



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 24 October 2012

15308/12

ENFOCUSTOM 106

OUTCOME OF PROCEEDINGS

of:	Customs Cooperation Working Party (Plenary meeting)
on:	12 October 2012
Subject:	Summary of discussions

1. Adoption of the agenda

The meeting adopted the agenda as set out in doc. CM 4629/1/12 REV 1 with the addition of an information point by the Council Secretariat under AOB.

2. Information from the Presidency

The CCWP was updated about some recent events of relevance to customs authorities enumerated in doc. DS 1629/12.

The NL delegation referred to OLAF's presentation of the permanent structure for JCO at the meeting of the Committee on Mutual Assistance and suggested that the issue could also be discussed in the CCWP.

In addition, the Presidency informed delegation about the meeting it had with DG Home together with the IE and PL delegations. DG Home provided some information about the ongoing internal restructuring of issues, specifying that such restructuring did not necessarily imply a change as to which DG would be responsible to follow the work of CCWP. The Commission (DG Home/DG Taxud) said it would keep the Presidency informed about the developments. The issue of financing for customs activities under the new instrument ISF was also discussed. The Presidency informed delegations that it had sent a letter to the Commission about the same issue.

Finally, the Presidency referred to the incoming Central Coordination Units meeting to be held in Larnaca on 8-9 November. The invitation had been sent out at the end of July but due to some technical mishaps it might not have reached all interested parties. The Presidency requested delegations to forward the information about the meeting to all relevant national services within the deadline for registration set on 20 October.

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

The PL delegation presented the revised draft of the strategy (doc. 12712/1/12 REV 1 ENFOCUSTOM 7) following the discussion at the last meeting and the comments received from MS, and explained the rationale behind the main changes. The aim was to have the strategy endorsed by the Council in December. The drafting group would meet again on 30 October in order to further work on the document. On that date the drafting group could also start to work on an action plan if that was the intention of the MS.

The UK, ES and NL delegations as well as the Commission raised some legal and procedural issues. The UK, supported by the Commission, pointed out that some wording could lead to conflict of interests between areas within the competence of the Commission and areas within the competence of the Council. Much as it would be useful to involve the Commission in some aspects of the CCWP activity, from a legal point of view Commission activity would not be covered by the legislation underpinning customs law enforcement cooperation. This was a general issue that would apply to several parts of the draft strategy. In addition, any discussion about the structure or mandate of the CCWP should be carried out in Coreper and should not find its place in the draft strategy. NL raised the issue whether Article 73 of the TFEU should be mentioned as legal basis of the strategy. The Commission also highlighted that many expressions in the text were too vague and went beyond the scope of a document such as the draft strategy. It suggested that the Council Legal Service could be consulted on the draft.

Several delegations supported the idea that work on an action plan should be started as soon as possible and agreed by the end of the year as the current action plan would expire in December. However the CZ delegation called for a future action plan to include a lower number of actions and to focus more on practical matters and being instrumental in promoting effective cooperation.

In addition to these general comments, several delegations made remarks on specific parts and wording of the text and announced that they would send written contributions. The Presidency gave a deadline until 19 October for written comments, also in order to adequately prepare the meeting of the drafting group on 30 October.

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 1139/6/12 REV 6).

As regards Action 5.1, the LT delegation explained that they were currently analysing the replies of the questionnaire and the drafting of the report would start soon. It would be distributed to the members of the drafting group and subsequently to the CCWP.

As regards Action 5.2, the CZ delegation informed that the last meeting of the project group had taken place on 3-5 October 2012. It had focused on the instruments available for Internet searches and working procedures. Europol took part to the meeting and made a presentation about their methods for media monitoring and for processing the gathered information. Furthermore, it made a presentation on the European Cybercrime Centre. The final report was now being drafted.

As regard Action 5.4, consultations were still ongoing between the Council Legal Service and the Commission Legal Service. The point would probably be again on the agenda of the next meeting in November.

