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NOTE

From:	Presidency
To:	Customs Cooperation Working Party
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Subject:	Final Report on the Study by the Presidency on Advanced Passenger Information and Passenger Name Records

Delegations will find attached the final report regarding the Study by the Presidency on Advanced Passenger Information and Passenger Name Records. The CCWP is invited to note this report.

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ACRONYMS

API	Advanced Passenger Information
CCWP	Customs Cooperation Working Party
EU	European Union
MS	Member States
PNR	Passenger Name Record
WCO	World Customs Organisation

PRESIDENCY STUDY ON THE USE OF ADVANCE PASSENGER INFORMATION AND PASSENGER NAME RECORDS

1. Background

The WCO Council adopted a Recommendation regarding the use of Advance Passenger Information (API) and Passenger Name Record (PNR) for efficient and effective Customs control at its June 2012 sessions. This Recommendation is based on international experience of Customs enforcement agencies in using API and PNR data to meet the challenge posed by trans-national crime. The WCO Council took the view that use of API and/or PNR data for risk assessment would assist Customs administrations in developing and exploiting the best possible intelligence for the control of travellers, facilitate allocation of enforcement resources and facilitate low risk passengers.

Mindful of this initiative from the WCO, the Presidency indicated at the meeting of the Customs Cooperation Working Party (CCWP) Plenary Group held on 11 February 2013 that it proposed to undertake a short survey¹ amongst the Member States (MS) in relation to the use of API and PNR. The Presidency indicated that the purpose of this survey, which it proposed to undertake using a questionnaire, was to establish a clear picture of the current position from both legal and operational perspectives in the MS. Overall, the expectation from the Presidency was that presentation of the findings to the CCWP Plenary Group would provide MS with a clear perspective of the Union-wide position on this issue with specific emphasis on:

1. linkages to trade;
2. the basis for such linkages;
3. the type and extent of co-operation taking place;
4. the legal basis and scope of current activity in this area;
5. the practical implementation of such activity; and
6. future plans, where appropriate.

Furthermore, the Presidency believed firmly that the outcome of this survey would be of significant interest to the Project Group led by Cyprus regarding air transit passengers and would thus add worthwhile value to the ongoing and evolving work in this important area of activity.

¹ doc. 5947/13 ENFOCUSTOM 18 GENVAL 7

A total of 24 MS plus Croatia responded to the questionnaire and the Presidency wishes to extend its appreciation to them for doing so.

2. Introduction to the questionnaire

The questionnaire contained a total of eight questions, some of which were sub-divided, depending on the initial response. In framing the questions, the Presidency focused primarily on the following aspects of API and PNR:

1. the legal dimension – particularly the legal authority to use such data, the extent of such authority and the purposes of it specified in law;
2. the operational dimension – the purpose for which the data is used, the type of access allowed and the systems used to achieve that.

An important aspect to the questionnaire is that, whilst certain MS may not have legal authority at present for access to such data, it was recognised that they may be in the process of planning/arranging for this in the future so they were given the opportunity to indicate that this is the case.

In framing the questionnaire, the Presidency considered it inappropriate to ask a specific question about MS-Customs involvement in Article 5 of the Proposal for an EU-Directive on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime. This was based on the understanding that the proposed Directive is still making its way through the legislative process and that, whereas PNR systems in individual MS might eventually have to be compliant with the final legal text, there is some distance to travel before this matter is finalised. Some MS in their responses mentioned the fact that they are looking forward to the adoption of the Directive as this will give them greater legal certainty.

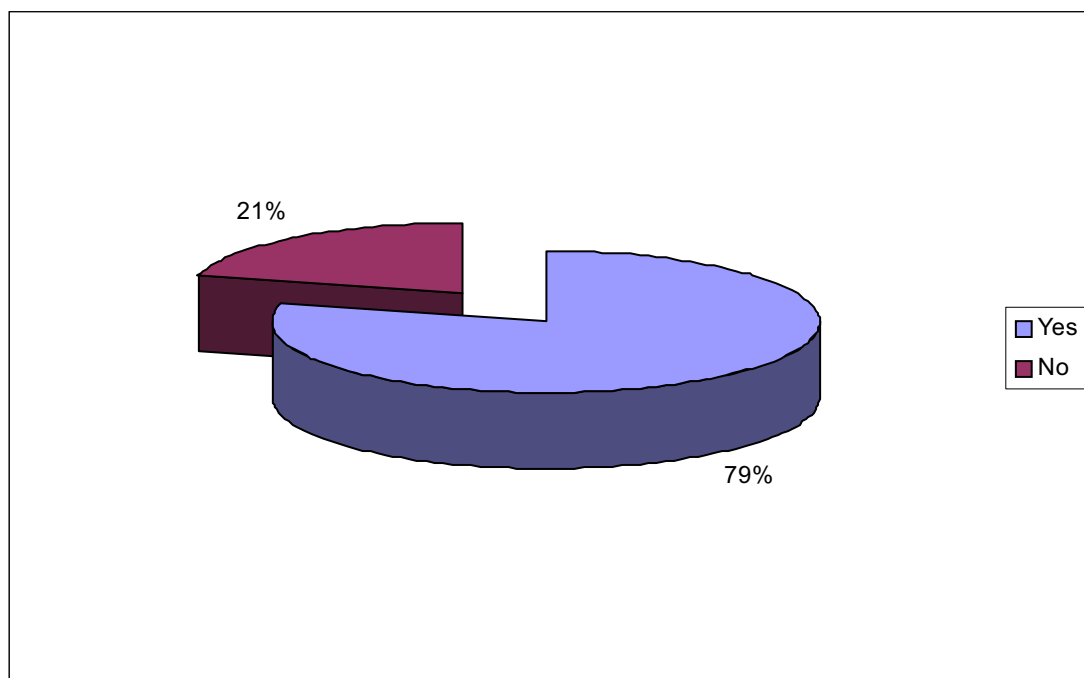
3. Analysis and findings on each question

