

Economic Community of West African States, African Regional Bodies

## A/P5/5/82 Convention for Mutual Administrative Assistance in Customs Matters

Legislation as at 29 May 1982

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Economic Community of West African States

# A/P5/5/82 Convention for Mutual Administrative Assistance in Customs Matters

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**Commenced**

*[This is the version of this document as it was at 29 May 1982 to 31 May 1982.]*

## **PREAMBLE**

**The Governments of the Member States of the Economic Community of West African States**

- **CONSIDERING** the provisions of Article 12 to 26 relating to the trade regime;
- **CONSCIOUS** of the fact that the implementation of Community Rules of Origin on Products and the Programme of Trade Liberalization in respect of intra-Community trade may create some illegal trade flows;
- **CONVINCED** of the necessity rationale for the establishment of a Convention relating to mutual assistance in customs matters for a better control over normal trade and more efficient control against smuggling;

**RESOLVE** as follows:—

## **Chapter I**

### **Article 1 – Definitions**

For the purposes of the present convention and its application, the term:

1. "**Treaty**" means the founding Treaty of the Economic Community of West African States;
2. "**Community**" means the Economic Community of West African States
3. "**Council**" means the Council of Ministers set up under Article 6 of the Treaty of the Economic Community of West African States;
4. "**Commission**" means the Trade, Customs, Immigration, Monetary and Payments Commission set up under Article 9 of the Treaty of the Economic Community of West African States;
5. "**Member States or States**" means a Member State or the Member States of the Economic Community of West African States;
6. "**Customs legislation**" means the totality of legislative and regulative measures applied by customs administrations as regards the imports, exports or transit of merchandise, currency movement across the borders, including the monitoring of exchange control regulations;
7. "**Customs evasion**" means any customs infringement in which a person fraudulently evades, either wholly or in part, the payment of import or export duties and taxes, infringes the prohibition or restrictive measures applied under customs legislation or obtains any benefit whatsoever by the infringement of such legislation;
8. "**Customs infringement**" means any violation or attempt to violate customs legislation;
9. "**Commercial evasion**" means any infringement by which, outside the provisions mentioned under (g) above, any merchandise is concealed or withheld from the knowledge of the external trade authorities, whether or not subject to import duties and taxes;

10. "**Smuggling**" means any customs evasion in which merchandise is moved by any means across a customs post or un-authorised routes;
11. "**Import or export duties and taxes**" means customs and any other duties, taxes and royalties or sundry levied on imports or exports, with the exception of royalties and charges where the amount is limited by the approximate cost of the services rendered;
12. "**Entity**" means both an individual and a legal entity, unless the context provides otherwise;
13. "**Ratification**" means the formal acceptance or application of the present Convention as provided under Article 62 of the Treaty;
14. "**Competent authorities**" means any national customs administration or any other national authority designated to assist customs administration.

## **Chapter II**

### **Application of the present convention**

#### **Article 2**

1. The Member States agree that their competent authorities shall render each other assistance with a view to the prevention, detection and punishment of customs infringements, in accordance with the provisions of the present convention.
2. The competent authorities of any State may request the assistance referred to in clause 1 of the present Article in the course of any enquiry or judicial or administrative proceedings undertaken by that State. If the competent authorities lack jurisdiction in instituting direct proceedings it may request assistance only to the extent of the competence attributed to it with regard these proceedings. Similarly, if proceedings are initiated in the country of the administration from whom the assistance is requested, the latter may provide the requested assistance to the extent of the competence attributed to it with regard to these proceedings
3. In addition to the provisions of paragraph 1 of this Article this convention shall cover mutual administrative assistance in customs matters among Member States.
4. The assistance referred to in Section 1 of the present Article does not cover requests to effect arrests, nor to recover duties, taxes, charges, fines or any other sum due to a Member State, in so far as these matters come under the Community Customs Code.

#### **Article 3**

The provisions of the present convention shall also apply to non-recorded traffic in drugs and narcotics.

