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**COMMISSION STAFF WORKING DOCUMENT**

**Impact assessment**

*Accompanying the document*

**Proposal for a  
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
amending Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between  
the administrative authorities of the Member States and cooperation between the latter  
and the Commission to ensure the correct application of the law on customs and  
agricultural matters**

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# 1 Introduction

Financial fraud has existed and evolved throughout the economic history, adapting to the changing environment and trading conditions. Therefore, it is important to continuously apply a zero-tolerance policy and alleviate consequences of fraud by reducing the profitability of committing fraud and the likelihood for it to go unpunished.

It is no different in the context of the EU and its resource-generating activity of applying customs duties to trade crossing the EU borders. Customs duties and the need to practically implement them create both possibility and opportunity to reap unlawful benefits by circumventing the applicable rules. To mitigate this phenomenon, the EU and its Member States have put various measures in place in order to detect, prosecute and deter fraudulent behaviour.

- *Importance of cooperation with regard to fighting customs-related fraud and protecting the Union's financial interests*

Customs fraud is a growing phenomenon which causes serious damage to the Union's financial interests because customs duties are own resources of the EU budget. Customs fraud also has negative consequences for the Internal Market because it creates an unfair advantage for operators who avoid duties. The rapid growth of international trade and the increased need for acceleration of trade flows has strengthened the role and importance of cooperation (mutual assistance) between Member States and the Commission in fighting customs-related fraud. The damage resulting from the three most common types of customs-related fraud (i.e. mis-declaration of origin, mis-description of goods and misuse of the transit system, see: Problem Definition) is estimated at around 185 million EUR per year.<sup>1</sup>

- *OLAF as a service platform for national customs authorities*

Already in its Communication of June 2000<sup>2</sup> on "The fight against fraud", the Commission had recognized the need for a "new culture of operational cooperation" with Member States. Specifically, the need was acknowledged for an enhanced exploitation of intelligence in partnership with Member States. To achieve this strategic objective in line with Regulation 515/97, designed to ensure the correct application of customs legislation, and in accordance with Article 1 of Regulation 1073/1999, which lays down the objectives and tasks of OLAF, OLAF is expected to provide services and assistance to the relevant national bodies or authorities in organising close and regular cooperation, coordinating their activities and contributing to the design and development of methods of fighting fraud and any other illegal activity affecting the financial interests of the Member States as well as the EU.

- *Background of this initiative*

One of the main tools used by customs authorities to detect customs-related fraud is a risk assessment. The customs officers analyse various pieces of information in order to develop risk profiles that can help them to ultimately identify suspicious consignments. The mutual assistance between the Commission and the Member States to combat customs-related fraud is mainly based on the exchange and sharing of information. Today, various types of information are used to combat customs fraud. For the fullest exchange of information and

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<sup>1</sup> Calculations are based on figures provided in Annex 2.

<sup>2</sup> COM(2000) 358 final, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2000:0358:FIN:EN:PDF>

proper functioning of mutual assistance, a central database (the so-called CIS<sup>3</sup>) was created as a platform for Member States and it helps to prevent, investigate and prosecute breaches of Union customs legislation. This system is complemented by the FIDE<sup>4</sup>, a database put in place to facilitate investigations carried out by the national competent authorities as well as the Commission. These databases include information on customs fraud cases and on-going cross-border investigations<sup>5</sup> and are considered by its users (Member States) as being useful. Nonetheless, recent pilot projects show that there are other types of information that could further facilitate the work of customs officers and investigators across the EU, by increasing the possibilities of threat assessment and identification of suspicious shipments. Hence, even though customs cooperation in the EU is generally considered to be successful, there is a great potential for further fraud prevention and more efficient investigation based on novel means.

The focus of this Impact Assessment lays on analysing alternative and complementary measures that can be used to further improve the detection, investigation and ultimately prosecution of the customs-related fraud. Furthermore, the problem of delays in OLAF investigations is examined and possible solutions are assessed.

Based on a careful analysis of the drivers behind these problems and the objectives, possible solutions are identified. Finally, the Impact Assessment presents policy options designed to address these objectives and compares their expected impacts.

