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presenting the results of the consultations of Member States and stakeholders required by Article 8(3) of Decision No 1152/2003/EC, Article 45(1) of Directive 2008/118/EC, Article 35(1) of Council Regulation (EC) No 2073/2004 and Council Regulation (EU) No 389/2012

Accompanying the document

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

on the functioning of the arrangements for the computerised supervision of excise movements under duty suspension and on the application of the administrative cooperation rules in the area of excise duties, in accordance with Article 8(3) of Decision No 1152/2003/EC, Article 45(1) of Directive 2008/118/EC, Article 35(1) of Council Regulation (EC) No 2073/2004 and Council Regulation (EU) No 389/2012

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1. SUMMARY

This document comprises three sections devoted to implementation of various aspects of excise legislation. Each section is based on a comprehensive survey of the relevant stakeholders, as well as other input from interested parties and the Commission's reflections on the issues raised. Each section begins with a summary of findings and a set of recommendations for further action, where necessary. The purpose of this document is complement the Commission report required by the EU excise legislation, as quoted below, and to provide the details of the consultation-based analysis underpinning the findings of the official report.

Section 2 reports on the implementation of Decision 1152/2003/EC of the European Parliament and Council on the computerisation of the movement and surveillance of excisable products. This Decision established the governance arrangements and the central development funding for the Excise Movement and Control System (EMCS). The Decision requires the Commission to make a report on the implementation of the Decision and proposals for evaluating the performance of the system. EMCS started partial operation in April 2010. Its full scope was implemented by the Commission and the Member States on 1st January 2012. EMCS currently supervises approximately 250 000 movements per month of excise goods under duty suspension. The 131 stakeholders that were surveyed as part of the preparation of this section of the report see EMCS as an improvement over the paper based system that it replaced, both in terms of trade facilitation and in aiding the fight against fiscal fraud. Nevertheless, the stakeholders' surveys have made numerous useful suggestions for improvements, particularly in the linkage of EMCS with customs applications. The Commission will take these suggestions into account for future legal and technical work

Section 3 addresses the requirement under Article 45(1) of Directive 2008/118/EC for the Commission to provide a report to the European Parliament and the Council concerning EMCS Fall Back Procedures, which are covered by Articles 26 and 27 of the Directive, and the print-out of the accompanying document provided for under Article 21(6) of the Directive. The 108 stakeholders that were surveyed were generally satisfied with the arrangements set up under Directive 2008/118/EC, but called for more standardisation of the fallback documents to ensure that they are easily recognisable as such by all interested parties.

Section 4 summarises the consultation of Member States concerning their first experiences with Council Regulation (EU) No. 389/2012 on administrative cooperation in the field of excise duties and repealing Regulation (EC) No 2073/2004. This coincided with the introduction of EMCS Phase 3, which has incorporated exchanges of information for administrative cooperation into EMCS, as well as updating the arrangements for the maintenance of registers of economic operators and the collection of operational statistics. The Commission received 24 replies, representing 19 Member States to the survey that was run on these subjects. Member States felt that the new arrangements for administrative cooperation were an improvement over the previous e-forms based systems, giving better control of workflow and a readily available archive of administrative cooperation information. Various suggestions for improvements to EMCS functionality were made, which the

Commission will take up for inclusion in the future evolution of EMCS and where necessary the corresponding implementing acts. For information **Section 5** contains a survey on the operation of the repealed Regulation (EC) No. 2073/2004.

1.1. Acronyms and abbreviations

The acronyms and abbreviations used in the present report are listed below.

Acronym	Definition
AAD	Administrative Accompanying Document
e-AD	Electronic Accompanying Document
ABV	Alcohol By Volume
AES	Automated Export System
ARC	Administrative Reference Code
CELO	Central Excise Liaison Office
CIGINFO	Cigarette Information sub-module of the Antifraud Information System (AFIS)
CS/MISEE	Central Services/Management Information System for Excise
CMR	Convention on the Contract for the International Carriage of Goods by Road
CRMS/RIFF	Customs Risk Management System/ Risk Information Form
CN	Combined Nomenclature
DDNEA	Design Document for National Excise Application
ECP	EMCS Computerisation Project
ECG	Excise Contact Group
ECS	Export Control System
ECWP	EMCS Computerisation Working Party
ELO	Excise Liaison Office
EMCS	Excise Movement and Control System
EWSE	Early Warning System for Excise
FESS	Functional Excise System Specification
IPM	Interactive Policy Making portal
MLC	Multilateral Controls
MCPPP	Monthly Central Project Planning
MSA	Member State Administration

MVS	Movements Verification System
NPP	National Project Plan
SAD	Single Administrative Document
SAAD	Simplified Administrative Accompanying Document
SEED	System for the Exchange of Excise Data
SEP	Security Policy
SLA	Service Legal Agreement
TA	Test Application
TOC	Terms of Collaboration

2. THE COMPUTERISATION OF THE MOVEMENT AND SURVEILLANCE OF EXCISABLE PRODUCTS

2.1. Introduction - the need for computerisation

With the construction of the Single Market frontier controls of movements of goods between Member States were abolished. Excise goods present particular risks when being moved between Member States because:

1. The duty rates of some excise products (cigarettes, some energy products) lead to a taxation burden that is much greater than the net value of the goods. Therefore the risk of tax evasion is considerably greater than for VAT.
2. The whole amount of excise duty is collected at one single location. Therefore excise duty suffers from the same problem as classic sales or purchase taxes, where a distinction has to be made between mostly exempt Business to Business supplies and taxable supplies to consumers, who carry the full liability, thus encouraging evasion based around trader status.
3. Excise duty is in almost all circumstances due in the Member State of consumption (the destination principle). This, coupled with the two previous differences, means that there would remain a high risk of excise duty evasion in intra-community movements, even if the rates were harmonised.

Given the fiscal risks inherent in the movement it was necessary to make special arrangements for the holding and movement of excise goods. Directive 92/12/EEC was adopted by the Council in order to take account of these factors.

Under Directive 92/12/EEC for the movement of excise goods under excise duty suspension economic operators made use of a multi-part paper form (the Administrative Accompanying Document or AAD.) Movements of excise goods under duty suspension were accompanied by multiple copies of the AAD. When the goods were delivered the consignee would forward a copy of the AAD to its Excise Authority for endorsement. This copy would be returned to the consignee who would then return it to the consignor to act as a report of receipt. The report of receipt would then serve as evidence that the excise goods had been transferred to another economic operator and that the consignor had thereby discharged any liability for excise duty on the goods.

The AAD document flow only involved the excise authorities at destination and it was common for documents to be delayed or lost.¹ In general Member States had no information in advance of the arrival of excise goods and so the system provided no real monitoring or control. In 1997 the potential for excise fraud implicit in this system was highlighted by the High Level Group Report on Fraud in the Tobacco and Alcohol Sectors.² The key recommendation of this group was for the creation of a fully computerised system for the monitoring and control of excise goods. Work on this recommendation culminated in the adoption by the European Parliament and the Council of a Decision to provide for the development of such a system.

2.2. Decision No. 1152/2003/EC

Decision No 1152/2003/EC of the European Parliament and of the Council of 16 June 2003 (hereafter referred to as “the Decision”) on computerising the movement and surveillance of excisable products establishes a computerised system and sets out the following goals:

Article 1(2):

“The computerised system is intended to:

(a) permit the electronic transmission of the accompanying document provided for in Regulation (EEC) No 2719/92, and the improvement of checks;

(b) improve the functioning of the internal market, by simplifying the intra-Community movement of products under excise duty suspension arrangements, and by affording Member States the possibility of monitoring the flows in real time and of carrying out the requisite checks where necessary.”

The Decision mandated the electronic transmission of the AAD. The Decision also aimed to afford Member States the possibility to conduct real-time monitoring of the flow of documents between economic operators.

The Decision did not include a general revision of Directive 92/12/EEC. Nevertheless, it was decided to also revise the general arrangements for the holding and movement of excise goods, since there was a need to clarify and simplify the legislation. More specifically, it was considered that Directive 92/12/EEC did not provide an adequate basis for a fully electronic monitoring and control system. The Commission proposed a complete revision of Directive 92/12/EEC, which was adopted by the Council in 2008 as Directive 2008/118/EC. The new Directive provides a firm legal basis for the complete replacement of the paper based system with an electronic system for the movement of goods under excise duty suspension. This system is the Excise Movement and Control System (EMCS.)

¹ Some Member States required the presentation of an additional copy of the AAD by the consignor before dispatch of the goods but this was by no means universal and when applied imposed an additional burden on economic operators.

² High Level Group on Fraud in the Alcohol and Tobacco Sectors – Report to Directors General for Customs and Indirect Taxation

2.3. Excise Movement and Control System (EMCS)

EMCS caters for the computerisation and mutual exchange of information concerning movements of excisable goods under duty suspension and the actors involved in these movements. Well-defined procedures combined with automated data validation contribute to the simplification of intra-EU movements of excisable products. In addition, EMCS provides Member States with complementary follow-up and collaboration tools.

The main benefits provided by EMCS in terms of the objectives defined in the Decision are the following:

- for the economic operators: a fast discharge of the movement procedure resulting in a fast release of movement guarantees, and a reduction of the administrative burden;
- for the Member State Administrations (MSAs): a better view of on-going movements of excise goods, a decrease of the risk of fraud and a better targeting of their controls.

EMCS was to be established within a fixed time period:

Article 2:

“Member States and the Commission shall establish the computerised system within six years of the entry into force of this Decision.

Activities relating to the initiation of application of the computerised system shall begin not later than 12 months after the entry into force of this Decision.”

The Decision entered into force on 1 July 2003 (publication in Official Journal L 162); therefore, the deadline for the establishment of the EMCS, as specified in Article 2 of the Decision, was 1 July 2009. The specification of the project was delayed. The revised planning was reviewed by the Committee on Excise Duty and the of the National Director Generals of Customs and Deputy Generals responsible for Excise at the 25th meeting of the Customs Policy Group on 2nd July 2008. The EMCS Master Plan was revised accordingly. The first stage of the project (Phase 2) was started on 1st April 2010, with full operation of the first stage on 1st January 2011. The next stage of the project (Phase 3) was put into operation on 1st January 2012.

2.4. Reporting on the implementation of the Decision

Article 8 paragraph 3 of the Decision provides for the submission of the report by the Commission to the European Parliament and the Council, which covers the implementation of the computerised system (EMCS) by the Commission and the Member States, and proposes methods and criteria to be used for evaluation of EMCS functioning:

Article 8(3):

“At the end of the six-year period referred to in the first subparagraph of Article 2, the Commission shall present to the European Parliament and the Council a report on the implementation of the computerised system. The report shall set out, inter alia, the methods and criteria to be used in the later evaluation of how the system is functioning.”

In order to meet this obligation the Commission has prepared this section of the document. Section 2.5 explains the organisation of the EMCS project, which provides a structure for the specification, development and operation of the EMCS system as well as providing a basis for cooperation between the Commission and the Member States for the evaluation and further evolution of the system. Section 2.6 describes the results of the stakeholder survey carried out by the Commission into the arrangements for EMCS project, the general functioning of EMCS and possible approaches for future evaluations of the system.

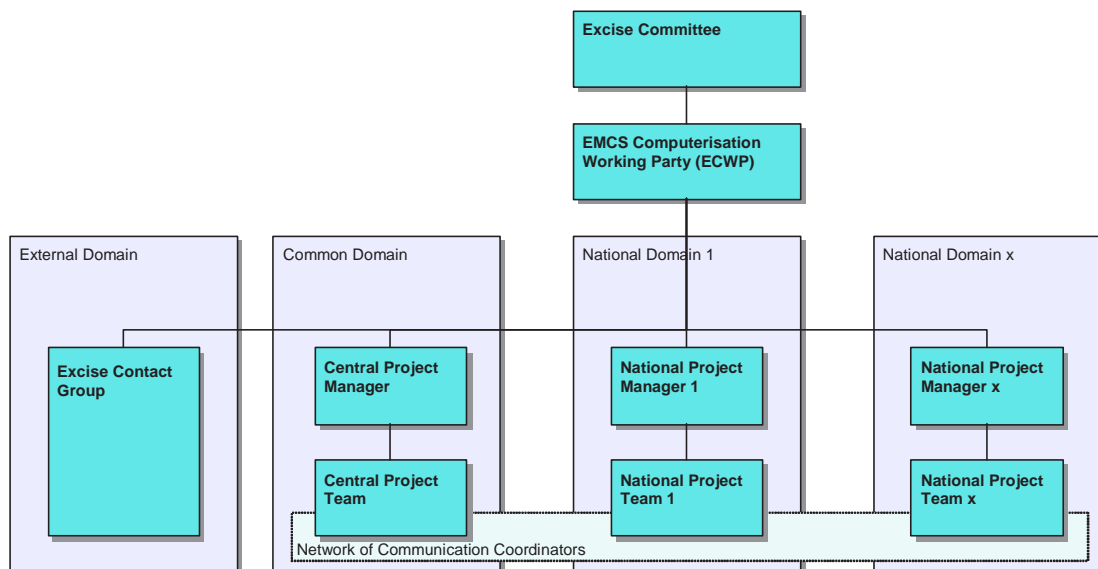
2.5. The EMCS project

This section describes the EMCS project governance structures, the high level planning of the project, and the achievements of the project up until now, including some first operational statistics

2.5.1. EMCS project organization

For EMCS to be successful it was extremely important to ensure that decisions made would be acted upon at the right time by the Commission and by the Member States. It was equally important to ensure that Trade Federations could express their views on the on-going development of the project. Therefore a number of decision making and consultative bodies were set up. It was also very important to establish a set of ground rules for the collaboration between the Commission and the Member States so that each party had a clear and common understanding of their obligations.

The following diagram shows the different decision making and consultative bodies in the EMCS project.



Decision Making and Consultative Bodies in EMCS

The Committee on Excise Duty

The Committee is the principal decision making body of the project. The Committee is chaired by the Commission and has one voting delegate per Member States.

