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## COVER NOTE

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Delegations will find attached document SWD(2018) 385 final.

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**COMMISSION STAFF WORKING DOCUMENT**

**Implementation of article 43b of Regulation 515/97**

*Accompanying the document*

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

**29th Annual Report on the Protection of the European Union's financial interests - Fight  
against Fraud - 2017**

{COM(2018) 553 final} - {SWD(2018) 381 final} - {SWD(2018) 382 final} -  
{SWD(2018) 383 final} - {SWD(2018) 384 final} - {SWD(2018) 386 final}

## Implementation of Article 43b of Regulation 515/97

### 1. Introduction

Regulation 2015/1525<sup>1</sup> amending Regulation 515/97 on mutual assistance in customs matters introduced Article 43b requiring the Commission, by 9 October 2017, to carry out an assessment of:

- The necessity of extending the export data contained in the Container Status Messages (CSM) directory<sup>2</sup> and Import, Export and Transit (IET) directory<sup>3</sup>, by including data on goods other than excisable goods ('necessity assessment'), and
- The feasibility of extending the data contained in the transport directory, by including data on import, export and transit of goods by land and air ('feasibility assessment').

The Commission made a preliminary assessment in its annual report on the protection of the EU's financial interests (PIF Report) for 2016<sup>4</sup> and committed to make a more comprehensive analysis in the PIF Report for 2017.

Member States were regularly associated with this exercise in the context of the Expert Group on mutual assistance in customs matters.

### 2. Necessity assessment

Currently, in accordance with Article 18a(4), point (b), and Article 18d(1), point (c), of amended Regulation 515/97, both the CSM directory and the IET directory are limited to the export data of specific categories of excisable goods (including alcohol, tobacco and energy products).

With regard to the CSM directory, the maritime carriers currently submitting CSM data to the Commission are given a choice as to the preferred method of transmission. According to Article 3(2) of Commission Implementing Regulation 2016/345<sup>5</sup> the two options include: 'global dump' which means transfer of all CSMs generated, collected or maintained in the carrier's electronic records without selecting individual CSMs as specified in amended Regulation 515/97, and 'selective reporting' which means, as the name suggests, selecting only the CSMs as required by legislation.

It has to be noted that only three carriers are selectively restricting the reporting of export CSM to excisable goods. The CSM reported by these three carriers constitute a mere 6.5% of the total CSM data volume. All the other carriers report export CSM independently of the

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<sup>1</sup> OJ L 243 of 18.9.2015, p. 1.

<sup>2</sup> The CSM directory contains information on the physical movements of any container imported by a maritime vessel into the EU, and of exported containers containing excise goods. This information, in the form of CSMs, is sent by the carriers directly to OLAF.

<sup>3</sup> The IET directory contains data on goods entering, leaving and transiting the EU. This information is replicated from the sources operated by the Commission on the basis of the Union Customs Code, namely from Surveillance (import), ECS (export) and NCTS (transit) systems.

<sup>4</sup> COM(2017)383 final of 20.7.2017, see section 3.1.1.2 on Implementation of Article 43b of Regulation 515/97.

<sup>5</sup> OJ L 65 of 11.3.2016, p. 38.

commodity being transported by the containers. This means that, as such, extending the obligation to report CSM export to all types of goods, would not affect significantly the volume and completeness of the current CSM database. Nonetheless, such an extension would have the benefit of simplifying the text of the reporting obligation and there would be no more need for the Commission to maintain a long list of excisable goods.

As regards the export data included in the IET directory, it is copied from the Export Control System (ECS) managed and operated by the Commission in accordance with Article 18d(1) of Regulation 515/97. Even though the data replicated in the IET directory are limited to excisable goods, the data contained in the ECS are not limited to excisable goods and, provided Regulation 515/97 allows it, they would be easily replicable in the IET directory.

The Commission engaged in consultations with Member States to determine the necessity of an extension of the existing directories to encompass other categories of goods apart from those subject to excise duties. A large majority of Member States (nineteen) as well as the Commission have supported such an expansion, stressing that additional information may assist the identification and prevention of infringements committed in violation of export restrictions, curb customs fraud, expose fraudulent networks and protect public health, safety and security. One Member State noted that the gathering of additional data may facilitate the recognition of connections between companies, goods and supply chains. Similarly, one Member State acknowledged that the additional availability of data could provide for a deeper level of analysis to tackle customs related fraud from a variety of different perspectives, whilst another expressed its appreciation over the centralisation of additional data and its potential positive effect on data availability.

