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LIMITE

ENFOCUSTOM 21

NOTE

From: Presidency
To: Delegations
No. prev. doc.: 16445/09 ENFOCUSTOM 130
Subject: Draft Fifth Action Plan (1.7.2011–31.12.2012) to implement the Council Resolution of 23 October 2009 on a reinforced strategy for customs cooperation and the revised strategy for customs cooperation in the third pillar

Delegations will find below the draft Fifth Action Plan for Customs Law Enforcement Cooperation for the period from 1.7.2011 to 31.12.2012 as prepared by the drafting group at its meetings on 18 February and 24 March 2011.

The CCWP is invited to agree to this document and to forward it to CATS for approval.

Introduction

In its Resolution of 23 October 2009 on a reinforced strategy for customs cooperation¹ the Council recognised that the customs authorities of the Member States play a crucial role in the fight against cross-border illicit trafficking in goods, being the first firewall between these illegal activities and the citizens of the Union; that strong cooperation between the customs authorities and between them and other competent authorities is indispensable for the fulfilment of their tasks; and that the need for a strategic framework laying down the objectives for the multi-national and multi-agency approach to customs cooperation remains. The Council also noted with satisfaction the progress that has been achieved by the implementation of its Resolution of 2 October 2003 on a strategy for customs cooperation² and the subsequent work carried out by the Customs Cooperation Working Party (CCWP) and resolved to continue this work by means of a new and updated Strategy and a detailed Action Plan.

According to the revised strategy for customs cooperation in the third pillar³ aiming to implement the Council Resolution, the CCWP has an important role in planning and coordinating the activities to be undertaken for the purpose of fulfilling the objectives laid down in the strategy, by means of Action Plans. The former Article 36 Committee approved the first 3-year Action Plan⁴ (2004-2006) in December 2003. Pursuant to the strategy for customs cooperation⁵, the CCWP reviewed the first Action Plan during the UK Presidency in 2005 and concluded that shorter 18-month Action Plans would provide greater flexibility to react to changing circumstances in the future.

Since then, the Second Action Plan (January 2007 - June 2008)⁶, the Third Action Plan (July 2008 - December 2009)⁷ and the Fourth Action Plan (January 2010 - June 2011)⁸ have been approved and implemented.

¹ OJ C 260, 30.10.2009, p. 1.

² OJ C 247, 15.10.2003, p. 1.

³ 15198/09 ENFOCUSTOM 118 ENFOPOL 272.

⁴ 15315/2/03 REV 2 ENFOCUSTOM 41.

⁵ 11167/5/03 REV 5 ENFOCUSTOM 29 ENFOPOL 84.

⁶ 13424/2/06 REV 2 ENFOCUSTOM 64.

⁷ 8284/1/08 REV 1 ENFOCUSTOM 48.

⁸ 16445/09 ENFOCUSTOM 130.

There is a new legal framework which has an important impact in the area of freedom, security and justice, therefore, the new Action Plan has to reflect to these changes i.e. the entry into force of the Treaty of Lisbon, the adoption of the Stockholm Programme⁹ and the further implementation of the Council Resolution on a reinforced strategy for customs cooperation.

Furthermore, on the basis of the proposal for monitoring the implementation of project groups recommendations concerning Action Plans from 1 January 2004 until 31 December 2006, from 1 January 2007 until 30 June 2008 and from 1 July 2008 until 31 December 2009¹⁰ prepared by the Belgian Presidency and discussed by the CCWP, the new Action Plan incorporates the relevant recommendations into proposed actions.

The CCWP is invited to approve the Fifth Action Plan for Customs Law Enforcement Cooperation for the period from 1 July 2011 to 31 December 2012.

⁹ OJ C 115, 4.5.2010, p. 1.

¹⁰ 11801/4/10 REV 4 ENFOCUSTOM 65 (to be issued).

Content of the Fifth Action Plan

The Fifth Action Plan for customs law enforcement cooperation takes into account the Council's priorities identified in the fields of customs-related crime, including organised crime, the improvement of the architecture of internal security and protection of the external borders.

