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NOTE

From:	Presidency
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Subject:	FIDE Handbook

Delegations find in annex a revised version of the FIDE Handbook, which reflects two types of changes:

- (1) **New Chapter 9.6. agreed by the 31st Mutual Assistance Committee on 29 March 2011.**

- (2) **Changes of the terminology generated by the entry into force of the Treaty of Lisbon on 1 December 2009 and by the application as of 27 May 2011 of Council Decision 2009/917/JHA of 30 November 2009 on the use of information technology for customs purposes (OJ L 323, 10.12.2009, p. 20), which repealed the CIS Convention (including its Protocols):**

<u>For</u>	<u>Read</u>
Treaty establishing the European Community (TEC)	Treaty on the Functioning of the European Union (TFEU)
Third-pillar and first-pillar issues	Shared competence and exclusive EU competence issues
FIDE 1 st pillar	FIDE (EU)
FIDE 3 rd pillar	FIDE (MS)
CIS 1 st pillar	CIS (EU)
Community or EC	EU
Convention of 26 July 1995 based on Article K.3 of the Treaty on European Union on the use of information technology for customs purposes (OJ C 316, 27.11.1995, p. 33), as amended by the Protocol of 8 May 2003 established in accordance with Article 34 of the Treaty on European Union Protocol (OJ C 139, 13.6.2003, p.1) (corrected in OJ C 56, 5.3.2005, p. 46)	Council Decision 2009/917/JHA of 30 November 2009 on the use of information technology for customs purposes (OJ L 323, 10.12.2009, p. 20)
CIS Convention	CIS Decision
FIDE Protocol dated 8 May 2003	CIS Decision
Article 1(1) CIS Convention	Article 2, point 1 CIS Decision
Article 2 CIS Convention	Article 1 CIS Decision
Article 8(1), second sentence CIS Convention	Article 8 (1), third sentence CIS Decision
Article 12 CIS Convention	Article 14 CIS Decision
Article 12A (3) CIS Convention	Article 15 (3) CIS Decision
Article 12B CIS Convention	Article 16 CIS Decision
Article 12E CIS Convention	Article 19 CIS Decision
Article 19(3) CIS Convention	Article 28 CIS Decision

FIDE

Fichier d'Identification des Dossiers d'Enquêtes Douanières

(Customs files identification database)

Handbook

(Frequently asked questions – FAQs)

How FIDE works - Summary

1.

Enter the names of persons or businesses that you are investigating in FIDE: do not forget your file number and the name of your office.

2.

Ask FIDE whether other offices are investigating or have investigated the same persons or businesses that you are investigating.

If FIDE provides this information (“hit”), check whether it is appropriate or necessary to exchange information with these offices.

-----This is what FIDE is for-----

3.

In all cases:

Update the field “status of investigation” as the time of deletion of the data depends on this.

Delete the information in FIDE if there is no further suspicion of infringements or breaches of customs laws.

Detailed information is included in this Handbook:

a general overview

and

the handbook itself:

detailed answers to detailed questions

General overview

Preface

This manual is a brief introduction to the FIDE system, informing the users of the system in a very simple way and providing a very brief description of the system. The more detailed and thorough FIDE handbook consists of questions and answers and gives a far more exhaustive study of the system. As a matter of fact, many users will probably not read the enclosed handbook as a whole, but will look for answers to specific questions only. For ease of reference, all important information is included in the answers. If necessary, there are links to corresponding answers. Where, for editorial reasons, links did not seem to be appropriate, important information is repeated.

What is FIDE?

FIDE (**F**ichier d'**I**dentification des **D**ossiers d'**E**nquêtes **D**ouanières – Customs files identification database) is an EU-wide index of investigation records, generated by Member States' customs and other investigation authorities for administrative purposes and for purposes of criminal investigations and prosecutions in the customs area.

Upon entry of a detailed query, FIDE gives information:

- on the name and address of the investigating authority, and
- a file number of the investigation record of that authority,

in cases where there is information available on files concerning both **pending or closed** investigations against natural or legal persons (“hit”). Following this, the office that entered the query may decide to ask for mutual assistance or provide spontaneous information.

Purpose of FIDE

When there is a “hit”, the objective of FIDE is to enable the national authorities who are responsible for carrying out investigations in the customs area:

- to coordinate their investigations at EU level, and/or
- to exchange available information or evidence.

FIDE concerns both ongoing and completed investigations. With the information provided with a “hit” you will be able to request mutual assistance from authorities in other Member States investigating the same person or the same business.

But this will only work if the Commission and the Member States make use of FIDE and provide it with information.

Legal basis for FIDE

FIDE consists of two databases due to the two legal bases applicable to it which are as follows:

- **as regards the area where EU has exclusive competence (Article 3 of the Treaty on the Functioning of the European Union):**

Council Regulation (EC) No 515/97 of 13 March 1997, as amended by Regulation (EC) No 766/2008 of the European Parliament and of the Council of 9 July 2008 (OJ L 82, 22.3.1997, p. 1),

- **as regards the area where EU shares competence with Member States (Article 4 of the Treaty on the Functioning of the European Union):**

Council Decision 2009/917/JHA of 30 November 2009 on the use of information technology for customs purposes (OJ L323 10.11.2009, p. 20).

For the purpose of this Handbook, they are respectively called “FIDE (EU)” and “FIDE (MS)”.

Fields of investigation - FIDE (EU) and FIDE (MS)

FIDE concerns investigations in the areas as described in “Annex 1”.

Data to be entered

Information to be entered:

1. Persons (name, date of birth, nationality, sex),
2. Businesses (business name, name under which trade is conducted, registered office, VAT identifier, excise number),
3. Contact information of the Member State’s authority handling the case,
4. File number of the investigating authority.

In addition, general information on the scope of the investigation should be entered.

Member States may also decide to enter the name of the investigating officer.

What to do if FIDE provides information (“hit”)?

Ask for assistance (if necessary) or send spontaneous information.

Curious?

For more detailed information on how FIDE can assist you in your investigations, please read the attached FIDE handbook.

If you need technical information on how to store data in FIDE and how to query FIDE, please read the FIDE Manual issued by OLAF.

If you require access to the system, please contact your national liaison officer.

FIDE Handbook

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1. INTRODUCTION

1.1. Purpose of the handbook

The handbook describes how all the authorities in the individual Member States cooperate at EU level using the two FIDE databases.

The legal bases for FIDE are as follows:

- as regards the area where EU has exclusive¹ competence²:

Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters, (OJ L 82, 22.3.1997, p. 1) as amended by Regulation (EC) No 766/2008 of the European Parliament and of the Council of 9 July 2008 (OJ L 218, 13.8.2008, p. 48), (hereinafter: Regulation (EC) No 515/97),

- as regards the area where EU shares competence² with Member States³:

Council Decision 2009/917/JHA of 30 November 2009 on the use of information technology for customs purposes (OJ L 323 10.11.2009, p. 20), (hereinafter: CIS Decision).

¹ Article 3 of the Treaty on the Functioning of the European Union.

² The term "competence" refers in essence to responsibility for regulation. Member States' administrations implement EU law.

³ Article 4 of the Treaty on the Functioning of the European Union.

In many cases, the legal bases for an exchange of information following the receipt of information from FIDE ("hit"¹) are:

- Regulation (EC) No 515/97 (see above), and
- the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on mutual assistance and cooperation between customs administrations, (OJ C 24, 23.1.1998, p. 1) (hereinafter: Naples II Convention).

Member States can adopt legal provisions or administrative guidelines supplementing the basic procedures described in this handbook. This handbook does not contain any information regarding questions which are of purely national interest.

Information regarding the technical operation of the FIDE IT application is contained in the FIDE User Manual.

The authors are aware that the use of FIDE is not an end in itself but simply a tool to help practitioners engaged in investigating breaches of customs law to cooperate successfully with one another. Although FIDE will cost the user in terms of working hours, investigators will be compensated in full by the service which FIDE provides in enabling them to provide information and evidence and to coordinate investigations at EU level. These, at least, are the expectations which are being placed on FIDE. It will be able to meet those expectations only if the Commission and Member States make use of FIDE and give it a "good start" in the form of a maximum quantity of data which can then be retrieved in the event of a "hit". The aim of this handbook is to show how FIDE can contribute towards this.

The handbook is written in the form of a compilation of questions and answers. Since the aim is to enable the reader to find an immediate and comprehensive answer to his questions, certain concepts which are essential in terms of understanding FIDE are reiterated below.

The handbook needs to be updated as soon as new legal instruments enter into force.

¹ The functioning of the FIDE database is also commonly referred to as an "index file" or a "hit/no hit" system.

1.2. What is the scope of application of the two FIDE databases?

FIDE (EU) includes references to investigation files in the area of EU customs legislation (such as the customs code, rules of origin) and legislation on prohibitions and restrictions on the import and export of goods (i.e. precursor or political embargoes). For details see Annex 1.

The fact that a criminal investigation is being conducted does not exclude the storage of data in FIDE (EU).

FIDE (MS) includes references to investigation files concerning infringements against national customs legislation (prohibitions and restrictions). For details see Annex 1.

1.3. Definitions (for the purposes of this handbook)

- “CIS – Customs Information System”
is a database for the purposes of sighting and reporting, discreet surveillance, specific checks and operational and strategic analysis¹. (From a legal point of view, FIDE is formally a part of CIS, see question 2.2).
- “Competent authority”
is a national authority designated by a Member State to have direct or indirect access (writing or read-only). The concept of FIDE assumes that, in principle, competent authorities have the competence to conduct investigations.
- “File number”
is an alphanumeric reference under which investigations are registered in the national systems, such as A528/2009 or 2009/7456 - C 1-OR.
- “File reference”
is the summary of all information on the existence of a case stored in FIDE, including the file number.

¹ Purpose: operational and strategic analysis for CIS (EU) only.

- “Breach of EU customs legislation”

This term is used to describe the application of EU customs legislation in a way other than in compliance with the legislation (improper application), regardless of whether a known or unidentified person has committed such a breach of EU customs legislation with or without criminal intent or through negligence.

Member States investigate breaches of EU customs legislation in order to ensure the correct implementation of EU administrative law. For that purpose they cooperate with other Member States and with the Commission within the framework of Regulation (EC) No 515/97.

The term “EU customs legislation” also includes agricultural legislation applicable to goods entering or leaving the customs territory of EU.

If the case has a criminal background, Member States may, in addition, investigate “infringements”.

- “Infringement”

is to be understood within the meaning of the definition of “infringement” in Article 4, point 3 of the Naples II Convention (“acts in conflict with national or EU customs provisions”).

“Infringement” (“contravention”) is a criminal act whereby a known or unidentified person has infringed legislation either intentionally or through negligence.

Member States investigate infringements with the aim of tracing the persons responsible and ensuring that they face criminal prosecution.

Examples:

- a) investigating those responsible for the non-payment of customs duties to be paid upon smuggled goods;
- b) investigating those responsible for the smuggling of contraband goods, such as drugs.

In general, an incorrect application of EU administrative legislation (“breach of EU customs legislation”) is the pre-condition for an infringement. (Example: there is no “smuggling” when goods are declared and customs duties are collected in line with the provisions of the customs code.)

- “Hit”
is the act of finding information in FIDE linked to the person or business that is the subject of the query.