Article 4(1):

The Commission, acting in accordance with the procedure provided for in Article 7(2), shall coordinate the setting up and running of the Community and non-Community components of the computerised system, and in particular:

- (a) the infrastructure and tools needed to guarantee the system's internal links and overall interoperability;*
- (b) the development of a security policy of the highest standard possible in order to prevent unauthorised access to data and to guarantee the integrity of the system;*
- (c) the instruments for the exploitation of data to combat fraud.*

Article 7(1):

The Commission shall be assisted by the Committee on Excise Duties³ set up under Article 24 of Directive 92/12/EEC.

In implementing the provisions as set out in Article 4(1) of the Decision, the Committee on Excise Duty has the following main responsibilities:

- Coordination and monitoring the project at a strategic level;
- Adoption of planning and system specifications;
- Setting business objectives, priorities and milestones;
- Taking strategic decisions, on matters related to the legal, procedural, organisational, financial and technical aspects of the EMCS Computerisation Project.

With these responsibilities, the Committee on Excise Duty acts as the Steering Committee for the project. Committee on Excise Duty meetings are convened by the Chair, either on his initiative or at the request of a simple majority of Committee members; typically, the Committee on Excise Duty normally meets twice a year.

ECWP

The EMCS Computerisation Working Party (ECWP), a forum for discussing functional, organisational and IT aspects of the EMCS Computerisation Project

³ The Committee was renamed 'Committee on Excise Duty' in Directive 2008/118/EC

(ECP), was set up by the Committee on Excise Duty in 2002. The main responsibilities of the ECWP are:

- Contributing to and following up the production of system specifications;
- Discussing the implementation of legal, procedural, organisational and IT aspects and issue recommendations to be submitted for adoption to the Committee on Excise Duty;
- Delivering an opinion on functional and technical documents, and project deliverables;
- Identifying any common areas of development which could allow economies of scale;
- Reporting and formulating recommendations to the Committee on Excise Duty.

The Committee on Excise Duty is the only entity empowered to take decisions on the basis of the Decision. Proposals made by the ECWP are advisory.

During the specification and development of EMCSECWP meetings were convened by the Commission approximately every 6 to 8 weeks. Now that EMCS is in operation the ECWP meets two to three times a year to examine operational issues and proposals for future evolution. The ECWP has met 61 times since 2002.

Central Project Team

The Central Project Team is the team led by Directorate-General Taxation and Customs Union of the European Commission, consisting of business and IT experts.

The Central Project team is in charge of the management of the central project, including the coordination with the national projects. This coordination consists primarily of meetings, missions, workshops, trainings and the launch of common communication initiatives.

National Project Teams

Within a Member State Administration, the National Project Team is responsible for managing the national EMCS project and participating in the coordination initiatives of the Central Project Team.

Terms of Collaboration (TOC) and Service Level Agreement (SLA)

The detailed arrangements for the coordination of central and national activities are set out in two documents, which have been revised regularly on the basis of changing needs as the project has advanced. The Terms of Collaboration document explains in detail the agreed structure of the national and central project teams and their respective obligations. The Service Level Agreement describes the obligations that the Commission Services have towards the Member States. These services include the provision of a Help Desk, a Change Management Service and an operational service that it responsible for operating the central parts of EMCS and making sure that they meet the minimum level of guaranteed service.

Excise Contact Group

The Excise Contact Group (ECG), composed of representatives of the European Trade Federations, of the Commission and of the Member States Administrations, ensures bilateral communication on EMCS with the European trade associations. The ECG meets approximately twice a year.

2.5.2. Planning

The Decision provides for the establishment of an EMCS Master Plan, which acts as the central planning tool for EMCS.

Article 4(2)

To achieve the aims of paragraph 1, the Commission shall conclude the necessary contracts for setting up the Community components of the computerised system and shall, in cooperation with the Member States meeting within the Committee referred to in Article 7(1), draw up a master plan and management plans required for the establishment and running of the system.

The master plan and the management plans shall specify the initial and routine tasks which the Commission and each Member State are to perform. The management plans shall specify the completion dates for the tasks required for carrying out each project identified in the master plan.

The **Master Plan** provides a long-term vision of the project and is used to ensure the synchronisation between all the parties involved in the project. It identifies the activities to be performed in order to be able to respect the deadlines specified in the EMCS legal decision. The Master Plan describes the activities, their expected results, their target completion date and the actor(s) responsible for them. The Master Plan also defines all major synchronisation points between all involved parties.

As a high level plan, the Master Plan is updated when major changes occur in the lifecycle of the project. A first version was adopted by the Member States in 2003. The current version, which reflects the fact that EMCS is now in production was adopted by the Committee on Excise Duty in June 2012.

Each set of activities identified in the Master Plan is detailed in a **Management Plan**. The sets cover each of the ECP phases (phase 0, 1, 2 and 3) but also the legal and procedural framework, the co-ordination and support activities and the accompanying information programme.

These Management Plans are not published individually anymore, but have been consolidated since July 2005 in the **Monthly Central Project Planning** (MCPPE).

The MCPPE combines a long-term vision of the project (extracted from the Master Plan) and a detailed activity report covering a window of 3 months before and 9 months after the month in review. The MCPPE also integrates the monthly input received from the Member States via the National Project Plans (NPP).

The EMCS system has been planned in “1+3” phases (Phase 0 and Phase 1, 2, 3).

Phase 0 encompasses the operational support, maintenance and improvement of existing systems used in the excise field, which pre-dated the operational phase of EMCS; Phase 0 ensured that these systems are aligned with the overall objective of EMCS. Now that EMCS is operational, the one remaining Phase 0 component, Movement Verification for movements not under excise duty suspension, will be phased out in 2014, following the inclusion of this functionality in EMCS

Phase 1 is a continuous activity, which supports the production of the EMCS System Specifications.

Phases 2 and 3 are the development and implementation phases, covering the detailed design of the national excise applications, the development of the central and national applications, as well as their phased rollout.

Phase 2 focused on the essential functionality necessary to ensure the successful introduction of EMCS. Following a transitional period starting in April 2010, it came fully into operation on 1st January 2011 and completely replaced the previous paper based system.

Phase 3 incorporates administrative cooperation into EMCS, replacing earlier arrangements based on e-forms and paper exchanges. It was put into operation on 1st January 2012.

The current Master Plan provides for 3 further releases of EMCS between 2013 and 2017.

- Release 3.1 (by end Q1 2014) introduces mainly corrective changes
- Release 3.2 (by end Q3 2015) provides for corrective changes, data improvement
- Release 3.3 (by end Q1 2017) improves integration between EMCS and Export Control System (renamed the Automated Export System – AES).

2.5.3. *Overview of EMCS Components*

EMCS consists of a number of components, which for ease of exposition can be divided into core components and support components.

Core Components – core business and administrative cooperation

The core components of EMCS have common specifications, but are developed and maintained by the Member States

The **core business component** provides the core processes of submission of the e-AD by the consignor, the validation of the e-AD by the Member State of Dispatch, the submission of the report of receipt to the Member State of Destination by the consignee and its forwarding by the Member State of Destination to the Member

State of Dispatch, thereby discharging the movement. The core business also includes the possibility to cancel the movement before it leaves the place of dispatch, to make a change of destination, where the consignee has changed, or a consignee has refused goods at arrival and the possibility to split on-going consignments to allow for multiple consignees in the case of energy products. The core business module also includes the functionality for interfacing with export. The details of the interfacing with national import procedures are for the moment a national matter. The functioning of the core business component is legally defined by Directive 2008/118/EC and Commission Regulation (EC) No. 684/2009, as amended.

As of Phase 3 the **administrative cooperation component** replaces the previous e-form based systems, EWSE and MVS, for the exchange of administrative cooperation information. The component also includes the possibility to share control reports and interruption reports which result from physical control activities and to exchange event, alert and rejection reports. The functioning of the administrative cooperation component is defined by Council Regulation (EU) No. 389/2012. A Commission Implementing Regulation to define the details of the business processes and data requirements for the use of EMCS in administrative cooperation is currently in preparation.

Support Components SEED, CS/MISE and the Test Application

SEED is developed and maintained by the Commission and the Member States, SEED-on-Europa, CS/MISE and the Test Application are developed and maintained by the Commission

SEED is a distributed register of the authorisations held by excise traders who conduct business including the use of excise duty suspension procedures. SEED holds authorisation information on authorised warehouse keepers, registered consignors and registered consignees. It also holds information on tax warehouses operated by authorised warehouse keepers. The functioning of SEED is legally defined by Council Regulation (EU) No. 389/2012 and Commission Implementing Regulation (EU) No. 612/2013

SEED-on-Europa is a central service provided by the Commission to allow traders to confirm the validity of excise authorisations claimed by a trading partner. Its legal base is shared with SEED.

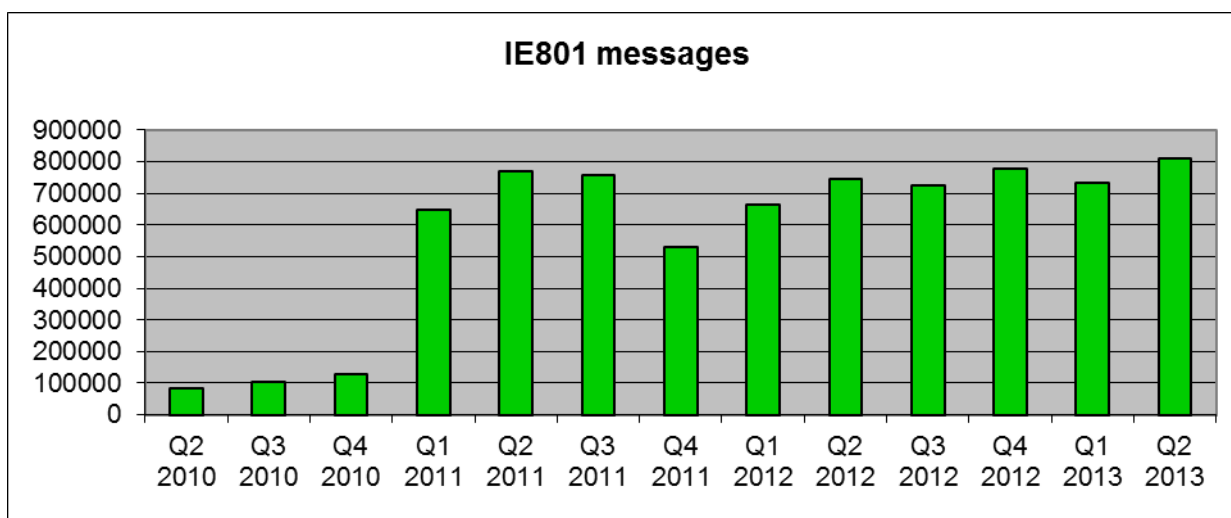
Central Services / Management Information for Excise (CS/MISE) is Commission central service provided by the Commission, which allows Member States and the Commission to check the status of open excise movements and to generate statistical reports. The function of CS/MISE is defined in general terms by Council Regulation (EU) No. 389/2012. A Commission Implementing Regulation to define the details of the data to be collected for statistical reporting is currently in preparation.

The Test Application (TA) is a Commission central application, which can be used by Member States to test the conformance of national applications to the EMCS specifications, and to therefore the interoperability of their applications with those of other Member States.

2.5.4. Operational Statistics

Since April 2010 operational statistics have been collected automatically by the Commission and made available to Member States using CS/MISE.

The graph below, generated from CS/MISE, shows numbers of movements started per quarter from 1 April 2010 when EMCS became operational. From 1 April 2010 until 31 December 2010 EMCS was not compulsory, giving Member States and economic operators time to gradually migrate from the previous paper-based system. During this initial period a large number of movements took place under the paper based system. From 1 January 2011 EMCS became compulsory for movements of excise goods under duty suspension, hence the rapid increase in the number of movements in first quarter of 2011.



IE801 messages sent per quarter 1/04/2010 – 30/06/2013

Number of movements (IE801)	7 425 318	Number of movements with registered RoR (IE818)	7 055 685
Number of movements with reminder sent (IE802)	1 530 116	Number of movements with destination change (IE813)	52 765
Number of cancelled movements (IE810)	96 275	Number of rejected movements (IE819)	6 581
Total of messages exchanged 01/04/2010 – 01/06/2013			16 166 740

Table 1 Global statistics 01/04/2010 – 01/06/2013

Table 1 shows that only 1.3 % of movements have been cancelled and in 0.7 % of movements the destination has been changed. The consignor may only send a cancellation message after validation of e-AD but before the actual dispatch of goods. Cancellation messages are sent due to errors in data such that the e-AD does not correctly describe the consignment or because the physical movement has been

cancelled for business reasons. Change of destination is possible either in the normal course of the movement (new consignee or new place of delivery) or following a refusal at delivery or a rejection of the e-AD. The percentage of cancellations and changes of destination compared with the total number of movements since the beginning of EMCS is of the order of 1.4%. Or in other words 98.6% of EMCS movements complete normally and without any change to the original consignee.

The total for the number of e-ADs validated is slightly higher than the number of reports of receipt / report of export. This is normal since there is a delay between the issuing of an e-AD and the corresponding report of receipt, which should correspond to the journey time of the movement plus the time that it takes the consignee to send a report of receipt to the consignee. The difference in totals can be used to estimate the average time taken to close a movement in EMCS, assuming that all movements are eventually closed by a report of receipt. If on average there are 700 000 movements per quarter and the difference between the total number of validated e-ADs and the total number of reports of receipt since 1st April 2010 is approximately 370 000, we can estimate that the average time between opening a movement and the sending of a report of receipt is:

$700\ 000 / 370\ 000 \times 3\ \text{months} = 1\ \frac{1}{2}\ \text{months}$ during the period that EMCS has been operating.

On the other hand the time taken for delivery plus the time taken to issue a report of receipt is only 6.8 days according to a statistics analysed form CS/MISE. This is an extremely good figure for a comparative new system, but does not take into account the time taken where movements have been closed manually. The difference is probably due to movements which have not been closed automatically, meaning that they do not have a matching electronic report of receipt and have been closed manually using alternative evidence.

Such so-called manual closures still occur in some circumstances where excise goods have been exported and where the automatic link between EMCS and the Export Control System has not worked correctly.

