



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 18 July 2012

12714/12

ENFOCUSTOM 77

OUTCOME OF PROCEEDINGS

of:	Customs Cooperation Working Party (Plenary meeting)
on:	13 July 2012
Subject:	Summary of discussions

1. Adoption of the agenda

The meeting adopted the agenda as set out in doc. CM 3672/1/12 REV 1 with the addition of information points by the NL delegation and Europol under AOB.

2. Information from the Presidency

The CCWP was updated about some recent events of relevance to customs authorities enumerated in doc. DS 1482/12. Special attention was paid to the outcome of the latest meetings of COSI, CUG and HDG. Delegations were also informed about the issues discussed at the annual meeting of Philip Morris International and Japan Tobacco International with the Member States and the last sessions of the WCO's Policy Commission and Customs Cooperation Council.

3. Follow-up of the Council Resolution on the future of custom law enforcement cooperation

The PL delegation informed that the last meeting of the drafting group was held in Brussels on 2 July 2012. On the basis of exchanged views, the participating Member States finalised the structure of the draft Strategy which would encompass the customs mission in fighting crime, the operational and strategic targets and the customs action plan. The final version of the draft Strategy would be presented at the September meeting of the CCWP in order to enable all Member States to express their opinion on the draft text.

The PL delegation also explained that as result of the meeting with the Council Legal Service it was concluded that the draft Strategy would be adopted in the form of Council Conclusions, which suited best both its nature and content as a policy document providing guidelines to both Member States and Commission. It was underlined that a greater support by and close contact with Commission services, in particular DG Home, would be necessary for the implementation of the future Strategy.

The Presidency stated that it would organise a meeting with the relevant Commission services to discuss this point and their future involvement in the CCWP work.

4. The Fifth Action Plan (July 2011 - December 2012) to implement the Council Resolution of 23 October 2009 on a reinforced strategy for customs cooperation

Delegations provided an update on various actions under the Fifth Action Plan (doc. DS 1139/4/12 REV 4).

As regards Action 5.1, the LT delegation explained that they were currently analysing the replies of the questionnaire disseminated at the end of April 2012.

As regards Action 5.2, the CZ delegation informed that the last meeting of the project group would be held on 3-5 October 2012 in Budapest. It would focus on the instruments available for Internet searches, open source intelligence, mutual assistance and exchange of information on Internet crimes. Europol was expected to take part and to present the tasks and mission of the European Cybercrime Centre as well as the progress made on its establishment. The recommendations of the final report would be looked into.

As regards Action 5.5, the FR delegation explained that the project group had its last meeting on 19 June 2012 in Paris at which the analysis of the replies of the questionnaire was completed and the draft final report was finalised. Delegations were requested to provide their comments by 1 August 2012 and the FR delegation would present the draft final report at the September meeting of the CCWP.

As regards Action 5.6, the HU delegation informed that they had prepared a questionnaire which was just circulated. The deadline for answers was 17 September 2012.

As regards Action 5.8, the PL delegation explained that it would be in a position to provide information at the September meeting of the CCWP.

As regards Action 5.9, the PL delegation announced that at the Steering group meeting held on 12 July 2012, the library under the MAB system was discussed and the agenda for the Larnaca Conference was finalised and would be distributed shortly. Next meeting would be held mid-October 2012 in Rome.

As regards Action 5.10, the DE delegation informed that 17 replies to the questionnaire were received so far and requested the other Member States to provide their contributions.

5. Draft final report on Action 5.4 "To examine the further use of existing secure channels for information exchange between customs authorities and with other law enforcement authorities in relation to mutual assistance in the area of freedom, security and justice"

The SE delegation presented the draft final report on Action 5.4 (doc. 11831/12 ENFOCUSTOM 65), specifying that at EU level there were 2 secure communication channels for exchange of intelligence - SIENA and MAB mail. The results of the questionnaire prepared and disseminated by the project group revealed, *inter alia*, that the customs authorities of only 6 Member States had access to the SIENA network and 4 were in process of preparing their access whereas the police of only one Member State had access to MAB mail.

This led to the question whether MAB mail could be used for law enforcement purposes. Although the Commission expressed the opinion that it was possible, no uniform position was reached within the project group on that matter. Therefore the SE delegation requested the opinion of the Council Legal Service and explained that the outcome might lead to a revision of the recommendations stated in the final report.

Several delegations supported the draft recommendations and launched the idea of supplementing the final report with the opinion of the Council Legal Service, which in their view would be useful and could serve as a guideline when a choice between the two secure channels was to be made. One delegation expressed the view that the final report should explain where the uncertainty regarding the use of MAB mail for law enforcement purposes derives from and suggested that some of the recommendations should be corrected as one of them seemed contradictory where another required further precision as the matter it was referring to was already dealt with in DAPIX.

6. The FIDE Handbook

The Chair introduced the new revised version of the FIDE Handbook reflecting the respective points of the joint opinion of the data protection authorities (doc. 5047/3/12 REV 3 ENFOCUSTOM 1). As no additional comments were made by delegations, the text was adopted.

7. Threat assessment on transit air passengers

The CY delegation presented doc. DS 1483/12, explaining that its aim together with the questionnaire circulated recently was to check within the CCWP the need to prepare a threat assessment on transit air passengers and to collect the necessary information before putting a proposal in this regard to CCWP/Experts. It was underlined that in CY the transit air passengers were considered as a separate risk area as experience showed that they usually use illogical routes whenever being involved in illegal activities.