2. POTENTIAL USES OF FIDE / BASIC QUESTIONS

Previously, there have been occasions when authorities in various Member States have conducted investigations on the same persons or businesses, concerning the same, similar or related actions, without being aware of one another's activities. Clearly, the persons and businesses concerned benefited from the fact that the authorities could only ascertain some of the facts, and may even have interfered with or hampered one another's investigations.

This is now a thing of the past. FIDE enables Member States to systematically coordinate their investigations into specific persons and businesses.

2.1. Detailed example for the use of FIDE

Case:

- The Madrid customs investigation office is conducting an investigation (file number 123/09) into the German national Bella Schmitz, who is suspected of cocaine smuggling. They have evidence of cocaine smuggling but have not ascertained the sources.
- Bella Schmitz travels from Colombia to Frankfurt. The German authorities find 5 kg of cocaine in her luggage. They start an investigation (file number 456/09). They suspect that the cocaine was to be transported on to other countries.

Variant 1

Situation without FIDE

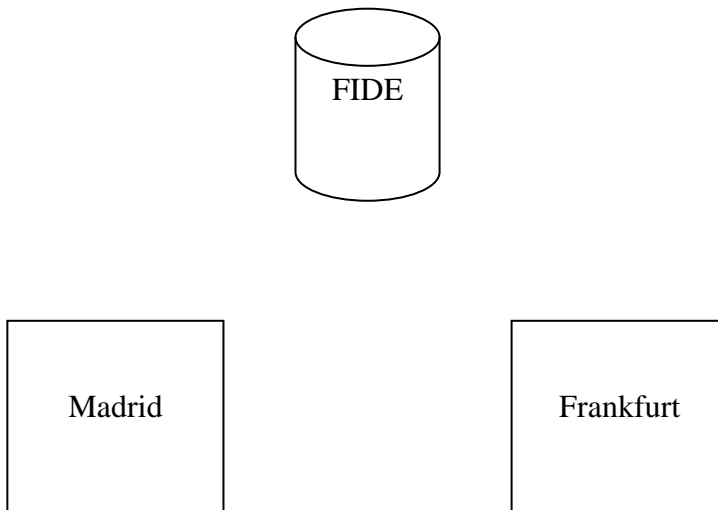


Assessment:

No awareness of the fact that the other unit is investigating the same person.

Variant 2

FIDE in place but not used.

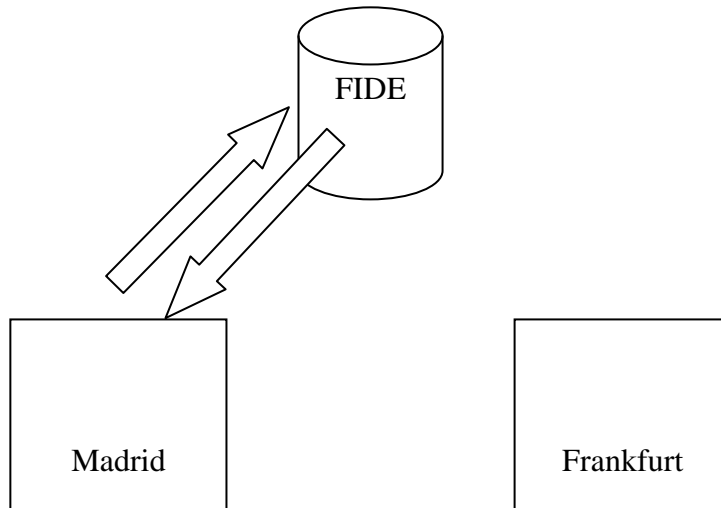


Assessment:

No awareness of the fact that the other unit is investigating the same person.

Variant 3

As soon as she is intercepted, the Madrid customs investigation service enters Bella Schmitz's data, (including the file number, 123/09) into FIDE. At the same time, they run a search to determine whether any data on Bella Schmitz are already stored in FIDE.



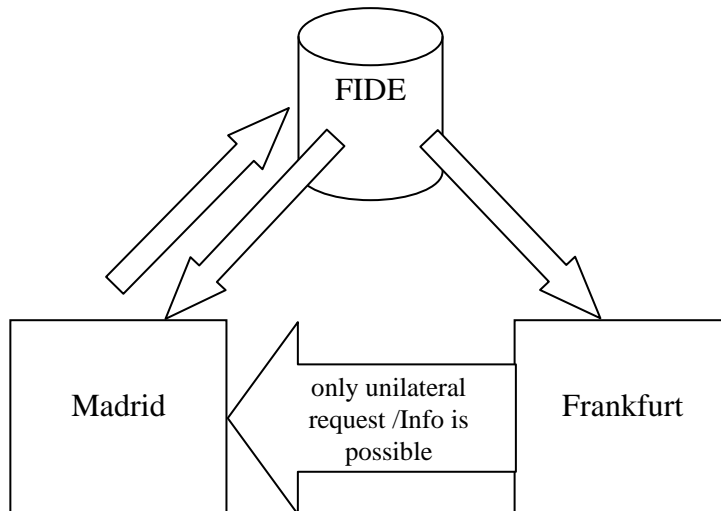
Assessment:

As Madrid has entered its data, it can be asked for additional information by any authority authorised to use FIDE. Frankfurt does not run a search in FIDE, nor does it enter any data of its own.

As a result, each authority is still unaware that the other is investigating the same person.

Variante 4

The authorities in Frankfurt run a search in FIDE and find the reference to Madrid's file number 123/09 (a "hit"); but they do not enter any data of their own.



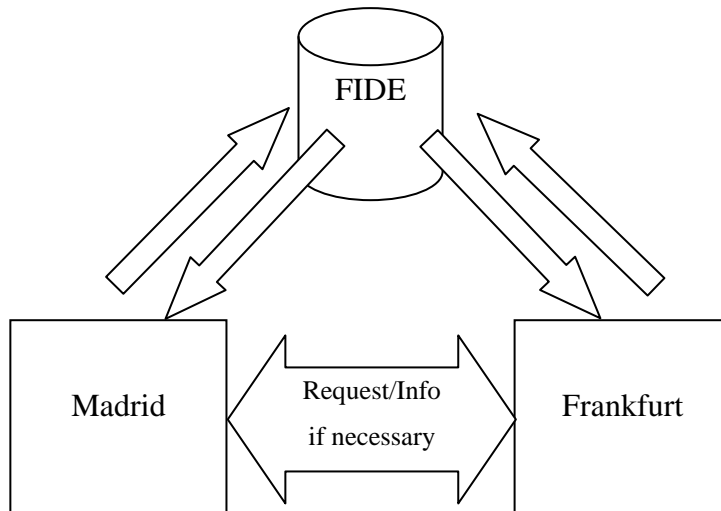
Assessment

Frankfurt knows that at least one authority in a Member State (Madrid) is investigating a person who could be the same person that Frankfurt is investigating. However, as long as Frankfurt does not enter its own data into FIDE (or pass it on to Madrid), or send a request for assistance to Madrid, Madrid will not know of the investigation in Frankfurt and is therefore unable to submit a request for assistance to Frankfurt.

Frankfurt should therefore contact the Madrid office to check whether it is appropriate to provide direct information on the ongoing investigation.

Variant 5

As variant 4, but now Frankfurt does enter data into FIDE:



Assessment:

As a result, when the authority in Madrid searches in FIDE again, it learns that Frankfurt has entered data (file number 456/09) on a person who may be the same as the person being investigated by Madrid.

If Frankfurt does not submit a mutual assistance request or send “spontaneous information”, Madrid can do so.

Variant 5 is the "ideal situation". This example shows that it is important to:

- enter the names of persons and businesses in FIDE, and
- search in FIDE for the names of persons and businesses

as soon as possible. The search can be repeated to check whether other offices have, in the meantime, stored relevant information without informing you directly.

FIDE does not automatically notify the offices whose data are found. Therefore if an office identifies a "hit" and decides that a mutual assistance request is not necessary, it may still be useful to provide spontaneous information to the other office.

2.2. What is the relationship between the Customs Information System (CIS) and the customs files identification database (FIDE)?

The Customs Information System (CIS) is a database in which information is stored for the purposes of "discreet surveillance", "specific controls" and "sighting and reporting" as well as, in the case of Regulation (EC) No 515/97, "operational analysis" and "strategic analysis".

FIDE is a database in which the file numbers of ongoing and completed investigations of persons and businesses are stored for the purpose of cooperation ("mutual assistance") in conducting investigations.

These databases are operated completely separately, because they serve different purposes.

The legal instruments relating to the Customs Information System, Regulation (EC) No 515/97 and the CIS Decision, have been supplemented by provisions on FIDE. Where no specific provisions relating to FIDE have been adopted, the general regulations for CIS apply.

For these historical reasons, the term "Customs Information System" (CIS), as used in

- Regulation (EC) No 515/97, and
- the CIS Decision,

includes FIDE.

In practice we distinguish between two databases:

- FIDE for the customs files identification database, and
- CIS for the database for the purposes of sighting and reporting, discreet surveillance, specific checks and operational and strategic analysis.

2.3. How many databases are actually involved?

In total, there are four databases. It has not been possible to combine the data they contain in a single database because:

- the competences of EU and those of the Member States, and also (in respect of both EU and Member State competences)

- the different purposes for which data are held

had to be taken into account:

EU competence Regulation (EC) No 515/97		Member States' competence CIS Decision	
Purpose: CIS	Purpose: FIDE	Purpose: CIS	Purpose: FIDE
<ul style="list-style-type: none"> ▪ specific controls ▪ discreet surveillance ▪ sighting and reporting ▪ operational analysis ▪ strategic analysis 	<ul style="list-style-type: none"> ▪ identifying competent authorities investigating the same persons or businesses 	<ul style="list-style-type: none"> ▪ specific controls ▪ discreet surveillance ▪ sighting and reporting ▪ operational analysis ▪ strategic analysis 	<ul style="list-style-type: none"> ▪ identifying competent authorities investigating the same persons or businesses

Because of the different legal bases, the datasets entered by users are kept strictly separate.

A user authorised to access both FIDE (EU) and FIDE (MS) should not notice, however, whether he is working in the area of EU competence or Member States' competence. This is due to the fact that, for their respective purposes, the wording of the legal bases in Regulation (EC) No 515/97 and the CIS Decision is, as far as possible, parallel and one program manages both databases. FIDE has a uniform user interface; the differences between the EU scope of competence and that of the Member States are the options shown in the field "field of investigation" and the fact that you should enter "previous surnames" or "excise ID number" into the FIDE (EU) only.

It is because of this near-parallel wording of the legal provisions that it is possible to set out largely uniform rules in this handbook for the use of both FIDE databases.

Consequently, users who have access only to the FIDE (MS) and those who have access only to the FIDE (EU) see almost the same screen. But they cannot search or write in each other's database.

2.4. Which countries or organisations can use FIDE?

All Member States participate in FIDE on the basis of both Regulation (EC) No 515/97 and of CIS Decision.

In addition, as regards the area where Regulation (EC) No 515/97 is applicable, the European Anti-Fraud Office (OLAF) also participate in FIDE (EU). As regards the area where CIS Decision is applicable, Eurojust and Europol can take part in FIDE (MS).

Third countries do not take part in FIDE (partial factual exception: see question 9.1).

2.5. Why are the file references of criminal investigations of breaches of EU customs legislation, as defined in Article 2 of Regulation (EC) No 515/97, stored in FIDE (EU) and not in FIDE (MS)?

