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From: Danish Delegation

To: Customs Cooperation Working Party

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Subject: Action 4.6 "To revise the concept of JCOs" - draft final report

1. Introduction

The customs authorities of the Member States play a crucial role in the fight against cross-border crime. Therefore it is of utmost importance that there is well-developed cooperation between both Member States' customs authorities and the Commission as well as between these parties, other competent authorities, including those in third countries, especially the ones neighbouring the European Union, and with relevant international organisations.

The Customs Cooperation Working Party (CCWP) has for several years successfully contributed to this cooperation by implementing Joint Customs Operations (JCOs). These are carried out with the overall objective of encouraging and improving the effectiveness of operational cooperation between Member States' administrations engaged in combating infringements of customs legislation.

JCOs were started in the early 1990s in connection with the establishment of the third pillar in the Maastricht Treaty. Since then many JCOs have been conducted.

[...]

The benefits accrued from JCOs include increased seizures of various illicit products, illicit supply disruption and assisting in dismantling organised crime networks whilst improving Customs enforcement risk analysis, targeting, operational techniques and general professionalism. Due to the expansion of the EU and increased knowledge and awareness of EU and transcontinental organised crime, experience has shown that regional focused operations, based on updated Europol co-ordinated OCTA recommendations, are more effective in tackling core smuggling issues and are more manageable to implement and co-ordinate.

JCO activity should be based where possible on the recommendations from the OCTA intelligence cycle whilst also taking account of strategic threat assessments. Single agency platforms are limited in tackling the diversification of organised crime and the current law enforcement focus in dismantling transnational illicit networks is to tackle these with effective law enforcement/military networks. Perhaps there is now a need for Customs services throughout Europe to open up their co-ordinated structures, such as JCO activity, to other law enforcement platforms and agencies (e.g. MAOC-N and CECLAD should perhaps be accepted as partners in maritime/aerial drug related operations). As a result of the ongoing security threat the focus should now be in developing joint intelligence driven operations at all levels: local, national, EU wide and intercontinental. Customs services should be the drivers and developers of such initiatives rather than waiting to react to proposed developments from supranational bodies such as FRONTEX.

A guide for JCOs has been established and was last revised in March 2011 (doc. 8435/11 ENFOCUSTOM 24). The work of this group might result in the need for further revisions of the guide.

The objectives of CCWP are set out in the strategy for customs cooperation¹. To achieve the aims of the strategy, relevant actions are carried out according to action plans. The Fourth Action Plan to Implement the Strategy² covers ten actions and was in force from 1 January 2010 until 30 June 2011.

This Action Plan puts forward Action 4.6 “To review the concept of JCOs” and determines its strategic objectives:

- to consider new forms of cooperation and new investigative techniques;
- to take practical steps toward 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.

2. Mandate

The mandate³ for action 4.6 “To review the concept for JCOs” is set out in the strategy for customs cooperation.

According to the terms of reference, the working group should look into the planning, execution and especially the follow-up to JCOs, including the use of the special forms of cooperation in the Naples II Convention.

It was thus not part of the work to review the entire concept of JCOs.

¹ Doc. 15198/09 ENFOCUSTOM 118 ENFOPOL 272

² Doc. 16445/09 ENFOCUSTOM 130

³ Doc. 15664/1/10 REV 1 ENFOCUSTOM 101

The outcome of the work on this specific action would be to present a report which includes analysis and recommendations to be adopted by the CCWP.

3. Working group

A working group was established with representatives from Belgium, Finland, Germany, Hungary, Italy, the Netherlands, Poland, Slovenia, Spain, Sweden, the European Commission and Denmark (lead).

The working group had four meetings in Brussels in 2011. In addition, e-mail was used as a means of communication. Furthermore, the chairperson of the working group gave interim reports to the CCWP on the progress of the work in the group.