## **Chapter III**

### **Article 4 – General nature of assistance**

1. The particulars, documents and other sources of information communicated or obtained under the application of the present convention shall:
  - a. Be used only for the purposes given in the present convention including judicial or administrative proceedings, and only on conditions that the conditions stipulated by the competent authorities are fulfilled;

- b. Benefit in the receiving country, from the same measures protecting confidential information and professional secrets as are in that country for particulars, documents and other sources of information obtained within its own territory.
2. Particulars, documents and other sources of information may only be used for other purposes, with written consent of the customs authorities or equivalent authority providing such information, and only on condition that the conditions stipulated by the organisation under section (1) of the present article, are fulfilled.

### **Article 5**

1. Communication between Member States provided for under the present convention shall take place directly between the competent authorities. The competent authorities of Member States shall indicate the departments or officials responsible for such communications, and inform the Executive Secretariat of the Economic Community of West African States of the names and addresses of these departments. The Executive Secretariat shall communicate such information to the Member States.
2. The competent authorities of any Member States to whom a request for assistance is addressed shall take all the necessary steps to comply with the request, with due regard to the laws and regulations in force within its own territory.
3. The competent authorities of a Member State to whom a request is addressed shall reply to such a request within the shortest possible time.

### **Article 6**

1. Requests for assistance on the basis of the present convention shall normally be submitted in writing, accompanied by the necessary information and any documents deemed relevant.
2. All written requests shall be submitted in one of the official languages of the Community acceptable to the Member State concerned.
3. When the competent authorities of a Member State presents a request for assistance to another Member State, which it would be unable to reciprocate if that other State were to submit a similar request, this fact shall be stated when the request is made. The Member State to whom the request is directed shall be at liberty to decide what action should be taken with regard to the said request.
4. In all cases, each Member State shall accept requests for assistance and accompanying documents drafted in French or English, or accompanied by a translation into one of these languages.
5. Whenever requests for assistance are not submitted in writing, primarily on account of their urgency, the Member State to whom a request is addressed may demand written confirmation.

### **Article 7**

The costs arising from provision of experts and witnesses by Member States as well as other costs resulting from the application of the present convention shall be borne by the party making the request. However the content and estimate of such cost shall be mutually agreed upon by the parties concerned prior to the rendering of the said assistance.

## Chapter IV

### Article 8 – Sundry provisions

The Council, Executive Secretariat and Competent authorities responsible for implementation of the convention shall take appropriate measures to ensure that departments responsible for the prevention, detection and punishment of infringements involving customs or trade evasion are in direct and personal contact with each other to facilitate the implementation of the general aims of the present convention.

## Chapter V

### Article 9 – Technical provisions obligatory assistance

1. The competent authorities of any Member State shall communicate to the competent authorities of other Member States, any significant information reaching it in the course of its normal activities, which leads it to suspect that a serious customs or trade infringement has been or about to take place on the territory of that Member State. Such information shall concern the movement of entities or of merchandise or the means of transport used.
2. The competent authorities of a Member State shall communicate to the competent authorities of any other Member State, any document, reports, records or proceedings in support of information provided in accordance with clause I of this article either in the form of originals or as certified copies.
3. The competent authorities of any Member State shall communicate to the competent authority of any other Member State directly concerned, any information likely to be useful to it relating to customs and trade infringements and especially to new means or methods used in the commission of such infringements.

### Article 10 – Assistance with regard to determination of import or export duties and taxes

1. At the request of the competent authorities having reason to suspect that a serious customs or trade infringement has been committed within its country, the competent authorities of the Member State to whom such a request is submitted shall communicate any information at its disposal which is likely to assist in determining the exact amount of import or export duties and taxes due:
  - a. As regards the customs value of merchandise: commercial invoices submitted to the customs authorities of the exporting or importing country, or copies of the said invoices certified by the customs and as required by the circumstances; documents showing current export or import prices; a copy of the declaration of value made when the merchandise was exported or imported; trade catalogues, current prices etc., whether published in the country of export or the import;
  - b. As regards the classification of merchandise for tariff purposes; the results of any analysis carried out by laboratories to determine, the classification of merchandise whether for import or export purposes.
  - c. As regards the origin of merchandise, the declaration of origin as established if necessary in accordance with the provisions of the protocol relating to the ECOWAS rules of origin, when such declarations are required, the customs status of merchandise in the country of export (i. e. for consumption, in customs transit, in bounded warehouses on temporary importation, in a free zone, export duty draw-back etc.)