On the basis of the CIS Decision, FIDE contains only the file references of criminal investigations of infringements of "national laws" specified in point 1 of Article 2 of the CIS Decision (prohibitions and restrictions on cross border traffic, money laundering). This is why criminal investigations of breaches of EU customs legislation are not covered by FIDE (MS).

There is no legal loophole, however, since breaches of EU customs legislation are covered by FIDE (EU) on the basis of Regulation (EC) No 515/97.

Article 41b(1)(a) of Regulation (EC) No 515/97 provides:

"The data shall cover only the following categories:

- (a) persons and businesses which are or have been the subject of an administrative enquiry or a criminal investigation by the relevant service of a Member State, and..."

This makes it clear that the FIDE (EU) includes the file references of criminal investigations by the relevant authorities (not just customs administrations!).

Background:

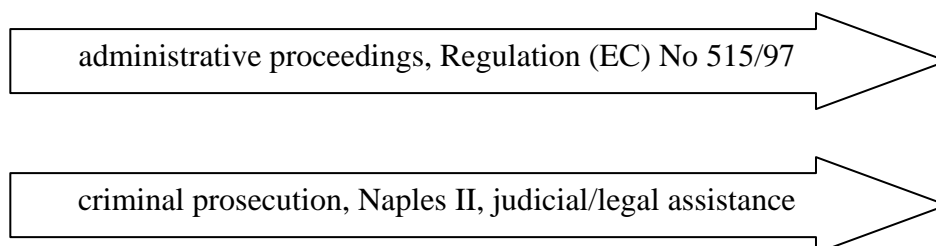
Regulation (EC) No 515/97 only provides the legal basis for mutual assistance to ensure correct application of EU customs legislation. Regulation (EC) No 515/97 does not aim to support the investigation of infringements of EU customs legislation in terms of law enforcement or criminal prosecution. However, cases that have a criminal background are also relevant for administrative investigations and administrative follow-up in order to apply EU customs legislation correctly, and to protect the financial interests of EU. This is because an infringement (punishable according to national criminal law) can only take place if EU customs legislation is not correctly applied. So administrative and criminal aspects are closely interlinked. Often the same information serves both administrative and criminal purposes:

Example: It is necessary to know the quantity of cigarettes that have been smuggled

- to levy customs duty (and, at the same time, to levy the excise duty and VAT on importation), and
- to collect evidence as to whether this was a serious infringement.

There is a big difference between 3 000 and 3 000 000 cigarettes being smuggled, both for fiscal purposes and for purposes of criminal prosecution.

Investigations for administrative and criminal purposes are therefore conducted in parallel:



The administrative proceedings, administrative cooperation and the system of mutual assistance (MA) communications do not come to an end simply because the breach of EU customs legislation detected may also constitute a criminal offence and a criminal investigation is therefore being conducted.

When investigations are conducted in parallel in this way for administrative and law enforcement purposes, a criminal investigation may affect the application of Regulation (EC) No 515/97 in the following respects:

- Prior authorisation of the judicial authority for communications in application of Regulation (EC) No 515/97 may be requested by national law (final sentence of Article 3 of Regulation (EC) No 515/97).
- When criminal law is applied, the defendants are no longer obliged to comply with administrative law (e.g. to cooperate and present their businesses' books).
- Any information (previously) received in administrative proceedings can be used as evidence for criminal proceedings in court (Article 45(3), first sentence of Regulation (EC) No 515/97).

Any information which has been obtained in the course of later criminal proceedings can be used as evidence in administrative proceedings, if the judicial authorities agree (Article 3 of Regulation (EC) No 515/97).

Therefore, provided that consent is given by the judicial authorities in those Member States where this is necessary, a reference to a file that serves not only administrative purposes but also criminal purposes can be stored in FIDE. The fact that a criminal aspect is not even required as a condition for storing data in FIDE increases the number of cases that may be stored in FIDE.

Data received from the FIDE (EU) in the event of a “hit” may be used not only for mutual assistance under Regulation (EC) No 515/97, but also (at the same time) for the purposes of FIDE (MS) of prosecution and punishment of the same case, including cooperation on the basis of Naples II (second sentence of Article 43 (3) of Regulation (EC) No 515/97).

The following table summarises the points set out above.

	FIDE (EU) Regulation (EC) No 515/97	FIDE (MS) CIS Decision
National customs law	-----	Information on file references to persons and businesses that are the subject of criminal investigations term used in this handbook: “(criminal) infringement”
EU customs legislation	Information on file references to persons and businesses that are the subject of administrative investigations, (the fact that a criminal investigation is conducted into the same act does not exclude the storage of data in FIDE.) term used in this handbook: “breach of EU customs legislation”	-----

2.6. Is FIDE applicable in the area of VAT fraud or evasion of harmonised excise duties?

Generally, FIDE cannot be used to investigate suspected breaches of EU VAT and excise legislation and data cannot be entered in it for VAT and excise purposes. However, as circumstances in which EU customs legislation has not been complied with often also include non-compliance with EU legislation relating to:

- VAT on imports or exports of goods from/to third countries, and
- excise duties on imports or exports of goods from/to third countries,

information obtained from FIDE in such circumstances may also be used to request mutual assistance or to provide spontaneous information on the basis of Regulation (EC) No 1798/2003 (VAT irregularities) or Regulation (EC) No 2073/2004 (excise irregularities).

See also question 3.14 on data entry and question 5.1 on data query.

2.7. My authority already has a customs files identification database which contains considerably more data fields and can be exploited in many more ways. So why should I use FIDE?

Many Member States have national information systems that show which persons and businesses are being investigated by the competent local authorities. It is possible, for instance, to ascertain that authorities on the maritime border and inland authorities are investigating the same person.

These Member States' information systems, however, have one crucial disadvantage: they are only available to authorities in one Member State.

This is the great added value of FIDE: through FIDE, the competent authorities can discover which authorities in other Member States are investigating the same person or business.

FIDE is used by various authorities in all Member States, which of course comprise a number of local offices.

FIDE and any national databases must be operated in parallel. In order to avoid double-entry of data, data can be transferred automatically from a national system to FIDE using XML files. There are different possibilities available:

- transfer of one file or a batch of files,
- transfer of data directly into the central database, or
- transfer of files as drafts and checking them one by one before storing in the database.

The XML scheme for FIDE can be obtained from OLAF.

2.8. My authority has no national customs files identification database. What is the value of FIDE in this case?

The information in FIDE is available in the same way to all Member States. The information can therefore be searched not only in other Member States but also in the Member State which entered the data.

FIDE can therefore also be used on a national level. When FIDE is used in this way for national purposes, it is important to note:

- that all Member States can read the data, and
- that the EU provisions and the CIS Decision apply.

2.9. How many access authorisations are issued to Member States?

Member States can grant access to all authorities of the customs administration and to other administrations which require access to FIDE. There is no limit on the number of connections.

2.10. Why do the data in FIDE contain so little information on breaches of EU customs legislation or infringements of national customs laws?

The best form of data protection is the reduction of data to the quantity that is absolutely indispensable. In addition, having fewer data for one “case” also has the advantage that the workload of data entry and updating is less.

FIDE is only intended for the purpose of informing other Member States

- which competent authority of the Member State in question is investigating or has been investigating,
- under which file number,
- in which field of investigation,
- who (person) or what (business).

The data contained within FIDE fulfil this purpose. Should the requesting Member State need further information in the case of a “hit”, it may ask for it in a mutual assistance request. Limiting the amount of information entered into FIDE means that the workload of the officer responsible for entering and updating data is kept to a minimum.

At the same time, each Member State should, when entering data into FIDE, be aware that misuse of these data cannot be excluded with certainty. For this reason data may not be entered where even the mere (unauthorised) knowledge of the existence of investigation files could jeopardise the life or health of persons.

Should the requesting Member State need further information in the event of a “hit”, it may ask for it in a mutual assistance request. The data contained in FIDE fulfil this purpose perfectly.

2.11. Who has access to FIDE (reading and writing)?

Access should be allowed to any official whose job it is to carry out administrative or criminal investigations of certain persons or businesses. It is up to the Member States to determine, on the basis of their legislative provisions and administrative structures, which authorities and which officials to have such access. Access may be direct or indirect. It is indirect when, for example, an officer himself or herself cannot input or search data, but must ask another official or authority to do this for him/her.

It is an important fact that, depending on the legislative and administrative structures of the Member State in question, not only the customs authorities but also all authorities which carry out criminal investigations in the area to which FIDE relates have access to FIDE (41a(3) of Regulation (EC) No 515/97; Articles 7(1), 15(1) of the CIS Decision).

The reason for this provision is that the customs administrations in the Member States have different competences. Cooperation between the competent authorities in the Member States in the area of national customs legislation and EU customs legislation (including legislation protecting the financial interests of EU) must not be hindered by national competences.

In order to exclude the problems associated with different competences in different Member States, the EU's rules on mutual assistance (Regulation (EC) No 515/97) and those of the Member States (CIS Decision, Naples II Convention) specifically lay down the area in which, and the extent to which, the Member States must provide mutual assistance.

The authority competent for this is determined by the Member States.

These considerations are of paramount importance for the use of FIDE.

FIDE is intended to help the Member States to coordinate investigations in the area of customs between Member States and enable the exchange of documentary evidence held. For this reason it is necessary that all authorities (apart from judicial authorities) which are responsible for administrative and criminal investigations be granted writing and reading access to FIDE. The use of FIDE would otherwise be jeopardised for all Member States if individual Member States failed to enter data into FIDE because they limited writing access to FIDE only to authorities that fulfil the formal condition of a “customs authority”.

After a “hit” in FIDE, mutual assistance in the area of criminal investigation is often requested on the basis of the Naples II Convention (section 1.1). Depending on the judicial and administrative rules of the host state customs administrations, the police and also other authorities may be responsible for such cooperation.

Considering the purpose of FIDE and in accordance with their actual and local circumstances, the Member States will determine which officials and which authorities will be granted read-only and/or read-write access to FIDE.

2.12. Can the Public Prosecutor's Office have access to FIDE?

Concerning FIDE (EU), the legal basis of Regulation (EC) No 515/97 relates only to administrative authorities. There is no legal basis for giving Public Prosecutor's Offices direct access to FIDE (EU). However, in certain cases it may be necessary to give the Public Prosecutor's Office indirect access to FIDE, for example by providing information as to whether there is information in FIDE on specific persons and businesses. That information ("hit") can help the Public Prosecutor's Office to decide:

- whether to advise a customs administration (Article 4(7) of the Naples II Convention) to send a Naples II request for mutual assistance to the authority that stored the data in FIDE with the aim of prosecuting infringements of EU customs legislation (it is anticipated that, in the event of such a request, the customs administration will also ask for information on the basis of Regulation (EC) No 515/97 for administrative purposes), or
- to submit a request for mutual legal assistance. In this case it is proposed that the request include the information received in the "hit", and what authority in the requested Member State is or has been conducting an investigation.

As to FIDE (MS) (CIS Decision), Member States can decide whether to nominate Public Prosecutor's Offices as authorities who have direct access to FIDE (Article 15 (2) of the CIS Decision). This may be advantageous, because FIDE (MS) only includes file references to cases of severe criminal infringements.

In case of a "hit", the Public Prosecutor can proceed as described above for FIDE (EU).

If the judicial authorities wish to have direct access to FIDE, they must comply with the data protection rules and monitoring requirements in the CIS Decision.