4. Work of the working group

The working group discussed the activities concerning the planning and execution of JCOs, including the funding aspects and procedures, possibilities for a more comprehensive planning mechanism as well as the possibilities for enhanced cooperation with other bodies within or outside the EU such as LEWP, COM, Europol, EUROJUST, FRONTEX [...] and the WCO. In addition to this, the group held discussions on a coordinated follow-up to the results achieved, in particular concerning seizures made or investigations into customs infringements.

5. Issues/problems identified and possible solutions

The working group identified certain issues/problems that might hamper effective planning, execution and follow up to JCOs, and has listed possible solutions and ideas to enhance their effectiveness.

The following problems and issues were identified:

- Overlap between operations,
- Lack of a proper funding mechanism,
- Difficulties in managing the JCOs,
- Number and coverage of JCOs,
- Time span of JCOs,
- Lack of proper and effective follow-up,
- Lack of the use of the special forms of cooperation in Naples II Convention.

5.1 Planning

5.1.1 Issues/problems identified

- Overlapping

It was noted that there is a tendency of JCOs overlapping, in relation to both objectives as well as timing, with other operations organised by other entities. The existing Coordination Mechanism for Joint Operations¹ is therefore an important forum where all scheduled operations should be tabled in order to avoid duplication.

The possible lack of commitment from MS could be due to an overlapping with full scale operations, regional operations and national operations and there is therefore a need for the MS to prioritise.

Furthermore, the lack of a proper funding mechanism may under certain circumstances cause an overlap. There is often quite a long time span between the phase where the planning of a new operation is initiated and the time where the grant for funding is received. This postpones the execution of the operation along with the risk that the JCO may overlap with JCOs organised by other bodies.

¹ Doc. 13077/2/10 REV 2 COSI 54 ENFOPOL 230 ENFOCUSTOM 73 FRONT 123

This long time span also makes quick reactions to new threats almost impossible as the period between the application and the granting of funds will in many cases be 9-10 months or even longer. Many Member States may be reluctant to engage in JCOs without the allocation of funding.

As far as coordination with other bodies is concerned, it was found that there is a definite need to coordinate and cooperate with other bodies. The actual functioning of the existing Coordination Mechanism was discussed and it appeared that the mechanism is functioning although information about operations is sometimes received at a very late point (see below). The fact that COSI was created to coordinate operations between customs and police was also underlined.

As far as coordination with WCO and other bodies is concerned, it was agreed that there would be room for improvement.

FRONTEX

It was agreed that an improvement of the communication and coordination between the CCWP Group of Experts and FRONTEX is essential to avoid overlapping.

European Commission

The working group noted that cooperation with OLAF is working well. When it comes to cooperation between the CCWP and TAXUD there is room for improvement in the exchange of information in the planning and timing of operations.

WCO and other parties

There are also other parties which initiate operations, such as WCO/RILOs, the SECI Center, EUBAM [...] (this list is not exhaustive). A need for better planning and coordination of initiatives was identified in this area as well.

- Lack of a proper funding mechanism

A general problem is that existing funding programmes or operational budget such as ISEC, HERCULE II and CUSTOMS 2013 programmes or budget made available to implement the Council Regulation (EC) 515/97 do not cover all the needs of the customs enforcement activities in the fight against cross border illicit trafficking in goods:

- Funding made available to implement the Council Regulation 515/97 covers 100% of the costs and applies to operations exclusively in EU competence in the customs domain.
- HERCULE II [...] programme, which covers 80% of the costs, only applies to actions exclusively in EU competence, respectively in the domain relating to the protection of EU financial interests and in the customs domain.
- Customs 2013 programme, which covers the EU components of the trans-European IT systems, the EU common training modules and related platforms for collaboration and information sharing, and the so-called "joint actions" established through a grant agreement. For the latter the co-financing part covered by the beneficiary customs administrations mainly relates to the human resource aspect. The programme is based on the internal market article and is therefore not limited to financing activities in exclusive EU competence.
- ISEC programme, which covers 80% of the costs, only applies to operations of shared competence between the EU and MS.