3.1 Question 1 – Arrangements in place to obtain advance information

This question set the scene for what followed and asked MS whether, as part of an overall strategy, their Customs Authorities have put specific arrangements in place to ensure the fullest co-operation of airlines and the other international passenger transport businesses to assist them in conducting risk analysis regarding travellers.

Chart 1 sets out the findings in this case.

Chart 1
Arrangements in place on advance information



At a 79% positive response, this is a very satisfactory outcome particularly in view of the fact that this is a relatively recent concept. Of course, there is scope for improvement as Customs Authorities should be striving to achieve a situation where there is 100% coverage. However, it is accepted that such a situation may not be attainable having regard to domestic legislation, issues of competence or other considerations.

3.2 Question 2a – Basis for arrangements to obtain advance information

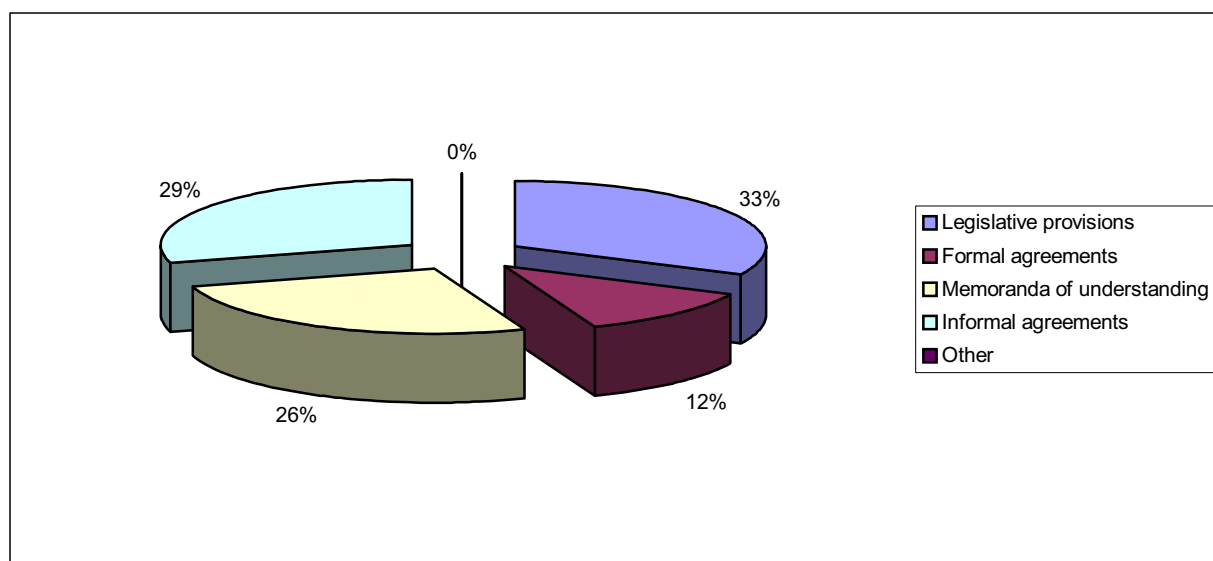
In this question, MS which gave a positive response to question 1 were asked to indicate how they achieved the necessary co-operation. Five options were mentioned as follows:

1. Legislative provisions
2. Formal agreements
3. Memoranda of Understanding
4. Informal arrangements
5. Other

Scope was provided also for further elaboration, where required.

The findings are set out in Chart 2a.

Chart 2a
Basis for arrangement



The findings in this case are quite interesting. Perhaps the most striking aspect is the range of arrangements which is employed at present. In some cases more than a single method is employed, thus allowing for a more flexible approach and this is noteworthy. An important finding here is that the highest percentage of respondents at 33% rely on legislative provisions. This is desirable as it gives the strongest degree of power to the Customs Authorities whilst also ensuring high levels of protection to legitimate travellers.