Where appropriate, the Public Prosecutor's Office may also have indirect access to information from FIDE (MS).

See answer to question 7.5.

2.13. Can I also issue alerts with the system?

No. FIDE must only be used to direct a request for assistance to a specific authority, which may possibly be investigating or have investigated the same person or business. Alerts which contain a request to take a particular form of action when a particular person or a particular item is encountered are a matter for the Customs Information System (see question 7.6).

2.14. Can I copy data from FIDE into national or EU systems?

For the FIDE (EU), the question arises as to whether Article 41a, second sentence, and Article 35(3) of Regulation (EC) No 515/97 are also applicable. These provisions allows the Member States to copy data from CIS into:

- national risk management systems used to direct customs controls at national level, or
- systems for operational analysis used to coordinate measures at EU level

on a routine basis. (No comparable provision is contained in the CIS Decision, for which reason the question does not arise for the FIDE (MS)).

Such copying of data from FIDE (EU) into national or EU systems would not be permitted. Article 35 (3) of Regulation (EC) No 515/97 cannot be applied to FIDE, because the purposes of recording data in CIS and FIDE are different. If the data were copied, they would not be used exclusively for FIDE purposes, i.e. requesting mutual assistance.

2.15. What is the "list of serious contraventions", Article 15 (3) of the CIS Decision?

Under the CIS Decision, only offences in relation to serious infringements of "national laws" referred to in point 1 of Article 2 thereof may be recorded in FIDE. These are offences concerning national prohibitions, restrictions and controls on cross-border trade, for example drug smuggling or child pornography or money laundering (see Annex 1).

Content relating to fiscal matters generally does not fall within the scope of the CIS Decision and therefore does not fall within the scope of the Member States' FIDE system¹.

(It should be noted that there may also be breaches of EU customs legislation concerning trade in goods subject to EU prohibitions, restrictions or controls², see question 2.17.)

With regard to such offences, only file references relating to "serious" infringements may be included in FIDE. This should ensure a proportional relationship between the seriousness of the charge on the one hand and the extent of the encroachment on individual rights in the form of storage in FIDE on the other, as the personal data are disseminated to all the Member States. It is thus not allowed to store file references to less serious operations in FIDE, even where, from a criminologist's viewpoint, they could make valuable contributions to further investigations.

The CIS Decision does not include a definition of "serious" infringement. Instead, each Member State decides for itself the offences for which it enters data in FIDE. For this the following procedure and conditions must be fulfilled:

- Under Article 15 (3) each Member State must declare the types of offences against national law referred to in point 1 of Article 2 of the CIS Decision for which it intends to enter data in FIDE. This is a unilateral declaration by each Member State which need not be agreed with other Member States.

Member States should base their declarations first and foremost on their national criminal law. Since, however, a declaration including for example "offence against paragraph 140 of the Criminal Code" cannot be directly understood by other Member States, a non-binding explanation such as: "commercial drug dealing in quantities of over 1 kg of hashish or 50 g of cocaine" could be appended.

Each Member State may update their declaration at any time.

¹ There may be exemptions in Member States which refer, for example, to binding rules on distribution licenses for goods such as alcohol and tobacco.

² Example: precursors for the manufacture of narcotics within the meaning of Regulation (EC) No 111/2005 or EU embargoes.

The list of offences for which a Member State will enter the file references in FIDE is, firstly, information for the other Member States. Secondly, this list can also have a domestic impact, since it stipulates the investigations whose record file may be entered in FIDE according to national law.

- In addition, the offences that are included in this declaration must be punishable by one of the following two possible penalties:
 - deprivation of liberty or a detention order for a maximum period of not less than twelve months. This is the same penalty threshold as in Article 2(1) of the European Convention on Extradition of 13 September 1957. The Member States adopted this threshold on the basis of the consideration that an offence is "serious" and may be stored in FIDE where the circumstances also warrant arrest and extradition.

Example:

The relevant infringement of national customs laws as referred to in Article 2 of the CIS Decision is punishable in a Member State by a detention order of a period from nine months to three years.

In this example, the maximum period of the penalty is three years. The maximum penalty is accordingly two years more than the minimum period ("threshold") of 12 months. The lower limit, in this case nine months, is of no importance.

- a fine of at least EUR 15 000.

Example:

The relevant infringements of national customs laws under Article 2 of the CIS Decision are punishable in a Member State by a fine of EUR 10 000 to EUR 200 000. This operation may not be stored in FIDE because the lower threshold of EUR 15 000 is not reached.

Those two prerequisites must be fulfilled before data are entered. If investigations have led to evidence of an offence which fails to fulfil either condition the data in FIDE must be deleted. This may, depending on national law, be the case where, for example, no premeditation but only gross negligence can be proved.

2.16. Why is there no "list of serious breaches of EU customs legislation" for FIDE pursuant to Regulation (EC) No 515/97?

In FIDE (EU) only file references on cases that are of "particular relevance at EU level" may be stored (Article 27 (2) final sentence of Regulation (EC) No 515/97), see question 3.4.

2.17. The legal basis for prohibitions and restrictions may be national laws and/or EU customs legislation. What is the impact on the use of FIDE?

The legal basis for prohibitions and restrictions may be found either in national laws and/ or in EU customs legislation. How does the source of the legal basis influence the use of FIDE?

Additionally to the answer given with respect to question 2.5, this is answered as follows:

a) Data from investigation files concerning cases of criminal investigations because of serious contraventions against prohibitions and restrictions that are defined by national law (such as those concerning drugs, pornography, arms) are to be stored in FIDE (MS).

b) Data from an investigation file concerning a case:

- in which the prohibitions and restrictions have been applied in a way that may constitute a breach of the EU customs legislation or agricultural legislation applicable to goods entering or leaving the customs territory of the EU (such as EU provisions concerning precursors, CITES or political embargoes against single countries), and
- which is of particular relevance at EU level

are to be stored in FIDE (EU).

The investigations may be conducted for administrative purposes or for purposes of criminal prosecution:

	FIDE (EU)	FIDE (MS)
Prohibitions and restrictions stipulated by national criminal law are subject to national competences		applies if declared according to Article 15 (3) of the CIS Decision
Prohibitions and restrictions, applicable to goods entering or leaving the customs territory of the EU, are subject to administrative enquiries because of breach of EU customs or agricultural legislation <u>precondition that may be fulfilled:</u> Prohibitions <u>and</u> restrictions stipulated by national criminal law, applicable to goods entering or leaving the customs territory of the EU are subject to EU competences	applies if case is of particular relevance at EU level.	

3. DATA ENTRY

3.1. When should data be entered into FIDE?

Data should in principle be entered into FIDE as early as possible, in order to ensure that any investigation of the same case or investigations of cases that have a mutual reference are coordinated between the authorities and to allow for the prompt exchange of information.

However, data may be entered into FIDE only if the actual and legal conditions for entry are fulfilled. Data may be stored only if an investigation file is “opened”. In many Member States this includes the existence not only of an assumption of suspected breaches of EU customs legislation or infringements, but also of indications or evidence thereof.

If a "new" case of breaches of EU customs legislation or infringement is being investigated, it is recommended that

- the data be entered into FIDE and
- a search be conducted as to whether FIDE already contains information on that person or business ("hit"), see question 3.7.

3.2. What is the difference between the date of entry of the data and the date of the start of the storage period?

To ensure that different legal rules or delays in the physical storage of data in FIDE do not have any adverse effects on the calculation of the maximum time of retention of data in FIDE, the period is calculated from a point in time which, objectively speaking, is easy to determine.

The storage period (see section 4) runs from the day of entry of the data in the investigation file - and not from the day that the data are physically stored in FIDE (Article 41d(1), second sentence, of Regulation (EC) No 515/97; Article 19(1), second sentence, of the CIS Decision). This is the day on which the investigating authority first notes on paper or in a national electronic file that investigations are being conducted into certain persons or businesses. In accordance with national laws or rules of procedure, this point in time may be identical to the moment when administrative investigations or criminal investigations are launched.

It is therefore possible that in some cases the date from which the maximum storage period is calculated and the date on which the data are stored in FIDE will be different.

The following are examples of how to determine the start of the maximum period for retention of data in FIDE:

Example 1:

The Frankfurt customs investigation office starts an investigation of the German national named Bella Schmitz on Monday. She is suspected of having smuggled 5 kg of cocaine in her luggage on that day. For various reasons, the authority does not enter the person's details in FIDE until the following Friday. The calculation of the maximum storage period starts from the Monday.

To ensure that FIDE can properly calculate the maximum retention period, Monday must be entered as the start of investigation (which is the day on which calculation of the retention period starts). Otherwise the maximum storage period could unlawfully be exceeded by four days.

Example 2:

The investigation of Bella Schmitz is conducted as from 1 February 2009. The Public Prosecutor's Office does not agree to data being entered in FIDE because covert investigators would then be put at risk. The Public Prosecutor's Office agrees on 22 August 2009. The data are stored in FIDE on 3 September 2009. Although the data are physically stored in FIDE on 3 September 2009, the date of the start of the investigation must be entered as 1 February 2009. The data are automatically deleted on 31 January 2019 at the latest.

It is technically possible to periodically transfer data from a national database to FIDE using XML features (see question 2.7). These data must include all correct information on the point in time at which the investigation files were opened, so that FIDE can automatically calculate the retention period.

Calculating the start of the retention period with incorrect starting points does not necessarily lead to incorrect application of the provisions on FIDE in Regulation (EC) No 515/97 and the CIS Decision. Those provisions are only disregarded if, as a result, data are stored in FIDE at a point in time which is beyond the maximum data retention period.

3.3. We are planning to audit a business. Shall I register the business in FIDE?

The question concerns FIDE only under Regulation (EC) No 515/97 , as there is no provision for audit of a business in connection with criminal investigations.

An audit is the usual way for administrative authorities to ensure that administrative regulations are being properly applied. The mere fact that an audit is being conducted does not mean that the business has not acted in compliance with EU customs legislation and that consequently the name of the business is to be stored in FIDE.

However, if, in the course of the audit, evidence emerges that customs regulations have been incorrectly applied, it may become necessary to enter the business (see section 6) and/or the persons concerned in FIDE.

The findings of an audit may also have a criminal background with actions committed intentionally or negligently, actively or by omission. But a criminal background is no reason for entering the data in FIDE.

Irrespective of any entry into FIDE, it should also be ascertained whether information needs to be communicated under Article 18 of Regulation (EC) No 515/97 (see questions 2.5 and 9.3).

3.4. What are the guidelines for establishing the seriousness or the relevance of breaches of EU customs legislation or infringements on which data are to be stored in FIDE?

For issues where EU shares competence with Member States see answer to the question 2.15.

For issues where EU has exclusive competence it is impossible to give a definitive answer to this question because various aspects have to be taken into account. In Regulation (EC) No 515/97 there is a clause requesting that files entered into FIDE (EU) should concern cases “which are of particular relevance at EU level”. Therefore, the key question is: “Is the case under investigation of particular relevance at EU level?”.

Member States should avoid the temptation to download file references of large numbers of small investigations into FIDE (EU), but should select information likely to be of value to Member States or the Commission.

Breaches of EU customs legislation involving, for example, smuggling 10.000 litres of precursor BMK or breaches of EU customs legislation where customs duties amounting to EUR 100.000 have not been levied appear suitable for entry in FIDE only because of the quantity of precursors or the financial implications.