The Action Plan contains 10 actions which cover one or more of the following work areas:

- border management and security,
- intelligence,
- operational cooperation, and
- information exchange.

The Action Plan is structured as follows:

- “Proposed action” column indicates the title of the action;
- “Strategic objective” column refers to the overall aims and objectives of the revised strategy for customs cooperation, which are:
 - ✓ To consider new forms of cooperation and new investigative techniques,
 - ✓ To take practical steps towards implementing these new forms of cooperation and to continue to further develop existing forms of cooperation,
 - ✓ To improve and make more flexible the existing cooperation process;
- “Performance indicator” column refers to the documents and reports that will be prepared as the result of the work of the project group. It also indicates the body which is to adopt the report and the relevant recommendations;
- “Possible outcome(s)” column refers to the final improvements and benefits that the completion of each action would mean for national customs authorities, the CCWP and possibly for other law enforcement authorities;

- “Other concerned parties” column refers to other Council working groups, the Commission, Europol, Eurojust, World Customs Organisation (WCO) and other international organisations which might be involved in the project groups or discussions within their field of competence. The “Other concerned parties” can be involved in the project groups, their involvement will then be defined in the mandate of a particular project group which is adopted by the CCWP;
- The box “Terms of reference” refers to the stipulated reasoning, main goals and foreseen achievements of the actions.

Implementation of the Action Plan

The CCWP is responsible for the implementation of this Action Plan for Customs Law Enforcement Cooperation.

It should be recognised that the reports of the project groups do not automatically reflect the vision of all Member States and that the reports, notwithstanding their quality, should be considered as preparatory documents for the consideration and deliberation of the CCWP.

All actions should start within the validity of the Action Plan. Member States proposing actions are also encouraged to lead them. Although the plan sets out the framework of the future work of the CCWP, it does not exclude the right of the Member States or the Commission to propose further initiatives if necessary. In particular, if the Council reassesses its priorities relating to law enforcement cooperation, the CCWP would also consider the need for additional measures which are in line with those priorities.

	Proposed action	Strategic objectives	Performance indicator	Possible outcome(s)	Other concerned parties
5.1	To improve the possibilities to tackle the threat of tobacco smuggling, including the use of technical devices (such as mobile or fixed scanners)	(1) To consider new forms of cooperation and new investigative techniques; (2) To take practical steps towards implementing these new forms of cooperation and to continue to further develop existing forms of cooperation; (3) To improve and make more flexible the existing cooperation process.	(1) Analysis of the situation using the available statistics on seizures and threat assessments in the area of tobacco smuggling; (2) Assessment of the needs of customs administrations of the Member States for additional detection equipment; (3) Assessment of the needs of customs administrations of the Member States for the EU funding for acquisition of customs detection equipment; (4) Available EU funding sources identified; (5) Report, analysis and recommendations presented to and adopted by the CCWP.	(1) Improved cooperation and exchange of information in this field; (2) New ways to tackle increased threats identified; (3) Explored possibilities for customs administrations of the Member States to apply for EU funding for acquisition of customs detection equipment; (4) Recommendations on improvements in the area of customs controls at the external borders with a link to EU funding available for the Member States for acquisition of customs detection equipment.	- COM (DG TAXUD, OLAF), - Europol.

Terms of reference

The recent statistics of seizures of tobacco products smuggled to the EU from third countries show a large scale of increase of trafficking in tobacco products. Usually EU customs respond to the increased threats by organising JCOs, which are rather expensive and limited in time instruments. The project group will discuss the possible ways other than JCOs to react to the increased threat of tobacco smuggling from third countries, in order to contribute to reinforcing the customs abilities to perform more effective controls on a regular basis. The collection and analysis of information on detection equipment available for customs controls and the assessment of needs for additional detection equipment to be installed at the EU external borders will be carried out. After the needs for equipment will be identified, the project group in close cooperation with COM will try to identify the available sources of EU funding and, if necessary, will draft the recommendations concerning the improvements in the area of customs controls at the external borders with a link to EU funding dedicated for acquisition of customs detection equipment.