Delegations welcomed the Presidency idea. To the question what was meant by transit passenger the CY delegation referred to the provisions of the Union Customs Code.

Delegations were also reminded that the deadline for providing replies to the questionnaire was 7 September 2012.

8. SOCTA Methodology

A representative of Europol made a presentation on the SOCTA methodology, which was endorsed by COSI on 25 June 2012. It was explained that although SOCTA was a follow-up of OCTA, it was based on a different conceptual model as it was having an enlarged scope both with regard to the criminal activities to be covered and the tools used encompassing also indicators for serious and organised crime areas.

It was further explained that SOCTA looked into the effects, both the direct and indirect ones of the serious and organised crime (SOC) and the crime relevant factors, which represented developments in society that influence aspects of SOC, crime areas, behaviour of criminals and victims. In this regard the representative of Europol acknowledged the difficulties in collecting data and precise figures.

Delegations were also informed that a questionnaire was prepared and the deadline for Member States to send their replies was 31 August 2012.

9. Presentation of the outcome of the CPG meeting held on 5-6 July 2012 regarding the possible ways to enhance EU-level capabilities for customs risk analysis and targeting

The Commission explained that the CPG meeting was dedicated to the outcome of the study on how to improve the capabilities for customs risk analysis and targeting at EU level assigned to Price Water House Cooper. The study outlined a number of problematic issues/areas and made corresponding suggestions for their enhancement, *inter alia*, improvement of the performance measurement, enhancement of data quality, introduction of the supply chain in the risk management, improvement of governance & strategy and enhancement of operational cooperation. The Commission wanted to verify at the CPG meeting with all Member States whether all areas of concern were covered and what were the priorities for them on which basis to prepare an Action Plan.

The discussion covered a wide range of issues, therefore the Commission requested Member States to send in written their positions by the end of August 2012 and to appoint one contact person to take part in the work to be done in September 2012.

Following the presentation delegations welcomed the findings of the study and several of them asked Commission to clarify how exactly it was planning to continue the work (e.g. in a working party, project group, spontaneously). They suggested that a letter be drafted for that purpose addressing the respective Directors-General. The Commission agreed and explained that it would draft a note in order to make clear the future steps and provide some information on the outcome of the CPG meeting.

10. Proposals for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data and for a Directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data

The Commission explained that the reform of the data protection framework was provoked, amongst others, by the abolition of the former pillar system and the slow and rather fragmented implementation. Therefore the proposed legal instruments aimed at creating a clear, consistent and uniform EU framework and ensuring an adequate level of data protection at EU level while strengthening at the same time the individual data protection rights.

The proposed Regulation would replace Directive 95/46/EC and although pursuing the same objectives it was expected to improve consistency and implementation by setting the general data protection framework in a single instrument that was binding in its entirety and directly applicable in all Member States. Moreover the draft Regulation would establish a "one-stop shop" system for data protection in the EU allowing companies operating through multiple offices to deal with only one data protection authority (DPA). It would also seek to improve governance by creating stronger national DPAs and enhancing the cooperation among them and by putting in place a new EU data protection Board.

At the same time, the proposed Directive, which would replace Framework Decision 2008/977/JHA, would strive to harmonise the data protection rights and to ensure the free flow of information in the field of criminal justice and police cooperation. Due to its legal character, the proposed Directive would provide the necessary flexibility required to accommodate the specific nature and needs in that area. Its scope would cover the prevention, detection, investigation and prosecution of criminal offences and the execution of criminal penalties.

11. Presentation of the outcome of the border guard-customs administrations cooperation meeting held on 14 June 2012

The Commission started its presentation by explaining that both the Stockholm Programme and the Internal Security Strategy in Action called for actions to support the collaboration between authorities. Therefore, in 2010, DG HOME carried out a comprehensive study on the matter agreeing that the dialogue should continue through dedicated meetings.

On the basis of the study, the Commission prepared a discussion paper providing an overview of what was done previously, of the framework for cooperation and the main results of the study, namely good practices and main obstacles. It also established in annex a 3 levelled model for cooperation - minimal, middle and high-level one.

Delegations were asked to present their comments by 15 August 2012 as well as to inform about their working practices.

12. Improvement of the visibility of the CCWP's work

The DE delegation presented several ideas on how the visibility of CCWP's work could be improved, in particular vis-à-vis the other EU institutions, bodies and formations. They underlined the need to specifically address the CCWP's role and remit within the Council structure, to provide regular information on key issues and to maintain regular contacts with and present the CCWP's views or opinions to its relevant counterparts.

A number of delegations intervened on the matter, welcoming in general the topic and putting new suggestions for improvement of the CCWP's work visibility, *inter alia*, easier access to the information relating to CCWP on the Council website, preparation of annual reports, use of the social media, etc. The Presidency wrapped up the discussion concluding that many different ideas were made and they required careful consideration in respect of the resources they would entail to be put in practice. However the preparation of a good Strategy for customs cooperation might be an appropriate first step in addressing the visibility issue.

13. AOB

In relation to an upcoming WCO operation in which Member States were invited to state their participation by 15 July 2012 the NL delegation raised the question whether CCWP should provide coordination on the matter and requested Member States to share some details on how they establish contacts between their relevant national authorities in such cases.

Several delegations announced that they would take part in the WCO operation. However, in order to answer properly the questions posed by NL, delegations requested that a discussion paper was being prepared and presented at the next CCWP meeting.

Europol informed about two documents that were recently issued: a crime situation report on mobile criminal groups and a pre-operational risk assessment of JCPO ATHENA III, both available through the SIENA system.