### **Article 11 – Assistance with regard to monitoring**

At the request of the competent authorities of a Member State, the competent authorities of another Member State shall submit information on the following:

- a. The authenticity of the official documents submitted in support of a declaration of merchandise to the customs authority of the Member State presenting the request;
- b. the regularity of exports, from the territory of the Member State to whom the request is submitted, of merchandise imported into the territory of the Member State requesting the information.

### **Article 12 – Assistance as regards surveillance**

At the request of the competent authorities of any Member State, the competent authorities of any other Member State shall exercise, to the extent of its competence and powers, special surveillance for a determined period.

- a. On the movements, particularly at territorial entry and exit points of entities suspected of engaging professionally or by custom, in suspicious activities on the territory of the Member State requesting the information;
- b. On the movement of any merchandise indicated by the competent authorities of the Member State requesting information as being the object of considerable illicit traffic to or from the territory of that Member State;
- c. On any locations where stores of merchandise have been built up, indicating their possible future use for illicit imports into the territory of the Member State requesting the information;
- d. On any vehicles, ships, aircraft or other means of transport which there is reason to believe are used to commit customs or trade infringements in the territory of the Member State requesting the information; and shall communicate the results to the competent authorities of the Member State submitting the request.

### **Article 13 – Enquiries and notifications carried out on behalf of another Member State**

1. At the request of the competent authorities of any Member State, the competent authorities of any other Member State shall act in accordance with the laws and regulations in force in its own country to carry out enquiries with a view to obtaining items of evidence with regard to customs or trade infringements which are the object of investigation on the territory of the Member State submitting the request, shall record the statements of individuals suspected or wanted in connection with such infringements, as well as those of witnesses or experts, and shall communicate the results of such an enquiry, together with the relevant documents or other items of evidence, to the competent authorities or other items of evidence, to the competent authorities of the Member State submitting the request.
2. On written request from the competent authorities of any Member State, the competent authorities of any other Member State shall act in accordance with the laws and regulations in force in its own country to notify any interested parties resident on its territory, requesting for information with regard to any matter relevant to the application of the present convention.

### **Article 14 – Statements by representatives of competent authorities before foreign tribunals**

When a simple written statement is not sufficient and the competent authorities of a Member State requests it the competent authorities of the other Member State shall as far as possible, authorise its agents to give evidence before the appropriate tribunal in session on the territory of the Member State requesting information,

as witnesses or experts in any matter concerning a customs or trade infringement. The request to appear before the tribunal shall specify the case in question and the capacity in which the agent or official is to give evidence.

### **Article 15 – Presence of representatives of the competent authorities of one Member State on the territory of another Member State**

1. On written request from the competent authorities of a Member State enquiring about a specific trade or customs infringement, the competent authorities of the other Member State shall authorise, whenever it deems it appropriate to do so, any agents specially designated by the Member State requesting information to gain access to any papers, records and other documents or complementary sources of relevant information held by its offices, and to take copies of such documents or extract from the information or items relevant to the said infringement.
2. In the application of the provisions of clause 1 above, the greatest possible assistance and collaboration shall be provided to agents of the competent authorities of the Member State requiring information, so as to facilitate its enquiries.
3. On the written request of the competent authorities of a Member State, the competent authorities of any other State shall authorise, whenever it deems it appropriate to do so, agents of the competent authorities requesting information to be present on the territory of the Member State to whom the request is submitted, in connection with enquiries into or establishment of a customs or trade infringement involving the Member State requesting information.

### **Article 16 – Participation in foreign enquiries**

When the two Member States concerned deem it appropriate to do so, representatives of the competent authorities of one of these Member States shall participate at the request of the other, in enquiries carried out on the territory of the latter.

### **Article 17 – Cooperation in the compilation and analysis of customs statistics**

1. The competent authorities of the Member States shall assist each other in the preparation and analysis of trade statistics of imports, exports and re-exports passing through common frontiers. To this end each exporting customs office shall communicate to the related importing customs office in the neighbouring country a monthly statement listed under tariff nomenclature positions, of quantities exported to the neighbouring country.
2. At the request of the competent authorities of a Member State, the competent authorities of another Member State shall carry out enquiries in order to check the correctness of statistics prepared by the requesting authorities in respect to imports, exports and re-exports of goods through common frontiers.