It should be borne in mind that Member States have different thresholds for the quantity of prohibited or restricted goods or the amount of unpaid customs duties that trigger investigations. When considering the relevance of a case, an assessment should be made of the likelihood that the same persons or businesses have committed or might commit breaches in other Member States. Also multiplicity of violations, modus operandi and other circumstances of a case may be criteria for storage of a file reference in FIDE.

However, the fact that an investigation of breaches of EU customs legislation also led to findings that constitute an infringement according to national criminal law could be reason enough to assume that the case investigated is of particular relevance at EU level.

In any case, FIDE should also be queried in less serious instances. In the event of a "hit", it might be possible, in the framework of mutual administrative assistance, to obtain findings that do eventually lead to investigations being launched. If no mutual assistance request is made, the office which made an entry in FIDE could be notified in the framework of spontaneous mutual administrative assistance.

3.5. In view of the different criminal laws in the respective Member States, are the data entered comparable?

a) Reply as regards FIDE in accordance with Regulation (EC) No 515/97:

The file references of cases in which EU customs legislation has not been correctly applied are entered in FIDE. EU law is the same in all Member States. Therefore, in general, there should be no diverging interpretation as to whether EU customs legislation, as defined in Article 2(1), first indent, of Regulation (EC) No 515/97, has been correctly applied or not. But there may be diverging interpretations as to whether a case is of such particular relevance at EU level that file references need to be stored in FIDE, see question 3.4. This interpretation may lead to a non comparable data being entered into FIDE.

b) Reply as regards FIDE in accordance with the CIS Decision:

See reply to question 2.15.

Given time and experience it is expected that data stored in FIDE will concern about the same level of cases. In any case, queries in FIDE should also be conducted for cases that appear to be of lesser importance, because “hits” may be the trigger for investigations into other, larger-scale inquiries. A less significant operation in one Member State may be closely connected to a serious infringement in another Member State.

3.6. What type of data must I enter at the very least?

The following data may be entered:

a) data on persons:

FIDE (EU) Regulation (EC) No 515/97	FIDE (MS) CIS Decision
Name*	Name*
Maiden name*	Maiden name*
Forename	Forename
Former surnames*	
Alias	Aliases
Date of birth	Date of birth
Place of birth	Place of birth
Nationality	Nationality
Sex	Sex

*at least one of the fields marked must be provided

b) data on businesses:

FIDE (EU) Regulation (EC) No 515/97	FIDE (MS) CIS Decision
Business name*	Business name*
Trading name*	Name traded under*
Address of the business (street, number, P.O. Box, zip code, city, country)	Registered office (street, number, P.O. Box, zip code, city, country)
VAT identification number ¹	VAT identifier
Excise duties identification number	

*at least one of the fields marked must be provided

c) the field concerned by the investigation file (see Annex 1)

d) data on the investigation file:

FIDE (EU) Regulation (EC) No 515/97	FIDE (MS) CIS Decision
Name	Name
Nationality	Nationality
Details of the relevant service in the Member State	Contact information of the Member State authority handling the case
File Number	File Number

There are no minimum legal requirements for data entry. However there are some mandatory fields (these are in **bold** and underlined in the list of data) at IT level because without them FIDE would be meaningless.

¹ The VAT and excise duties identification numbers are merely an identifying feature of the business in FIDE.

As the person or the business must be identifiable, at least one of the surnames (current or former) of a person must be provided. For the same reason the business name or trading name and country of a business must be provided.

The "investigation field" which contains a rough indication (for example "textiles", "cocaine", "alcohol") of the area of investigation, as well as the investigation start date and status are mandatory at IT level. Data on the investigation start date could be of use when considering whether a mutual assistance request in connection with this investigation would be useful or not (for example: if an investigation of the person has been conducted in a completely different area).

Details of the service handling/investigating the case and the file number are essential as this identifies which relevant authority in another Member State holds the information. Member States also have the option of providing the name of the investigating officer.

See the answer to question 5.2. for the minimum conditions for a search in FIDE.

3.7. Will there be two (or more) entries in FIDE on the same persons or businesses?

See answer to question 3.8.

3.8. Are links between data allowed? Are links between files allowed?

FIDE is based on the principle that for

- each investigation a file number will be stored in FIDE and correspondingly
- each person and each business will be entered under this file number.

This can lead to multiple entries if persons or businesses break EU customs legislation or commit infringements on several occasions or in several Member States.

Example:

The Frankfurt customs investigation office is conducting investigations into three persons under the file number 123/09. In this case the Frankfurt office makes three separate entries in FIDE (no other permitted data fields are mentioned because they are of no relevance to the explanation of the principle):

Name	Unit	File Number
Bella Schmitz	Frankfurt	123/09
James Miller	Frankfurt	123/09
Jean Michel Boullanger	Frankfurt	123/09

The Madrid customs investigation office conducts an investigation and makes three separate entries in FIDE:

Name	Unit	File Number
Snowflakes Ltd	Madrid	456/09
Bella Schmitz	Madrid	456/09
Bruno Kaputto	Madrid	456/09

If FIDE is searched for "Bella Schmitz", it will produce two "hits". A search for "Bella Schmitz" will on no account show with whom or with which businesses she collaborated or is suspected to have collaborated in committing her offences.

In the context of mutual administrative assistance – and hence outside the scope of FIDE – Frankfurt and Madrid can exchange that information.

This process was laid down in Article 41(b) (1), final sentence, of Regulation (EC) No 515/97 and Article 16(1), final sentence of the last subparagraph, of the CIS Decision. In addition, it was made clear that it is not permissible to link data. In this example, therefore, the Frankfurt authorities have not linked data on Bella Schmitz, James Miller and Jean Michel Boullanger in FIDE.

3.9. How does data entry in FIDE fit in with national obligations concerning official secrecy or with the confidentiality of judicial authorities' investigations?

The following answers refer to information included in the answer to question 2.5.

The answers anticipate competences of judicial authorities, that may vary in some Member States.

Re FIDE - Regulation (EC) No 515/97:

It goes without saying that this question is only relevant if a breach of EU customs legislation covered by the scope of Regulation (EC) No 515/97 also constitutes an infringement against national criminal law. If, in a specific case, the judicial authorities have no competence as no infringements of national criminal law have been committed, there is no need for the judicial authorities to decide on the storage of data in FIDE (EU).

Article 3 of Regulation (EC) No 515/97 concerns the sharing of information with judicial authorities, and this also applies with regard to the entry of data in FIDE. Where national authorities take mutual administrative assistance actions involving measures which may be implemented only with the authorisation or at the demand of a judicial authority, the authorisation of judicial authorities is needed for data entry if this requirement derives from national law.

If a judicial authority objects to data being stored, it is proposed that the investigating authorities inform the judicial authorities of the benefits of FIDE and request authorisation for the entry of data as soon as the obstacles have been removed. From the viewpoint of all FIDE users, it would be desirable if the judicial authorities did not withhold their authorisation entirely but only where there is a risk of criminal investigations being put at risk, e.g. in the period prior to a search or in the period of deployment of a covert investigator.

See the replies to the questions in section 8.

Re FIDE - CIS Decision:

With regard to the competences of judicial authorities, the use of FIDE (EU) and FIDE (MS) only differs insofar as FIDE under the CIS Decision covers only investigations of criminal infringements of national laws. There will be no investigations of administrative aspects conducted at the same time.

Thus if provided for by national law, the judicial authorities will decide whether file references are to be stored in FIDE (MS).

3.10. When data are entered, is it possible to ensure that only certain Member States can read the data?

No. The data are accessible to all Member States on an equal basis. If it is feared that an authority might use particular data for non-legitimate purposes, it may be necessary to refrain from entering data on persons or businesses. When this decision is taken it should be remembered that FIDE only consists of very limited data and that no details of the investigation are revealed.

In any case, the disadvantage of a possible misuse of data in FIDE, e.g. by corrupt officials, or other criminal infringements regarding this data, has to be balanced against the advantages that FIDE offers to support mutual assistance with non-corrupt officials of that Member State and with other Member States.

3.11. Does FIDE have different levels of confidentiality, for example for particularly sensitive proceedings in the field of organised crime?

No, the rule is that data entered into FIDE are available to all investigating authorities in all Member States on an equal footing. If the data are not to be made generally available, they should not be entered in the system.

It is important to note that FIDE shows only whether a person or business is under investigation, which authority is carrying out that investigation, and the file number for the investigation. In the event of a "hit", detailed information can only be exchanged directly between the authorities involved. They may reach agreement on confidential arrangements for dealing with the data beforehand.

3.12. My authority already has a national files identification system with a higher performance than FIDE. Under these circumstances, what is the point of entering data in FIDE?

National files identification systems are available to national units. However, FIDE is available to all relevant authorities in EU, provided that Member States make the appropriate arrangements.

It is true that authorities which enter data in national files identification systems as well as in FIDE will have access to the same information from both sources. To streamline data input and to avoid having to enter data twice over, FIDE contains an interface which allows data to be transferred from a national files identification database into FIDE, see answer to question [2.7](#).

3.13. I would like to use FIDE and enter a file reference to my investigations. Do I now have to enter references to all the "old" cases that I have investigated?

No. It is intended that the quantity of data entered into FIDE will increase over time, and so too will the probability of a "hit".

However, there is no comparable rule in Title Va of Regulation (EC) No 515/97, so here Member States need to check which investigations they should enter in FIDE. Investigations where the financial interests of EU are or have been particularly affected and where there is reason to believe that the persons or businesses involved were active in several Member States are particularly suited to retrospective entry.

3.14. The customs administration where I work is also responsible for collecting VAT and combating VAT fraud. Can I enter file references relating to such matters into FIDE?

Mutual assistance under Regulation (EC) No 515/97 does not extend to VAT or excise matters, which means that file references cannot be entered into FIDE purely for VAT or excise purposes. However, file references relating to breaches of EU customs legislation can be entered into FIDE despite the fact that they may also be relevant for VAT or excise purposes.

3.15. I am investigating a business in a South American state on suspicion of drug smuggling. Can I enter this firm too?

Any business or person can be entered into FIDE, regardless of location or nationality, provided that the other entry criteria are met. (Please refer to question 6 on the entry of data on businesses.)

3.16. Should data already in FIDE, e.g. addresses, be updated later on?

FIDE users have a duty to update information as soon as necessary. This duty covers not only the updating of data on persons and businesses, but also the deletion of data.

3.17. Is there any sort of alert for subsequent changes, to show users in other Member States who have accessed the relevant file that a change has been made?

No, nor is this necessary, because a mutual assistance request will usually be made soon after any "hit". During the subsequent exchange of information, the authorities involved will first of all have to check whether the person or business entered into FIDE is the same as the person or business to which the request refers. There is no need to alert all the Member States to changes in files which they have never requested.

4. LENGTH OF STORAGE

NB: These sections explain how long data may be stored from the date of their entry as described in section 3.

4.1. What are the rules on length of storage in FIDE? What does the "cumulation ban" entail?

The period for which data may be stored depends on the laws, regulations and procedures of the Member State supplying them (first sentence of Article 41d(1) of Regulation (EC) No 515/97 / Article 19(1) of the CIS Decision). These cover not only the length of the period, but also rules for calculating when that period starts and ends (deletion).