As regards Action 5.5, the final report had been adopted.

As regards Action 5.6, the HU delegation informed that they had distributed a questionnaire and had received replies from 19 MS. Work on the final report would start soon.

Action 5.8 was dealt with as a separate point on the agenda.

As regards Action 5.9, the PL delegation announced that it would provide information at the next meeting.

As regards Action 5.10, the DE delegation informed that a meeting had been held on 11 October and that work was continuing.

5. The 6-monthly report of the activities of the CCWP during the DK Presidency

The DK delegation presented its six-monthly report (doc. 14344/12 ENFOCUSTOM 97).

6. Draft mandate for Action 5.8: "The role of customs in managing crisis situations"

The PL delegation presented the revised draft mandate (doc. 12900/1/12 REV 1 ENFOCUSTOM 79).

Some delegations pointed out that the document had been received very late and entered reservations. In addition, FI and NL lamented a lack of clarity as to the aim of the paper and the definition of a crisis situation as well as the possible role of customs in crisis situations. Customs would be only one player among many others in a crisis situation and this had to be taken into account.

In reaction to delegations' comments PL pointed out that the definition of a crisis was very broad and that depending on the type of crisis different events could be triggered. A crisis had to be understood as an unexpected chain of events that could have an effect on crime fighting actions, in particular since criminal organisations were likely to exploit any opportunity. This included unexpected events when organisations had to react in a very short time. Customs services usually were not immediately responsible to react to a crisis situation ie they were not the first player. PL would try to take the comments into account in a revised version and was ready to discuss the issues bilaterally.

7. Draft final report on JCO COLOSSEUM

The CCWP approved the draft final report on the above-mentioned JCO (doc. 10515/1/12 REV 1 ENFOCUSTOM 45 ENFOPOL 159 + ADD 1 REV 1).

8. Annual revision of the tactical objectives for JCOs

The CCWP approved the revision of the tactical objectives for JCOs as outlined in doc. 12736/1/12 REV 1 ENFOCUSTOM 78 COSI 68.

9. Coordination of Member States' actions within CCWP

The NL delegation presented the revised paper on the coordination of MS' actions within the CCWP (doc. DS 1542/1/12 REV 1), focusing on the changes introduced after the first round of discussion in the CCWP in September and in particular on the question whether Article 73 TFEU would be an appropriate legal basis.

Several delegations (SE, DE, DK, FR, UK) entered a reservation on the document. SE, supported by DE and UK, pointed out that some parts of the document should be more carefully worded. In particular, the concept of coordination of participation of MS in international customs operations would not be acceptable; however they were ready to consider the idea of a coordination of comments and approaches to business cases. The Commission and DK expressed doubts on the choice of Article 73 TFEU as legal basis. FR suggested to use an experimental formula i.e. to test the mechanism over a certain period of time, assess its added value and then make it regular. The UK supported the idea of the FR delegation and further cautioned about possible duplication and overlaps of similar joint operations organised by Europol or WCO, as well as about the need to respect national competences. BG also supported the FR idea and pointed out that the regional dimension could also be taken into account.

The Council Legal Service said that Article 73 TFEU did not appear to be the most appropriate legal basis for this type of cooperation as the activity of customs was not relevant, at first sight, to national security. However, bilateral or regional cooperation in customs activities would not be excluded as it was a matter of shared competence.

The Presidency gave a deadline until 19 October for written comments. The NL delegations announced that it would produce a revised version of the paper taking into account the remarks of delegations. The Council Legal Service said it would be ready to further comment on Article 73 TFEU with regard to both the strategy discussed under agenda item 3 and the document discussed under this agenda item at the next meeting.