### **Article 18 – Cooperation in the preparation and operation of customs training arrangements**

The competent authorities of the Member States shall assist each other in the preparation and operation of customs training arrangements. This provision may apply to:

1. the planning and operation of joint training institution or facilities.
2. the invitation by the competent authorities of a Member State to the competent authorities of another Member State to designate officials to participate in training courses, or in other professional training activities, in order to improve their knowledge of formalities, procedures and other professional subjects of mutual interest.

## Chapter VI Centralisation of information

### Article 19

The competent authorities of Member States shall cooperate in the establishment and maintenance of a combined index of information on customs frauds involving persons and vehicles; to this end the Executive Secretariat shall be responsible for coordinating and organising the measures necessary to establish and maintain the index.

### Article 20

1. The competent authorities of Member States shall communicate to the Executive Secretariat of the Community the information provided for in Article 26 to the extent that such information is relevant to Inter-State affairs.
2. The Executive Secretariat of the Community shall establish and keep an up to date central file of information provided by Member States, and shall use the data in the file to compile summaries and studies of recent or already established trends in trade or customs evasion.
3. The competent authorities shall, on request and on condition that the remaining provisions of the present convention are satisfied, supply the Executive Secretariat of the Community with any additional information which may be required by it in order to compile the summaries and studies referred to in paragraph 2 of the present Article.
4. The Executive Secretariat of the Community shall, on request, communicate to Member States any other information in its possession in respect of the present Article.
6. The Executive Secretariat shall ensure that relevant links are established with other international organisations concerned, especially the competent organisations of the United Nations, UNESCO and INTERPOL with regard to the combating of illicit traffic drugs and narcotics.

*[Please note: numbering as in original.]*

## I Entities involved in smuggling

### Article 21

Information conveyed under the present section is intended to provide the following particulars:

1. on entities convicted definitively for smuggling offences; and
2. where appropriate, on entities suspected of smuggling or caught in the act of smuggling on the territory of the Member States responsible for supplying the information, even if no prosecution has yet resulted.

### Article 22

The principal items of information to be communicated are the following:

- A. **Individual entities**
  - a. Name
  - b. Given names
  - c. Where appropriate, maiden

- d. Surname or assumed name
- e. Occupation
- f. Present address
- g. Date and place of birth
- h. Nationality
- i. Country of residence
- j. Country or countries in which the entity has resided over the previous 12 months;
- k. Nature and number of means of identification, including dates and countries of issue;
- l. Description:

1. Sex	5. Hair
2. Height	6. Eyes
3. Weight	7. Complexion
4. Build	8. Distinguishing marks

- m. Brief description of infringement (indicate, inter alia, the nature, quantity or origin of criminally handled merchandise, the manufacturer, the shipper and forwarding agent) and the circumstances in which it was discovered.
- n. Nature and extent of the penalties incurred or the sentence passed;
- o. Any other observations, including languages spoken by the entity in question and any previous convictions, if known:
- p. Member State supplying the information (including reference number).

**B. Legal entities (Companies)**

- a. Name or type of company
- b. Address
- c. Name of principal directors or employees of the company being prosecuted and, where appropriate, descriptions as indicated in Part A above, sections (a) to (l);
- d. Name of associated multi-national company;
- e. Nature of activity;
- f. Nature of infringement;
- g. Description of infringement (including information as to manufacturer, shipper and forwarding agent) and the circumstances in which it was discovered;
- h. Maximum penalty;
- i. Any other observations, including any previous convictions, if known;
- j. Member State supplying information (including reference number)

### **Article 23**

As a general rule, the Executive Secretariat of the Community shall circulate information concerning individual entities to all Member States.

## **II Individual or legal entities involved in customs evasion other than smuggling**

### **Article 24**

1. Information conveyed under the present section is intended to provide the following particulars:
  - a. On entities convicted definitively for customs evasion offences other than smuggling;
  - b. Where appropriate, on entities suspected of such offences, even in cases where no prosecution has yet resulted.

### **Article 25**

The principal items of information to be communicated, whenever possible are the following:

1. Name (or name of company) and address
2. Names and descriptions of principal directors of the company;
3. Nature of merchandise,
4. Country of origin;
5. Associated multi-national company.
6. Name and address of seller
7. Name and address of shipper
8. Name and address of other implicated entities (buyer's or seller's agents, other middlemen, etc.)
9. Port(s) or place(s) from where the merchandise was exported
10. Brief description of the infringement and the circumstances in which it was discovered
11. Total penalty and loss of income for the Treasurer, where appropriate;
12. Any other observations, including any previous convictions, if known,
13. Member State supplying the information (including reference number).