Eight Member States, however, expressed reservation about the widening of the scope of the directories to include export data on non-excisable goods for a variety of reasons. One Member State felt that it had firstly to ensure that the CSM directory was functioning properly and smoothly before it could consider the necessity of extending the scope to other non-excisable goods. Similarly, one Member State felt that the CSM and IET directories were too new, to conclusively determine whether the expansion of such would be in its interests. Another felt that the type of information to be included in the foreseen expansion had to be defined before it could endorse such an initiative. One Member State expressed its scepticism over the need or added value of an expansion of the data available at central level in CSM and IET directories, arguing that the current databases should be perfected before notions to expand them can be entertained.

One Member State was not in a position to provide a definite reply to the question pertaining to the need for an extension of the existing directories beyond excisable goods.

The outcome of this consultation will be taken into account in the next review of Regulation 515/97.

### **3. Feasibility assessment**

Currently, Article 18a(1) of Regulation 515/97 provides that the Commission shall establish a directory of data reported by carriers (the so-called 'transport directory'). The CSM directory, which is provided for by Article 18a(4) of the same Regulation, is to be considered as a sub-set of the transport directory limited to transport of goods by maritime containers. This is the only part of the transport directory for which a legal obligation to report currently exists.

The legal basis for creating and managing the transport directory (covering all means of transport) is already included in Regulation 515/97. What is lacking for the transport by land, including by rail, and air is the corresponding obligation to report which exists for maritime transport.

In its assessment the Commission has taken into account the concerns expressed by Member State Customs Authorities at various occasions about the issue of complexity of reporting requirements to various Commission services. The Commission has ensured to avoid multiple reporting and duplication of efforts, and has looked for where data for land, including rail, and air transport was or would be available in the future.

The feasibility assessment therefore focused on the identification of potential sources of additional data for land, including rail, and air transport. In this context, the Commission will explore, among others, the possibility of re-using ENS data<sup>6</sup> which are envisaged to be provided by the economic operators to the new Import Control System (ICS) 2 system.

The goal of the ICS2 project is to further strengthen the safety and security of the supply chain for all modes of transport by covering the entry of all goods into the Customs Union, improving data quality, multi-filing, data availability and data sharing as regards the entry summary declaration and related risk and control information. The project will enable real-time, systematic collaboration amongst Member States in the process of risk assessment. The ICS2 set-up will lead to a complete new implementation architecture compared to the existing trans-European ICS system.

The ICS2 project is currently in its inception phase and the implementation decision is still under consideration by the Commission and the Member States. The envisaged operational and transition planning proposes to spread the implementation of the ICS2 system in time by means of three main releases. The implementation of the first release, pertaining to air postal and express pre-loading is scheduled for 15 March 2021, the second concerning the completion of the air sector is set for 1 March 2023 and the remaining release, regarding maritime, rail and road modes of transport is scheduled for 1 March 2024. Each release will be self-contained, provide the expected business added value and allow the phase-out the existing ICS system in a controlled way.

It is important to note that currently the re-use of ICS2 data for the purposes as described in Article 18a of Regulation 515/97 is not factored into the business conditions, the legal assessment or the IT specifications of the ICS2 project. It is also important to recall that the ICS data is provided by economic operators to Member State Customs Authorities under the Union Customs Code, which governs the purpose, scope and conditions for sharing such data between the Member States, and between the Member States and the Commission. In this context, it should be anticipated that the possibilities and conditions for re-use of data from a future ICS2 system is to be assessed with the Member States Customs in the UCC governance framework in the first instance (Customs Code Committee/Customs Expert Group, and if necessary the Customs Policy Group) before they would be considered in the context of a review of Regulation 515/97.

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<sup>6</sup> The data contained in the Entry Summary Declaration (ENS) are defined in Article 127 of Regulation 952/2013, OJ L 269 of 10.10.2013, p. 1, and Article 183 of Commission Implementing Regulation 2015/2447, OJ L 343 of 29.12.2015, p. 558.

The possibility of re-using ENS data should not prevent the Commission from exploring other options if there are indications that shortcomings in the legal framework as well as ineffective implementation of customs controls on imports, as identified by the European Court of Auditors<sup>7</sup>, persist.

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<sup>7</sup> Special Report No 19/2017: "Import procedures: shortcomings in the legal framework and an ineffective implementation impact the financial interests of the EU".