The time taken to close EMCS movements will require further attention in future, particularly paying attention to times taken for manual closures, This would form the basis of a useful performance indicator.

Comparing the number of e-ADs validated (IE 801) with the number of movements where a reminder was sent (IE 802) gives approximately 21% of movements where the estimated journey time had been exceeded and the Member State of Dispatch had not yet received a report of receipt within 5 days of the expected date of delivery. This figure seems rather high and suggests that the use of the reminder message should be investigated more closely.

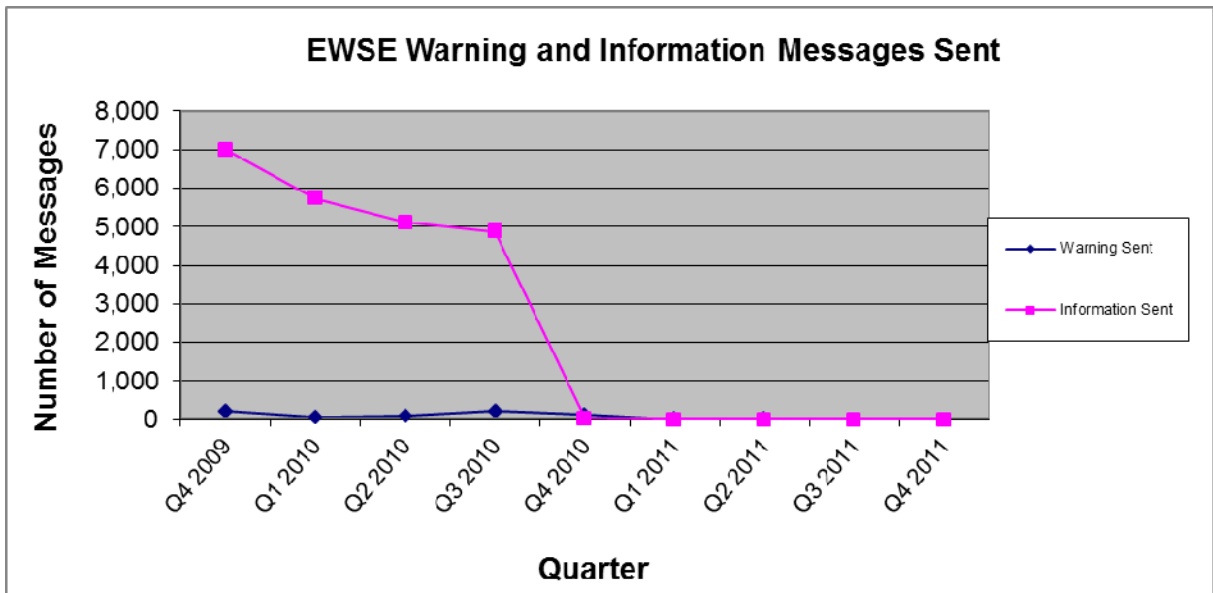
Number of control reports (IE717)	14 948	Number of admin coop common request (IE721)	4 435
Number of interrupted	1 806	Number of admin coop	6 129

movements (IE807)		results (IE867)	
Number of event reports (IE840)	1 364	Number of history results (IE838)	N/A
Total of messages exchanged 01/01/2012 – 01/06/2013			28 682

Table 2 Follow-up and collaboration messages between 01/01/2012 and 1/06/2013

Table 2 provides an overview on exchange of messages form EMCS Phase 3 for follow up and collaboration. It consists of reports on controls carried out during movements: those are usually physical checks (control reports, IE717) as well as of reporting of events that occurred during the movement (event reports, IE840). Control reports are produced and shared between administrations, whilst event reports can be produced by anyone who has an interest in the movement. Control reports and event reports were introduced in January 2012. The numbers are small, in comparison with all movements. Not all Member States are using them yet, but there is definitely a growing trend. Table 2 also shows the number of times that Members States have decided to interrupt a movement following findings of control, or following some events, or from any other source of information. Interruptions result in the end of a movement and, depending on national legislations, may lead to confiscation of the goods in question.

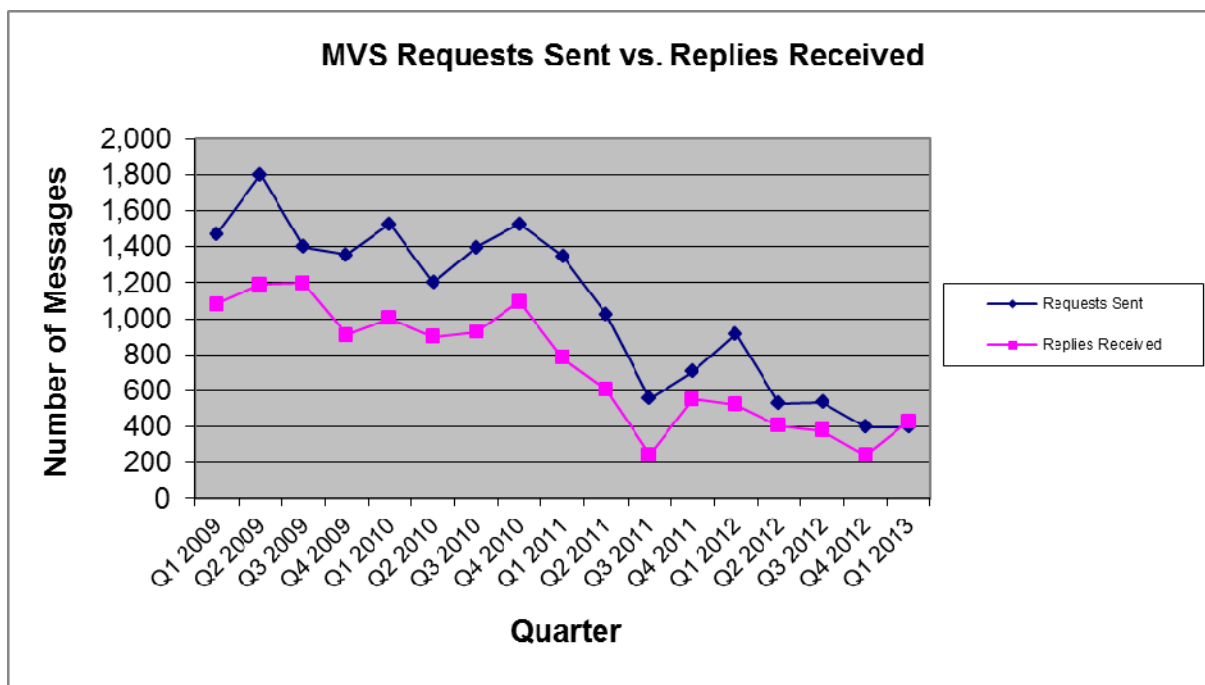
Table 2 also contains information on administrative cooperation between Member States. Data gives numbers of requests for assistance and the replies to be sent between administrations, and the exchange of spontaneous information.



The Phase 0 EWSE Early Warning System for Excise allowed transmission of information messages and warning messages, to indicate to other Member States

whether particular movements were considered to be high risk, on the basis of some shared risk factors, or on the basis of risk assessment in the Member State of Departure. EWSE messages were the only advance indication of the impending arrival of a movement that the Member State of Destination received before the goods actually arrived. The message was intended to encourage the Member State of Destination to carry out post-delivery controls.

Since the establishment of EMCS Member States have been able to conduct their own risk assessments, as they now receive advanced notice of all movements on the basis of the e-ADs that they receive from the Member State of Dispatch. Therefore EWSE messages became almost obsolete from 1st January 2011 onwards, only being used occasionally for the signalling of a risk that would not be obvious from the e-AD data. EMCS provides real-time, on-line information about movements and allows an administration better application of risk analyses and performance of more effective controls.



The Phase 0 MVS Movement Verification System now serves an administrative tool for the verification of movements of excise goods after their release for consumption. These movements take place outside of EMCS, relying on a simplified version of the system based on the paper AAD form that was used for duty suspended movements until the introduction of EMCS.

Before the introduction of EMCS MVS messages were also used for movements under duty suspension. The number of these messages was quite high at between 1500 and 2000 requests per quarter. After the establishment of EMCS but during the transitional period between 1 April 2010 and 31 December 2010 we can still observe the use of those messages as well as for duty suspension. Since the movement of excise goods under EMCS became compulsory we can note a decrease

of the exchange of MVS messages. From 2012 after introduction of new functionalities and the replacement of MVS message for duty suspension with the EMCS Phase 3 IE721 message, the number of MVS messages has declined steeply to about 400 messages per quarter. MVS requests now only concern movements of goods that have been released for consumption in one Member State that are subsequently moved to another Member State.

2.6. The stakeholder survey

2.6.1. Purpose

The Commission conducted a survey to gather stakeholder views on how well the objectives of the Decision have been met, their opinions on the current functioning of EMCS and on how the performance of EMCS can be evaluated in the future.

2.6.2. Methodology

The Commission conducted the survey using a questionnaire addressed to Member States and to trade representatives.

The questionnaire was accessible through a web link, using the online survey tool of the Commission Interactive Policy Making portal (IPM). An invitation that included the link was sent to the Permanent Representations of the Member States and to the Trade Federations represented in the Excise Contact Group. The Trade Federations were asked to forward the invitation to their National Federation and to individual companies. The questionnaire was open from 18th of March until 12th of April 2013. The data delivered by the questionnaire were used as input for this report.

2.6.3. The sample

The questionnaire received a total of 131 replies. The total sample consists of two different “sub samples:”

(1) There are 27 replies from Excise Administrations of Member States, which represent 23 different Member States. Some Member States filled in the questionnaire more than once. To keep the results representative, harmonisation of the answers of the same Member State was sometimes needed. The correct sample size is indicated for each question in this report.

(2) The other 104 replies come from multinationals (21 replies), large companies primarily operating one Member State (23 replies), small and medium enterprises (50 replies) trader federations (8 replies) and other (2 replies). Those replies are grouped and will be hereafter referred to as the “traders’ sample” or “trader respondents”. The traders’ sample represents 15 different Member States.

2.6.4. Questions on the achievement of the general objectives of Decision 1152/2003/EC

The first set of questions asked whether the project had met each of the general objectives set out in the Decision.

2.6.4.1. Member States Replies

The overwhelming majority of Member States consider that the project has met its initial objectives and that the establishment of EMCS and electronic transmission of

the e-AD in comparison with the paper form of accompanying document (the AAD) has improved the control of movements under duty suspension. The main advantage is the fast, safe and secure exchange of information. Many Member States reported that on-line information about on-going movements gives immediate and easier access to up-to-date, real time data. This means better control of information exchanged and easier / better control and follow-up of the movements. It also results early awareness of incoming movements, minimization of incorrect data and facilitation and enhancement of the intra-EU trade. Electronic transmission of the e-AD has allowed simplification of administrative procedures, reduction of bureaucracy and at the end paperless administration.

Most of Member States have not seen many disadvantages with regard to introduction of computerised system. However, some Member States reported that high costs of development and maintenance or upgrades as a disadvantage of EMCS in comparison with the previous system.

20 out of 23 Member States (87%) state that the delays in establishment of EMCS have not been problematic

Those Member States who reported having problems due to the late establishment of EMCS, said that they faced difficulties during the transitional period in 2010. Late implementation of EMCS in some Member States forced the extended use of the paper-based fallback system on a scale for which it was never intended in the case of movements with those countries. For one Member State the delay put a burden to the administration due to necessity to use 2 supporting systems. Some dishonest economic operators during that period may have used the gaps in the paper system to execute fraudulent movements or operations.

With reference to the balance between Community, non-Community components and trader components, the majority of Member States report that the respective responsibilities of Member States and the Commission to specify and develop are about right. The same group state that responsibility placed on traders to specify and develop is about right as well. Three Member State think that too much has been left to Member States to specify and develop, one that too little has been left to traders and two that too little has been left to the Commission.

19 out of 23 Member States (83%) state that EMCS has provided better integration with other customs/taxation procedures/systems

22 out of 23 Member States (96%) think that the central tools provided by the Commission for EMCS – as SEED, SEED-on-Europa, Conformance test Tools, CS/MISE Message Tracking and Statistics work well

The Security Policy document (SEP) for the EMCS Project is a commonly agreed set of policy guidelines for the Commission and the Member States aimed at ensuring system integrity and the protection of confidential and personal information held in EMCS. 19 out of 23 Member States (83%) think that the EMCS security policy (as described in the SEP document) is working correctly. One Member State suggested that it would be useful to revise the SEP to bring it into line with the ISO/IEC 27000 series of standards, which have a wider scope than ISO/IEC 17799 (included in the series as ISO/IEC 27002), 19 out of 23 Member

States (83%) state that the current governance arrangements for EMCS (Committee on Excise Duty and ECWP (EMCS Computerisation Working Party) function effectively. Two Member States complained that the process was inefficient with duplication between discussions in the ECWP and in the Committee on Excise Duty. Discussion was sometimes repetitive and did not always lead to clear decisions.

14 out of 23 Member States (61%) think that Excise Contact Group (ECG) is an effective channel for input into the decision making process for EMCS. No Member State considered the ECG to be ineffective and there were no suggestions to improve the situation.

2.6.4.2. Trader Replies

All traders found that the project had been a success, with clear advantages over the previous paper based system under Directive 92/12/EEC.

Advantages reported by traders include: faster termination of excise suspension procedures; increased transparency and clarity; less handling of paper documents (creation, handling, archiving); smaller margin of errors; immediate validation of the e-AD; integration of processing with existing computerized systems; real-time monitoring of movements, better control; decrease of administration; awareness improvement of each additive delivery; e-AD has a capacity to effectively decrease tax frauds based on unpaid excise duty; EMCS more efficiently prevents fraud and loss of tax revenues; faster release of guaranties; less risk of mistakes; system gives better traceability and visibility of the movement; closure of movement is much faster; speed of processing, safety information retrieval and backup for security issues; easy to use; shearing of information between administrations and traders.