As far as the ISEC funding programme is concerned it was found that although the programme was established to cover these kinds of operations as stated above, it is not flexible enough to make it possible for the CCWP Group of Experts to organise a full scale JCO soon after a new threat has been identified. The often very long time span between the submission of the application for funding and the actual allocation of the grant creates uncertainty to MS organising a JCO and in certain cases leads to the postponement of planned JCOs.

However, the problem of funding also has another aspect. As for now, resources for the planning of JCOs have to be provided solely by the customs administrations of MS and cannot be funded via existing funding programmes. It means that a MS volunteering to lead a JCO must be able to provide the resources necessary for the project. Especially in times with ever tighter personnel resources in MS this is seen as being a factor discouraging MS to lead JCOs.

- Difficulties in managing the JCOs

The planning of JCOs was considered to place a heavy burden involving extensive resources on the single MS that volunteers to lead an operation. This can have a discouraging effect on the willingness to lead operations.

Furthermore, especially MS which are only leading JCOs occasionally often lack the availability of experienced staff. This means that problems may occur during many of the planning processes (application for funding, time aspects, avoid of overlap, logistics, etc.) which will often lead to extra, superfluous use of resources. Although part of these problems have been more or less solved with the introduction of the JCO Library these findings have lead MS to consider introducing a “facilitating mechanism” (see below).

5.1.2 Possible solutions

- Overlapping

The working group considered the further improvement of the coordination mechanism crucial and believed that it should cover all possible operations organised by other bodies. For this purpose the introduction of a “calendar” with overview of all JCOs – both full scale as well as regional - and operations planned by other bodies such as the WCO, FRONTEX and the LEWP could be considered. This would mean the establishment of an information exchange procedure with the abovementioned other bodies.

Furthermore, a more proper and flexible funding mechanism would enable leaders of JCOs in obtaining a more precise planning and thereby avoid unforeseen overlaps due to amendments of time schedules.

More specifically this could imply the following:

FRONTEX

Closer contacts with FRONTEX within the Coordination Mechanism would avoid situations where the CCWP Group of Experts is informed at a very late stage about initiatives carried out by FRONTEX. The FRONTEX working programme covering also the planned operations is available every year, however, an increased understanding of the document would be necessary for CCWP.

WCO and other parties

A solution could be that prior to or at the beginning of each Presidency the incoming/acting Presidency takes contact with the WCO to learn about their planned operational initiatives. Together with the talks in the Coordination Mechanism this will ensure a good planning and avoid overlapping.

- *Lack of a proper funding mechanism*

It was the general opinion in the working group that a 100% funding mechanism should be established in order to cover all actions irrespective of their belonging under exclusive or shared EU competence. This would also include the funding of VAT which is not at the moment financed by the programmes.

- *Difficulties in managing of the JCO*

The establishment of a more permanent structure or group under/amongst the Group of Experts to facilitate the handling of general aspects of the planning of a JCO was discussed. Among other advantages, this would contribute to an in-depth planning of JCOs. Such a structure would also handle the work around the business cases of planned JCOs and have the necessary experience to take care of the planning work in general, among other matters the funding of JCOs.

Another idea would be that a facilitating function could be established within the Commission. [...]

5.2 Execution

5.2.1 Problems/issues identified: The use of the special forms of cooperation in Naples II Convention

a) The use of the special forms of cooperation in general

The special forms of cooperation mentioned in the Naples II Convention are:

- Hot pursuit (Art. 20)
- Cross border surveillance (Art. 21)
- Controlled deliveries (Art. 22)
- Covert investigations (Art. 23)
- Joint special investigation teams (Art. 24).

