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COMMISSION STAFF WORKING DOCUMENT

Executive Summary

**Impact Assessment on the Amendment of Council Regulation (EC) No 515/97 and
Council Decision 2009/917/JHA on mutual assistance**

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{SWD(2013) 483 final}

1 Problem definition

1.1 Problem introduction

Action against breaches of customs legislation is integral to the protection of the Union's financial interests and to the development of customs cooperation. EU legislation in this domain includes Regulation 515/97, governing mutual administrative assistance and exchange of information, and Council Decision 917/2009, addressing issues of breach of national laws in the customs area. Customs legislation may be breached in a number of ways, including by **misuse of the transit system**, so that goods effectively imported are declared as being in transit in order to evade the applicable customs duties; by **mis-description** of imported goods so as to take advantage of lower duties; or by **misdeclaration of the origin of goods** in order to circumvent anti-dumping levies and avoid quantitative import limits or quotas.

1.2 Problem description

In order to verify the authenticity of the declared origin of goods, customs authorities perform a document-based check that does not contain detailed information about the transport-logistic steps followed by the container transporting the goods; hence the customs officers do not have the means to verify whether the declared origin of goods is consistent with the route actually followed by the container in question. This makes the identification of potential cases of misdeclaration of origin very difficult.

In verifying the authenticity of the declared description of goods, customs authorities must base their work on a risk assessment in order to identify suspicious cases. The Commission creates relevant profiles but, in so doing, its services make repetitive requests for similar data, which creates an unnecessary burden for the Member States (MS).

In order to verify the goods in transit, customs authorities perform document-based and visual checks. These methods are not only limited by the available man-power but they also miss the opportunity to profit from technical developments allowing automatic analysis, such as ConTraffic for identification of suspicious shipments and ATIS for detection of abnormal transit patterns, tools introduced by the Commission.

A particular issue in the fight against customs fraud is that OLAF investigators have to wait 3 to 7 months before obtaining supporting documents from the MS. In addition, there are cases where MS are often unable and sometimes even reluctant (as they may not be directly involved in the investigation in question) to assist OLAF in obtaining supporting documentation from economic operators for the purposes of OLAF investigations. This is particularly problematic in view of the three-year limitation period for recovery of the customs debt.

1.3 Scale of the problem

Fraud resulting from false declaration of origin alone may amount to as much as EUR 100 million yearly loss for the EU27. In 2011, MS reported 1.905 cases of detected fraud and other irregularities amounting to damage of EUR 107.7 million, related to misdescription of goods. This is, however, only damage detected by the MS and the Commission. The actual scale of the problem is thus substantially higher. The cases of breaches related to transit

amount to an approximate loss of EUR 12 million per year, while information is not available on an estimated 30000 detected cases of potential fraud.

Regarding the delays in OLAF's investigations, experience shows that the 3-7 month period elapsing before documents supporting imports and exports are obtained is a significant source of loss. The European Court of Auditors, in a 2010 audit, found that 'In the 274 declarations checked, 49 errors were found, giving rise to EUR 558 000 of loss of duty. These amounts are time-barred and therefore can no longer be recovered and are definitively lost for the Community budget'.

1.4 The drivers behind the identified problems

Gaps in the existing detection system

1.4.1 Mis-declaration of origin

There are currently limited means of checking the true origin of imported goods. In particular, it is not possible for the customs officers to verify whether the declared origin of goods is consistent with the route followed by the container transporting the imported goods. Such information is considered as crucial for detecting cases of misdeclaration of origin.

1.4.2 Mis-description of goods

The identification of suspicious cases by customs authorities is based on notifications that may be received from various sources (for example, other customs authorities or economic operators) and analysis based on limited data available. The main drawback of the current procedure is that the controls are still not sufficiently targeted as they are based on non-systematic data analyses.

1.4.3 Misuse of the transit system

Current procedures used for verification of goods in transit consist of document-based and visual checks, methods limited in effectiveness and efficiency as they are not premised on sufficient analysis. More extensive controls may, in turn, lead to serious distortions of trade flows. In addition to document-based and visual checks, MS and OLAF may also use the ATIS; this, however, is not premised on a solid legal basis and also misses important information, in that it does not contain data on national movements but only provides for the initial transit information.

