



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 22 November 2012**

**16586/12**

**ENFOCUSTOM 129  
COSI 123**

**OUTCOME OF PROCEEDINGS**

of:	Customs Cooperation Working Party (Plenary meeting)
on:	14 November 2012
Subject:	Summary of discussions

**1. Adoption of the agenda**

The meeting adopted the agenda as set out in doc. CM 5062/1/12 REV 1 with the deletion of point 9 and the addition of an information point by 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 1711/12.

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

The Presidency referred to the meeting of the drafting group held on 30 October, where a revised draft of the strategy had been prepared (doc. 12712/2/12 REV 2 ENFOCUSTOM 75 COSI 71) together with a draft action plan for 2013.

The PL delegation explained the rationale behind the main changes introduced in the draft. Furthermore, it illustrated the points raised by the UK and the Commission after the drafting group meeting and proposed some changes to accommodate those requests. The Commission also took the floor for some further remarks of a general nature that were not meant to prevent the adoption of the document; in particular it raised the question about how point 6.4 of the action plan would fit into the policy cycle. On a question by the IT delegation, PL clarified that the adoption of an action plan for 2013 would be without prejudice on the decision on the length of future action plans, ie whether they should continue to cover a 18-months time frame as was the case so far. On the issue of action 6.4, PL stated that the action plan had to be understood as preliminary; if for any reason point 6.4 could not be implemented the CCWP could decide to withdraw it. The action plan was not meant to be endorsed by the Council and it would be for the CCWP to decide on the actions to be carried out.

A new version of the strategy (doc. 12712/3/12 REV 3 ENFOCUSTOM 75 COSI 71), incorporating the changes discussed during the meeting, was distributed after the lunch break and was approved by the CCWP.

#### **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.

As regards Action 5.2, the CZ delegation informed that it was preparing the final report for the next meeting of the CCWP.

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

As regards Action 5.9, the PL delegation said that the revised draft would be distributed ahead of the next meeting.

As regards Action 5.10, the DE delegation informed that it was working on the final report.

Actions 5.4, 5.6 and 5.8 were dealt with as a separate points on the agenda.

## **5. Monitoring of the Fourth Action Plan (January 2010 - June 2011) - Implementation of recommendations**

The DK delegation presented the two documents related to this point. The questionnaire (doc. CM 4743/12) did not include questions on all actions of the Fourth Action Plan but only on selected ones. It had already circulated to MS. The second document (doc. 15902/12 ENFOCUSTOM 115) was a collection of all the recommendations from the First to the Fourth Action Plans. It built upon, and updated, the document produced under the Belgian Presidency. It followed the same structure as the Belgian document, although annexes 1, 2 and 3 were new.

The Presidency put a deadline for comments on the second document on 23 November. In absence of remarks by that date, the document would be deemed to be approved.

## **6. 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 Presidency presented the changes introduced in the document (doc. 11831/1/12 REV 1 ENFOCUSTOM 65 DAPIX 85 ENFOPOL 209). In the framework of the negotiations on the text it had requested to OLAF and Europol to explain the characteristics of MAB mail and SIENA system respectively.

A representative from OLAF made a presentation of the MAB mail, and referred to the document distributed via email to delegations. He underlined that MAB mail was a technical solution, not a database, and it had security features and high security standards.

The CLS recalled that under the Naples II Convention it is the competence of Member States to determine the means used for the communication with other Member States. The presentation and documents provided by OLAF allowed to conclude that there is no legal objection for the Member States to use MAB mail for law enforcement purposes and for the CCWP to decide to invite them to do so in the final report.

Europol made a presentation of the SIENA system. Its main benefits were that it is widely used and had a strong legal framework and security regime, it was auditable by national authorities and had an effective case management functionality.

The group concluded that all remaining issues about the final report had been solved. Following the presentations by OLAF and Europol, one recommendation would be deleted as no longer necessary. The new version of the report to be issued after the meeting was deemed to be approved.

**7. Draft final report on Action 5.6 "To explore in greater detail the legal and operational possibilities of coordinated activities involving customs for detection, prevention and investigation of crime at the external borders"**

The HU delegation presented the main findings and conclusions of the draft final report, that was still being finalised and would be distributed as soon as possible.

**8. Draft mandate for action 5.8 "The role of customs in managing crisis situations"**

The PL delegation presented the new version of the mandate (doc. 12900/2/12 REV 2 ENFOCUSTOM 79) where some text had been added on the basis of requests by MS.