	Proposed action	Strategic objectives	Performance indicator	Possible outcome(s)	Other concerned parties
5.2	To examine the working/investigative techniques applied by customs and other law enforcement authorities to combat customs fraud and illegal trade through the Internet, including the current situation regarding the existence of customs Internet crime specialised units	(1) To consider new forms of cooperation and new investigative techniques; (2) To take practical steps towards implementing these new forms of cooperation and to continue to further develop existing forms of cooperation; (3) To improve and make more flexible the existing cooperation process.	Report and recommendations presented to and adopted by the CCWP.	(1) Setting up of units specialised in combating the use of the Internet for criminal purposes and linking them up to existing specialised networks among law enforcement bodies; (2) Improved cooperation between existing customs Internet crime specialised units; (3) Identification and exchange of best practices; (4) New working methods and investigative techniques in fighting illicit trafficking of goods facilitated by the use of Internet.	- Europol, - COM, - LEWP.
Terms of reference					
<p>Following the Council Conclusions [to be] adopted on 11-12 April 2011 on the contribution of the customs authorities to the implementation of the Stockholm Programme in the fight against serious and organised cross-border crime (8096/11 JAI 183 ENFOCUSTOM 18), the project group will first focus on the assessment of the current situation regarding the existence of customs Internet crime specialised units and actions undertaken by the customs authorities to combat fraud and illegal trade on the Internet. The project group will subsequently study the investigative and other working methods of the use of Internet in customs related crime which are or should be encouraged in order to make the investigations into customs infringements as much effective as possible. The primary aim of this action is to achieve a better understanding of the trends and developments in the Member States' customs administrations as to the fight against fraud which is being increasingly facilitated by the use of Internet. Secondly, the action aims to increase the level of Internet crime awareness within customs authorities, to identify ways customs authorities can enhance their capabilities to combat crime and to strengthen the cooperation between the customs Internet crime specialised units and other parties involved.</p>					

	Proposed action	Strategic objectives	Performance indicator	Possible outcome(s)	Other concerned parties
5.3	To explore available and required training possibilities for customs law enforcement officials at EU level	(1) To continue to further develop existing forms of cooperation; (2) To improve and make more flexible the existing cooperation process.	Report, analysis, recommendation to the CCWP.	(1) Customs cooperation areas which could be the subject of trainings for customs officials will be defined; (2) Providing regular trainings for customs officials at EU level and ensuring a platform for exchanging experience, best practice, etc.; (3) Enhancing international cooperation via developed knowledge and personal contacts.	- CEPOL, - COM (DG Taxud, OLAF) - Europol, - FRONTEX, - WCO.

Terms of reference

There is no training provided at EU level specially designated for customs law enforcement officials. Even if customs officials can take part in other related trainings organised at EU level it is only on the basis of invitation and not on the basis of a general and structured arrangement, and, furthermore, there is no deliberate, well-organised and structured training programme ensured for customs law enforcement officials. The CCWP should further discuss and thoroughly examine (1) which trainings provided by the existing EU bodies (e.g. OLAF, Europol, CEPOL, Frontex, DG Taxud - Customs 2013 etc.) could be attended by customs officials regularly and on equal terms with other law enforcement authorities and which EU bodies could offer regular trainings for customs officials (as regards CEPOL, the recommendations of Action 3.6. could be used – document 14583/3/09 REV 3 ENFOCUSTOM 104), (2) what these required trainings should contain (the recommendations of the following documents could be used as starting points: 16883/3/06 REV 3 JAI 722 ENFOCUSTOM 91 considering areas for international multidisciplinary seminars and trainings; 5932/1/06 REV 1 ENFOCUSTOM 18 CRIMORG 22 considering the training on the use of JIT; 8062/1/07 REV 1 ENFOCUSTOM 37 considering the catalogue of assistance available in the field of operational intelligence; 10238/2/04 ENFOCUSTOM 39 REV 2 considering terrorism threat; 14667/3/07 REV 3 ENFOCUSTOM 111 considering illegal waste shipment, identifying and handling of waste on the basis of the related regulations), (3) possibilities of joint trainings (results and recommendations of Action 3.1 could be utilised – 8351/2/09 REV 2 ENFOCUSTOM 42 – recommendations 12 and 14b); (4) how the CCWP can offer solutions where a lack of training is discovered (the document 16883/3/06 REV3 – ENFOCUSTOM 91 could serve as starting point).