No legal provision for avoiding delays in OLAF investigations

1.4.4 Delays in OLAF investigations

As a result of the recent introduction of e-Customs, import-supporting documents (invoice, certificate of origin, etc.) are kept by the economic operators and not by the customs administrations. This causes a loss of time since a variety of actors need to contribute/respond to requested documents before these become available to OLAF. There is currently no provision in the legal framework which could be used to accelerate procedures relating to OLAF investigations.

1.5 Baseline scenario: How the problem would evolve

In the absence of policy change, customs-related breaches of legislation would continue to remain partially undetected, causing continuing financial losses to the EU and allowing a lower degree of implementation of related legislation.

Fraud related to **misdeclaration of origin** will rise. ConTraffic has proved the usefulness of container-related information (Container Status Messages — CSMs) and as a research project it will come to an end soon. Until a new method helping to detect misdeclaration of origin is adopted, fraud will continue to occur and even grow with fraudsters gaining experience. Hence the loss of EUR 17.6 million linked to misdeclaration of origin will remain and will most likely grow even further. Similarly, no improvement in the fight against **misdescription of goods** is to be expected. For the time being there is no indication of any planned changes that could be introduced into the customs procedures in order to facilitate the fight against misdescription of goods. Fraud related to **misuse of the transit system** is expected to increase. The current solution — ATIS, despite being very useful, reveals shortcomings. Data on merchandise in transit, currently collected on the basis of this administrative arrangement, may no longer be available as the legality of the legal basis for their collection is doubted by several MS. In that event, the volume of undetected fraud would most likely rise.

As regards the delays in OLAF investigations, unless a change to the existing procedure is made, no improvement is to be expected in the near future. It is unlikely that the situation will change without any action being taken.

2 Analysis of subsidiarity and proportionality

The necessity of action at EU level is based on the fact that MS alone cannot efficiently identify and mitigate risks of breach of customs legislation; neither are they capable of pursuing investigations properly if cross-border transfer of goods is involved. Therefore, the fight against customs-related fraud requires a broader European approach. Importantly, the EU has exclusive competence in fraud prevention and protection of its financial resources in customs matters. The EU is arguably best placed to serve as a driving force behind this initiative because it already possesses the necessary experience and systems.

Value added: Action at EU level would significantly improve the fight against customs-related fraud, by increasing the available evidence, improving the possibilities for detection and repression of fraud and rendering the action more efficient and effective.

3 Objectives

General objectives of this initiative are to: i) reinforce the protection of the financial interests of the European Union (fraud detection and investigation) and ii) strengthen customs cooperation between MS and between the latter and the Commission by ensuring the correct application of customs law.

Specific objectives are to increase the **detectability, prevention and prosecution** of customs fraud by **enhanced collaboration** both between the MS and between the MS and the Commission in fighting customs-related fraud, and to improve the process relating to OLAF investigations.

The operational objectives of the action to be taken correspond to the problems identified and to the specific objectives. Indeed, in order to increase the detectability, prevention and

prosecution of customs-fraud, it is necessary to create conditions for improved fighting of customs fraud. To deal with the problem of delays in OLAF investigations, steps have to be taken to speed up the process.

The table below interlinks the identified problems with the objectives.

Problem	Specific Objective	Operational Objective
Misdeclaration of origin and related financial losses	Increase the detectability, prevention and prosecution of customs fraud by enhanced collaboration both between the MS and between the MS and the Commission (when fighting fraud related to misdeclaration of goods' origin, misdescription of goods and misuse of transit system)	1. Create conditions for improved fighting of customs fraud related to mis-declaration of goods' origin
Misdescription of goods and related financial losses		2. Create conditions for improved fighting of customs fraud related mis-description of goods
Misuse of the transit system and related financial losses		3. Create conditions for improved fighting of customs fraud related to misuse of the transit system
Delays in OLAF investigations and (time-barring)	Improve the process relating to OLAF investigations	4. Speed-up OLAF investigations

4 Policy options

4.1 Options addressing the core problem (operational objective 1, 2 and 3)

- **Option 0: keep status quo**

This option follows a description of the baseline scenario.