Maximum periods, which must not be exceeded, are set for the length of time for which data can be retained. FIDE calculates these maximum periods from the start of the investigation. As soon as the maximum periods are exceeded, FIDE deletes the data automatically.

a) maximum storage periods

FIDE proceeds on the basis that data on any current investigation can be stored for up to a maximum of three years. If a person or business is eliminated from an investigation pursuant to the laws and administrative regulations of the Member State that has entered the data in FIDE, the data must be deleted from FIDE immediately.

Data must also be deleted from FIDE if investigations are suspended for more than a year. As FIDE does not know whether an officer has suspended investigations for such a long time, the period of retention has to be manually extended repeatedly until the maximum period is reached, as long as the current investigations have not led to results.

Example (1):

An officer starts a long investigation on 1 February 2009 and enters data with that time of entry in FIDE. These data in FIDE will automatically be erased on 31 January 2010. The officer can extend the period of retention during the month of January 2010 by one year. In January 2011 he can repeat the extension up to a maximum of three years storage.

Data on persons and businesses can continue to be made available in FIDE after the close of investigations, if a suspicion of a breach of EU customs legislation or an infringement has been established. In many Member States the investigating authorities mark the close of their investigations by sending a report to the relevant administrative or prosecuting authorities. Once this point in the proceedings has been reached, the status of the investigation has to be changed. After that the storage period is extended automatically up to a maximum of six years.

Example (2):

The investigations begun on 1 February 2009 have confirmed a suspicion on 1 August 2009. The status will now be changed to “infringement established”¹. Thus the period of retention will be extended until 31 January 2015 (maximum period of six years).

If a suspicion has been confirmed, the “one-year rule” referring to suspended investigations does not apply.

However, this is only if the proceedings are intended to culminate in an administrative decision, a conviction or an order to pay a criminal fine or an administrative penalty. As soon as it becomes clear that this will not be the outcome, and, for example, the relevant administrative or prosecuting authorities halt the proceedings because they do not think there is enough evidence, the data in FIDE must be deleted.

¹ This is the wording as it is displayed, for technical reasons, in the program. From the legal point of view, this term may also be understood in FIDE (EU) as meaning that administrative enquiries or criminal investigations have established an operation in breach of customs and agricultural legislation (Article 41d(1)(b) of Regulation (EC) No 515/97).

If investigations have resulted in an administrative decision, a conviction or the imposition of a criminal fine, or an administrative or judicial penalty, the data may be stored in FIDE for a maximum of ten years. This applies even if the measures are not final because appeal proceedings have been started in an administrative or criminal court.

Example (3):

The investigations started on 1 February 2009 have resulted in an administrative decision on 1 September 2009. In this case, the status of investigations has to be changed to “sanction imposed”¹. The retention period will thus be extended until 31 January 2019. On this date, data in FIDE will be deleted automatically.

However, the data in FIDE must be deleted as soon as the measures are lifted, for whatever reason.

b) ban on cumulating periods

There is only one date from which the different periods are calculated, see reply 3.2.

These periods of three, six and ten years, starting on the same date, may not be added together (cumulated). Nor does any new period of six or ten years start to run when a suspicion has been confirmed or investigations have produced results. The maximum storage period will never be more than ten years.

The ban on cumulating periods was included in the final sentence of Article 41d(1) of Regulation (EC) No 515/97, for the sake of clarity.

¹ This is the wording as it is displayed, for technical reasons, in the program. From the legal point of view, this term may also be understood in FIDE (EU) as meaning that administrative enquiries or criminal investigations have given rise to an administrative decision (Article 41d(1)(c) of Regulation (EC) No 515/97).

4.2. What must I do to abide by storage periods?

Member States must have suitable administrative procedures to ensure that the deletion date corresponds to the current stage of the investigation. For this purpose, the field “status of investigation” (“current investigation”, “infringement established”, “sanction imposed”) must be amended as soon as possible to ensure deletion on the correct date.

From the information on the status of the investigation, FIDE automatically calculates the retention period, beginning from the date of the start of the storage period. It is not possible to manually alter the date on which the retention period ends.

Manual input of this kind is necessary in the following cases:

- Extension of the initial one-year storage period for data on current investigations by one year at a time, up to a maximum of three years in total.

Note:

- The FIDE program does not accept extensions for periods of less than one year.
- The FIDE program permits extension of the retention period for another year only if this extension is entered in the last month of a one-year period, see question 4.1 a), example (1).
- If an extension is forgotten, the data in FIDE are deleted automatically. They can be entered again with updated points in time.

After the investigation is closed, it not necessary to amend the retention period by changing data, as the system automatically calculates the retention period from the date of the start of the investigation and the status of the investigation:

- If the investigation has resulted in the establishment of a breach of customs or agricultural legislation or an infringement, the field “status of investigation” must be changed from “current investigation” to “infringement established”. From this, the system automatically calculates a maximum storage period of six years.
- If the investigation has resulted in an administrative or criminal penalty, the field “status of investigation” must be changed from “infringement established” to “sanction imposed” From this, the system automatically calculates a maximum storage period of ten years.

In any case, the data must be deleted manually if a person or a business is cleared of suspicion. This includes cases where an administrative or court decision can no longer be issued, is no longer sought or has been withdrawn or lifted.

Member States need to establish local procedures to ensure that these deletions are made.

4.3. I have been investigating a case for over a year. What are the implications for FIDE?

The second part of Article 41d(1)(a) of Regulation (EC) No 515/97 and the second part of Article 19(1)(a) of the CIS Decision state that data on current investigations which have not yet established any infringement of customs legislation may be held for a maximum of three years. However, the data must be deleted before then if one year has elapsed since the last investigative act. The reasons for this suspension are not relevant.

This provision applies to “current investigations” only, see reply 4.1 a), first sentence.

FIDE cannot know whether or not an employee in a Member State has actually done any work on a specific case for a year. That is why the program is designed to delete data a year after they were entered, even if investigations have been going on during that time. Automatic deletion can be prevented if the employee conducting the investigations extends the storage period. This can be done twice, up to a maximum storage period of 3 years.

This is of course only permitted if the employee is actually investigating. Repeated extension of the storage period is not allowed if investigations have been suspended. See the examples in reply 4.1.

4.4. Despite lengthy and intensive investigations I have not established any breaches of EU customs legislation /infringements. What do I do with the data in FIDE?

The data must be deleted immediately (Article 41d(2) of Regulation (EC) No 515/97 and Article 19(2) of the CIS Decision). This holds even if the investigating officer thinks that the data in FIDE might be useful for relevant authorities in other Member States.

4.5. I have been investigating a major case for over three years. However, I am unlikely to have all my evidence together until next year. What are the implications for FIDE?

The second part of Article 41d(1)(a) of Regulation (EC) No 515/97 and the second part of Article 19(1)(a) of the CIS Decision state that data on current investigations which have not yet established any infringement of customs legislation may be stored for a maximum of three years (see question 4.3.). These rules, however, make no provision for cases where investigations last longer. The data must be deleted, even if the existing evidence lends credence to the suspicion that a breach of EU customs legislation or an infringement has been committed.

The data which have been deleted should be re-entered in FIDE once the current investigations have established that an action in breach of customs or agricultural legislation or an infringement has taken place, within the relevant maximum storage period of six years. In this case too, the start of the storage period is the date (more than three years earlier) on which the name of the data subject was first entered in the investigation file.

This means that the data may not be stored in FIDE from the end of the third year (maximum storage period for current investigations) up until a subsequent date (end of the investigations) before the end of the sixth year.

In this case it might be useful to conclude the investigations in relation to part of the operation. The longer maximum period of six years would then apply (Article 41d(1)(b) of Regulation (EC) No 515/97 and Article 19(1)(b) of the CIS Decision) and there would not be this "gap" during which data are not held in FIDE.

4.6. I am not authorised to enter data myself, but I forward drafts of data to be included in FIDE to another official for entry in FIDE. How does this affect the calculation of deadlines?

The legal bases for FIDE cover only data stored in the database available to all Member States. They do not cover drafts processed at national level with a view to the possibility of storage later on.

The working procedures for the "preparation of a draft" step and the "data input" step do not affect the calculation of the period.

4.7. What is the order of precedence of the rules on length of storage in the Customs Information System and in FIDE?

The rules on length of storage in Article 41d of Regulation (EC) No 515/97/Article 19 of the CIS Decision are specific rules for FIDE alone. They prevail over the rules on length of storage in the CIS in Article 33(1) of Regulation (EC) No 515/97/Article 14(1) of the CIS Decision.

5. DATA QUERY

5.1. When can I search FIDE?

The rules on FIDE contain detailed provisions on data input, but they do not specify the conditions under which a query is permissible. General data protection rules under EU and national law should therefore be used to determine whether or not a particular data search is permissible.

For FIDE this means that a search is not permissible unless information from FIDE (a "hit") is needed to achieve the aims pursued by the CIS Decision and Regulation (EC) No 515/97.

Accordingly, a search in FIDE is not permissible for private reasons, for example, or if the reason for the search relates to direct taxation, excise duties, VAT or general criminal law.

FIDE may be searched whenever this is deemed to be appropriate (provided it is for a permissible purpose). In any event, FIDE should be searched when information is entered in the database (unless you do not want to know whether other offices are or have been investigating the same persons and businesses.)

5.2. Why are there minimum requirements placed on the content of my searches?

FIDE can only be searched for a specific purpose. There has to be a particular reason for asking FIDE whether the same person is being or has been investigated by other authorities in EU.

Generalised enquires ("data fishing") are not allowed. To eliminate abuse as far as possible, there is a requirement that at least one of the following elements must be known for a search to be undertaken:

- for persons: surname or forename or maiden name or former surname or alias;
- for businesses: name or trading name or VAT number or excise ID number,

see answer to question 3.6. As an example, searches by nationality or by address, for example all persons living in Frankfurt, are not possible.

5.3. What can be done if FIDE provides no results for the persons and businesses?

Nothing for the time being. If there is no information in FIDE, it simply means that no information has been entered by a Member State.

However, it cannot be ruled out that the data subjects may be or have been under investigation. There are many reasons why such persons or businesses may not have been entered in FIDE: perhaps the investigating authority did not think the infringement could be of interest to other Member States or the judicial authorities did not allow storage in FIDE.

It would therefore be a good idea to search FIDE again in due course.

5.4. Can FIDE be searched for general offences, for example human trafficking, theft or robbery?

No, searches for these purposes are not allowed (see questions 7.6 and 7.11).

6. SPECIAL FEATURES OF DATA ON LEGAL PERSONS/BUSINESSES

In principle, data input is governed by national law.

It is conceivable that in answer to the following questions some Member States may draw a distinction between FIDE (EU) and FIDE (MS), because FIDE (EU) provides for data to be stored on "the subject of an administrative decision", whereas FIDE (MS) does not.

6.1. In general - When must I enter the name of the business in FIDE (EU) and FIDE (MS)?

Subject to diverging national regulations, the entry of data on businesses/legal persons is to be considered in two cases:

- a) where the business itself is being investigated with the aim of subjecting it to an administrative decision or is the subject of an administrative decision (only applicable for FIDE (EU)),
or
- b) where the management is being investigated for liability, direct or indirect, either actively or by default, for the breach or infringement of EU customs legislation (applicable for FIDE (EU) and FIDE (MS)).

Cases a) and b) may be applicable in parallel, independently of one another. If one condition is fulfilled, this is sufficient for the data to be stored.