Traders also reported some disadvantages: there were sometime connection problems with customs systems (export / import systems); there was no possibility to correct any mistakes after validation of documents (only cancelation is possible); there were problems dealing with exceptions to the normal flow of events, where the systems did not seem to be well defined, for example in the case of shortages or excesses, different Member States support different sets of functional possibilities such as splitting; the management of fallback procedures differed between Member States; in some Member States reporting of alcohol quantities is by the volume equivalent in pure alcohol, rather than the volume and the ABV percentage; the correct way to specify goods by CN codes was not always clear; the structure of SEED records differs between Member States and the records are not always replicated in each Member State in a timely way; there were complaints concerning unavailability of the system (possible technical problems/ service interruptions); a lack of service from ELO side; lack of knowledge about existing procedures - customs authorities do not support the harmonisation approach in a uniform and correct way (discrepancy in interpretation of applicable community law - shortages); higher costs; occasionally bad and slow access to the applications of EMCS.

82% of the trader respondents state that the delays in establishment of EMCS have not been problematic

Dissatisfied respondents state that the late establishment of EMCS resulted in more emergency procedures due to an improperly working system and delays – necessity to use paper documents or paper and electronic at the same time. It caused additional work and confusion in the partner countries. The delay of implementation was also time-consuming and costly from a project management point of view.

With reference to the balance between Community, non-Community components and trader components, the majority of trade respondent report that responsibility of Member States and the Commission to specify and develop is about right. The same group state that responsibility of traders to specify and develop is about right as well. Some of them however think that too much has been left to Member States to specify and develop, and too little has been left to traders to specify and develop.

25% of the trade respondents think that the Excise Contact Group (ECG) is an effective channel for input by traders into the decision making process for EMCS, whilst 8% thought that the ECG could be improved. 67% of the trade respondents were not aware of the ECG's existence. This would indicate that there is a need to publicise the activities of the group both directly, and through the Trade Federations that are represented in the group

9% of trader respondents state that the meetings could take place more often, also documents should be provided earlier enough to have possibility to consult the member companies. A suggestion was to replace the existing set-up with a trader-only group. Traders would like to also the Commission making more use of questionnaires, such as the one used in this survey in order to have more direct access to the Commission. It was claimed by one respondent that some Member States used information produced at ECG meeting to introduce new administrative measures.

Conclusion

Member States and traders are on the whole satisfied with establishment of EMCS. According to a large majority of both samples the main goals set out in the Decision have been achieved. In general, the governance arrangements are seen as satisfactory. Nevertheless, the representative body for traders is largely unknown in the traders' community, pointing to the need for its existence and its role to be publicised more widely.

2.6.5. *General Assessment of EMCS and its functioning*

2.6.5.1. Member States Replies – General assessment

8 out of 23 Member States (35%) think that administrative costs of the operation of EMCS compared with the costs of operating the previous arrangements under Directive 92/12/EEC are lower. 9 out of 23 Member States (39%) – think that they are higher. 6 out of 23 MS (26%) – don't know)

21 out of 23 Member States (91%) state that EMCS provides improved compliance by traders.

12 out of 23 Member States (51%) state that there is less need for follow-up and exception handling than before.

13 out of 23 Member States (56%) state that establishment of EMCS has improved revenue collection.

16 out of 23 Member States (70%) state that EMCS has led to simplification of procedures so far.

The examples of simplifications which were given are: elimination of paper - paperless administration; less need for keeping paper records; all the information being on line concerning a movement and its follow-up, it can easily be consulted by all excise officers and the traders; faster release of the guarantee; identification of stakeholder's authorizations is carried out automatically; more convenient and efficient monitoring of economic operators. Administrative procedures are faster and simpler.

However procedures the handling of exceptions are sometimes more complicated because the rules are not well defined; procedures which are related to administrative cooperation should also be more defined.

All Member States agree that the EMCS procedures are faster than those under Directive 92/12/EEC.

20 out of 23 Member States (87%) state that it takes less time to release guarantees.

8 out of 23 Member States (35%) think that the level of user satisfaction depends on the type of interface provided.

In most cases traders use one kind of web application/ interface module (internet) provided by administration. User satisfaction can depend on factors other than the type of interface provided– for example, benefits of the system, the quickness of the system.

10 out of 23 Member State (43%) say that the administration is faced with trade sector specific problems.

Those Member States raised the following sector problems they have experienced:

- Little compliance with procedures in the wine sector, due to zero rates in some Member States (large numbers of e-ADs are not closed).
- Problems with indication of alcohol volume in the report of receipt, which causes incorrect indication of the amount of alcohol received, which effect on the quantity of shortages.
- Difficulties with the use of new documents and new the introduction of new procedures especially in bulk operations in the oil sector – it is required to submit a draft e-AD with quantities already filled in and get an ARC number before the tanker/ship leaves port – but the exact quantity is not known at this time).

- In energy sectors there are usually problems with reporting shortage and excess
- Use of import/export procedures (problems with synchronization with EMCS, to evaluate the correctness of data and proper closure of movements).
- One Member State develops different software for each sector, trying to give the best answer to each specific sector.

10 out of 23 Member States (43%) think that EMCS has led to the reduction of tax evasion or tax fraud. The others do not have evidence for this.

According to the replies as a result of the improved application of risk analysis in the field of excise duties, administrations are able to better ensure the correct assessment of excise duty than before. The system contains reliable information on all movements so it is almost impossible to avoid tax in case of unfinished movements and shortages. Also the collection of duties by Member States is improved. EMCS prevents the unauthorized delivery of products between the operators who are not entitled to receive the product, by refusing the validation of e-ADs, which contain incorrect information.

22 out of 23 Member States (96%) state that EMCS provides the tools required to improve national controls/ multi-lateral controls

21 out of 23 Member States (91%) think that EMCS provides a useful tool for risk analysis

All Member States state that the EU level governance process has provided enough possibilities to influence decisions

All Member States state that their national project management process allowed sufficient participation by relevant stakeholders.

2.6.5.2. Member State Replies on Functioning of EMCS

The most common errors in EMCS messages received by Member States originating from traders:

- Office of Export and Office of Exit used wrongly;
- Wrong consignee trader in cases of exportation/ direct delivery or temporary registered consignee;
- Wrong or missing invoice number,
- Erroneous journey time,
- Erroneous identity of transport units;
- Erroneous SEED number,
- Erroneous quantities,
- Erroneous CN codes,
- Incorrect destination type codes,
- Incorrect product description;

- Wrong data in report of receipt (date of arrival, observed shortage, excess);
- Incorrect tax warehouse linked to warehouse keeper;
- The misuse of change of destination message to update details in the e-AD, such as transport identification⁴.

The most common mistakes in EMCS messages received by Member States originating from other Member States:

- Missing data concerning the degree of alcohol or degree Plato;
- Missing or wrong SEED data,
- Erroneous CN codes,
- Incorrect weight.
- Errors in data format;
- The date of the report of receipt (IE818) being before the date of dispatch of the goods in the e-AD (IE801);
- Misuse of change of destination messages
- Inaccuracies in cases of direct delivery;
- Misuse of manual closure; varying levels of compliance with business and technical validation rules in MSA's systems - different interpretation on some rules and conditions.

14 out of 23 Member States (61%) use all the available EMCS Phase 3 functionalities

Where Member States do not use all the available EMCS Phase 3 functionalities in most cases those not used are:

- The splitting message (IE825);
- Interruption of a movement (IE807);
- Customs rejection of e-AD (IE839);
- Notification of accepted export (IE829);
- In one case information on intended claims and post-delivery processing.

Also the correct usage of the messages for information on intended claims, control and event reports is not clear and varies between Member States

4 out of 23 Member States (17%) think that some of EMCS Phase 3 functionalities are redundant (for example. interruption and information on intended claims, post-delivery processing message).

⁴ Some Member States think that such details should be updated using a newly specified EMCS message. Others think that this is not necessary.

One suggestion was to provide a specified business message for the manual closing of movements when exceptions occur and a means of providing reasons for closing, instead of relying on a low level technical message.

According to Member States suggestions, the Commission could improve the content of those messages by:

- Specifying more precisely the conditions for the use of various Phase 3 messages in the future Commission Implementing Regulation based on Regulation (EU) No. 389/2012;
- Creation of a correction message (for correction of details of ARCs as well); of information on the change of transport means;
- Addition of alcohol volume of the received goods in the message IE818;
- Improvement of the Administrative Cooperation messages;
- Better synchronization between changes in the FESS and the DDNEA specifications;
- An evaluation of the system on a yearly basis.

Member States think as well that the system needs to be stabilized. New changes are expensive, especially for Member States having a low number of national movements.

Member States have following problems using EMCS functionalities:

- Divergent interpretations of manual closure and interruption of movements.
- No electronic arrival message when the goods arrive at destination (consignee has 5 working days to introduce the report of receipt). In practice, this means that no control at destination is possible.
- There is no proper e-AD correction message. A correction message would solve problems that administrations are facing at the moment.
- Integration of EMCS with other Customs systems need to be improved and need to be implemented based on common specifications.
- One cannot create partial replies to requests for assistance. A request can only be answered by one reply.
- A clearer claims procedure has to be developed.
- There is a lack of common approach for the use of explanation messages (exactly explanation on shortage) and event reports and control reports (mostly these are not exchanged within useful time limits or they are not used at all in some Member States).
- Lack of possibility to process correctly ship supplies and deliveries of energy products for mixing with non-Community products.

13 out of 23 Member States (57%) state that to deal with incorrect messages from other Member States it is better to use the Help Desk to solve such problems. 5 of

them (22%) think that it is better to use administrative cooperation to solve such problems.

A few respondents stated that different methods depending on different circumstances in each Member State (they use communication with traders or sometimes informal contacts with representatives in other Member States).

16 out of 23 Member States (70%) state that administrative cooperation works better in EMCS Phase 3 than previously using MVS and EWSE mailboxes.

However sometimes technical problems can affect incoming and outgoing requests, which might be delayed. According to one Member State it is not clear in which cases an event report and/or control report should be introduced (in FESS it is not clearly enough described); and if no excise duties will be collected, no specific message has been created to inform the concerned Member State.

1.1.1.1. Trader Assessment of EMCS in general

38% of the trader responders think that administrative costs of the operation of EMCS compare with the costs of operating the previous arrangements under Directive 92/12/EEC are lower (24% - higher; 38% - don't know.)

71% of the trader responders state that EMCS facilitates compliance by traders.

55% of the trader responders state that there less follow-up and exception handling than before.

59% of the trader responders state that EMCS led to simplification of procedure so far. As examples they stated:

- it is easier to follow-up movements;
- immediate available reporting;
- there is no paper work, which saves time and costs;
- elimination of loss of documents;
- faster release of guarantee for the movements;
- EMCS captures and processes the information about the movement online, validates the data entered and allows real time notification of the dispatch and receipt of the shipment;
- full picture of movements;
- detailed search possibilities and comments in case of deviations;
- better overview, simple trace in history, no waiting for post-delivery;
- better control.

94% of the trader responders agree that the EMCS procedures are faster than those under Directive 92/12/EEC

80% of the trader responders state that it takes less time to release guarantee.

63% of the trader responders state that the web-interface provided by the administration is user friendly.

79% of the trader responders think that the level of user satisfaction depends on the type of interface provided. Explaining this they stated that if the interface is inadequate than the level of user satisfaction will be low. The more user friendly and faster the interface is, the higher the level of user satisfaction. The type of the interface can determine the time it takes to get the data through the system. An easy-to-use interface has a positive influence on the user satisfaction; easy handling and understanding. Other traders who do not use a web interface use their own software or that of a third party provider. These traders see the interface as less of an issue.

20% of the trader responders state that have trade sector specific problems:

- Different treatment of excise products in different MS (specially within energy products);
- Differences in excise rates between Member States (e.g. wine)
- No tolerance definition on differences regarding non-packed liquids (e.g. beer tanks)
- In the case of energy products an e-AD can only be created after loading of the product because before the loaded quantity is unknown
- Problems with understanding some definitions (customs office of delivery, exit)
- No link with export/ import systems;
- Differences with fallback procedures in different Member States;
- Problems with issuing an e-AD whenever requested change of goods destination or cancellation;
- Problems with change of destination procedure;
- No data corrections in EMCS;

20% of the trader responders state that there are problems for multi-national companies when the systems differ from each other. According to the respondents the problems are:

- Problems with export procedure – obligation to use of both EMCS and ECS, which are not properly linked one to another causing a significant number of error messages;
- Different national SEED structures (problems in validating EMCS shipments; excise number for authorized warehouse keeper and warehouse may differ between the Member States);
- Different fallback procedures in different countries;

- Different use of EMCS functionalities resulting in technical problems, errors, difficulties to operate a single common solution, high costs of implementation;
- Different classification of some goods - non uniform product codes;
- Different treatment of the same product (in some Member State aroma's do not have to be declared as excise duty products, while in other Member States it is an obligation to declare them as such);
- No communication between administrations.

76% of trade responders think that the EU level project process provided enough possibilities to influence decisions. Nevertheless some traders have not found any possibility to influence decisions. If there is an involvement in the project process, it should be based more on a mixture of associations and traders. Some felt that deadlines are too tight to be able to provide proper input (e.g. questionnaires).

72% of trade responders think that the national project management process allowed sufficient participation

1.1.1.2. Trader assessment of functioning of EMCS

The most common mistakes in EMCS originating from traders:

- Wrong product;
- Wrong product code;
- Wrong CN code;
- Wrong quantity;
- Wrong transport details;
- Wrong unit of measurements;
- Wrong density;
- Wrong destination type code;
- Wrong trader identification, wrong dates/ time;
- Wrong place of delivery/ type of destination;
- Wrong name of consignee;
- Wrong excise number and addresses;
- Given data does not fit every time with SEED database;
- Typing mistakes;
- Very little communication between EMCS helpdesks or Customs on international level

The most common mistakes in EMCS originating from other Member States:

- Wrong unit of measurements (brutto, netto weight, % of alcohol);

- Wrong product;
- Inadequate description of the excise product;
- Wrong or missing information on the Plato degree, in the case of beer movement;
- Wrong CN codes;
- Wrong transport details;
- Incorrect delivery date;
- Document not registered in the system of the country of destination;
- No uniformity in free text content, leading to messages which are difficult to understand or not properly described;
- Mistakes originating from different alphabets used for languages of different Member States;
- Very little communication between EMCS helpdesks or Customs on international level

35% of trade responders use all the available EMCS Phase 3 functionalities. The reason is that at the moment in a few Member States not all functionalities of EMCS Phase 3 are available. A few trader respondents represent small companies and handle only one product – wine, so it is not necessary to use all of the functionality. 6% of trade responders think that some functionality is redundant. For example the explanation on shortages message is hardly used; the alert/reject function is not well understood by some users; truck numbers are considered redundant, also the use of the report of receipt message referring to excesses is not clear.