## **2 Procedural issues and consultation of interested parties**

### **2.1 Identification**

Title: Impact Assessment on the Amendment of Council Regulation (EC) No 515/97 on mutual assistance in the area of customs.

### **2.2 Organisation and Timing**

The Impact Assessment process for the review of Regulation 515/97 commenced in autumn 2011 with the submission of the IA Roadmap.

The inter-service steering group was convened for the first time on 2 March 2012 and met again on 20 April, 12 July and 5 September 2012. The following Commission services participated in the steering group chaired by OLAF: SG, SJ, HOME, JUST, TAXUD, BUDG, AGRI, JRC and MOVE.

### **2.3 Consultation of the IAB**

The Commission's Impact Assessment Board met on 3 October 2012. The comments received on 5 October 2012 were incorporated into the new version of the document and were resubmitted on 18 October 2012. The Impact Assessment Board provided its second opinion on 15 November 2012. Additional recommendations from the Impact Assessment Board have been taken into account in this revised version of the Impact Assessment. The main changes are: strengthening the problem definition; presenting clearer intervention logic; better distinguishing between the issues regulated at the EU level and those addressed at the Member State level; reinforcing the baseline scenario and clearly defining the scope of the

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<sup>3</sup> CIS - Customs Information System based on Regulation 515/97 and Council Decision 2009/917/JHA.

<sup>4</sup> FIDE – Fichier d'Identification des Dossiers d'Enquêtes Douanières – Customs files identification database under Regulation 515/97 and Council Decision 2009/917/JHA.

<sup>5</sup> CIS database and FIDE database, respectively.

initiative. In addition, the proposed options were redesigned. Finally, the assessment of the options has been strengthened.

Final comments from the Impact Assessment Board were received on 23 July 2013. Following the Impact Assessment Board's recommendations, a number of issues were further improved. With regards to the description of the policy options substantial effort was put into presenting the exact scope and practical implications of each option. The report now also discusses the risks related to data security and legal implications of requiring data from operators that have contractual obligations not to disclose it. In addition, the assessment and comparison of the proposed options has been strengthened. In particular, the assumptions made when estimating the costs and benefits of different options are clarified. Finally, the presentation of the views of stakeholders was improved and all the abbreviations and technical terms were explained.

## **2.4 Consultation and Expertise**

### **2.4.1 Member States customs authorities<sup>6</sup>**

Member States expressed their views regarding the proposed amendment of Regulation 515/97 in a questionnaire.<sup>7</sup> The questionnaire asked Member States about their needs for access to customs data (import, transit and export) concerning transactions in other Member States and about the perceived usefulness of information such as Container Status Messages (CSMs) [see Glossary], etc. Furthermore, Member States' views on the preferred way of collecting, storing and analysing such information were gathered. The main results of the consultation are as follows:

- 22 out of 24 Member States stated that they need **access to customs-related data** (import, export and transit) relative to transactions which occurred in a different Member State and 18 out of 19 Member States were **in favour of creating a central repository** on import, export and transit data as opposed to the alternative of connecting 27 different national customs systems;
- 23 out of 25 Member States were of the opinion that **timely access to CSMs would improve fraud detection** and 22 out of 24 Member States were **in favour of creating a centralised EU repository of CSMs**

### **2.4.2 World Shipping Council**

About 90% of the world's cargo is transported in maritime containers. Therefore, this Impact Assessment focuses in particular on combating fraudulent activity involving movements of maritime containers. Since the Members of the World Shipping Council (WSC) are individual shipping companies which represent approximately 90% of the global liner vessel capacity, it was considered appropriate to include the WSC in the consultation process.<sup>8</sup> A meeting in March 2012 was a major consultation of the shipping industry, since not only the association representatives but also the WSC's Member Lines participated. The aim was to inform carriers about the envisaged changes to Regulation 515/97 and to obtain their feedback on the possible provision of CSMs to the Commission. The outcome of the discussions is summarised in a

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<sup>6</sup> Other formal consultations with the Member States are listed in Annex 7.

