding to the Framework Cooperation Agreement a Protocol on mutual administrative assistance in customs matters.

**2. BUDGET HEADING(S) INVOLVED**

A-7010

A-7031

**3. LEGAL BASIS**

The Protocol in question was negotiated on the basis of directives for a Framework Cooperation Agreement between the Community and Chile, approved by the Council on 21 December 1995. The Framework Cooperation Agreement was signed on 21 June 1996.

In line with Article 7(3) of the Framework Cooperation Agreement, the parties agreed on a Protocol on mutual administrative assistance in customs matters which now needs to be appended to the Framework Cooperation Agreement by means of an Agreement in the form of an Exchange of Letters.

**4. DESCRIPTION OF OPERATION**

The purpose of the Protocol is the prevention, detection and prosecution, through mutual assistance by the parties' competent authorities, of activities breaching customs legislation. This assistance mainly involves the forwarding of information and documents on investigations and the surveillance of specific individuals, goods, places or means of transport. The Protocol is of indefinite duration and does not require renewal.

The Protocol will be administered by a working party set up by the Joint Committee established under Article 35 of the Framework Agreement.

**5. CLASSIFICATION OF EXPENDITURE OR REVENUE**

Non-compulsory expenditure.

**6. TYPE OF EXPENDITURE OR REVENUE**

- Cost of Community missions to Chile every two years.
- Where required, any meeting costs not covered by the existing infrastructure.

**7. FINANCIAL IMPACT**

7.1 Method of calculating total cost of operation (relation between individual and total costs)

7.2 Itemised breakdown of cost

Commitment appropriations EUR million (at current prices)

Breakdown	year n	n+1	n+2	n+3	n+4	n+5 and subs. yrs	Total
Total							

7.3 Operational expenditure for studies, experts etc. included in Part B of the budget

Commitment appropriations EUR million (at current prices)

	year n	n+1	n+2	n+3	n+4	n+5 and subs. yrs	Total
– Studies							
– Meetings of experts							
– Information and publications							
Total							

#### 7.4 Schedule of commitment and payment appropriations

EUR million

	year n	n+1	n+2	n+3	n+4	n+5 and subs. yrs	Total
Commitment appropriations							
Payment appropriations							
year n n+1 n+2 n+3 n+4 n+5 and subs. yrs							
Total							

#### 8. FRAUD PREVENTION MEASURES

- Implementation of Community regulations.

#### 9. ELEMENTS OF COST-EFFECTIVENESS ANALYSIS

Grounds for the operation. The main aim is to protect the collection of traditional own resources. To that end, a system will be set up to transmit information between the competent authorities on transactions which are or appear to be against Community customs legislation.

**10. ADMINISTRATIVE EXPENDITURE (SECTION III, PART A OF THE BUDGET)**

Actual mobilisation of the necessary administrative resources will depend on the Commission's annual decision on the allocation of resources, taking into account the number of staff and additional amounts authorised by the budgetary authority.

**10.1 Effect on the number of posts**

Type of post		Staff to be assigned to managing the operation		Source		Duration
				<u>Permanent posts</u>	<u>Temporary posts</u>	
Officials or temporary staff	A	0'1		0'1	Not determined.	
	B					
	C					
Other resources						
Total		0'1		0'1		

**10.2 Overall financial impact of additional human resources**

EUR

	Amounts	Method of calculation
Officials	10 800	0'1 man-years at EUR 108 000 (unit cost), Title A-1, A-2, A-4, A-5 and A-7
Temporary staff		
Other resources (indicate budget heading)		
Total	10 800	

10.3 Increase in other administrative expenditure as a result of the operation

EUR

Budget heading	Amounts	Method of calculation
A-7010	3 800	Working party meetings (once a year, alternately in Brussels and Chile)  - meetings held in Chile: four-day mission for one DG TAXUD Commission official (EUR ... per official)
A-7031	p.m.	Working party: travel costs of Council representatives involved in the working party will be met by the General Secretariat of the Council.
Total	3 800	
A-7010		In the years in which the working party meets in Chile.
A-7031	p.m.	

The amounts given correspond to expenditure for 12 months (operation is indefinite).

N.B.: Resources needed for missions undertaken by Commission officials will be obtained by redeploying existing resources.