	Proposed action	Strategic objectives	Performance indicator	Possible outcome(s)	Other concerned parties
5.4	To examine the use of secure channels for customs authorities in relation to mutual assistance and information exchange	(1) To improve and make more flexible the existing cooperation process.	(1) Further exploring the use of secure channels for all activities of customs relating to mutual assistance and information exchange; (2) Report, analysis and recommendation to the CCWP, approval by the CCWP.	(1) Improved cooperation and information exchange between customs administrations; (2) Improved protection of personal data and data security; (3) Promoting the use of secure channels; (4) Presenting the different options open to customs authorities when exchanging information.	- COM (OLAF), - Europol.
<p>Terms of reference</p> <p>While police can use secure digital channels for information exchange and international cooperation, customs are not provided with such exclusive channels. As the AFIS MAB has been operating live since 15 June 2010, it should be further examined how it or other channels (e.g. Europol, FCLOs etc.) could be utilised for all activities of customs relating to mutual assistance and information exchange, including requests under the Naples II Convention, when protection of personal data is required (the recommendations of the following documents could serve as starting points: 8282/3/08 REV 3 ENFOCUSTOM 47; 8351/2/09 REV 2 ENFOCUSTOM 42). Best practice on data protection, data security and the freedom of information at operational level could also be explored by the project group. However, the use of the Naples II Convention and other practical matters in connection with mutual assistance and information exchange were discussed on the meetings of the Central Coordination Units, mutual assistance and information exchange has not been discussed from a data protection and security point of view, therefore this action could result in added value to the fully use of available legal instruments regulating international cooperation.</p>					

	Proposed action	Strategic objectives	Performance indicator	Possible outcome(s)	Other concerned parties
5.5	To identify and share best practices of controls in a road free flow traffic context	(1) To consider new forms of cooperation and new investigative techniques; (2) To take practical steps towards implementing these new forms of cooperation and to continue to further develop existing forms of cooperation.	Assessment of situations in MS, analysis of risks or opportunities, report to the CCWP.	Recommendations on new methods of control or cooperation.	
<p>Terms of reference:</p> <p>The removal of all kind of obstacles to circulation of vehicles on the EU road network poses a real challenge to operational Customs services in terms of controls and fighting against fraud. It should be interesting to share views and analysis on how to maintain controls' efficiency in such a context, and possibly share successful experiments and adaptations in this area. According to the recommendations of Action 3.5 (16759/1/09 REV 1 ENFOCUSTOM 133), it could be further explored how the links between mobile units and services in charge of risk analyses and fight against crime (detection, intelligence, investigations) could be enhanced within Customs Administrations. Referring to the document 13858/2/07 REV 2 ENFOCUSTOM 100, more practical guidance for using MOUs with the private sector could be developed to enhance the fight against crime and boosting the efficiency of customs control in the context of a road free flow traffic.</p>					