<sup>7</sup> A consultation of the Member States by means of a questionnaire was launched in February 2012, see Annex 8.

<sup>8</sup> Meetings between the Commission services and representatives of the WSC took place on 2 February, 15 March and 7 June 2012.

working document<sup>9</sup> addressing the following: minimum data that container carriers shall provide to the European Commission; events to be reported; time limits for reporting; time period of reporting; content of messaging; message formats; and methods of transmission of CSMs.

For all these issues, the Commission was able to secure general agreement with the industry. The only aspect still flagged by the industry as problematic concerns the reporting obligation in case of a container that is already laden when the reporting starts. While the shipping companies consider it additional burden to report also about the period from the time when the container was laden, such information is crucial for the Commission. For the sake of the analysis and better fraud detection, it is important to use the information about the container (and goods) movements from the beginning of their movement until its end. This is critical information for establishing the real route to be compared with the one declared. The solution to this concern expressed by the industry is that the shipping lines send the required data by way of the (recommended) global submission of data, the so-called “global dump” (global dump involves the submission of all information including irrelevant data; selection of what is relevant is to be done by the Commission). In those cases, the issue of excessive burden would no longer be relevant because the companies would "dump all data" including data relating to the period from the time when the container was laden.

During the discussions, the industry also emphasised the need to ensure that both financial and administrative burdens triggered by the obligation be minimised to all possible extent. In particular, they expressed their support to the idea of one centralised database of CSMs as it would allow them to submit data in question only once. The industry also specifically requested that, once the information is transmitted, it should be up to the Commission to disseminate it to MS and to EU organisations, so that they would not need to re-submit the data.

The intention of the Commission was to involve the industry in the consultation process, so as to ensure that the voice of the industry affected is carefully considered and an easy implementation of its proposal can be swiftly achieved<sup>10</sup>. For that reason the opinion of the industry has been consolidated and is reflected in the above-mentioned internal working document.

### **2.4.3 Data Protection bodies**

Because of different legal bases, the CIS system is split into two parts, one containing information relating to the exclusive EU competence, supervised by the EDPS, based on Regulation 515/97; and one containing information relating to the Member State competence, in the context of law enforcement cooperation, supervised by the Customs Joint Supervisory Authority (CJSA), based on Council Decision 2009/917. Meetings<sup>11</sup> with both bodies responsible for the data protection in this area were organised and their views have been taken into account in the preparation of this Impact Assessment. The discussion focused primarily on the need to ensure better cooperation between the two bodies. The EDPS suggested as a best option the so-called 'coordinated supervision' referring to the example of Eurodac (i.e. large database of fingerprints of applicants for asylum and illegal immigrants found within the EU).

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<sup>9</sup> See Annex 3.

<sup>10</sup> None of the members of the WSC can be considered as an SME (Small and medium-size enterprises).

<sup>11</sup> Meetings with the ESPD took place on 19 April 2012 and 14 June 2012; meeting with CJSA took place on 15 May 2012.

#### 2.4.4 Other expertise used

Additional expertise used for the purposes of this Impact Assessment was derived from two initiatives: (1) the ConTraffic project and (2) ATIS (Anti-Fraud Transit Information System). Both initiatives were launched to examine the problems which are within the scope of this report (i.e. customs fraud in the area of transit and customs fraud related to goods origin). The experience gathered on the basis of these initiatives and the results available provided major input for this Impact Assessment.

In particular, the ConTraffic project confirmed the usefulness of the so-called Container Status Messages (CSM), information crucial to the success of this initiative. It also revealed that the situation under Regulation 515/97 can be further improved. While the current Article 18a of Regulation 515/97 empowers the Commission to "establish and manage a directory of data received from public or private service providers active in the international supply chain", it does not legally oblige the companies/economic operators to provide the Commission with CSM. The feedback from the relevant companies was that in general they would be able to provide this information but only in response to an explicit obligation in the legislation.

ATIS, on the other hand, illustrates the importance of information on transit for detecting customs-related fraud. The engagement of the Member States in the project (see below) confirms its usefulness.