## **III Methods used in smuggling and other types of evasion including forgery, falsification or counterfeit**

### **Article 26**

Information conveyed under the present section is intended to provide particulars relating to methods used in smuggling and other types of infringement, including the utilisation of methods of concealment, forgery, falsification or counterfeit, in all cases of relevance at international level. Member States shall in each case indicate the method used (whether smuggling or other types of evasion), as well as any new or unusual methods and any potential means of smuggling or committing other types of evasion, such that any trends developing in illicit trade may be detected.

## Article 27

The principal items of information to be communicated whenever possible, are the followings:

1. Description of methods used in smuggling and other types of evasion, including the use of forgery, falsification and counterfeit. Whenever possible, a description (make, model, registration number, etc.). When appropriate, information on the licence or number plate of containers or vehicles, the technical standards of which have been approved under the terms of an international convention, and also any indications concerning the fraudulent manipulation of seals, bolts on the sealing device, or other parts of the container or vehicles shall also be provided;
2. Where appropriate, description of the place of concealment, with a photograph or sketch whenever possible;
3. Description of the merchandise involved;
4. Nature and description of forgeries, falsification or counterfeit purposes for which the forged, falsified or counterfeited documents, customs seals, number plates, etc, have been used;
5. Further observations, especially with regard to circumstances in which the evasion was discovered;
6. Member State supplying the information (including the reference number).

## IV Ships used for smuggling

### Article 28

Information conveyed under the present section is intended to provide particulars relating to ships of all types used in smuggling. In principle, only information relating to matters considered relevant at Inter-State level shall be communicated.

## **Article 29**

The principal items of information to be communicated, as far as they are available are as follows:

1. Name and brief description of ship (tonnage, profile, etc.)
2. Name and address of charterer or shipper
3. Flag.
4. Port of registration and, if different, home port
5. Name and nationality of captain (and, where appropriate, principal officers of ship)
6. Nature of infringement, with description of any merchandise seized.
7. Description where appropriate of place of concealment (with if possible a photograph or sketch) as well as the circumstances in which it was discovered
8. Country of origin of the merchandise seized
9. Port of departure
10. Port of destination
11. Ports of call between ports mentioned in (9) & (10)
12. Any other observations (number of times the ship, shipping company, charterer of other entity using the ship under role has already participated in smuggling)
13. Member State supplying the information (including reference number)

## **Chapter VII**

### **Article 30 – Functions of the Council of Ministers**

1. The Council shall ensure the proper administration and implementation of the present Convention.
2. For this purpose, the Commission shall exercise the following functions, as authorised by the Council and in accordance with its directions:
  - a. Propose to the Council any draft amendments to the present Convention which it considers necessary;
  - b. Advice on the interpretation of the provisions of the Convention;
  - c. Take any steps liable to contribute to the implementation of the general aims of the Convention, and in particular study any new methods and procedures intended to facilitate the prevention, detection and punishment of infringements, relating to smuggling.

## **Chapter VIII** **Final provisions**

### **Article 31**

Any dispute that may arise among the Member States regarding the interpretation or application of this Convention shall be amicably settled by direct agreement. In the event of failure to settle such disputes, the matter may be referred to the Council of Ministers.

### **Article 32**

1. The present Convention shall come into force on a provisional basis upon signature by the Heads of State and Government, and on a definitive basis when it has been ratified by at least seven Member States which are signatories to the Convention in accordance with the constitutional laws of each Member State.
2. This Convention and Instruments of Ratification shall be deposited with the Executive Secretariat of ECOWAS which shall transmit certified true copies of this Convention to all Member States, and notify them of the days of deposits of the Instruments of Ratification and shall register this Convention with the Organisation of African Unity, the United Nations and such organisation as the Council shall determine.

IN FAITH WHEREOF WE the Heads of State and Government of the Economic Community of West African States have signed this Convention.

Done at Cotonou this 29th day of May 1982 in single original in the English and French languages both texts being equally authentic.