The Commission could improve the content of messages by improving the description of messages which should be clearer, more understandable and more detailed. A few traders pointed out that the error messages could be designed to contain a more detailed specification of the error and the correction options. Also the possibility to update after validation instead of cancelation would be desirable. Some traders would like to see all messages in one language.

Traders experience various other problems in using EMCS:

- SEED-database has limited info available (more information is needed);
- Some Member States don't close the procedures on time;
- No possibilities to track and trace ARC number online between different Member States;
- There are different obvious formal mistakes in EMCS (e.g. transposed digits, wrong fractional digits in loading volumes and density);

2.6.5.5. General Functioning - Conclusion

A large majority of both the Member States' sample and the traders' sample state that EMCS generally works well. In replying to the questionnaire both samples confirmed that the establishment of EMCS led to simplification and acceleration of procedures. They report that the system has led to improvements in tax collection and that the release of guarantees takes less time than previously. Also there is less follow-up and exception handling. Member States report that EMCS provides the tools required for national or multi-lateral controls and that is a useful tool for risk analysis.

On the other hand they are still faced with some problems. Both Member States and traders stress the difficulties in integration with export / import systems. Also the lack of possibilities to correct data in the e-AD after validation causes problems to Member States and the trade. Differences in functionalities or procedures (e.g. the fallback procedure) between Member States are seen as disadvantages. In some cases problems with exception handling need to be solved.

2.6.6. *Criteria and Methods – future evaluation of EMCS*

2.6.6.1. Member States

In the future Member States would like to EMCS be evaluated on the basis on following **criteria**:

- Number of administrative cooperation requests still open after 3 months – 15 Member States
- Reduction in administrative costs – 14 Member States
- Time taken to close movements – 12 Member States
- Percentage of error messages – 12 Member States
- Time to reply to administrative cooperation requests – 12 Member States
- Number of alert/rejection messages – 10 Member States
- Number of movements still open after 3 months – 9 Member States
- Number of movements still open after 4 months – 9 Member States
- Measurable positive contribution to enforcement activities – 9 Member States
- Measurable improvement to allocation of human resources – 9 Member States
- Number of administration cooperation requests still open after 1 month – 1 Member State

Also one Member State proposed the reduction of rejected incorrect messages because of non-compliance with EMCS specification as a criterion for evaluation of EMCS.

All Member States (100%) state that as a method for future evaluation of EMCS CS/MISE reports taken from live data should be used.

Additionally 3 Member States would like to use also Member State Reports for areas not covered by central collection. Those reports could contain numbers of smuggling acts concerning movement of excise duty products; contribution to national controls/risk analysis; opinions of Member States on possible improvements or problems with EMCS in production which are not related to error messages in EMCS.

11 out of 23 Member States (48%) think that the Commission should produce statistical and evaluation reports for Member States on yearly basis. The others think that it should be on quarterly (26%) or monthly (17%) basis.

19 out of 23 Member States (83%) state that the Commission should produce statistical and evaluation reports for ECWP/ Committee on Excise Duty yearly. One of the suggestions was to have such a report twice a year or quarterly.

22 out of 23 Member States (96%) think that the Commission should produce statistical and evaluation reports for traders yearly. One Member State thinks that it should be left to traders to express a preference. 23 out of 23 Member States (100%) think that the Commission should produce statistical and evaluation reports for Council and Parliament every five years.

5 out of 23 Member States (22%) would like to see the establishment of some form of permanent Measurement of Results Group which could steer the future direction of evaluation.

2.6.6.2. Traders

In the future traders would like to EMCS be evaluated on the basis on following criteria:

- Time taken to close movements – 68 responders/ 65%
- Number of movements still open after 3 months - 36 responders / 35%
- Number of movements still open after 4 months - 32 responders / 31%
- Percentage of error messages - 38 responders / 37%
- Number of alert/rejection messages - 30 responders / 29%
- Reduction in compliance costs - 33 responders / 32%
- Measurable improvement to allocation of human resources - 22 responders / 21%
- Other suggestions - 11 respondents suggested the percentage of manual closures in case of e-AD have been submitted to exportation. All suggested criteria would be preferable in evaluation.

2.6.6.3. Evaluation - Conclusion

The answers allow setting up essential *criteria* which could be taken into account in future EMCS evaluation. The basic criteria can be identified as follows:

- Time taken to close movements
- Number of movements still open after 3 months
- Number of movements still open after 4 months
- Percentage of error messages
- Number of alert/rejection messages
- Reduction in compliance costs
- Measurable improvement to allocation of human resources

Additionally in evaluation could be taken into consideration:

- Number of administrative cooperation requests still open after 3 months
- Time to replay to administrative cooperation requests
- Number of administrative cooperation requests still open after 1 month

CS/MISE should be used as the preferred method for monitoring of the future functioning of EMCS. The functionality offered by CS/MISE includes the follow up the movements via their ARC, technical and business statistics and the monitoring of system unavailability. Also Member States' statistics could be used as a method in EMCS evaluation.

3. THE PRINTED VERSION OF THE ELECTRONIC ADMINISTRATIVE DOCUMENT OR OTHER COMMERCIAL DOCUMENT AND ARRANGEMENTS FOR FALLBACK (ARTICLE 45(1) OF COUNCIL DIRECTIVE 2008/118/EC)

3.1. Introduction

3.1.1. Legal base

The legal base of the report that this document is underpinning is Article 45(1) of Council Directive 2008/118/EC. It states that the Commission shall provide a report to the European Parliament and the Council concerning EMCS fallback procedures and the print-out of the accompanying document described under Article 21(6) of the Directive.

Article 45(1)

By 1 April 2013, the Commission shall submit to the European Parliament and the Council a report on the implementation of the computerised system and, in particular, on the obligations referred to in Article 21(6) and on the procedures applicable should be the system be unavailable.

3.1.2. Methodology

In order to build this report the Commission opened a consultation using a questionnaire addressed to Member States and to representatives of traders. The

purpose of the questionnaire was to gather feedback on the implementation, effectiveness and usefulness on the concerned arrangements. Also some questions were asked about EMCS in general to provide orientation for further research. The questionnaire was made possible through the online survey tool of the Commission: “Interactive Policy Making” (IPM). The questionnaire was accessible via a web link. The questionnaire was open from Monday the 3rd of December 2012 till Friday the 11th of January 2013. The Commission encouraged the ECG Member Trade Federations to forward the link of the questionnaire to national trading federations and to individual traders, which made it possible to reach a large group of potential respondents. The questionnaire was built in that way that respondents were only asked to answer questions that were relevant for their status. The data delivered by the questionnaire were used as input for this report.

3.1.3. The sample

The questionnaire received a total of 104 replies. The total sample consists of two different “sub samples:”

(1) There are 36 replies from Excise Administrations of Member States, which represent 24 different Member States. Some Member States filled in the questionnaire more than once. To keep the results representative, harmonisation of the answers of the same Member State was sometimes needed. If answers could not be harmonized, answers were not included and so the size of the Member State sample can vary depending on the question. The correct sample size is indicated for each question in this report.

(2) The other 68 replies come from traders (57 replies), trader federations (9 replies) and other (2 replies). Those replies are grouped and will be hereafter referred to as the “traders’ sample” or “trader respondents”. The traders’ sample represents 15 different Member States.

3.1.4. The structure

In this chapter the results on the fallback procedure will be discussed in section 3.2 the results of the print-out of the accompanying document in section 3.3 and the results of EMCS in general in section 3.4. In every section each sample will be discussed separately. The chapter ends with a set of general conclusions in section 3.5.

3.2. The fallback procedure

3.2.1. Member States

- 24 out of 24 Member States (100%) state that the current minimum level of 97% for EMCS availability in the Service Level Agreement and the FESS is achievable.
- 16 out of 24 Member States (66,66%) have to give approval to the traders for the use of the fallback procedure.
- 24 out of 24 Member States (100%) state that the fallback procedure is clear to them.

- 20 out of 24 Member States (83,33%) are satisfied with the fallback procedure as it is now. Concerns about fraud were also expressed: since the fallback document is not validated by the Member State of Dispatch, but looks valid to the control officers, a consignment that would not have passed e-AD validation will be delivered, since only the identity of the consignor and the consignee can be checked in SEED, but not the movement itself. Also consignments under fallback may not be recovered into EMCS and may not get included in the accounting books. The fallback procedure could also be used to avoid seizure of excise goods, for example where the trader had an excise debt, or some other fiscal debt. One respondent proposed to add the excise number of the consignor as a field in the fall back report of receipt. Another proposal was to create a list of national contact points per Member State for sending and receiving the paper fallback documents, so that the Member State of Destination (and the consignee) would be told that excise goods had been shipped. This would require the submission of the fallback document to the Member State of Dispatch at the time of departure.
- 20 out of 22 Member States (90.90%) have a standard template for fallback documents. It is interesting that two Member States that have a standard template for fallback documents, state that it is not compulsory use the models.
- 15 out of 24 Member States (62.50%) state that there is a need for a standardised fallback document across all Member States.
- 17 out of 24 Member States (70.83%) keep a record of all the fallback documents where traders have not yet recovered the data into EMCS.
- 10 out of 22 Member States (45.45%) have come across traders that fail to recover movement data from fallback documents into EMCS.
- 14 out of 22 Member States (63.63%) are convinced that the current paper based fallback system is effective in assuring compliance.
- 5 out of 21 Member States (23.81%) state that it would be better to define a format for the fallback documents which does not change with each release of EMCS. According to the Directive changes to EMCS messages should be reflected in changes to the structure and content of the fallback documents.
- Member States propose to only include the most essential data for the identification of the movement on the fallback document, so that changes in the fallback messages would not necessarily results in changes in the fallback document.
- Member States raised the following other problems they have experienced concerning the fallback procedure or documents:
 - The Report of Receipt fallback procedure is sometimes not followed by a recovery procedure, whether due to negligence, or attempted fraud.
 - Some Member States issue an ARC for a fallback document, which causes confusion for both consignor and consignee.

- Sometimes it is not clearly visible that the paper documents are fallback documents, a unique form for all the Member States could avoid this problem.
- The fallback document should clearly carry the title: “Fallback Accompanying Document for movements of excise goods under suspension of duty excise,” as is required by the Directive.
- Some Member States do not allow fallback procedure in cases when it is obvious that an authorisation is correct but that it has not been uploaded by the authorising Member States into central SEED, leading to a failure to validate an e-AD referencing this authorisation. This situation can cause high costs for economic operators. It is particularly related to temporary authorisations, which are usually valid for a very short time.

3.2.2. *Traders*

- 77.94% of the trader respondents are satisfied with the actual minimum availability level of 97% EMCS. According to respondents who were dissatisfied the main reason of unavailability of the system is caused by problems with national EMCS access. Different solutions to EMCS access problems are proposed: the central system should accept more users, system maintenance should be performed outside working hours and a standby EMCS implementation should be made available during maintenance. A less frequent reason for the unavailability of the system is problems with communication links.
- 72.06% of the trader respondents state that their Member State has to give them approval for using the fallback procedure.
- 75.00% of the trader respondents use occasionally the fallback procedure.
- 17.05% of the trader respondents use often the fallback procedure.
- 7.35% of the trader respondents use almost continuously the fallback procedure.
- 88.24% of the traders respondents state that the fallback procedure is clear to them.
- 80.88% of the traders respondents are satisfied with the fallback procedure as it is now. Dissatisfied respondents stress the administrative burden of filling in all the data on the paper version and subsequently re-entering the data in EMCS. There is also a problem with the fallback procedure for export, as in some Member States it is not possible to prepare an export declaration without the ARC number.
- 66.18% of the traders respondents state that their Member State have a standard template for fallback documents. 7,35% of the traders respondents state that it varies between the Member States they are active in. Some traders state that it is not compulsory to use the standard templates and they design their own ones.
- 55.88% of the traders respondents state that there is a need for a standardised fallback document across all Member States.

- 16.18% of the trader respondents have experienced differences between fallback procedures specified by Member States. Traders point out the different lay-outs of the fallback document, the different allocation procedure of the ARC number and that the fallback document is not accepted in all Member States.
- 7.35% of trader respondents stated that these different procedures lead to compliance difficulties.
- 16.18% of the trader respondents state that the variety of fallback documents impose problems. Traders have difficulties to understand documents with different lay-outs and they state that it is not always clear to see if it concerns a fallback document or a regular shipment.
- 13.24% of the trader respondents have experienced problems with the recovery procedure of the documents in EMCS. According to the traders respondents the main problem is that the recovery procedure takes too long.
- 88.24% of the trader respondents are convinced that the current paper based fallback system is effective in assuring compliance. Unconvinced respondents point out that the combined use of EMCS and ECS is unclear and complicated, there is a mismatch between the two systems.
- 16.18% of the trader respondents state that it would be better to define a format for the fallback documents which does not change with each release of EMCS. According to the Directive changes to EMCS messages should be reflected in changes to the structure and content of the fallback documents. Traders propose standardisation of the fallback document.
- Trader respondents raised the following other problems they have experienced concerning the fallback procedure or documents:
 - Different languages impose understanding problems, proposal for English as standard language for fallback documents.
 - Helpdesk does not meet the service standards of the traders.
 - The use of EMCS in the export procedure is unclear or an administrative burden for the traders. Export files do not get completed automatically, even where the consignor and the exporter are the same.

3.2.3. *Conclusion*

Member States and traders have very similar opinions concerning the fallback procedure. A large majority of the Member States' sample and the traders' sample are satisfied with the fallback procedure as it is now. Also a large majority of both samples are convinced that the current paper based fallback procedure is effective in assuring compliance, although some Member States express concern about the possible fraudulent use of the procedure, through failing to recover movement data into EMCS.