##### 2.4.4.1 ConTraffic

- A joint-intelligence exercise conducted by OLAF together with the Joint Research Centre (JRC), and with the participation of several national customs authorities;
- Aims to detect new cases of commercial fraud of the type "false declaration of origin";
- ConTraffic-SAD automatically verifies the origin of goods using i) import declarations (SAD)<sup>12</sup> for containerised cargo which are voluntarily provided by some Member States and ii) CSMs where the status and location of a container is registered along with the time and date;<sup>13</sup>
- "Potentially suspicious" transactions are automatically identified based on discrepancies between the origin of the goods declared by the importer and the respective origin derived from trace & tracking of the physical movements of the container(s);<sup>14</sup>
- In the two years of its operational phase (2011-2012), ConTraffic-SAD has identified 338 suspicious transactions related to EU importation of containerised cargo, leading to 14 investigation cases being opened by Member States. Out of these 338 suspicious

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<sup>12</sup> SAD: Single Administrative Document

<sup>13</sup> CSMs are electronic messages exchanged between transport operators of sea-containers (namely sea-carriers and port operators), containing information about the movement and load status of sea-containers as they move along the transportation chain. The companies use this information not only for their own logistics but also to inform their customers of the whereabouts of booked containers.

<sup>14</sup> Initial results of the ConTraffic project show that the analysis of the movements of containers is an effective way of identifying suspicious cases. By analysing container movements, one can identify inconsistencies between the origin declared by the importer and the geographical origin/dispatch country derived from the container routing data. These inconsistencies have proved to be strong risk indicators of potential breach of legislation of the type mis-declaration of goods-origin. Preliminary results have established that more than 50% of the cases identified using such indicators are indeed cases of breach of customs legislation.

importations, 80 proved to be related to existing OLAF cases to which the project provided support. These results from ConTraffic-SAD clearly demonstrate that risk-analysis based on container-movements is effective in what concerns the detection of fraud of the type "false declaration of origin";<sup>15</sup>

- The project proves the usefulness of import declarations and the CSMs. As regards the latter, the Commission's current approach<sup>16</sup> only yields information on the movements of less than 30% of containers crossing the EU external border. As a consequence, a large part of the necessary information (i.e. CSMs) is still missing. This fact prompted further reflections on the current framework.

#### **2.4.4.2 Anti-Fraud Transit Information System (ATIS)**

- A joint project between OLAF, DG TAXUD and Member States operated by OLAF;
- Used for analysis of transit-related data in order to detect abnormal patterns in the transit movement and diversion of destination;<sup>17</sup>
- Operational since 1st July 2009, originally with sensitive goods data (1%) and extended to all goods as of 1st September 2011 – with ca. 11 million movements / year (~30.000/day);
- As a fully automated system, it collects transit-related information on sensitive and non-sensitive goods. This information is obtained through information transfer (copy) from a TAXUD environment<sup>18</sup> directly to OLAF; hence creates no costs for Member States;
- ATIS is a non-binding agreement currently based on Art. 15(2) and Art. 17(1)(a) third indent of Regulation 515/97 and Art. 13 of Regulation 2913/92. However, some Member States question whether these articles in fact provide sufficient legal basis;<sup>19</sup>
- While ATIS provides useful analysis in support of fight of the customs fraud in the area of transit, it reveals some shortcomings, which served as one of the reasons for further reflection on the current framework.<sup>20</sup>

### **3 Problem definition**

#### **3.1 Problem introduction and measures in place**

Various measures have been adopted by both the EU and Member States in order to detect, prosecute and deter fraud. However, as it will be demonstrated in the following chapters, these measures have some shortcomings which render the EU's and Member States' efforts to

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<sup>15</sup> Source: OLAF.

<sup>16</sup> A web-based open-intelligence approach systematically "polling" carriers' web-sites, and extracting from the web pages any publicly available data related to container movements.

<sup>17</sup> ATIS is a part of the Anti Fraud Information System (AFIS).

<sup>18</sup> The TAXUD's system mentioned is the so-called NCTS (New Computerised Transit System) which is a Commission system of electronic declaration and processing that enables traders to submit community transit declarations electronically, operated by DG TAXUD.