- **Option 1: Soft law — With appropriate recommendations, increase the detectability of customs fraud related to misdeclaration of goods' origin, misdescription of goods and misuse of the transit system**

As regards **objective 1**, the recommendation would invite MS to support the Commission in its attempts to obtain CSMs from economic operators.

In relation to **objectives 2 and 3**, the recommendation would invite MS to authorise the Commission to access/copy the data which are currently available in a Commission platform and also to provide additional transit data.¹

- **Option 2: Responsibility for increasing the detectability of customs fraud related to misdeclaration of goods' origin, misdescription of goods and misuse of the transit system is vested in the Commission**

This option involves the creation of an EU central database for CSMs and data related to import, export and transit. This database would build on experience gained from ConTraffic and from ATIS. The national transit and other subsequent transit information, such as

¹ Data on national transit and other subsequent transit information, such as modifications in the routing schedule or results of controls.

modifications to the routing schedule or results of controls will also be included in the EU central database.

- **Option 3: Responsibility for increasing the detectability of customs fraud related to misdeclaration of goods' origin, misdescription of goods and misuse of the transit system is vested in the MS**

This option involves, contrary to the above, entrusting the MS with the responsibility for collection and analysis of relevant data. Therefore, each MS will create its national databases for CSM, import, export and transit-related data. Regular exchange and open access should allow MS to communicate and exchange data and to prepare regular analyses.

- **Option 4: Shared responsibility between the Commission and the MS for increasing the detectability of customs fraud related to mis-declaration of goods' origin, mis-description of goods and misuse of the transit system**

Under this option, CSM and transit data would be collected at EU level, while MS would be given responsibility for import and export-related data. This may be the most plausible mixture because it takes into account the current settings (Commission handling ConTraffic and ATIS); hence, it divides the responsibility accordingly.

- **Option 5: Baseline scenario plus**

This option would mean increasing the manpower assigned to the detection and prevention of the relevant customs fraud. By relying upon more control officers and more investigators, it is expected that more fraud would be detected and possibly also prevented. The proposed doubling of resources could concern both MS and the Commission (OLAF). After thorough analysis this option is to be discarded at this stage.

4.2 Options addressing delays in OLAF investigations and related financial losses (Objective 4)

- **Option 0: keep status quo**

This option entails keeping the status quo. No additional measures would be taken under this option to facilitate faster investigations in OLAF.

- **Option 1: Soft law — Issue a recommendation to speed up the procedure**

This option would mean issuing a recommendation inviting MS to contribute to a faster procedure. A recommendation is a non-binding instrument, which can be understood as an appeal to MS to improve the current practice and contribute to the process of speeding up the investigations and fraud detection.

- **Option 2: Speed up the investigation procedure by empowering the Commission to directly ask economic operators for supporting documents**

The Commission would be empowered to request supporting documents directly from the economic operators. This option implies that MS would be informed but would not play an active role.

- **Option 3: Increase number of investigators in Commission/OLAF**

This option would mean improving the workflow at OLAF by increasing the number of investigators employed by OLAF. The time spent on investigation should thus be shortened, which should diminish the problem of lengthy investigations.

- **Option 4: Request economic operators to additionally provide information at national level by necessary provision in the relevant EU legislation**

This option would mean a return to the pre-2010 situation (i.e. before e-Customs was introduced). Economic operators would be obliged to provide information on all supporting documents to their respective national authorities, which should then be in a position to provide immediately the requested information.

- **Option 5: Impose a deadline for providing the supporting documents**

This option would mean imposing a specific deadline for MS to provide the Commission with the relevant documents. However, this option is considered to be too intrusive and impractical, as a unified deadline for all cases fails to take into account differences in the complexity of investigations.