The majority of both samples state the need for a standardised fallback document across all Member States with in particular a fixed lay-out and containing only necessary data. This would resolve a lot of problems. A minority of the two samples state that it would be better to define a format for the fallback documents which

does not change with the each release of EMCS. Some Member States have a standard template for the fallback document, but it is not always compulsory to use them and traders design their own templates. This results in difficulties in recognising and understanding the fallback documents.

Some respondent pointed out that it also important to avoid having to use fallback by tackling the problems at the beginning of the chain: high levels of unavailability of EMCS. Investigation into improving access to the national EMCS system is thus of great importance. Finally, problems between EMCS in fallback and the export procedure are quite remarkable and should be looked into.

3.3. The print-out of the accompanying document

The print-out of the accompanying document can be a printed version of the electronic administrative document or any other commercial document including at least the unique administrative reference code. (Art 21(6) Council Directive 2008/118/EC)

3.3.1. Member States

- In 6 out of 22 Member States (27.27%) is compulsory to use the print-out of the e-AD, including all of the printable e-AD data, as the print-out of the accompanying document.
- 11 out of 22 Member States (50.00%) have standard templates (other than just specifying the necessary data) for the print-out of the accompanying data.
- 7 out of 24 Member States (29.16%) have experienced problems with the print-out of the accompanying document presented by traders during controls. The main problems are missing information on the document, linguistic misunderstandings and illegibility.
- 9 out of 23 Member States (39.13%) state that there is a need for a standardised print-out of the accompanying document adopted by all Member States.
- 12 out of 21 Member States (57.14%) believe that a barcode, representing the ARC number, on the print-out of the accompanying document would help in the carrying out of controls.
- 2 out of 23 Member States (8.70%) believe that only a barcode, representing the ARC number, attached or printed on a commercial document as the print-out of the accompanying document would be sufficient.
- Member States raise the following other problems they have experienced concerning the print-out of accompanying document:
 - Sometimes excise officers are not sure about whether a presented document is a fallback document or an accompanying document.
 - There are several consignments using the same document.

3.3.2. *Traders*

- 52.94% of the trader respondents state that it is compulsory to use the print-out of the e-AD, including all of the printable e-AD data, as the print-out of the accompanying document. 5.88% of the traders respondents state that it varies between the Member States that they are active in.
- 26.47% of the trader respondents state that their Member States have a standard template (other than just specifying the necessary data) for the print-out of the accompanying data. 11.76% of the traders respondents state that the template varies between the Member States they are active in.
- 14.71% of the trader respondents have experienced problems with the print-out of the accompanying document of other Member States sent to them by trading partners. The main problems are that the document is missing and linguistic misunderstandings.
- 38.24% of the trader respondents state that there is a need for a standardised print-out of the accompanying document adopted by all Member States.
- 48.53% of the trader respondents believe that a barcode, representing the ARC number, on the print-out of the accompanying document would improve the usefulness of this document.
- 30.88% of the trader respondents believe that only a barcode, representing the ARC number, attached or printed on a commercial document as the print-out of the accompanying document would be sufficient. Some traders think that simply writing the ARC number on a standard CMR consignment note⁵ should be enough in all Member States.
- Trader respondents raise the following other problems they have experienced concerning the print-out of accompanying document:
 - If the print out is copied or faxed it is hard to read the data. Using portable devices such as Smartphones and having the accompanying document on there instead of a print-out could be a solution.
 - Traders have been sometimes unable to produce print-outs of the e-AD due to software failure while for one of the Member States it is obligatory for the excise products to be accompanied by such printout.

3.3.3. *Conclusion*

Concerning the print-out of the accompanying document there is a consistent demand for a standardised document between the Member States' sample and the traders' sample, as almost 40% of both samples indicated this need. Both samples also have the same opinion about adding a barcode, representing the ARC number, to the print-out of the accompanying document, as half of both samples supported this. Only a minority of both samples believe that only a barcode attached or printed on a commercial document as the print-out of the accompanying document would be sufficient. A minority of the two samples have experienced problems with the

⁵ Standard carriage document specified by the International Road Hauliers Union (IRU/CMR)

print-out of the accompanying document. The common problem of both samples is of a linguistic nature. There is no agreement between the opinion of the Member States' sample and the traders' sample on the obligation of using the print-out of the e-AD as the accompanying document, nor on the use of a standard template. Unfortunately no clear interpretation can be given to these last results. A standard template provided with a barcode would accommodate the need for standardisation and might resolve the linguistics problems, by allowing the data of the e-AD to be more easily downloaded in the language of the Member State concerned.

3.4. General EMCS

3.4.1. Member States

- 7 out of 24 Member States (29.16%) state that EMCS works excellently.
- 14 out of 24 Member States (58.33%) state that EMCS works well.
- 2 out of 24 Member States (8.33%) state that EMCS does what it supposed to do.
- 1 out of 24 Member States (4.16%) state that EMCS is impossible to use.
- 5 out of 22 Member States (22.72%) state that EMCS significantly decreased the recurrent cost of ensuring compliance with excise legislation.
- 1 out of 17 Member States (5.88%) state that EMCS significantly increased the recurrent cost of ensuring compliance with excise legislation.
- 15 out of 20 Member States (75.00%) state that EMCS has led to improved revenue collection.
- Member States' summarised feedback on things about EMCS that are better than the previous (paper AAD) system:
 - Monitoring of movements
 - Better control possibilities
 - Less paperwork results in reduction of workload and therefore faster system
 - Quicker release of guarantees
 - Helping risk management
 - More accurate and better quality data
- Member States' summarised feedback on things about EMCS that can be improved:
 - Include more comprehensive transport information, eg: change of transport means
 - Correction messages to correct mistakes in e-ADs
 - Faster update of SEED

- Improve administrative cooperation

3.4.2. *Traders*

- 8.82% of the trader respondents state that EMCS works excellently.
- 55.88% of the trader respondents state that EMCS works well.
- 23.53% of the traders respondents state that EMCS does what it supposed to do.
- 10.29% of the traders respondents state that EMCS is difficult to use, unreliable, unfriendly. They state that breakdowns lead to frequent use of the fallback procedure and it is not possible to change information in the e-AD, which makes it complicated to solve irregularities.
- 20.59% of the trader respondents state that EMCS significantly decreased the recurrent cost of compliance with legal provisions concerning excise movements under duty suspension.
- 35.19% of the trader respondents state that EMCS significantly increased the recurrent cost of compliance with legal provisions concerning excise movements under duty suspension.
- Traders' summarised feedback on things about EMCS that can be improved:
 - Faster & safer
 - Quick knowledge on irregularities
 - More transparency
 - Quicker release of guarantees
 - No loss of printed documents
 - Easier control by Customs
- Traders' summarised feedback on things about EMCS that can be improved:
 - It should be possible to correct data in the e-AD after validation
 - Faster update of SEED
 - Better compatibility of EMCS with other systems, especially with ECS

The combination of the EMCS and the export declaration procedure is not satisfactory; it represents an additional administrative burden because export files do not close down automatically.

 - Improve electronic system availability

3.4.3. *Conclusion*

A large majority of both the Member States' sample and the traders' sample state that EMCS works well or excellently. Concerning the costs it is remarkable that for the Member States sample the percentage claiming a cost decrease is higher than the percentage claiming a cost increase, which is not the case for the traders' sample where the percentage claiming a cost increase is higher than the percentage of

claiming a cost decrease. Traders state that the higher costs are mainly due to additionally IT implementation and maintenance cost of EMCS, as well as additional employment costs as extra people need to be hired and trained to work with the system. Feedback on things better than the previous system and things to improve from both samples are in the same trend. Actions need to be undertaken to make it possible to correct data in the e-AD after validation and to update the SEED database faster. Trader respondents stress the difficulties with EMCS in the export procedure.

3.5. General conclusion

The questionnaire has generated valuable insights on the current fallback procedure and the print-out of the accompanying document. The questionnaire also provides orientation for further research on EMCS in general. The Commission recommends:

- The development of standardised templates for fallback documents across all Member States with a fixed lay-out.
- Investigating improvements in the availability of national EMCS systems in order to avoid having to use the fallback procedure.
- For the print-out of the accompanying document a standardised template could be proposed. This would help reduce linguistic difficulties. The template could be based on standard commercial documents, such as the CMR Consignment Note for Road Transport. This should be introduced on a voluntary basis in a pilot project.
- The ARC number should be reproduced as a barcode on the print-out, in order to aid road controls, and to assist traders in identifying consignments.
- Investigation into the problems with EMCS in the export procedure should also be a priority as these problems were mentioned in the section concerning the fallback procedure and the section of the questionnaire concerning EMCS in general. Further research will be performed on the feedback received via the questionnaire to fine-tune the next steps.

4. RESULTS OF THE CONSULTATION CONCERNING ARRANGEMENTS FOR ADMINISTRATIVE COOPERATION IN THE FIELD OF EXCISE DUTY

4.1. Introduction

A new Council Regulation on administrative cooperation in the field of excise duties, Council Regulation (EU) No. 389/2012, came into force in July 2012. The Regulation mandates the use of EMCS for the exchange of information between excise authorities, responsible for the correct application of excise duty law. It also provides a basis for the automatic sharing of information about national authorisations for excise traders for mutual recognition purposes, provides a legal basis for establishing minimum service standards for the development, maintenance and operation of EMCS, and clarifies certain other issues relating to administrative cooperation.

Another major change is the extension of automatic exchange of data to cover reports of exceptions occurring during movements.

4.2. Practical implementation of the new arrangements for administrative cooperation in EMCS Phase 3

For information on this subject please see Section 2.5.

4.3. Legal Base for this section of the report

This section is an addition to the requirement under Article 35(1) of Regulation (EC) No. 2073/2004 to produce a report on the functioning of the Regulation every 5 years. This Regulation has since been repealed and has been replaced by Regulation (EU) No. 389/2012.

Article 35(1) of Regulation (EC) No. 2073/2004

Th w R th	<i>Every five years from the date of entry into force of this Regulation and based in particular on the information provided by the Member States, the Commission shall report to the European Parliament and to the Council on the application of this Regulation.</i>	document der the ed, and
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The first report on the functioning of the new Regulation is not due until 2017, but the Commission considers it useful to present and analyse the first experience of Member States following the replacement of Regulation (EC) No. 2073/2004 and at a practical level the experience of using administrative cooperation tools that have been incorporated into EMCS.

4.4. Methodology

In order to build this document the Commission opened a consultation using a questionnaire addressed to Member States, targeting EMCS Development Teams, Central Excise Liaison Offices (hereafter referred to as CELO), designated Liaison Departments and Customs, Excise of Taxation Control teams. The purpose of the questionnaire was to gather feedback on the implementation, effectiveness and usefulness of Regulation (EU) No. 389/2012 and the administrative cooperation tools that have been incorporated into EMCS. The questionnaire was made possible through the online survey tool of the Commission: “Interactive Policy Making” (IPM). The questionnaire was accessible via a web link. The questionnaire was open from Monday 29th of April 2013 until Friday the 17th of May 2013. A late reply was received from one Member State. Analysis of the responses includes feedback by Member States on these issues given at the Workshop on “Administrative Cooperation in Excise, first experiences with the new arrangements,” held in Poznan from 4th to 6th June 2013.

4.5. The Sample

The questionnaire received a total of 24 replies from 19 Member States. As with the other surveys conducted, some Member States answered more than once, and so the replies have been checked for a consistent national position. The profiles of those who answered the questionnaire were as follows: 10 members of EMCS Development Team, 6 members of EMCS Operations teams or National Helpdesks, 18 members of Central Excise Liaison Teams and 5 members of Customs or Excise

Control Teams. The majority of Member States prepared joint responses which explains why the total number of roles reported exceed the number of responses.

4.6. Questions on Regulation (EU) No. 389/2012 and Changes from Regulation (EC) No. 2073/2004

4.6.1. Distinction between administrative cooperation under Regulation (EU) No. 389/2012 and the mutual assistance arrangements under the Naples II Treaty.

The Naples II Treaty is concerned with customs cooperation with an objective of punishment or prosecution, i.e. criminal investigations. It is also applicable to investigations involving excise duty issues associated with customs procedures, but also any movements of excise goods under duty suspension, regardless of any corresponding customs procedures. Member States were asked whether the existence of two sets of procedures created difficulties in practice. All those who are involved in this activity stated the distinction caused them no difficulty.

4.6.2. Designation of liaison departments and competent officials in addition to the Central Excise Liaison Department

An article 4 and 5 of Regulation (EU) No. 389/2012 defines the power of the competent authority to designate liaison departments and competent officials in addition to the CELO. This provision is present to encourage the rapid and direct, but exchange of information, without waiting for the intervention of the CELO. Of the 19 Member States who replied, 10 reported that they had such arrangements in place. Some Member States have nominated individuals who have a particular liaison role. Some have nominated EMCS operational support services, in order to allow them to handle sensitive data as part of their role in supporting the business activities.

4.6.3. Article 6 Responsibilities of Central Excise Liaison Office

Article 6 of Regulation (EU) No. 389/2012 clarified the role and responsibilities of the CELO, by making it clear that most of the responsibilities under the Regulation are in the first instance the responsibility of the CELO. This means that the Office is responsible for ensuring exchange of information on request, automatic exchange, spontaneous forwarding of information, the maintenance of the SEED database, and the production and forwarding of statistics and information concerning possible fraud schemes to the Commission. The only major exception is the organisation of Fiscalis Multilateral Controls (MLC), which are the responsibility of the national MLC coordinators.

Only 1 Member State reported that this provision had led so far to organisational changes. This result is somewhat surprising since the role of the CELO has been greatly expanded by the new Regulation, and may warrant further discussion with the Member States.

4.6.4. Article 7 Prior authorisation for exchange of information obtained through judicial proceedings

Article 7 of Regulation (EU) 389/2012 allows the possibility that information obtained through judicial proceedings may require prior authorisation by the judicial authorities before it can be exchanged. 6 of the 15 Member States who answered

this question needed judicial authorisation, but in no case did they report that this as representing a problem.