Re a)

If there is a legal administrative obligation such as to declare imported goods, which also applies to businesses, businesses may also be the subject of investigations. This can result in storage of data on businesses.

The legal person need not necessarily be the sole or primary subject of the administrative act. Persons and businesses against whom/which there may be a subsidiary claim (because of their involvement in the breaches of EU customs legislation) may also be entered in FIDE as the subjects of administrative acts. These may, for example, be businesses in third countries on account of their involvement in breaches of EU customs legislation, such as, for example, a supplier which provides incorrect details in certificates of origin or invoices. Whether this legal person ultimately pays the customs duties is of no importance as regards verification of whether storage of the name of the business in FIDE is admissible.

Re b)

Article 3 of the Second Protocol of 19 June 1997 to the Convention on the protection of the European Communities' financial interests (hereinafter: PIF Convention) deals with responsibilities of businesses (copy in Annex 2):

- Paragraph 1 governs the liability of legal persons in cases involving a member of the management.
- Paragraph 2 governs the liability of legal persons in cases in which the persons referred to in paragraph 1 have not themselves been involved, but have made the offence possible because of lack of supervision or control within the business.
- Paragraph 3 makes it clear that legal persons are liable even if criminal proceedings are brought against a natural person as perpetrator, instigator or accessory.

Where the PIF Convention is applicable: these are the conditions for storage of names of businesses in FIDE.

It is recommended that Member States check whether these provisions may, beyond their original purpose and where not applicable, also be applied as a guideline to determine when data on businesses are to be stored in FIDE in cases of:

- investigations concerning breaches of EU customs legislation as covered by Regulation (EC) No 515/97, and
- investigations of infringements against national laws as defined in point 1 of Article 2 of the CIS Decision.

For FIDE (EU) these questions are only relevant if the companies involved are not the subject of an administrative decision.

6.2. When do I have to delete data on businesses in FIDE?

a) Re FIDE in accordance with Regulation (EC) No 515/97:

In the cases in question 6.1 the data on businesses must be deleted:

- if the investigations did not lead to an observation of an operation in breach of customs and agricultural legislation,
- if an administrative decision, a conviction or an order to pay a criminal fine or an administrative penalty is withdrawn,
- if the results of the investigations and/or the administrative decisions allow of the conclusion that this case is of no particular relevance at EU level,
- if further grounds for deletion arise from national legislation.

However, data on businesses are not deleted if, for example, at the end of the administrative investigation, an order to pay customs duties is issued to the business. Further grounds for deletion may arise from national legislation.

b) Re FIDE in accordance with Regulation (EC) No 515/97 (other cases than a), see question 6.1 last sentence) and the CIS Decision:

If Member States apply the principles embodied in Article 3 of the Second Protocol to the Convention on the protection of the European Communities' financial interests when deciding on the entry of business data in FIDE, the consequence is that data on legal persons in FIDE are to be deleted if the conditions of Article 3 of the PIF Protocol are not fulfilled, i.e. if it cannot be established either that members of the management of the business were themselves involved or that there was a lack of supervision or control on their part.

This would apply in particular to cases in which a member of the business acted on his own initiative despite being supervised by the management.

6.3. Within the same investigation relating to both the business and the managing director, should two different files be stored, one for the business and one for the director?

The entry of data is based on national legislation.

The operation of FIDE basically requires

- the name of the person that has acted, for example the director, the head of the transport section, the accountant, the head of the buying department or the driver of the lorry, and
- the name of the business (if the conditions specified in sections 6.1 are fulfilled)

to be entered in two separate records. It is not permissible to link data on the person involved and on the business, see question 3.7.

If it is not known who the person involved is and the condition for storing the business is fulfilled (see question 6.1), only the business should be stored in FIDE. It should be pointed out here that there may be organisational shortcomings (see Article 3(2) of the PIF Protocol) within a business that can impede the investigation of the case and/or the identification of the natural person who was involved.

It is not necessary to enter the file references of investigations into "unknown" parties unless an alias name is known, see question 6.4.

6.4. How can I handle dummy, fictitious, non-existing “businesses”?

There may be cases where persons pretend to do business with businesses which do not actually exist.

Example (follow-up to the example in question 3.8):

Bella Schmitz is sending cocaine by airfreight from Colombia to Spain. An airway bill has to include information on who sends the goods (consignor). Bella Schmitz does not want to display her name on that airway bill, or the name of Bruno Kaputto, who assists her in transport matters. They therefore ask the freight-forwarder in Colombia to put the name “Snowflakes Ltd” (and a fictitious address) as consignor on the airway bill. This serves a double purpose: to the customs office in Madrid, this shipment appears to be a “normal”, commercial shipment. If any investigations were conducted, these investigations would lead to no results.

Bella Schmitz and Bruno Kaputto continue to make airfreight shipments not only to Madrid, but also to other destinations in EU.

However, the name of a non-existent, fictitious business may be the only starting point of an investigation if no consignee can be traced. It is therefore important to enter fictitious businesses in FIDE.

If permissible under their national laws, Member States could proceed as follows:

- Names of fictitious businesses are used to conceal actions of persons. If investigations lead to a link between a fictitious business and a natural person, the fictitious business can be considered an alias of the person.
- Names of fictitious businesses are not subject to legal rules in the area of data protection as long as they can not be assigned to a person. In FIDE they can be entered as an “Alias” of an unknown person.

(For technical reasons it is necessary to store that name not only in the “Alias” field but also in the “surname” field).

7. PROCEDURE IN THE EVENT OF A “HIT”

Regulation (EC) No 515/97 and the CIS Decision include provisions on how FIDE is operated and how data in FIDE are allowed to be processed. These legal bases have no rules on how to proceed when you find information (a “hit”) that you have been looking for in FIDE.

The following information therefore goes beyond the legal framework of FIDE, but it is included here because FIDE is merely intended to “match” offices in the event of a hit.

7.1. I have found that FIDE contains information on a person or a business into which I am conducting an investigation. The information is very limited. What can I do with such information?

The information obtained from FIDE (“hit”) can only be used to make a mutual assistance request or send spontaneous information, for example on the basis of Regulation (EC) No 515/97 and/or the Naples II Convention. These requests need to be addressed to the competent authorities of that Member State and include information on the investigating authority as indicated in FIDE. Data from a "hit" must not be used to bring preliminary proceedings!

7.2. What do I do if I search FIDE and it contains details of the person or business sought?

If FIDE supplies information following a search, the authority performing the search knows that all the authorities mentioned may have information on the persons or businesses under investigation.

On that basis, it is possible to ask for mutual assistance, but there is no obligation to do so. If a request is made, it is strongly recommended that it contains:

- the file number given in FIDE and the name of the office (if different from the addressee of the request),
- a precise indication of the person or business,
- a description of the facts of the case under investigation
(see, for example, Article 9 of the Naples II Convention).

This will mean that the unit from which information is requested receives all the necessary information to establish whether the request and the available findings concern the same person or business. If there is no doubt that the request concerns the same person or business on which the findings are available, existing information can be exchanged and, if necessary, ongoing investigations can be coordinated.

7.3. What is the legal basis for a mutual assistance request following a "hit"?

The legal basis for a mutual assistance request is not laid down. In practice, Regulation (EC) No 515/97 and the Naples II Convention seem to be the frequently-chosen legal bases, depending on whether the information required is to be used for administrative investigations, for the investigation of criminal infringements or for both purposes (see answer to question 2.5).

This is an overview of the (probably) most important legal bases which may be used following a "hit":

	“Hit” in FIDE (EU)	“Hit” in FIDE (MS)
Mutual assistance Purpose: administrative proceedings	Regulation (EC) No 515/97	does not apply
Mutual assistance Purpose: criminal proceedings	<ul style="list-style-type: none"> ▪ Naples II Convention ▪ Mutual assistance in criminal matters 	<ul style="list-style-type: none"> ▪ Naples II Convention ▪ Mutual assistance in criminal matters

7.4. How many authorities can work together following a hit?

All the authorities that have entered data on particular persons and businesses in FIDE can work together insofar as this is necessary. It is therefore conceivable, for example, that a third investigating authority might supplement existing bilateral cooperation using FIDE.

This may lead to cooperation in the framework of "joint special investigation teams" under Article 24 of the Naples II Convention.

7.5. May I pass on information concerning a "hit" to judicial authorities which are investigating persons or businesses?

Yes. The judicial authorities can then check whether, in this case, they should:

themselves make a mutual assistance request under the Naples II Convention, or

- instruct the investigating authority to make a mutual assistance request under the Naples II Convention, or
- make a request in accordance with the current provisions on mutual assistance between judicial authorities in criminal cases. The file number given by FIDE and the investigating authority will make it easier for the requested judicial authority to identify those authorities already handling the case.

See also answer to question 2.12.

7.6. I would like to use the information from FIDE in support of customs clearance. May I do that?

FIDE may be searched only if investigations are being conducted for reasons of breaches of EU customs legislation or criminal infringement. A search in FIDE for customs clearance purposes is not admissible, see answer to question 2.14.

For information in connection with customs clearance the Customs Information System is to be used, see question 2.2.

The question also shows that the Member State entering data in FIDE should also check whether it is necessary also to enter the data in the Customs Information System. Since both databases serve different purposes and are accordingly accessed by other authorities in the Member States, this is not "duplication". In individual cases it may be necessary to make separate entries in both databases, see answer to question 9.5.

Note: This answer concerns the use of data that FIDE has provided in the event of a "hit", whereas the answers to questions 2.14 and 5.2 explain why it is prohibited to systematically query FIDE with the aim of collecting information for customs clearances and risk analysis.

7.7. Will I be notified if a Member State asks for my data?

(Background: This question was asked by an office investigating cases of organised crime. Due to the sensitivity of investigations, officers are often reluctant to store data in FIDE, but they would be interested to know who is searching for a specific person or business, either for the purposes of their own criminal investigations or because of corruption.)

No, this is not permissible. In this case it would be necessary to store the request and to store names of persons or businesses in the system who are the subject of investigations in a separate, confidential part of FIDE. There is no legal basis for that.

Besides, storage of queries is permissible only for the internal purposes of checking the admissibility of the request (Article 28 of the CIS Decision, Article 38 (3) of Regulation (EC) No 515/97), not for notifying the entering Member State.

7.8. I would like to put a mutual assistance request to the authority which is conducting an investigation into a particular person. Can I send the mutual assistance request directly to the investigating unit? What do I have to watch out for as regards the channel used?

Existing rules on channels of communication are unaffected even if a mutual assistance request is brought about through a "hit" in FIDE.

Mutual assistance requests should thus to be addressed to the competent authorities named by the Member States, e.g. the Central Coordinating Units under Article 5 of the Naples II Convention. In urgent cases direct cooperation, as provided for in Article 5(2) of the Naples II Convention, might often be necessary in practice.

7.9. May I transfer FIDE hard copies from FIDE to the investigation file?

Yes. This goes without saying if I make a mutual assistance request on the basis of a "hit". If no mutual assistance request is made, I may be obliged under national law to document why I did not follow this advice. The copy shows only general data of persons and businesses which are already mentioned in the investigation file. The only "new" information is the details of a "hit" provided by FIDE.

7.10. Do hard copies have to be removed from the file if the entering Member State deletes the data in FIDE?

No. The deletion of a record only means that the entering Member State no longer wishes to notify other Member States of the fact that it once conducted investigations. It is permissible for an authority which has not placed a mutual assistance request directly after a "hit" to make this request at a later date, even if the data in FIDE have already been deleted. The requested authority will then issue a reply which takes account of the fact that it has deleted the data in FIDE.