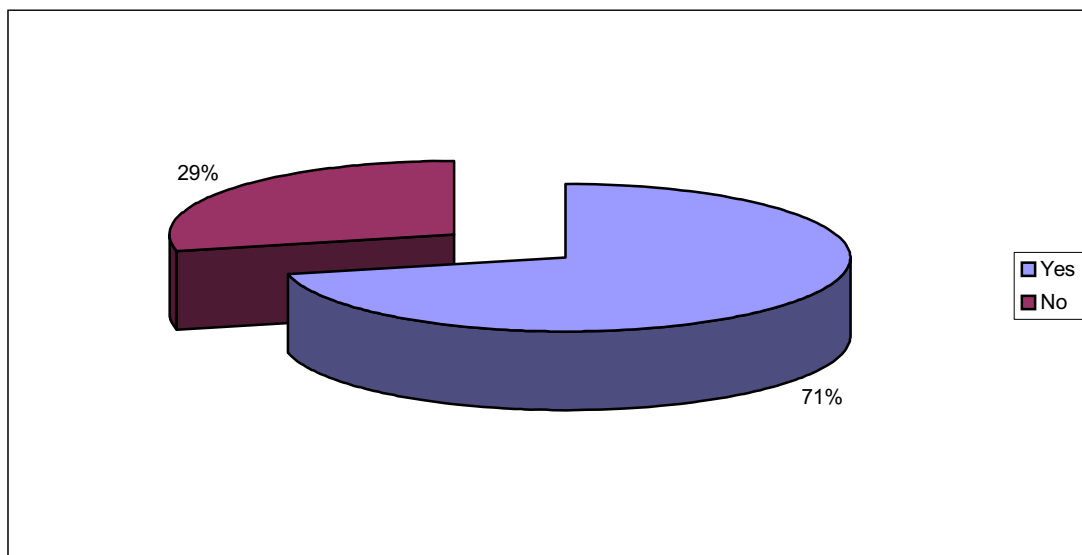
Memoranda of Understanding and Formal Agreements feature at 26% and 12% respectively. In particular, these findings point to the involvement of trade and the valuable links that have been established. Again, these are formalised arrangements so the scope of what is involved is clearly established and set out. As with statutory provisions, this clarity is of mutual benefit to both Customs Authorities and legitimate travellers, not to mention enabling trade to play a vital role. Informal arrangements are in place for 29% of respondents and this figure is quite high relative to the others. For the reasons outlined, it is desirable, where feasible, to move to more formal types of arrangement and clearly that message is being implemented.

3.3 Question 2b – Proposals to put arrangements in place

This question provided those MS which had responded negatively to question 1 with an opportunity to indicate whether or not they had plans to adopt such an approach in the foreseeable future.

The findings are set out in Chart 2b.

Chart 2b
Plans for access to advance information



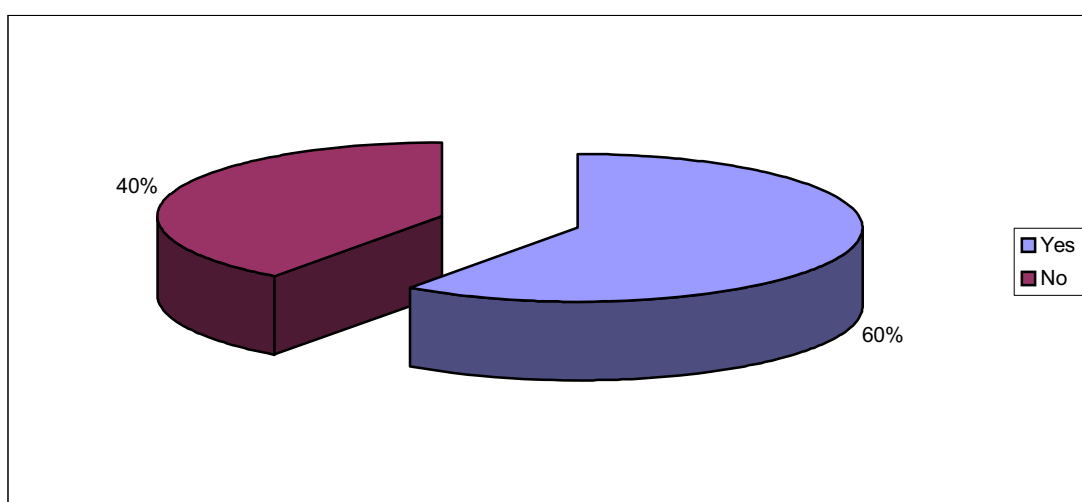
It is heartening to note that 71% of those who do not have arrangements in place at present regarding advance information confirmed here that they have plans to rectify this situation. If all of these respondents put their plans into practice, this would bring the total number of respondents with arrangements in place to 94% which would be a significant improvement on the current position. Of the 29% of respondents to this question who indicated that they have no plans at present to put advance information arrangements in place, none indicated their reasoning for this position.

3.4 Question 3 – Availability of legal access to advance information

In this question the MS were asked to indicate whether their Customs Authorities have legal authority at present to access advance information, principally API and/or PNR, for the risk assessment of travellers. This question laid a foundation for a number of others, the answers to which were dependant on the Customs Authorities having legal authority to access advance information.

The findings are set out in Chart 3.

Chart 3
Legal authority to access advance information



In this case, 60% of respondents indicated that they have a legal entitlement to gain access to advance information, although in some cases it was pointed out that there are limitations to their entitlement to such access. The response here is a relatively high percentage, which is satisfactory. Nonetheless, it allows adequate scope for improvement.