Some of these forms of cooperation are used more than others by MS customs authorities. In some cases, this is due to lack of competences, in other cases this can be due to a lack of experiences (e.g. JITs).

b) The use of the special forms of cooperation in connection with JCOs

MS participating in the working group mentioned that in certain cases they do not use these forms of cooperation in connection with JCOs or do so very rarely. Despite the fact that only some of the special forms of cooperation can in practice be used in the course of JCOs the group believes that these forms of cooperation are not widely used in connection with JCOs primarily due to different competences between different authorities according to national legislation (customs, police, prosecutors and judges). Furthermore, it was found that judicial authorities do not always seem to take an interest in using these forms of cooperation. It might be due to lack of awareness of the advantages in the use of the Naples II Convention in combating international crime and terrorism.

5.2.2 Possible solutions

A possible solution could be that customs services on national level, in case they do not have the necessary competences, seek closer cooperation with other competent authorities (e.g. the police and judicial authorities) that have the competences necessary for the application of Articles 20-24 of the Naples II Convention in order to enhance the use of these forms of cooperation.

Furthermore, in general an effort should be made to create more awareness amongst judicial authorities on these special forms of cooperation.

An option would be to include this item to the agenda of a future CCWP-LEWP meeting following discussion in the project group for Central Coordination Units (CCU).

5.3 Follow-up

5.3.1 Problems/issues identified: systematic follow-up to JCOs

It was seen as the primary problem that a systematic follow-up to JCOs has previously been more or less neglected. The results stemming from an operation are not always dealt with or followed up in a proper way. It was seen as a problem that after an operation participants are not using the conclusions and recommendations in a constructive manner. This is probably due to the lack of resources in MS.

Another problem is that the results of criminal/administrative investigations that derive from infringements found during a JCO are not taken into account when considering the final results of a JCO.

This is probably due to two main reasons:

- there is often a long time between the finding of an infringement and the final result of a criminal/administrative investigation;
- some customs authorities do not have the competence of conducting the criminal investigations themselves.

The need for a more systematic and coherent follow-up with analysis of the experience gained and the results achieved was identified as crucial in keeping the value of JCOs that have been conducted.

5.3.2 Possible solutions

[...]

As the less intensive follow-up to JCOs conducted is primarily due to the lack of resources in MS the establishment of a fully financed permanent structure to plan and coordinate the follow-up to JCOs might solve that.

Permanent structure

A solution could be setting up a permanent structure in connection with the Group of Experts which oversees that more “measurable” objectives for a JCO are set up – objectives that are easily evaluated at a debriefing or by the forerunner – and could easily be followed up.

Other ideas

Other ideas put forward for the improvement of especially the debriefings were:

- holding workshops with case studies at the debriefing,
- elaborating in-depth analysis prior to the debriefing (this would mean that a new TA would be almost ready for the debriefing and could be improved there, for instance with new risk profiles) and
- ensuring a better follow-up on major cases involving investigations.

It is also proposed that after an operation participants would have to use the conclusions and recommendations of the JCO in a constructive manner. This would also contribute to further enhancement of the use of the JCO Recommendation monitoring file.¹

5.4 Other topics for discussion

5.4.1 Topics discussed

- Time span of the execution phase

A typical JCO runs for one or two weeks. Especially JCOs running over a period of two weeks may be considered too long, depending on the kind of JCO.

Particularly in connection with land based control of lorries at border points, is often spotted very quickly that controls are being carried out and seizures therefore drop. In connection with controls of ships/containers and aircrafts the situation may be different.

The working group discussed the split up of the operational phase of a JCO into two phases with one or more weeks inbetween. It was agreed that such a break between the two operational phases could be used for a review of the agreed profiles and for an analysis of the results achieved during the first operational phase. If deemed necessary the outcome of this would enable the organisers of the operation to immediately adjust the second operational phase. It was agreed that it is probably necessary to review the Coordination Mechanism.

It was, however, stressed that it should not be compulsory to have a break between the two operational phases in case of all JCOs as it would depend on the concept of the actual JCO.