5 Analysis of impacts

5.1 Summary of the impacts

Impacts of options related to objectives 1,2 and 3

Criteria Option	Effectiveness			Efficiency (all objectives)	Economic impacts (all objectives)	Simplification			Coherence (all objectives)	Overall assessment
	Obj. 1	Obj. 2	Obj. 3			Obj. 1	Obj. 2	Obj. 3		
Option 0	0	0	0	0	0	0	0	0	--	0
Option 1	+	+	+	+	+	+	+	+	+	+
Option 2	++ +	++ +	++ +	++ (Total cost for the Commission: EUR 850.000– set up; EUR 200.000– yearly maintenance If global dump – no cost for economic operators, if selective reporting – EUR 3.000 to 200.000)	+++	++ +	++ +	++ +	+++	+++

Option 3	++	++	++	--- (Total cost for the MS: EUR 850.000– set up EUR 200.000– yearly maintenance Total cost for economic operators: as per Option 2	+++	++	++	++	-	+
Option 4	++ +	++	++ +	- (Total cost for MS: EUR 320.000– set up EUR 80.000– yearly maintenance Total cost for the Commission: EUR 530.000 - set up ; EUR 120.000– yearly maintenance Total cost for economic operators: as per Option 2	++	++ +	++	++ +	+	+

Impacts of options related to objective 4

Criteria	Effectiveness in achieving objective	Efficiency	Economic impacts	Coherence	Simplification
Option 0	0	0	0	0	0
Option 1	+	+	+ -	+	++
Option 2	+++	++	+++	+	++
Option 3	++	--	+	-	0
Option 4	+++	---	-	-	--

6 Comparing the options

6.1 Options addressing objectives 1, 2 and 3

As illustrated in the baseline scenario, Option 0 will not only fail to achieve the objectives but it might also worsen the current situation.

The voluntary nature of Option 1 would inevitably entail a risk of incomplete data and even though the situation could improve as compared to the status quo, it is clearly still not sufficient and therefore this option is considered as negative. Option 2, on the other hand, is considered as strongly positive because the Commission is already in possession of the necessary systems and experience to successfully run the databases in question. Moreover, Option 2 is a preferred option not only by MS but also by economic operators as it creates a cost-efficient and effective solution to the problem of customs-related fraud. Option 3 is considered as positive but, unlike Option 2, creating separate national databases will lead to overlaps and add complexity, as the same data would be gathered, processed and interpreted by several MS. Importantly, it would also impose a substantial financial burden on the MS. In this sense, Option 4 appears to offer a better solution than Option 3 because it avoids the imposition of excessive financial burdens on MS since the related costs as well as responsibilities are to be shared with the Commission. However, when compared to Option 2, it risks losing sight of the importance of a cross-border element in the context of collection and use of data on imports and exports. Also, similarly to Option 3, Option 4 leads to potential duplication of data on imports and exports in multiple national databases. On the basis of the above comparison, **Option 2** is the preferred option.

6.2 Options addressing objective 4

Option 1 is considered to be quite negative as it is highly unlikely that it would achieve the objective pursued. Option 2 is considered to be more effective than Option 1 because it presupposes that the only time spent on obtaining relevant documents would be time needed by economic operators to supply that information to OLAF. This offers a realistic possibility of substantially shortening the time needed for obtaining relevant documents. Also the problem that OLAF is currently facing (namely cases where MS are not in a position to assist OLAF in obtaining those documents) would be removed by addressing requests directly to those who are in possession of the documents in question. For these reasons, Option 2 is regarded as strongly positive. Option 3 is rated as quite positive because it has the potential to address the problem. However, because of the significant financial burdens it is less beneficial than Option 2. On the basis of the above comparison, **Option 2** is the preferred option.

7 Monitoring and evaluation

7.1 Monitoring

The table below provides an overview of indicators.

Objective	Indicator
1, 2 and 3	<ul style="list-style-type: none"> – Export/import/transit data/CSMs: – number of detected breaches of legislation, – number of investigations opened based on these data, – number of requests for use of data by investigators, – amounts recovered on the basis of such information

4	Duration of related OLAF investigations (whether the change resulted in faster procedures; whether it increased the number of investigations and the amounts recovered)
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7.2 Evaluation

With respect to the operational objectives, the Commission services responsible will ensure that evaluation is carried out every five years. The scope will cover results and impacts related to the increased detectability of fraud thanks to the database and the analysis carried out on the basis of the available data and information as well as the efficiency and relevance of the measures introduced. The evaluation will take the form of a presentation of the results in the Mutual Assistance Committee by the Commission/OLAF.