<sup>19</sup> Belgium, Netherlands, Denmark, Lithuania, Sweden and the UK stated during the 33<sup>rd</sup> meeting of the Committee on Mutual Assistance on policy matters covered by Article 43 of Regulation 515/97 and the 145<sup>th</sup> E/EFTA Working group on "common transit" and "the simplification of formalities in trading in goods" on 6 July 2011, that that they "cannot support any administrative arrangement which, according to our assessment, lacks a legal basis. The proposed legal basis, presented by OLAF as Art. 15(2) and Art. 17(1)(a) third indent of R. 515/97 and Art. 13 of Regulation 2913/92 does in our opinion not suffice. That said, we shall refrain from voting against or for the administrative arrangement".

<sup>20</sup> In addition to the MS requiring OLAF to provide for a proper legal basis for this project, some important data is still not available. See section 3.3.1.2.

combat fraud sub-optimal. The main problems identified by this Impact Assessment are instances of customs related fraud that continue to go undetected.

OLAF has analysed the identified cases of fraudulent behaviour, which can be broadly categorized into three types: (1) mis-declaration of origin; (2) mis-description of goods; and (3) misuse of the transit system. These three types of customs fraud<sup>21</sup> are well known to the Commission and the alarming effects they create call for further action. The losses to the EU budget resulting from these illegal activities are substantial.<sup>22</sup>

Further to the issues raised above, this document addresses also additional problem of the existing regulatory set up causing delays in OLAF investigations. This issue is not included in the core problem but is presented in a separate chapter.

The assessment conducted in the preparation of this document revealed also other shortcomings. In particular, as regards the databases (i.e. CIS and FIDE), there is currently no technical possibility to restrict inserted information to selected group of users, which creates an obstacle when using a database. As regards the data protection supervision, the recommendations issued by two different competent supervisory bodies overlap and create inefficiencies. Additionally, there is a need to clarify the use of information exchanged via mutual assistance and its respective admissibility in the national courts. These problems are however not addressed in this Impact Assessment as they are considered to be matters of mere clarification.

The problems identified and discussed in this Impact Assessment relate only to the customs domain and not to the agricultural domain which is also covered by Regulation 515/97.

### ***3.2 Current legal instruments and structure of the system***

The main legal instrument<sup>23</sup> to address breaches of customs legislation in the context of international cooperation is the **Council Regulation 515/97** on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters. It is accompanied by the **Council Decision 2009/917/JHA** on the use of information technology for customs purposes. While both instruments aim to assist in preventing, investigating and prosecuting serious breaches in customs (and agriculture), the Regulation governs matters of the exclusive EU competence (breach of EU legislation), whereas the Decision addresses matters of Member States' competence (breach of national laws in the area of customs).

### ***3.3 Problem description***

#### **3.3.1 Core problem**

To fight customs-related fraud, i.e. to early detect and successfully investigate potential fraud cases, it is imperative to have indications about trends and changes of import, export and transit behaviour, analysis of the profiles of suspected traders, effective risk management, etc. The following sub-chapters describe the shortcomings of the currently available measures,

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<sup>21</sup> These three types are chosen because they correspond to the majority of OLAF cases in customs area, related to the losses for the EU budget.

<sup>22</sup> See figures in the scale of the problem in the Annex 2.

<sup>23</sup> The legal basis for Union's action against fraud is Article 325 of the Lisbon Treaty. Article 33 TFEU provides the legal basis for the customs co-operation and Article 87 TFEU for the police co-operation.

which hamper the detection of customs related fraud in the form of mis-declaration of goods origin, mis-description of goods and misuse of the transit system.

### 3.3.1.1 *Mis-declaration of goods origin*

- *What does mis-declaration of goods origin entail?*

Several fiscal and economic EU policies, such as custom duties and quantitative importation restrictions, depend on the origin of the imported goods. Mis-declaration of goods origin can give significant undue market advantages to economic operators implicated in the fraudulent transactions, such as: i) circumvention of anti-dumping levies; ii) illegitimate use of low rates of customs duty intended for products originating from a preferential country; iii) and avoidance of quantitative limits imposed by importation quotas.