7.11. May I pass on information on a "hit" to other units, e.g. from the customs administration to the police?

It is not permissible to search FIDE for cases that are not covered by the scope of Regulation (EC) No 515/97 or the CIS Decision, see question 5.4.

As long as the recipient requires the information in order to detect, investigate, prosecute or punish breaches of EU customs legislation or infringements of national and EU customs provisions, the data may be passed on for these purposes to other national authorities.

If, however, the data are required for other purposes, for example for investigations in connection with the smuggling of human beings or racketeering, the data may be passed on only if the Member State entering the data in FIDE has previously consented to this procedure (Article 30(1) of Regulation (EC) No 515/97, Article 8(1), third sentence of the CIS Decision).

7.12. I would like to address an urgent mutual assistance request concerning a five-year-old case to a unit in another Member State. However, in the meantime that unit has been disbanded. How can I obtain the necessary information?

If not for other reasons, in this instance the request must be sent to the central authority of the Member State concerned.

In order to ensure that requests from other Member States can be answered promptly in the event of a "hit", Member States must create the organisational conditions to enable them to access again their archived "old files" on which they have entered data in FIDE.

8. COOPERATION WITH JUDICIAL AUTHORITIES

8.1. Do I have to heed instructions from judicial authorities regarding input of data into FIDE?

The duties and rights of judicial authorities are laid down in national legislation. Regulation (EC) No 515/97 and the CIS Decision ensure that any rights of judicial authorities to give instructions are fully respected.

This applies of course only if the instruction relates to an action falling within the scope of Regulation (EC) No 515/97 or the CIS Decision.

8.2. Can I notify the judicial authorities of a "hit" to enable them to submit a request for mutual assistance?

Yes, of course. The purpose of FIDE is to support cooperation between Member States in combating breaches of EU customs legislation and infringements. By virtue of their powers to direct criminal investigation proceedings, the judicial authorities also have access to FIDE (see question 2.12) and can submit requests for mutual assistance themselves on the basis of a "hit". However, they can also submit requests under the Naples II Convention or instruct the investigating authority to submit a request under that Convention on their behalf, see reply to question 7.3.

9. MISCELLANEOUS

9.1. What effects does Framework Decision 2006/960/JHA ("Swedish initiative") have on the use of FIDE?

Article 3(3) describes the objective of the Framework Decision:

"Member States shall ensure that conditions not stricter than those applicable at national level for providing and requesting information and intelligence are applied for providing information and intelligence to competent law enforcement authorities of other Member States."

For FIDE, this means:

- It is not necessary to provide other Member States with information from FIDE, since each Member State has access to the data. Consequently, any such requests should be refused.
- However, requests from Iceland, Norway and Switzerland should be responded since those countries do not participate in FIDE.
- This applies to FIDE (EU) and FIDE (MS). The contents of both databases are covered by the obligation to provide information as laid down by the Framework Decision.
- Information may be provided in individual cases only under the conditions laid down in Article 3(3) of the Framework Decision.

9.2. Can FIDE also export data via an interface?

No. It is not permitted to import data from FIDE into national databases, see question 2.14.

9.3. Do I have to submit a mutual assistance message (“AM-message”) pursuant to Article 18 of Regulation (EC) No 515/97 even when inputting data into FIDE?

Yes. An AM-message is sent to specific addressees. The addressees will read the communication and subsequently arrange for the necessary steps to be taken.

However, it is also possible that authorities which are not aware of the mutual assistance communication will conduct investigations in connection with the persons or businesses identified therein. When entering data into and retrieving data from FIDE, such units will find out – in the event of a "hit" – that other authorities could be involved in the same case.

9.4. How will OLAF use FIDE?

As part of the European Commission, OLAF is authorised to access the FIDE (EU) database only (see question 2.3).

OLAF enters data into FIDE:

- on administrative enquiries coordinated by it or carried out within the framework of EU administrative and investigative cooperation missions in third countries (Article 20 of Regulation (EC) No 515/97)
and
- when the “status of an investigation” is “a suspicion”.

As soon as administrative enquiries have been completed and the information gathered is transferred to a Member State, the Member State concerned is responsible for further activities linked to the investigation.

The storage of data by OLAF has no impact on the storage of data by the investigating offices in the Member States concerned.

This means: FIDE data on the same businesses and the same natural persons may be stored twice or more by OLAF and the Member States. The status of the investigation may differ, because each Member State may have a diverging point of view as to whether an infringement has been established.

It goes without saying that if a Member State searches in FIDE for a person or a business and there is a “hit” concerning a file introduced by OLAF, the Member State should contact OLAF in order to obtain additional information.

OLAF is searching data in FIDE when it opens a coordination file (Article 18 and Article 41a (3) of Regulation (EC) No 515/97) or when it prepares a EU mission in a third country (Article 20 and Article 41a (3) of Regulation (EC) No 515/97). If OLAF has a “hit” it requests additional information from the Member State concerned.

9.5. I have seized a container containing smuggled goods. What should I do?

This depends on the circumstances of the case.

It should be determined whether the following mutual assistance measures are both permissible and necessary (in addition to your own investigations and your own measures to uncover evidence and to safeguard the financial interests of EU and the Member States):

- a mutual assistance request or spontaneous notification to other Member States concerned (these include the Member State(s) through which the container entered EU, the Member State(s) through which the container was transported and the Member State of destination),
- where appropriate, a mutual assistance request or spontaneous notification to relevant third countries on the basis of EU, bilateral or national mutual assistance arrangements,
- entry in FIDE – where appropriate – of details relating to the businesses (for example the sender, recipient, carrier or intermediary) and persons concerned (for example the driver of the truck),

- even if a mutual assistance request or spontaneous notification has been submitted, such details should be entered in FIDE in order to enable other, as yet unidentified authorities investigating the same persons or businesses to submit a request for such assistance,
- entry in CIS of details relating to the businesses concerned and – where appropriate – the persons involved (carrier?) for purposes other than the coordination of investigations (customs inspections, use of data for operational and strategic analysis),
- where appropriate, notification of OLAF pursuant to Article 18 of Regulation (EC) No 515/97, see question 9.3,
- where appropriate, involvement of the national authority responsible for risk management (RIF).

9.6. What is the scope of application of FIDE as regards controls of cash under Regulation (EC) No 1889/2005?

To prevent money laundering, Regulation (EC) No 1889/2005¹ obliges persons to declare cash upon crossing EU external borders. Article 6(1), final sentence of Regulation (EC) No 1889/2005 makes Regulation (EC) No 515/97, including FIDE, applicable “mutatis mutandis” in the area of controls of cash:

- where there are indications that the sums of cash are related to any illegal activity associated with the movement of cash, as referred to in Directive 2005/60/EC² and Article 6(1), first sentence of Regulation (EC) No 1889/2005,
- where there is non-compliance with Regulation (EC) No 1889/2005. A criminal background, such as money laundering or intent, is not required.

¹ Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community (OJ L 309, 25.11.2005, p. 9).

² Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15), as amended by Directives 2007/64/EC, 2008/20/EC and 2009/110/EC, and as supplemented by Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfer of funds (OJ L 345, 8.12.2006, p. 1).

In particular, the following acts or omissions (provided that they are of particular relevance at EU level -Article 41b(1) of Regulation (EC) No 515/97) may constitute an administrative or criminal investigation, whose file numbers should be entered in FIDE:

- Investigations related to a person who is suspected not to have provided declarations or not to have provided correct declarations.
- Investigations related to a person who is suspected to have split transports of cash, which had to be declared elsewhere, into sums below the threshold ("smurfing").
- Investigations related to a person in cases where there are indications that the sums of cash transported (declared or not declared) are related to any illegal activity associated with the movement of cash, as referred to in Directive 2005/60/EC.

In these cases, data concerning natural persons, as described in the answer to question 3.6, may be stored in FIDE. Where legal persons are involved as described in question 6.1, the details of the legal persons such as the owner, the consignor or the consignee of the cash may also be stored in FIDE.

In case of a "hit", the information given by FIDE may lead to mutual assistance on the basis of Regulation (EC) No 515/97 in cases of non-compliance with the obligation to declare cash. This may result in cooperation in criminal investigations on a respective legal basis on grounds of money laundering (Article 45 (3) of Regulation (EC) No 515/97, Article 6 of Regulation (EC) No 1889/2005).

Regulation (EC) No 515/97 is intended to support the application of Regulation (EC) No 1889/2005 in the area of mutual assistance. Regulation (EC) No 1889/2005 is intended to fight money laundering by providing Financial Intelligence Units (FIUs) with relevant data.

The FIUs in the Member States may therefore have access to those data in FIDE that refer to Regulation (EC) No 1889/2005.

NB: From 27 May 2011, for the purposes of the CIS Decision, the files regarding an administrative enquiry or criminal investigation managed by the Members States (AT, BE, BG, CY, DE, DK, ES, FR, IT, MT, PL and PT) which apply intra-EU cash controls at the borders with other Member States on basis of their national law¹ could also be entered in FIDE (MS)(ex FIDE 3rd pillar).

¹ The implementation of intra-EU cash controls at the borders with other Member States on basis of their national law does not prejudice any position of the Commission regarding the compatibility of these national measures with Article 65 of the Treaty on the Functioning of the European Union.

see question 1.2

Fields of investigation for the purposes of FIDE (MS)¹**DRUGS**

- Opiates
- Cocaine
- Cannabis
- Khat
- Psychotropic substances
- Other drugs

WEAPONS

- Firearms/ammunition
- Explosive materials
- Other weapons

OTHER

- Money laundering
- Non-harmonized excise goods
- Paedophile material
- Other prohibitions/restrictions at national level

Fields of investigation for the purposes of FIDE (EU)^{2 3}

- Tobacco
- Alcohol
- Mineral oil
- CAP goods
- Counterfeit/pirate goods
- CITES
- Precursors
- Dual-use goods
- Product safety
- Veterinary and health regulation
- Common agriculture policy
- Textile products
- Cultural goods
- Misdescription of goods/origin/value
- Anti-dumping duties
- Other prohibitions/restrictions at EU level
- Cash control

¹ The description is the technical implementation of point 1 of Article 2 of the CIS Decision.

² The description is the technical implementation of Article 2 (1), first indent of Regulation (EC) No 515/97.

³ On the occasion of breaches of EU customs legislation in third-country traffic (Regulation (EC) No 1889/2005).

See question 6.1

Second Protocol, drawn up on the basis of Article K.3 of the Treaty on European Union, to the Convention on the protection of the European Communities' financial interests

OJ C 221, 19.7.1997, pp. 0012-0022

[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41997A0719\(02\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41997A0719(02):EN:HTML)

(Excerpt)

Article 3 Liability of legal persons

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for fraud, active corruption and money laundering committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on
 - a power of representation of the legal person, or
 - an authority to take decisions on behalf of the legal person, or
 - an authority to exercise control within the legal person,as well as for involvement as accessories or instigators in such fraud, active corruption or money laundering or the attempted commission of such fraud.

2. Apart from the cases already provided for in paragraph 1, each Member State shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of a fraud or an act of active corruption or money laundering for the benefit of that legal person by a person under its authority.

3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in the fraud, active corruption or money laundering.