	Proposed action	Strategic objectives	Performance indicator	Possible outcome(s)	Other concerned parties
5.6	To explore in greater detail the legal and operational possibilities of joint or coordinated activities at the external borders	(1) To consider new forms of cooperation and new investigative techniques; (2) To take practical steps towards implementing these new forms of cooperation and to continue to further develop existing forms of cooperation; (3) To improve and make more flexible the existing cooperation process.	Report, analysis and recommendation to the CCWP, approval by the CCWP, Council Conclusion.	Improved cooperation and information exchange between all parties at the external borders.	- COM (DG TAXUD); - Parties at the external borders (including border guards, FRONTEX etc.).
<p>Terms of reference</p> <p>The cooperation between all authorities operating at the EU external borders should be further discussed. It would be also worthwhile to identify and develop other areas of possible cooperation at the external borders, such as: single window, joint training in specific areas; exchange of risk analysis and intelligence information, joint activities, regular meetings of the interested parties, etc. The recommendations of Action 3.1 (8351/2/09 REV 2 ENFOCUSTOM 42) and 4.1 (15653/1/10 REV 1 ENFOCUSTOM 99 + COR 1) could be taken into consideration as starting points.</p>					

	Proposed action	Strategic objectives	Performance indicator	Possible outcome(s)	Other concerned parties
5.7	Improvement of the visibility of the contribution of customs to the area of freedom, security and justice	(1) To consider new forms of cooperation and new investigative techniques; (2) To take practical steps towards implementing these new forms of cooperation and to continue to further develop existing forms of cooperation; (3) To improve and make more flexible the existing cooperation process.	Report, analysis and recommendation to the CCWP, approval by the CCWP.	EU law enforcement agencies, taking part in the legislation and programming process will be better aware of the significance of the customs law enforcement (increased visibility of customs leading to actions directly linked to customs law enforcement in the new security and law enforcement programmes in the EU).	- COM, - EU JHA agencies.

Terms of reference

Ever since the creation of the Customs Union, customs has been the main "gate-keeper" at the external EU borders, carrying out a multitude of tasks on behalf of the whole society. Customs authorities have a long experience in cross-border cooperation and have been a fore runner in developing the necessary working methods and legal instruments in this area. In order to remain a pivotal player in protecting the EU and its citizens it is of great importance that the high quality work carried out by the customs becomes better known among decision makers and other stake holders.

Even the recommendations of Action 1.2 (6285/06 ENFOCUSTOM 22 UD 23 + COR 1) of the first Action Plan drew attention to the better visibility, by suggesting close cooperation between the chairpersons of the Customs Union Group and the Customs Cooperation Working Party in order to involve each other into projects of common interest.

	Proposed action	Strategic objectives	Performance indicator	Possible outcome(s)	Other concerned parties
5.8	The role of customs in managing crisis situations	(1) To consider new forms of cooperation and new investigative techniques; (2) To take practical steps towards implementing these new forms of cooperation and to continue to further develop existing forms of cooperation; (3) To improve and make more flexible the existing cooperation process.	Report, analysis and recommendation to the CCWP, approval by the CCWP.	Better knowledge about crisis management in customs services of the EU with the view to find best practises as well as to improve existing cooperation.	- COM (DG Home, DG TAXUD, OLAF), - Europol.

Terms of reference

The crisis management is becoming more important for the work of customs services within the EU. Customs services are often part of such systems in their respective countries. Even if they do not play a major role in their national schemes connected to the crisis management, due to the fact that customs services have unique competencies they are indispensable to accommodate such activities. However, the customs services do not only respond to the crisis situation but also can be an object of such crisis situation. The project group would focus on drafting the best practice in this context as well as to examine the current legal and practical situation in terms of cooperation, in the case of crisis situation where the customs service of one or two countries are involved.

	Proposed action	Strategic objectives	Performance indicator	Possible outcome(s)	Other concerned parties
5.9	Improve the exchange of information and intelligence between central coordinating units as well as the practical implementation of mutual assistance and cooperation	(1) Consider new forms of cooperation and new investigation techniques; (2) Take practical steps towards implementing these new forms of cooperation and to continue to further develop existing forms of cooperation; (3) Improve and make more flexible the existing cooperation process.	(1) Reports from meetings of Central Coordinating Units; (2) Publication of the solutions to the contentious issues.	(1) Enhanced cooperation between Central Coordinating Units; (2) Final report to the CCWP whether this work should be continued.	- COM, - COPEN, - Eurojust, - Europol, - LEWP.