4.6.5. *Feedback from requesting Member State on information provided*

Articles 8(5) and 15(2) of Regulation (EU) No. 389/2012 provide for the possibility of feedback, where a requesting Member State can tell the requested Member State how useful the information provided was. Only 2 Member States have made use of this possibility so far but 16 would like to make use of this possibility in the future, whilst 2 Member States did not consider it to be useful. One Member State commented that as well as giving positive feedback for the work carried out, the feedback information can be used to provide the requested Member State with useful additional information about their traders. The June 2013 workshop in Poznan indicated that the use would be facilitated by the inclusion of feedback information in EMCS in the form of standard messages.

4.6.6. *Article 11 Time limits for replies to requests for administrative cooperation*

When a request for information is made under Article 8 of Regulation (EU) No. 389/2012 there are two time limits according to Article 11: a time limit of three months where information is not already available to the CELO, and one month for information that is already available. This is unlike the previous Regulation which laid down a common three month limit.

Member States were asked to estimate the percentage of requests that they sent, which were answered within the appropriate time limit. The results were as follows:

Replies received in time	Number of replies (Total 24)	% Replies
Yes - always	0	0.00%
For more than 90% of requests	2	8.33%
For more than 75% of requests	10	41.67%
For more than 50% of requests	7	29.17%
For more than 25% of requests	1	0.00%
For less than 25% of requests	1	4.17%
Don't know / I am not involved in this activity	3	12.50%

When asked for their own estimates of their own ability to reply to requests the figures were as follows:

Replies sent in time	Number of requested records	% Requested records(23)
Yes - always	1	4.35%
For more than 90% of requests	8	34.78%
For more than 75% of requests	6	26.09%
For more than 50% of requests	1	4.35%
For more than 25% of requests	2	8.70%
For less than 25% of the requests	0	0.00%
Don't know / I am not involved in this activity	3	13.04%

There is a certain discrepancy between the two sets of values, but by either measure there are a relatively high number of requests, for which replies have not been received before the time limit.

A number of possible problems have been mentioned by Member States to explain delays:

- Messages may be lost, or may be delivered directly to a case officer without the CELO being aware of the request and being able to supervise the process.
- There is no clear way in EMCS to refuse a request, whilst providing a justification for refusal, as is required by the Regulation. So it may be that a failure to reply within 3 months is in fact a disguised refusal. This implies a need to re-examine the alignment of EMCS with the legislation at some point.
- Investigation arrangements must be in accordance with national arrangements, and have to be fit into national planning. However the Regulation and EMCS allow for negotiation of longer periods, so such planning requirements should be able to be accommodated.
- It is not clear to Member States whether the information requested from another Member State is at hand, in which case 1 month applies, or whether the information has to be sought elsewhere in case the limit of

three months applies. 16 Member States suggested that this should be established by exchanges between CELOs, whilst 7 suggested specifying the categories in the Implementing Regulation on exchange of information. Only 3 Member States would be happy to see this information included in the Excise Vade Mecum, maintained by the Commission for the use of the Member States.

Despite these problems, 18 Member States report that the arrangements for negotiating deadlines works well, with only 2 reporting problems.

Legal certainty is not aided by the lack of clear categories of information to be considered 'at hand' and 'not at hand.' The Commission will consider how to better establish the content of these categories.

4.6.7. Article 15 Automatic Exchange of Information

Automatic exchange concerns the regular exchange of information, either on a periodic basis, or on the basis of an agreed event or trigger. The Implementing Regulation which covers this provision is still in preparation.

Nevertheless, 12 out of 24 Member States already exchange information automatically under Article 15 of the Regulation. Of these 10 exchange control reports, 12 exchange event reports, 4 exchange interruption reports and 8 exchange alert or rejection reports received from consignees. Two Member States also exchange information automatically on intended claims and on delays, where goods have not arrived on time.

Some Member States have expressed a desire for more clarity about the use of automatic exchange, i.e. the types of messages and would like to see this addressed in the Implementing Regulation.

4.6.8. Article 16 Spontaneous Information

Article 16 allows a Member States to forward information to another Member State where the first Member State considers that the information may be useful. 20 Member States report that they make use of this provision. Member States use this provision for a variety of purposes:

- To inform Member States of the intention to remove an authorisation from a trader with immediate effect;
- To report discrepancies in documents;
- To report suspected fraud to other Member States, whose financial interest may be affected.

6 Member States so far have provided feedback on the information received.

4.6.9. New reporting obligations

The improvement of arrangements for administrative cooperation should not cause additional compliance burdens on traders, due to reporting obligations. All Member

States reported that the new arrangements have not changed the reporting obligations of traders in any significant way.

4.6.10. Suggestions for improvements

One Member State criticised the current arrangements for fallback, saying that allowing the paper circuit to pass directly between traders encouraged fraudulent movements which only appear in EMCS if the movement is subject to a road control. The Member State would prefer that the flow of paper documents included the Member States of Dispatch and Destination. This is an interesting contribution but is better dealt with under a discussion about fallback arrangements. Another Member State pointed out the Implementing Regulation for exchange of information should include a description of the documents that should be used for fallback when EMCS is not available. One Member State suggested creating a new message to deal with exchanges of information where a movement of goods is detected, for which there is no paperwork available.

The existing messages do not cater for this situation. This subject has been raised previously and should be investigated.

4.6.11. Conclusions

The new Regulation has not so far led to many changes in Member State practice. A significant minority of information requests are answered outside of the maximum time-period, or are not answered at all.

The Commission proposes better statistical monitoring of response times through automated data collection and matching. This can be included in the future Implementing Regulation of Operational Statistics. Furthermore a clarification of what information is 'at hand' and not 'at hand' would be useful. Finally the problems of procedure and message routing need to be addressed.

4.7. Experiences with EMCS Phase 3 (Exchange of Information functions), SEED, CS/MISE (Movement Tracking and Statistics Service) and the ELOtoELO Mailbox

4.7.1. EMCS Phase 3 versus the previous use of e-forms for exchange of information on request

With the exception of one Member State, all Member States reported that the use of EMCS Phase 3 represents an improvement on the previous use of e-forms. Advantages mentioned include easy access to movement details when constructing a request, the integrated storage of requests and replies and improved workflow management. Also one Member State mentioned the addition of new information exchanges concerning on-going movements, which allow traders and control officers to report problems and share the information with other interested Member States.

Problems mentioned include a lack of clear guidelines concerning the procedures and workflow and misuse of the system, whereby requests are sent as scanned letters in attachment, rather than the request itself being completed, thus defeating the multilingual objectives of the messages. There were also some concerns about

the limited content of the messages and that the workflow was not sufficiently rich to cover all the different possibilities (partial answers, repeated reminder messages, the inability to provide duly justified refusal).

It would be useful to review these issues with Member States.

4.7.2. *Register of economic operators (SEED)*

19 Member States out of 20 were satisfied with the operation of SEED. The other Member State was concerned that direct delivery addresses were not recorded in SEED. The Commission considers that where a Member State has given a direct delivery authorisation to a trader there is no practical way to record the delivery addresses of the trader's customers.

As far as reliability is concerned 6 Member States report that the data in SEED is almost always up to date, and so having to resort to alternative means to establish the validity of a consignee's authorisation is almost never necessary. A larger group of Member States still find it necessary to resort to other means from time to time. 15 Member States ask the other Member State to confirm the authorisation, whilst 12 use the central lookup service provided by central SEED.

It would of course be reasonable in such cases to take such a factor into account when assessing the risk associated with such movements.

Continuing delays in the transmission of authorisation updates is a matter of concern. It is believed that the new Implementing Regulation in this area, recently adopted by the Commission, should help to reduce this problem by introducing minimum service level obligations on Member States and the Commission.

4.7.3. *SEED-on-Europa*

SEED-on-Europa is an online service provided by the Commission, which allows excise traders to check the validity of the authorisation claimed by a trading partner on the basis of an authorisation number.

19 Member States out of 20 consider SEED-on-Europa to be a useful service to their traders. Some Member States consider that the information provided is too limited and would like to see the information extended to include the name and address of the trader. Others have argued in the past that providing complete details would make it easier to generate fraudulent orders. Others have responded to this by saying that the absence of this information makes it impossible for a consignor to check whether the delivery address belongs to the consignee.

The Commission believes that further discussion is warranted on this subject in order to come up with a solution which facilitates trade, whilst not encouraging fraud.

4.7.4. *Central Services/Management Information Services for Excise (CS/MISE)*

The Commission provides Member States with a management system which allows Member States to track the status of open EMCS movements. The system also provides facilities for the production of statistical reports. CS/MISE is being extended to include more business information about the status of movements and administrative cooperation exchanges.

13 of the respondents use CS/MISE regularly or occasionally. 10 do not use it as part of their work, but are aware of it. Only one respondent had not heard of the service. Nevertheless 12 respondents consider that the service is underused and that the Commission should promote it, whilst 8 think that its availability is sufficiently well known.

Under the previous arrangements for EWSE and MVS the Commission collected statistics on usage from Member States. The equivalent statistics for EMCS are now being collected automatically, using the facilities in CS/MISE, with an extension of the coverage to be introduced later this year.

All Member States except one, felt that statistics should be collected centrally though the facilities available. There was no particular request for an extension of the existing collection data beyond what is already planned. One Member State did suggest using the facilities to create a data warehouse of movement information which could be interrogated by Member States for the purposes of risk analysis. This is an interesting idea, but would involve a large-scale centralisation of Member State data. The Commission may wish to explore other means to achieve the same objective.

4.7.5. Secure E-Mail for Administrative Cooperation Purposes (ELOtoELO)

22 of the respondents use this service and 14 of them are completely satisfied with it. The major cause for dissatisfaction is that the secure e-mail channel is used both for operational issues, and for enquiries about national legislation, regulations and administrative provisions, and sometimes for technical enquiries that should be routed to National Helpdesks. It is suggested that the correct National Help Desk contact details are made available more widely and that additional e-mail addresses should be provided as standard to allow better routing of such exchanges.

One Member State suggested that the ELOtoELO service should be kept as a fallback service for EMCS and that operational use should be avoided. Again it was suggested that a new cooperation message should be developed for situations where there is no documentation accompanying a consignment.

The Commission agrees that the EMCS Phase 3 service should be used under normal circumstances with the secure e-mail service being reserved for exceptional situations. The content of the e-mail messages should be used as candidate material for enhancing the existing EMCS messages or creating new messages.

4.7.6. Conclusions

- The replacement of e-forms by EMCS Phase 3 is very successful and is seen as an improvement by the vast majority of Member States. Nevertheless, the existing content and workflow should be reviewed to see if further improvements to meet expressed business needs are possible.
- SEED works well and is mostly reliable and up to date. Further improvements can be expected with the bringing into force of the service level requirements in the Implementing Provision for the Register of Economic Operators.

- There is a continuing disagreement concerning the scope of information to be published on SEED concerning individual traders. During the adoption of the Council Regulation there was a long discussion on the exact content of the SEED database. Article 20(2) specifies that SEED-on-Europa only provides a verification service. The Commission considers the provision of more detailed information to traders to be a national matter.
- CS/MISE is appreciated as a service but should be promoted as a service for national operational services.
- Secure e-mail should be enhanced to allow for multiple e-mail addresses for different services. There should be an analysis of the use of the service to see if some of its function could be taken over by enriched content within EMCS itself.

4.8. Future Requirements

4.8.1. Risk – distribution of standard risk profiles

The initial plan for EMCS included the production and distribution of standard risk profiles. This work was deferred, because it was not clear what the content of such profiles would be and how such profiles would be used.

15 respondents were in favour of the distribution of common risk profiles, with 5 opposed to this. On the issue of a shared database holding details of traders and infractions the respondents were split, 8 being in favour of such a system and 8 against such a system. Various suggestions were made concerning the reuse of existing systems. Some favoured the extension of SEED to holder risk information on traders, whilst others suggested extending existing customs systems such as CRMS/RIF or CIGINFO to cover excise needs.

4.8.2. Other Requirements

There were few contributions on this issue. One Member State repeated the request for more flexible workflow in EMCS. Another request was for an interactive service to allow informal, but secure conversations, alongside EMCS messages and secure e-mail.

4.8.3. Conclusions

Better support for risk analysis should be considered as a possible extension for EMCS in the future. The possibility of an interactive service for communication between CELOs should be considered.

5. ANNEX: DRAFT REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

On the application of Council Regulation (EC) No 2073/2004 of 16 November 2004 on administrative cooperation in the field of excise duties

1. INTRODUCTION

According to Article 35(1) of Council Regulation (EC) No. 2073/2004 of 16 November 2004 on administrative cooperation in the field of excise duties, the Commission shall present every five years from the date of entry into force a report to the European Parliament and the Council on the application of this Regulation. This is the first report since the Council Regulation No 2073/2004 entered into force on 1 July 2005.

This report assesses the functioning of administrative cooperation within the current legal framework and focuses in particular on the use that is made of these newly introduced arrangements in order to evaluate whether these changes have been effective, what and how can be approved and what has to be added, changed or deleted.

The planning for the publication of this report was delayed with one year as the initial planning for the EMCS system application (based on Decision No 1152/2003/EC of the European Parliament and of the Council of 16 June 2003 on computerising the movement and surveillance of excisable products and with as legal base Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC) was delayed with the same period on request of the Member States. As Phase 3 of EMCS (mostly linked to the electronic method of administrative cooperation for excise), for which the application is planned for 1 January 2012, is linked with the revision of Regulation 2073/2004, it was considered as more opportune to adapt the planning for the publication of this report to align it with the review of the aforementioned Regulation.

2. CHANGES TO THE LEGAL BACKGROUND

Directive 77/799/EEC, had originally served to define administrative cooperation in all areas of taxation. This Directive was generic and not adapted to the needs of Excise Administrations in this area. Specifically it took no account of the EMCS project and of the particular tools that were being developed to support the so called Phase 0 of EMCS project (electronic tools to support existing manual business processes.)