An interesting aspect here is the contrast with the response to question 2a. In that question, only 33% indicated that their access arrangements are based on statutory provisions whereas a much higher percentage here confirm that they have a legal entitlement to gain access to advance information. Clearly, a substantial number of respondents are choosing to use arrangements other than those based on statutory provisions to gain access to advance information but no explanation has been given for that nor is this apparent.

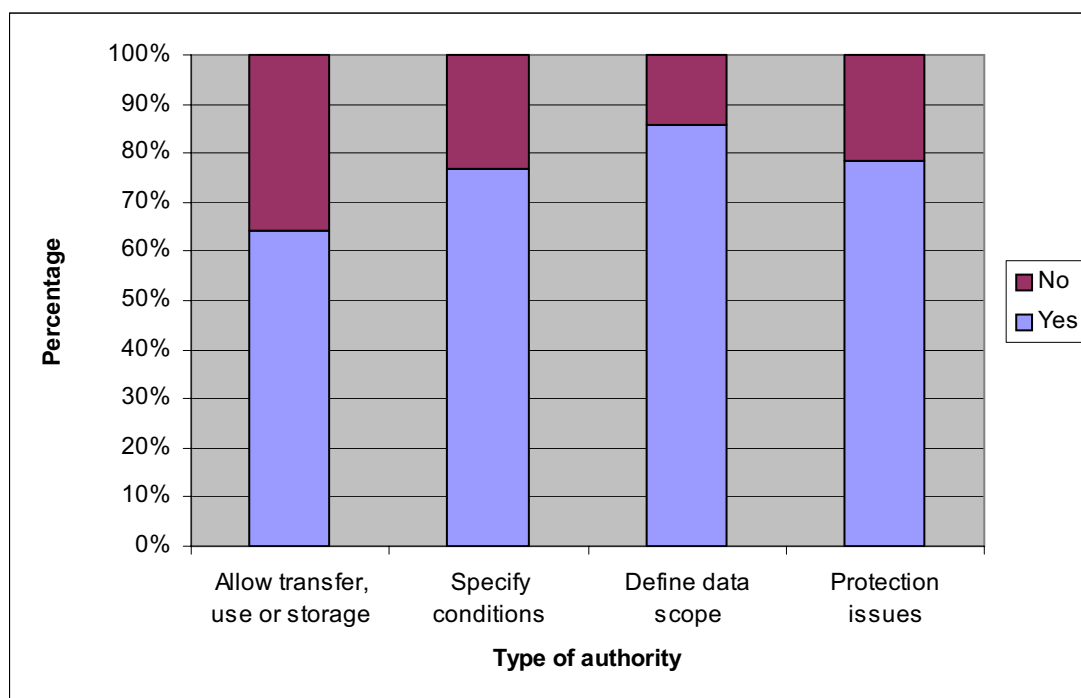
3.5 Question 4a – Extent of legal authority regarding advance information

In this question MS, which gave a positive response to question 3 regarding legal authority to access advance information, were asked to specify what the legal authority allowed their Customs Authorities to do. Four options (which were not mutually exclusive) were provided and covered a range of activities, as follows:

1. allow the Customs Authority to transfer, use and store API and/or PNR data
2. specify the conditions attached to such activity
3. define the scope of relevant data
4. put in place mechanisms for the protection of the pertinent data.

The findings are set out in Chart 4a.

Chart 4a
Extent of legal authority to access advance information



This question sought details in respect of four separate and distinct sectors and it is notable that in all of these there was a high percentage of positive responses. A number of conclusions can be drawn from this:

1. there is a broad range of powers available to Customs Authorities
2. there is a keen awareness of the extent of these powers
3. there is a high degree of consistency in the type(s) of authority available to Customs Authorities, and
4. there is a very high level of awareness and consciousness of data protection issues.

The issue of data protection is important here and it is clear that the expectation that legitimate travellers be protected adequately is well catered for.

Two further points were raised here, as follows:

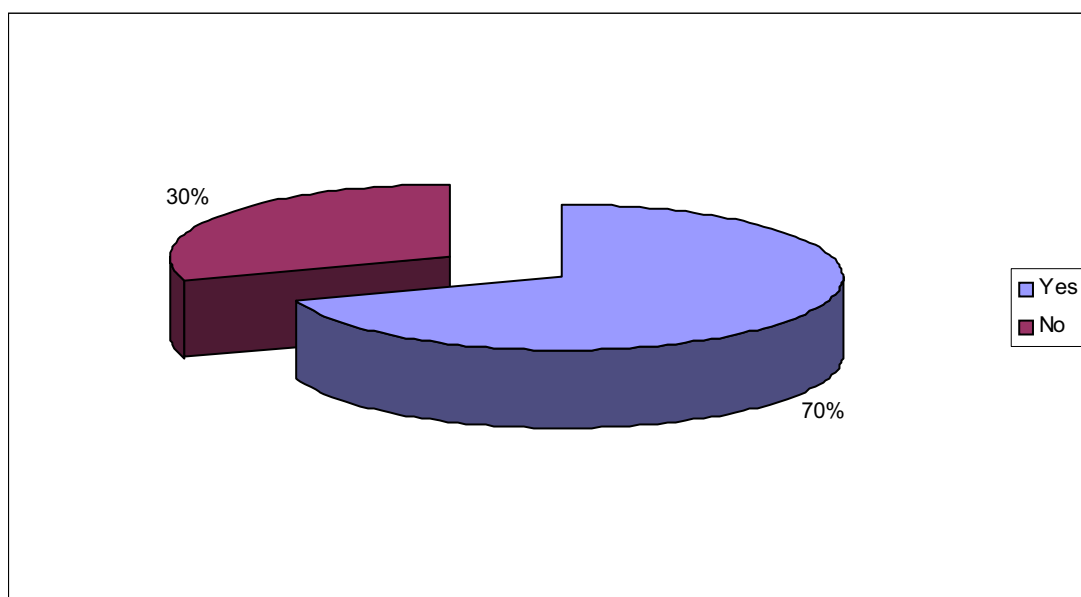
1. the need to differentiate between API and PNR as they are separate concepts and the fact that they must be dealt with separately
2. what happens the data after a control has been carried out – is it required to be deleted?

3.6 Question 4b – Proposals to provide legal authority

This question provided those MS which had responded negatively to question 3 regarding legal authority to access advance information with an opportunity to indicate whether or not they had plans to adopt such an approach in the foreseeable future.

The findings are set out in Chart 4b.

Chart 4b
Proposals to provide legal access to advance information



It is very heartening to note that 70% of those who do not have legal authority at present regarding advance information confirmed here that they have plans to rectify this situation. If all of these respondents put their plans into practice, this would bring the total number of respondents with legal authority to 88% which would be a significant improvement on the current position. A number of MS which indicated that they propose to get legal authority confirmed that the Proposal for an EU-Directive on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime is important for them as it will lead to changes in national legislation which will be helpful to them.

Of the 30% of respondents to this question who indicated that they have no plans at present to seek legal authority to obtain advance information, none indicated their reasoning for this position.

3.7 Question 5 – Use of information legally accessed

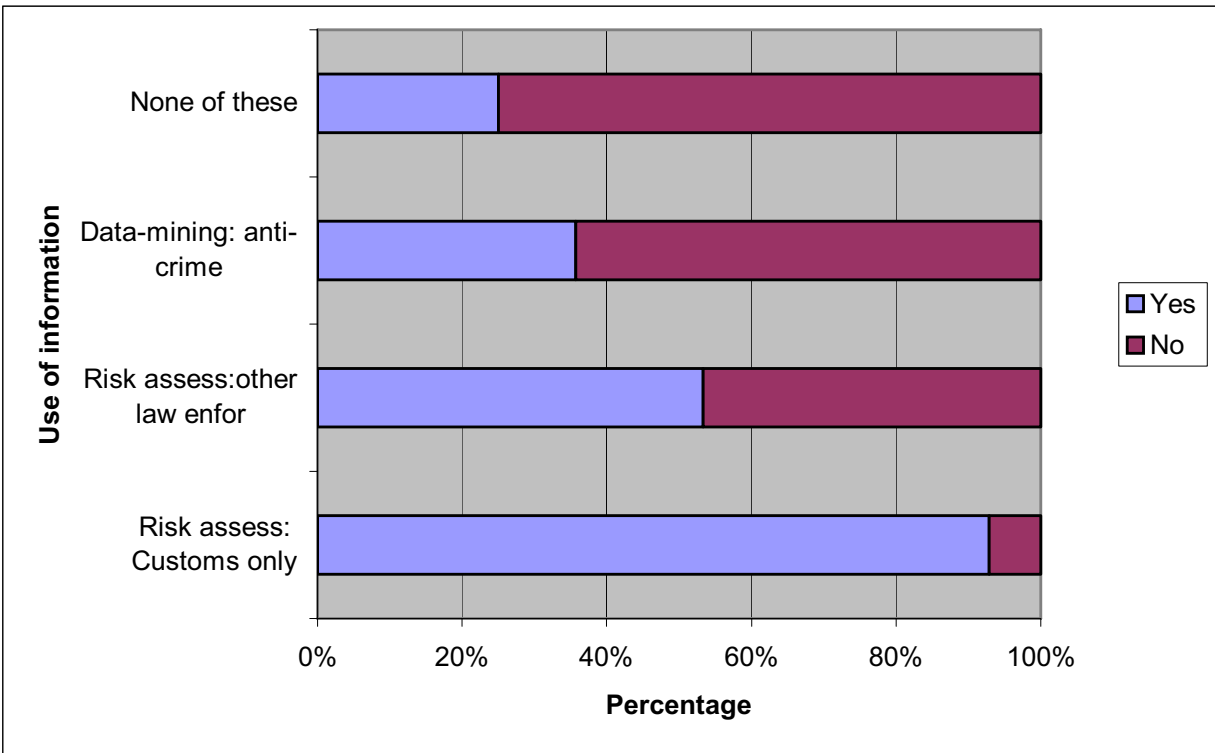
The response to this question depended on whether MS had given a positive response to question 3 regarding legal authority to access advance information. In this case, such MS were asked to specify for what purpose(s) they used the legal authority to access advance information. Four options were mentioned covering a range of activities, as follows:

1. Risk assessment for Customs law only
2. Risk assessment for other Criminal law also
3. Data-mining for general anti-crime purposes
4. None of these

Scope was provided also for further elaboration, where required.