10. Presentation by CEPOL on training possibilities for customs

A representative of CEPOL made a presentation about CEPOL role and activities as provider of training for police officers on major areas of interest such as the fight against organised crime, crime prevention, maintenance of law and order, cross border cooperation and civilian crisis management. The current legal basis of CEPOL provided only for training of senior police officers, but a new mandate was in preparation and might extend the possibilities for training. The training, offering a European perspective, was provided both through expertise within the agency and through trainers from Member States. Exchange of police officers had proven to be a valuable tool to build a common culture. CEPOL had also done a mapping of training opportunities across Member States and of training needs. The representative of CEPOL highlighted also the agency's cooperation with other agencies such as Eurojust and Europol.

Furthermore, she pointed out two major policy developments. First, almost one third of the training provided was now aligned on the priorities of the policy cycle. A joint training for police and customs would soon be organised in the area of containers smuggling. Second, the European Training Scheme would probably extend possibilities for training in the future, in line with the Stockholm programme that stated that training should reach a significant number of law enforcement officers and not only the police. A communication from the Commission on the European Training Scheme would be published in the coming months. She referred to the CEPOL website for more information on training opportunities and for the list of national contact points.

The BE delegation referred to previous discussions in the CCWP about the lack of training opportunities for customs officials. Training was usually provided at national level or through the Commission, but this was deemed to be insufficient. Appropriate changes in the mandate of CEPOL could contribute to improve the situation. FR referred to the priority on containers smuggling in the framework of the policy cycle and to the difficulties to have customs on board, not only with regard to training but also in COSI.

The representative of CEPOL confirmed that CEPOL was bound by its mandate to provide training for senior police officers and the possibility to include customs in the training was limited. Currently, customs officials could be involved in trainings carried out through e-learning and webinars. However, the mapping exercise had shown that customs were not addressed through training at EU level in a systematic way; it was now up to Member States to tackle this issue when discussing the new mandate of CEPOL.

Finally, the representative of CEPOL said that information about an upcoming joint training on containers had been circulated through the EMPACT team. It would also circulate the information via email to the CCWP.

11. Financing customs cooperation activities

The Commission (DG TAXUD) presented a document prepared for the Customs 2013 Committee to explain the possibilities for funding in the area of customs cooperation after the entry into force of the Lisbon Treaty, in the framework of the Customs 2013 program. In fact, since the entry into force of the Lisbon Treaty, that had abolished the pillar structure, questions had been raised at regular intervals on the possibility to fund activities falling previously under the former third pillar of the EU Treaty under the Customs 2013 program. The criterion for funding possibilities was the action envisaged; to determine whether an action could be financed under the Customs 2013 program it was necessary to look at the main objective of the activity. Only activities whose main objective was to improve the customs union could be funded under the program, while activities whose main objective was a matter of law enforcement would be excluded.

LT recalled that the problem of funding for customs cooperation had a long history and called on the Commission to envisage new proposals to fund JCOs. BE asked whether it would be feasible to consult informally with DG TAXUD to check whether an envisaged action would be fundable, so as to avoid to have a proposal rejected for formal reasons. This aspect would need to be considered when drafting an action plan. The UK stated that it was very important to respect the correct legal basis in the Treaty, and that it would oppose any move to bring customs law enforcement cooperation activities under the Customs 2013 program without the appropriate legal basis. One should rather look to the appropriate instrument, ISEC, which would come to an end in December 2013 and was meant to be replaced by the internal security fund in 2014. Frustration due to lack of adequate funding was understandable, but the right way forward would be to see improvements to funding mechanisms under Title V and not to revert to the wrong sort of funding mechanism. HU agreed on the need to get the ISF right.

12. AOB

The Council Secretariat recalled the email sent in July in order to ask delegations to provide information related to the FIDE Handbook, notably the information on the state of play of the implementation of Article 33 of the CIS decision and the list of serious contraventions in national law. Several Member States had already provided the requested information within the deadline of 12 September and in the last weeks. The Council Secretariat invited those delegations that had not yet reacted to provide the information as soon as possible.