Terms of reference

This Action is based on the “Report on Evaluation regarding Member States' implementation of customs cooperation (Naples II Convention), including ratification status (2007) 8282/3/08 REV 3 ENFOCUSTOM 47” which recommends enabling those concerned, especially central coordinating units, to regularly exchange experiences with a view to improving practical application of the Naples II Convention. Action [3.9] of the CCWP Action Plan - “To improve cooperation and communication between Central Coordination Units and other units directly co-ordinating mutual assistance and exchange of information” (14585/2/09 REV 2 ENFOCUSTOM 105) proposed a concrete solution to this recommendation, consisting in recurring meetings of the members of the Central Coordinating Units. These will significantly contribute to further enhancement of cooperation between the said units, particularly in the field of mutual assistance and exchange of information. The CCU meetings will discuss the topics relating to the practical implementation of mutual assistance and exchange of information and intelligence as well as to the problems described in the above mentioned report. To foster the organisation of the recurring meetings the setting up of a small group of experts (steering group) was proposed. The steering group will report on its activities as well as on the findings of the CCU meetings and on achievements in the enhancement process to the CCWP once per Presidency. The issue and the project were dealt with in the Third and Fourth Action Plans and, as it runs for three years, it is meant to be finished by December 2012.

	Proposed action	Strategic objectives	Performance indicator	Possible outcome(s)	Other concerned parties
5.10	To find and recommend best practice for customs cooperation in criminal matters	Comparing the legal base of special forms of cooperation in criminal matters and its implementation in the scope of various legal frameworks (Naples II, MLA, Schengen, etc.).	Report, analysis and recommendation to the CCWP, approval by the CCWP; preparation, publication and distribution of practical guides.	Improved cooperation and information exchange.	- COM (OLAF), - Europol, - Eurojust, - FRONTEX, - CEPOL.

Terms of reference

The final report of Action 4.10 of the fourth Action Plan – “To update the Naples II Convention Handbook” (11684/10 ENFOCUSTOM 63) drew attention to the ‘need to set up a new action within the next Action Plan, which would compare the legal base of special forms of cooperation in criminal matters and its implementation in the scope of various legal frameworks (Naples II, MLA, Schengen, etc) with the aim to find and to recommend the best practice.’ The fight against international criminal activities requires efficient and smooth cooperation between the MS' law enforcement authorities in order to better prevent, detect and investigate cross-border crimes. In recent years, EU instruments, which also apply to customs law enforcement, have been developed to ensure international law enforcement cooperation, however the possibilities they provide have not been fully exploited by the authorities, therefore, it should be further explored which tools (special cooperation forms) could be best used in any given situation, what are the possible obstacles and how they could be overcome, etc., in order to carry out efficient cooperation. Even the recommendation of Action 6.6 (on the ‘Evaluation of the application of the Naples II Convention by EU Member States’) of the first Action Plan determined that more precise information about the appropriate legal instruments in certain situations should be considered and made available to practitioners (7863/05 ENFOCUSTOM 21). In parallel, the final report (8282/3/08 REV 3 ENFOCUSTOM 47) on the Action 8 of the second Action Plan of “To evaluate the Member States’ implementation of customs cooperation (Naples II Convention)” (cf. Action Plan implementing the Hague Programme point 3.3(q)) also recommended that ‘the CCWP should give timely guidance on any new legal instruments that concern customs cooperation, (...), to avoid diverging interpretation and implementation in the Member States. Practitioners should be given a concise overview of the use and best practice of appropriate legal instruments in certain situations’. And according to the recommendations of Action 3.16 (6026/1/10 REV 1 ENFOCUSTOM 8), this action could also serve the purpose of the recommendation that the Best Practice Guide should be reviewed every two years in each forthcoming action plan in order to promote and enhance the better and efficient use of the special forms of cooperation under the Naples II Convention.