Chart 5 sets out the findings in this case.

Chart 5
Use of advance information legally accessed



The clearest finding here is that over 90% of respondents who confirmed that they use advance information indicated that this is primarily for customs risk analysis purposes. It is also notable that close to 60% of respondents use the information for risk assessment in another law enforcement context. In some cases, the number of respondents suggests that information is being used for more than a single purpose. Moreover, a number of MS indicated that the data is used in connection with:

1. customs supervision and operation of safety and security controls
2. detection and investigation of customs-related crime
3. prevention and detection of serious crime.

A specific option was provided here in respect of information being used in connection with data mining. Data mining was defined as the automatic or semi-automatic analysis of large amounts of data to extract previously unknown interesting patterns such as groups of data records (clutter analysis), unusual records (anomaly detection) and dependencies (association rule mining). As the concept of data mining is relatively new, it is notable that already over 30% of respondents are using advance information for that purpose. Given that over 60% of respondents are not using data mining, there is ample scope for development in this area of activity which is expanding rapidly due to advances in technology.

Other issues which were commented on by MS in their responses included the fact that in some cases where Customs Authorities are in legal possession of data there are various legal gateways to allow for sharing e.g. with Immigration Authorities.

3.8 Question 6 – Form of legal access

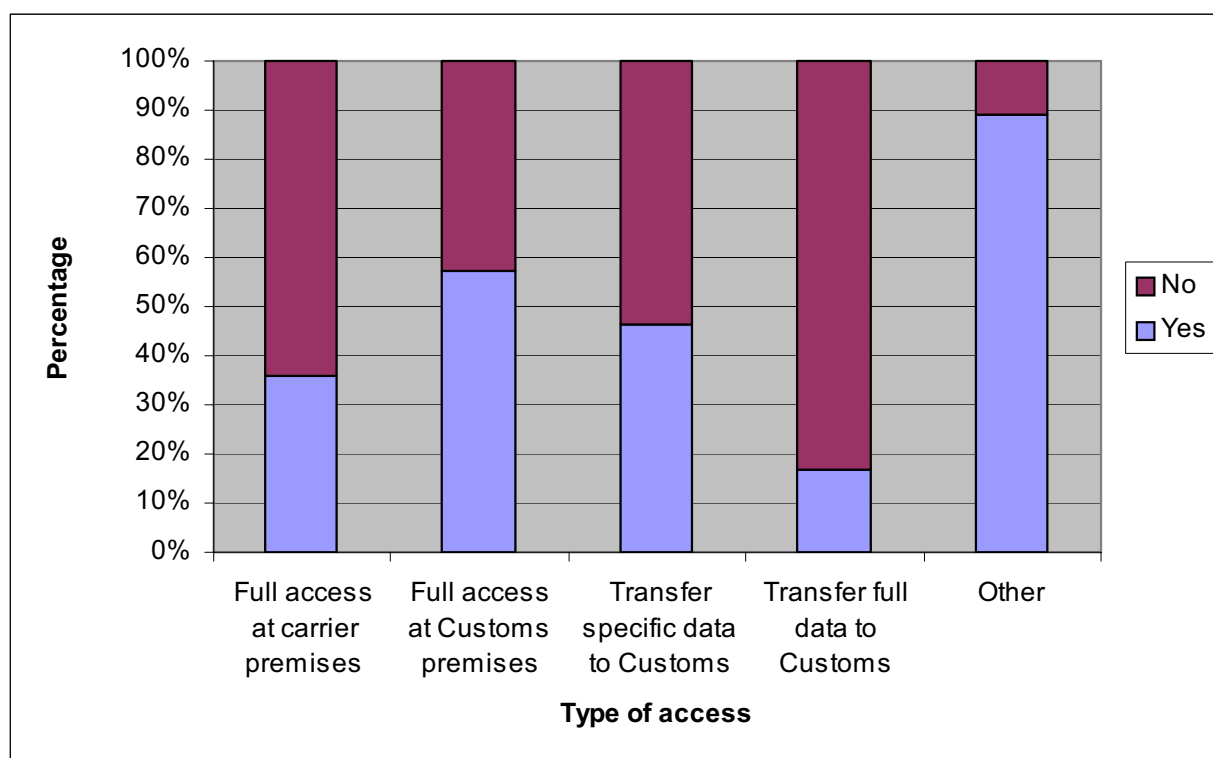
Yet again, the response to this question depended on whether MS had given a positive response to question 3 regarding legal authority to access advance information. In this case, such MS were asked to specify what form the access to advance information took and five options were provided for covering a range of possibilities, as follows:

1. Full access to carrier systems at carrier premises
2. Full access to carrier systems at Customs premises
3. Transfer of specific carrier data to Customs systems
4. Transfer of full carrier data to Customs systems
5. Other

Scope was provided also for further elaboration, where required.