¹ Doc. 16924/09 ENFOCUSTOM 135

- Number and coverage of JCOs

The number of JCOs amongst EU MS is in general about four per year. This re any other number of JCOs could always be discussed, however it was found that four seemed to be an appropriate number under given circumstances. MS also participate in operations with other partners. Furthermore, the resources that are necessary to plan and organise a JCO are regarded as a problem preventing MS, where such resources are not available, from conducting JCOs.

It was also mentioned that a single JCO is often limited to one or a few types of risk areas. The possibility of JCOs covering a broader number of risk areas, with due regard to the type of the JCO in question, was also discussed. It was agreed to try to promote broader risk area coverage if possible.

5.4.2 Possible new ideas

Longer lasting and more permanent JCOs

The idea of having longer and more permanent JCOs was discussed. This would, however, entail amendments of the planning and funding mechanisms, and could be a subject for another project.

6. Conclusions

The working group concluded that there is room for improvement for existing procedures in connection with JCOs. Recommendations are proposed under point 7.

It should, however, be mentioned that some of the problems identified, especially the ones of a more general nature (i.e. funding mechanisms, permanent structure, etc.) are also being dealt with by other project groups and will probably be discussed further in the CCWP.

7. Recommendations

The group has identified a number of problems/issues where there appears to be room/need for improvement. On this basis the group recommends:

1. On a general level:

- 1.1 to further explore the possibility of establishing a permanent structure/facilitation mechanism to assist MS especially in the planning and follow-up to JCOs;
- 1.2 to further explore the possibilities for a more proper, faster and coherent funding mechanisms, in particular, to consider an amendment of the Council regulation (EC) 515/97 or an extension of the future Customs 2020 programme in order to allow financing of all operations irrespective of their belonging under the exclusive or shared EU competence.

2. More specifically:

2.1 Planning

To improve the existing coordination mechanism and ensure that closer contact to other bodies – COSI, FRONTEX and WCO - is established in order to seek more coherent cooperation and avoid overlap of operations.

2.2. Execution

- 2.2.1 Test the division of the operational phase into two or more phases;
- 2.2.2 Consider the possibilities of a broader coverage regarding risk areas, where possible;

2.2.3 further explore the possibilities of closer cooperation between customs, police and judicial authorities in order to make better use of the special forms of cooperation in Naples II Convention (encourage MS, where Customs have the overall competency, to consider the use of the available special forms of cooperation in Naples II Convention on all occasions; in cases where customs do not have the overall competency, further explore the possibilities of closer cooperation between customs, police and judicial authorities in order to make better use of the special forms of cooperation in the Naples II Convention).

2.3. Follow-up

- 2.3.1 ensure a more systematic and coherent follow-up to JCOs in order to make use of the experience gained;
- 2.3.2 further explore the possibility of establishing a permanent structure to facilitate this process.

The CCWP is asked to adopt this report and the recommendations suggested.

8. Annex

A list of abbreviations used in the document is attached in Annex.

List of abbreviations

CCU	Central Coordination Unit
CCWP	Customs Cooperation Working Party
COM	The European Commission
COSI	Standing Committee on Internal Security
COSPOL	Comprehensive, Operational, Strategic Planning for the Police
EMSA	European Maritime Safety Agency
EUBAM	EU Border Assistance Mission to Moldova and Ukraine
EUROJUST	European Body for the Enhancement of Judicial Co-operation
EUROPOL	European Law Enforcement Agency
FRONTEX	The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
ISEC	Prevention of and Fight against Crime
JCO	Joint Customs Operation
LEWP	Law Enforcement Working Party
MS	Member State
OCU	Operation Coordination Unit
OLAF	European Anti-Fraud Office
RILO	Regional Intelligence Office
SECI	Southeast European Cooperative Initiative
TA	Threat Assessment
WCO	World Customs Organization