The NL delegation reiterated its wish to clarify the scope of the mandate, notably by specifying what type of crises or threats would be considered. A mention of the role of customs and its cooperation with other authorities in a crisis situation would also be important.

PL stated that the aspects highlighted by the NL delegation would be duly taken into account in the further work of the group. The CCWP approved the mandate.

## **9. Coordination of Member States' actions within CCWP**

This point was withdrawn from the agenda.

## **10. Results of the CCU Meeting in Larnaca 8-9 November 2012**

The PL delegation explained that the fifth CCU conference held in Larnaca was meant to be the last one from a formal point of view, as the mandate of the steering group was coming to an end. The conference focused on three topics: the application of the Naples II Convention to cases of excise frauds, the cooperation between customs and investigation services, judicial bodies and public prosecutors, and the work done by the steering group so far. Notably on this latter issue, the conference concluded that the steering group had implemented its mandate although not all issues could be solved, and recommended a new mandate to be given to continue work. The new mandate should be stronger and give the steering group more powers; it would be discussed in a separate meeting under the IE Presidency. The need for close contacts with Eurojust and for closer cooperation and exchange of information on VAT cases were other points raised during the conference. The need to further spread knowledge of the Naples II Convention in courts and among judges and prosecutors was also highlighted. The PL delegation concluded that it would produce a summary of the conference as well as a draft mandate for the steering group.

## **11. Reorganisation of customs in Portugal**

The PT delegation made a presentation on the reorganisation of customs in Portugal.

## **12. Permanent structure for JCO in OLAF**

The Presidency recalled that this point had been previously discussed within the Mutual Assistance Committee.

A representative from OLAF presented the document "Discussion paper on an Operational Centre that would run JCOs", distributed to delegations via email. The aim of the paper was to start the discussion, and not all ideas therein had been thoroughly considered yet. In order to continue the discussion the support of Member States would be essential. A contribution from Member States would be welcome. The operational structure would address four types of shortcomings identified in the organisation and running of JCOs: the overlapping of operations, funding, the management of operations to ensure business continuity, and follow-up and analytical capabilities. There was no specific timetable.

Several delegations expressed general support for the idea while raising questions and calling for more in-depth discussion and clarifications, including on the legal basis. The main criterion would be the usefulness of such permanent structure: the current number of operations organised per year would not justify the establishment of such an organisational superstructure. The permanent structure would serve first pillar operations while third pillar operations would remain under the responsibility of the Member States; hence, two parallel structures or arrangements would coexist. The overlapping problem had already been addressed through the coordination mechanism, hence the added value of a permanent structure in this respect needed to be considered in relation to that mechanism. The issue of funding for seconded national experts from Member States should also be considered. Other delegations were less supportive at this stage and questioned the opportunity to have such a permanent operational centre. The choice of the mutual assistance committee as the appropriate forum to discuss the establishment of the operational centre was also questioned.

### **13. Role of customs authorities within COSI and the policy cycle**

The FR delegation made a presentation on the role of customs authorities within COSI and the policy cycle (doc. 15095/12 COSI 90 ENFOCUSTOM 100 ENFOPOL 330) in order to start a reflection on how to enhance the role of customs authorities and valorize their know-how.

FR referred in particular to three major problems identified in its role as leader of the priority on container smuggling in the current policy cycle. First, an initial difficulty to mobilise customs authorities of other Member States, as it seemed that customs authorities were not associated automatically and spontaneously to the work of the policy cycle at national level. Second, there was a problem in mobilising funds as they were naturally addressed to the police services. Third, other law enforcement authorities at national level appeared to have no appropriate knowledge of the working methods of customs authorities. FR was convinced that the presence of customs authorities in the policy cycle was legitimate and pertinent and brought added value. It was necessary now to reflect on how to improve cooperation and how to bring this question to COSI.

The Commission said that it shared the view that customs authorities were important actors in the implementation of the Operational Action Plans especially in areas where customs are concerned such as container shipping. It would welcome an increased involvement and supported the process.

Several delegations took the floor to express support for the reflection initiated by FR. The issue of ensuring appropriate visibility for customs authorities in COSI was stressed as well as some difficulty to keep up to date with the work of COSI. The need to improve coordination between Commission services as well as between different national authorities was also highlighted.

The Presidency concluded that this discussion should be pursued.

### **14. AOB**

A representative of Europol drew attention to a recent threat assessment report on the use of container transport by organised crime.