Consequently Regulation (EC) No. 2073/2004 was written and adopted by the Council, replacing Directive 77/799/EEC in the field of excise duties. The version adopted was intended to be provisional, waiting on the automation of support for administrative cooperation that is contained in Phase 2 and Phase 3 of EMCS. Accordingly, most of the text of 77/799/EEC was only slightly modified, to clear up ambiguities. Articles concerning the use of SEED (System of Exchange of Excise Data), EWSE (Early Warning System for Excise) and MVS (Movement Verification System) were added to provide a

legal base for the use of these tools, alongside the existing articles on Requests for Information, Automatic Exchange and Spontaneous Exchange. This created a two-track approach, with some forms of exchange specified through descriptions of the tools used and some described in a generic way, to be more closely defined later by comitology, and national practice.

Given the transitional nature of the EMCS Phase 0 tools provided it was considered sufficient to rely on the technical specifications and guidance manuals for more detailed descriptions of the use of these tools. The existing more generic articles for exchange of information have also to some extent been used by Member States to exchange information outside of the use of SEED, EWSE and MVS, bilaterally, or between groups of neighbouring countries, but without any associated implementing regulations.

Everything considered, the Regulation was nevertheless an important first step for the improvement of the legal framework for administrative cooperation and an important and improved tool in the fight against excise fraud. In particular, the Regulation introduced improvements relating to:

- A fixed structure of official services and clearer and binding rules governing cooperation between Member States.
- The possibility for more direct contacts between services with a view to making cooperation more efficient and faster.
- The possibility for more automatic or spontaneous exchanges of information between Member States in order to combat fraud more effectively.

3. SOURCES OF INFORMATION USED FOR THE EVALUATION OF THE APPLICATION OF REGULATION 2073/2004.

As foreseen in Article 35(1) of Regulation 2073/2004, the evaluation of the application of the Regulation could only be done on the basis of substantial input from the Member States.

Therefore, the Commission was of the opinion that the information required for a comprehensive assessment of administrative cooperation under the new Regulation was best collected by way of a **questionnaire** sent to the Member States.

The questionnaire consisted of a series of objective questions concerning the numbers of actions undertaken, grouped by Article number in the Regulation. Member States were also given the opportunity to elaborate on certain replies given in the questionnaire and, more generally, to share their views on the functioning of Excise administrative cooperation and in particular on the possibilities they saw for its further improvement.

24 Member States replied to the questionnaire concerned, covering the activities during the period 2006 till the end of 2009.

A detailed analysis of the replies was carried out, which laid the basis for this report and for the proposal for a new Regulation on administrative cooperation in the field of excise duties, to replace Regulation 2073/2004, which was presented to and discussed in the meeting of Working Group n° 2 on 4 March 2011.

Interesting sources of information are also the **EMCS Monthly Statistics Reports**, composed by the Commission and containing figures concerning messages sent and received within the application of Regulation 2073/2004, used communication channels and the evolution of authorised products, economic operators and operations within the general arrangements for excise duty.

4. MAIN FINDINGS

4.1. Practical functioning

The following analysis considers separately each “active” article of the Regulation concerned, i.e. those articles giving the possibility for an “action” by Member States’ tax administrations. .

4.1.1. Exchange of information upon request

Article 4(1) which gives the possibility to refuse to provide information when the authorities concerned are acting with the authorisation or at the request of the judicial authority was only used by one Member State but without detailed statistics on the number of cases.

Article 4(2) giving the possibility to exchange the information mentioned in Article 4(1) in accordance with the national law was used by two Member States. Only once by the first Member State (concerning a discharge of an AAD of high value) and several times by the other (on criminal proceedings with excisable goods).

Article 5(1) creating the legal base for the cooperation on request was used during the period considered in total 7 879 times, excluding requests covered under the Movement Verification System (MVS) covered under Article 24.

The most common reasons for making these requests were related to investigations where other systems like for example MVS did not give or did not give enough accurate or complete information or was not replied to, suspicion that excise products may have been diverted, doubts about documentation authenticity and exchange of information about the specificities of national legislation (like oil markings).

In general all the Member States were very positive on the results of these exchanges. Minor remarks concerned incomplete answers and the lack of adding proves to some statements.

Besides some isolated and individual cases (for example, lack of the necessary data/documentation to prosecute investigations), no major problems were mentioned by the Member States in dealing with these requests.

Article 8 describes the maximum delay to reply on the requests.

On the question if other Member States respected the deadline of 3 months to reply, 19 Member States answered “YES” and 5 answered “NO”.

On the question if Member States, as requested authority, were able to respect the deadline themselves, 20 answered “YES” and 4 answered “NO”.

The main reasons for not respecting the deadline were the lack of human and material resources, the complexity of some cases and the need to contact several different external entities.

The biggest inconvenience that was seen when not respecting the time limit was the lost energy and time to produce reminders. In some cases when the problem took big proportions, bilateral contacts were made to solve the problem.

Article 9 permits that in certain cases the time limit of Article 8 can be different within an agreement between the requested and the requesting authorities.

On the question if Member States made use of this provision, 11 Member States answered “YES” and 13 answered “NO”.

Only exceptionally was there a request made for a shorter deadline (for example when the period to collect the excise duty was ending), but mostly it concerned requests to extend the deadline due to the complexity of the case, when the operator refused to cooperate or was not available. Another reason to extend was the time taken to locate the sought for supporting evidence.

4.1.2. *Presence in administrative offices and participation in administrative enquiries*

Article 11(1) allows officials of the requesting authority to be present in the offices of the requested Member State.

This possibility was only used by 2 Member States (each 5 times).

The Member States concerned gave none or only a brief answer on the question to evaluate these presences, but without negative conclusions.

Article 11(2) allows officials of the requested authority to be present in the requesting Member State.

This possibility was used by 6 Member States (respectively 2, 5, 1, 8, 1 and 1 time).

The Member States concerned gave none or only a brief answer on the question to evaluate these presences, but without negative conclusions.

4.1.3. *Simultaneous controls*

Article 12 and Article 13(4) foresee simultaneous controls within different Member States whenever such controls would appear more effective than controls carried out by only one Member State and the possible feed-back.

For the period considered, 8 Member States participated in total in 34 simultaneous controls.

These controls were experienced as important, useful and successful.

In the case of companies operating throughout Europe, simultaneous controls are an effective means of checking the facts of cases across borders. They enable the facts of cases regarding excise duty legislation to be fully and completely understood. In particular with regard to mail order selling, there are no other ways of checking. Simultaneous controls stay useful and important even if the results in financial terms are often minimal. They also show companies clearly that cross-border operations are also subject to controls in the area of excise duty.

This system surely helps for the operational collaboration between Member States, but the contrasting results on the combat of fraud show that there is a need to develop a system to exchange information within a network, considering the profiles and the techniques of fraud, the identification of criminal organisations and on the techniques used by the Member States to combat fraud (only 1 Member State gave some feed-back after a simultaneous control on the basis of Article 13(4)).

4.1.4. *Requests for notification of administrative decisions and measures*

Article 14 foresees the notification of administrative decisions and measures.

For the period considered, there are in total 204 messages sent (to remark that 1 Member State sent 160 messages).

On the question to the Member States if problems were encountered in applying this provision, the answer was negative.

4.1.5. *Exchange of information without prior request*

Articles 17 and 19 are the legal base for occasional automatic and regular automatic exchange of information.

For the period concerned, there are in total 5 351 messages sent.

7 Member States put also regular automatic exchanges in place on this basis.

11 Member States made also use of Article 19 within this frame.

The reasons to send this information was based on risk analyses, possible illegal trade, potential fraud situations to avoid any possible excise duty evasion and to inform about irregularities which occurred quite often or regularly.

This information was considered as very useful in most cases.

The main reason to create regular automatic exchanges was the big difference in excise duties between Member States, giving a permanent danger for fraud.

Article 19 was also used to inform other Member States about important changes in national legislations with direct practical consequences (like the change of fiscal marks).

4.1.6. Storage and exchange of information specific to intra-community transactions

Article 22 established a legal basis for an electronic database called “**System for Exchange of Excise Data**” (**SEED**), containing data about operators in the excise field and the related authorisations. Before its establishment Member States exchanged data on a monthly basis with each other by e-mail concerning their trader authorisations. This meant that the information was often incomplete and out of date.

At this moment 245 497 operators are registered in SEED.

This system allows operators to check the validity of excise authorisations and allowed excise products for these authorisations via national databases or via the central database of the Commission “SEED-on-Europa”.

For the period concerned, there were 4 766 329 consultations of the central database. Currently approximately 450 000 checks per month are carried out to check on the validity of excise authorisations. This represents a large increase in the number of consultations on SEED-on-Europa since 1 January 2011, from which time all movements of excise under duty suspension have been monitored by EMCS. Since the start of EMCS Phase 2, the SEED database has been integrated with EMCS national applications, thereby allowing for an automatic check of the aforementioned data and thus assuring better adherence to excise law.

Article 23 put in place an **Early Warning System (EWSE)** related to starting movements of excise goods on the basis of a risk analysis based on the Accompanying Administrative Document (AAD – Commission Regulation (EEC) N° 2719/92 of 11 September 1992), in order to allow the authorities of the Member State of destination to organise in due time a control on this movement in their country.

For the period concerned, there are in total 130 802 messages sent.

The statistics show that within that same period 660 of these messages were leading to the discovery of infractions or irregularities.

The most important of these infractions or irregularities were: incorrect completion of the AAD, illegal alcohol, false movements, movements not reaching their official destination or a different destination, losses or excesses, invalid excise authorisation numbers, other goods transported than those mentioned on the AAD, exceeding the allowed transportation time and a different office of exit than mentioned on the AAD.

Concerning the use of the risk analysis, besides a guideline from the Commission concerning some common criteria based on value, and whether there had been a change of destination, there was no other uniform system in use between the Member States during the reporting period.

So the criteria used to select a movement for sending a message within EWSE have varied widely from Member State to Member State.

In addition to the Commission criteria the most used criteria for this purpose were: a too long travel period mentioned on the AAD, a new consignee, suspect consignee or transporter, invalid excise authorisation number mentioned, big difference in tax levels between the Member States concerned, goods with high excise duties, the quantity of the goods, transactions with inactive declared operators, first movement of a new consignor.

Article 24(1) installed a **Movement Verification System (MVS)** to allow Member States to get information during a movement of excise goods or do a control after the completion of a movement on the basis of a risk analysis based on the AAD or the SAAD (Simplified Accompanying Administrative Document used for the movement of excise goods for which the duty is already paid – Commission Regulation (EEC) N° 3649/92 of 17 December 1992).

For the period concerned, there are in total 25 903 messages sent.

There are no statistics to show how many of these messages were directly leading to the discovery of infractions or irregularities, but it was shown that the use of the system concerned was very useful and successful for control purposes. Anecdotal evidence suggests that MVS controls revealed a higher percentage of infractions or irregularities than EWSE. This would be expected, since the primary function of EWSE was to act as a deterrent to certain groups of traders.

The most important control results were linked to shortages, false stamps, goods not arrived at destination, not authorised excise goods, lack of the necessary authorisation, invalid authorisations, misuse of traders' data information, unpaid taxes in the Member State of destination, movements not registered in the traders' records and change of data on the accompanying documents after departure.

The most common reasons for making an MVS request are: copy 3 of the accompanying document not returned to the consignor, spot checks, doubts on the stamps or signatures, no visa of the Member State of destination on the document about the arrival of the goods, other doubts about the arrival of the goods or about the exit of the goods out of the EU, doubts about a regular end of the movement, to control the inscription in the records, crossed data in the documents, possible fictive movements, first transactions, hold of an appropriate excise number, unknown excise authorisation and payment/reimbursement of excise duty.

Article 24(3) allows the Member State in which the consignor of excise goods is established to grant him assistance via MVS, especially to prove the discharge of an excise movement in certain circumstances.

18 member States confirmed using this provision to assist the consignor.

In general, Member States considered this system as useful, not presenting always a clear and final answer to discharge the movement on that base, but to help them in making a final decision on this discharge by presenting some additional elements.

Article 25(1) prescribes that Member States shall keep the information concerning this regulation for at least 3 years. On the question of the Commission if this period is sufficient, a majority of 18 Member States confirmed that this period was sufficient for them.

4.1.7. *Relations with third countries*

Article 27 (1) and (2) allows the exchange with third countries in certain circumstances.

None of the Member States had made use of one or both of these provisions.

It could be assumed that in these cases the custom instruments on administrative cooperation are used.

Nevertheless, the Commission is still convinced that in the longer term an approach coordinated at EU level to cooperation with third countries in the area of excise is the appropriate way forward.

4.1.8. *Conditions covering the exchange of information*

Article 30 (1), (2), (3), (4) and (5) defines certain conditions which must be fulfilled to be able to exchange the information.

From the replies from the Member States it can be concluded that the provisions to restrict exchange of information were rarely if ever used virtually non-.

Article 30 (1) was used once by two Member States, and Article 30(3) and (5) each once by 1 Member State (a reason was that it was impossible to collect the documents concerned as a result of a bankruptcy).

Article 31(3) allows the forwarding of information received from one Member State to another Member State.

6 Member States made use of this provision.

The most important reason was to share information about risks and modus operandi of fraud mechanisms.

2 of the Member States concerned require prior consent.

4.2. *General and final provisions*

Article 36 allows Member States to conclude bilateral matters covered by the Regulation.

8 Member States concluded such matters, especially to intensify the assistance between these countries.

5. CONCLUSION

The Member States consider that the Regulation has improved administrative cooperation in the field of excise. In general, the legal framework provides the competent authorities with a solid basis for exchanging information and for working together using the different instruments available to obtain valuable information to combat fraud.

In relation with the planned revision of Regulation 2073/2004 (due to Phase 3 of EMCS as already mentioned in the introduction) the general opinion of the Member States was, beside the necessary real changes related to EMCS, to keep the existing functions and possibilities unchanged as far as possible.

Nevertheless, the Commission analysed all the information and remarks received and took these into account where possible in the proposal for the recast of Regulation 2073/2004 that is prepared.

The pure fact that, as of 1 January 2012, the administrative cooperation messages will be structured and carried electronically (also replacing EWSE and MVS for movements under suspension of excise duty) will improve the global working in this area (fast communication, better feed back, better statistics.....).

Furthermore, for any subject where it seems useful or necessary, the Commission will take initiative to improve or intensify the actions (trainings, information and motivation, simultaneous controls, relations with third countries....).