The findings are set out in Chart 6.

Chart 6
Form of legal access to advance information



The responses to this question indicate a wide variation in the type of access used by Customs Authorities. Over 50% of respondents indicated that they access the information at a customs premises and this is the highest response in respect of a specific location. Almost 90% pointed out that they use other types of access without specifying what these are.

No overall pattern is discernable from the findings in this case. In general terms, access gained through specific forms is low in most cases and, as indicated above, only reaches less than 60%. This is an area which may be worthy of further consideration with a view to establishing what are the most effective ways of obtaining advance information.

3.9 Question 7 – Access systems used

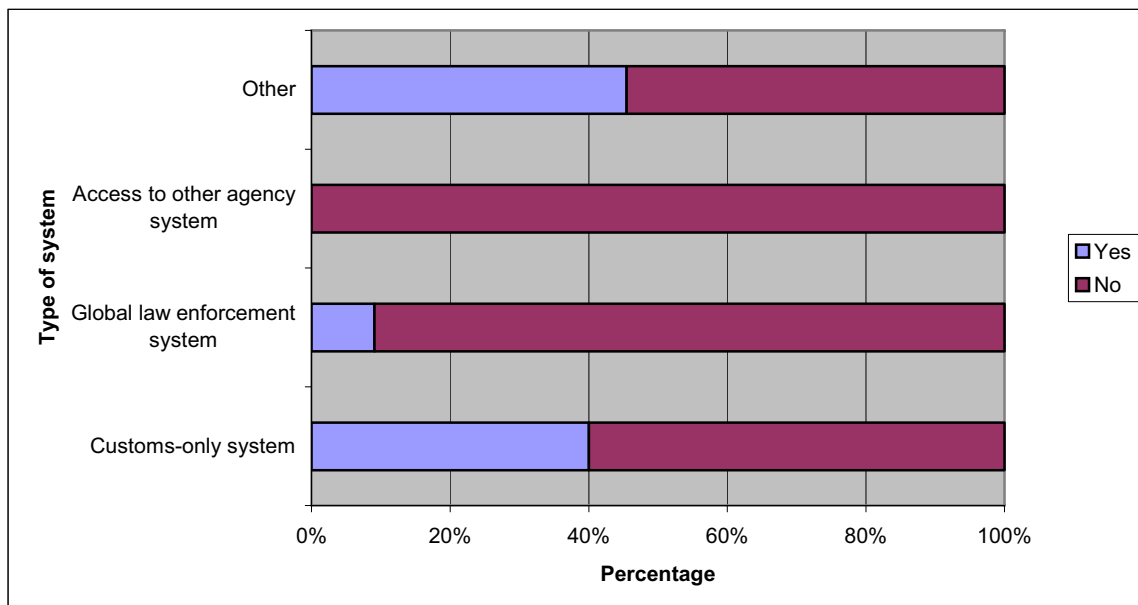
Once more, the response to this question depended on whether MS had given a positive response to question 3 regarding legal authority to access advance information. In this case, such MS were asked to specify what type of system they use to gain access to the relevant information. Four options were mentioned covering a range of possibilities, as follows:

1. A dedicated Customs-only system
2. A global law-enforcement system
3. A dedicated system of another agency e.g. Police or Immigration Authority to which Customs is allowed access
4. Other

Scope was provided also for further elaboration, where required.

The findings are set out in Chart 7.

Chart 7
Systems used to access advance information



There is no discernable pattern to the results in this case. Customs-only and Other systems are close to being equally popular but the use of these is low relative to the number of respondents. Access to global law enforcement systems is very low at 10% whilst in the case of systems operated by other agencies there is no access at all. This is somewhat surprising as there would be some expectation of the possibility of customs being able to piggy-back on such systems.

The various comments provided by respondents by way of clarification in this case go some way in clarifying the position. Chief amongst these comments were:

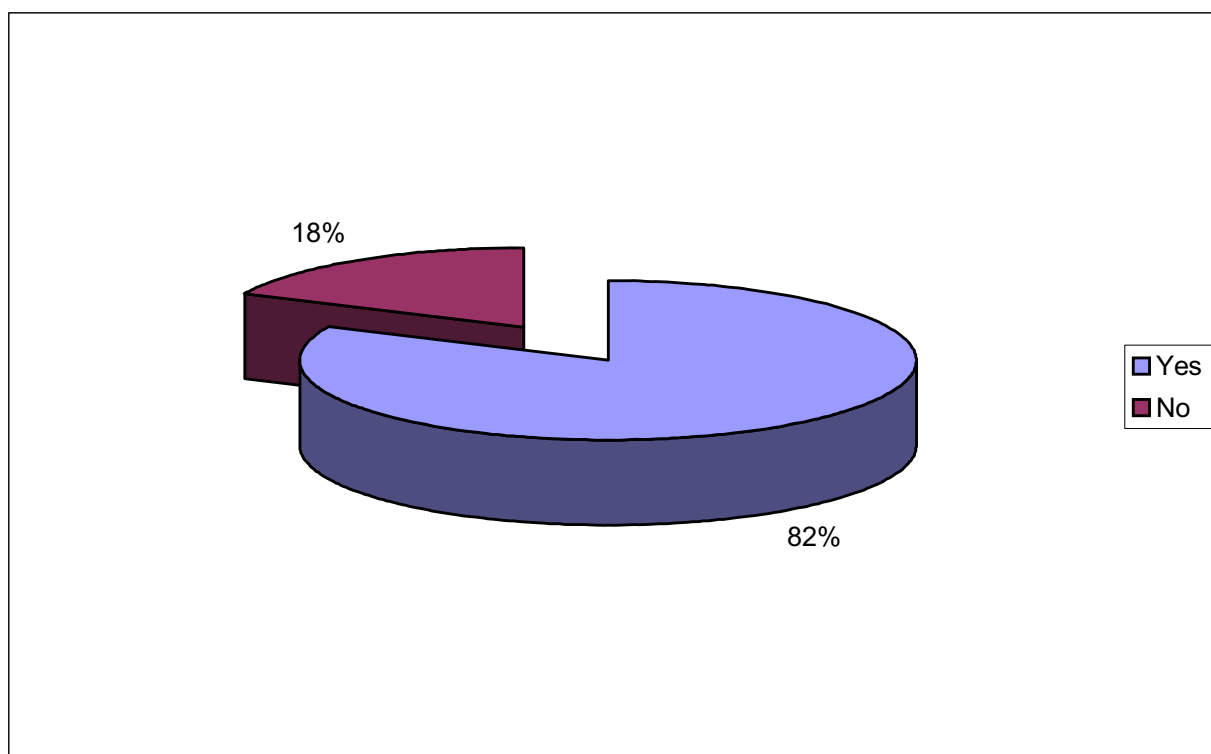
1. access to advance information is only available on request
2. data is transferred to customs on request
3. no formal system is in place due to the lack of a legislative basis
4. data are obtained in an ad hoc manner, mainly in paper format
5. carrier systems are used
6. carriers send data electronically but the format is their own choice
7. both “push” and “pull” mechanisms are used with traders to gain access to data, as necessary, depending on their systems.

4.1 Question 8 – Cooperation and support

In this question MS were asked whether their Customs Authorities promote co-operation with, and extend support to, other Customs Administrations, subject to their legal authority. In this regard, specific reference was made to including the exchange of intelligence and experience in the use of API and/or PNR with a view to more efficient and effective identification of potentially high-risk travellers.

The findings are set out in Chart 8.

Chart 8
Provision of co-operation and support



4. Overall conclusions

The overall conclusions to this study are positive and may be summarised as follows:

1. advance passenger information is a relatively new concept and a significant majority of MS is already alert to its possibilities in a law enforcement context
2. a significant majority of MS not involved with the process of advance information at present have definite plans to change this policy
3. there is a broad spectrum of arrangements in place to obtain and process advance information
4. there is a high level of engagement by trade
5. the most significant number of arrangements are formal in character

6. a high % of MS have legal access to advance data and this is desirable from all perspectives
7. of those MS which do not have legal authority to obtain and process advance information at present, a majority have plans to put such an arrangement in place
8. finalisation of the proposal for an EU Directive on the use of Passenger Name Record data is awaited with considerable interest
9. there is a high level of recognition for the importance of data protection in this particular area of activity which is a desirable development from a traveller perspective
10. advance information is being used primarily for customs risk analysis purposes at present. Although it is used for other purposes also, these are relatively minor but clearly there is scope to expand on such usage in a broader law enforcement context
11. there are wide variations in both the types of access and the systems used to gain such access at present
12. there is a high level of cooperation by MS at present.

5. Recommendations

This is an area of activity which is proper to the Member States national Customs Authorities. Therefore, in light of the issues of competence involved, recommendations in this case must, of necessity, be general in nature and reasonably high-level. The following recommendations are addressed to MS for consideration:

1. there is an indisputable case for Customs Authorities to have access to and to be able to use advance passenger information. Therefore, it would be beneficial for those Customs Authorities, which are not using such advance information at present and have yet to formulate plans to obtain and use it, to re-consider their position
2. legal authority is the most robust basis on which to obtain and use advance information. Whilst it is not an absolute requirement to have explicit legal authority, it would be preferable to have such a process in place as far as possible and Customs Authorities should explore this approach in greater detail

3. the potential benefits to be gained from effective use of advance information in an overall law enforcement context are very significant. From a customs risk assessment standpoint, such benefits are apparent already but, in keeping with the Policy Cycle, Customs Authorities now need to take a greater account of the broader law enforcement context and examine ways to maximise the effective use of such information from that perspective
 4. sources of advance information are varied and there is no dominant method whereby it is obtained which could be prescribed as being a best practice model. This is an area where further study could usefully be carried out with a view to developing such a best practice model
 5. similarly to identifying a best practice model for sources of advance information, a similar exercise needs to be carried out in connection with the systems used to gain such access at present.
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