#### **Example: Mis-declaration of origin of textile products**

In 2007, OLAF was informed about doubts relating to the origin of textile products imported into the EU. The subsequent investigation revealed that textile products originating from country B were wrongly declared as originating from country A. By claiming false origin, the economic operators involved could fraudulently enjoy a 0% preferential rate of duty instead of 12%.<sup>24</sup>

In March 2007, an OLAF-led EU administrative cooperation together with the support and cooperation of the local authorities identified around 1.400 forged or invalid proofs of origin declarations. The estimated amount of EU own resources (customs duties alone) evaded on these consignments was **5 million EUR**.<sup>25</sup>

These examples show how important it is for the EU to detect and investigate cases of mis-declaration of origin, resulting ultimately in financial losses to the EU budget.

Yet another example on customs fraud of type ‘false declaration of origin’ is provided below.

#### **Example of usefulness of import declarations when combating breach of customs legislation of type ‘false declaration of origin’**

Fasteners other than stainless steel are subject to an Anti-Dumping Duty (ADD) for imports from the People’s Republic of China to the EU since February 2009. Once this measure had entered into force, imports of such goods from China declined substantially, while at the same time statistics reported a considerable increase of imports from another ASEAN Member Country (Asian country 1). This is shown in the graph below.

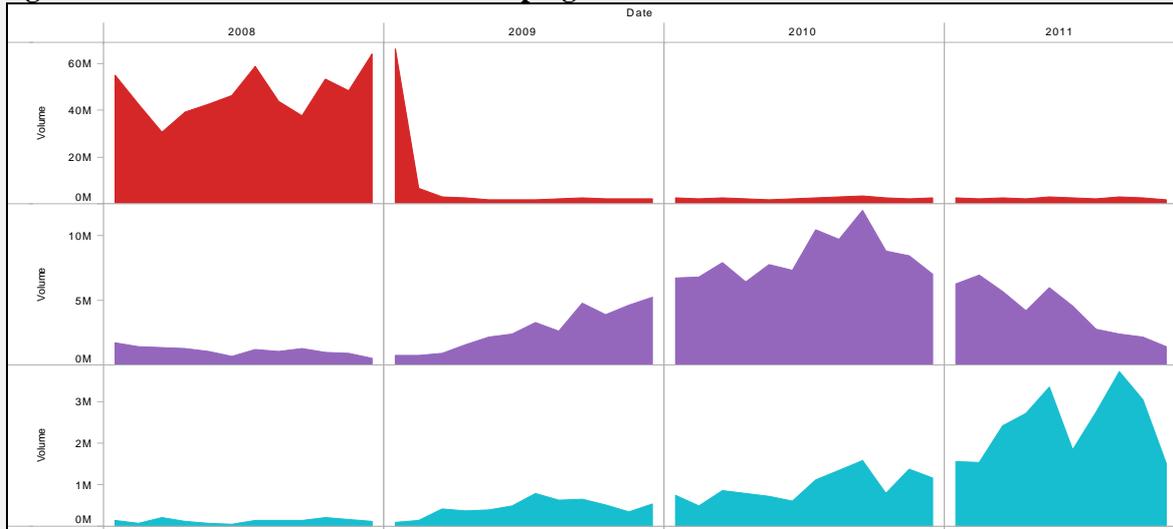
Investigations carried out by OLAF in the second half of 2010 caused a subsequent shift of imports from Asian country 1 to Asian country 2. A full follow-up on Import-Export information proved the shift and hence the false declaration of origin.

#### ***Effects of introduced Anti-Dumping Measures***

<sup>24</sup> Preferential rate under the EU Generalised System of Preferences (GSP) scheme.

<sup>25</sup> Report of the European Anti-Fraud Office; Summary version; 8<sup>th</sup> Activity Report (2007); page 53: [http://ec.europa.eu/anti\\_fraud/documents/reports-olaf/rep\\_olaf\\_2007\\_en.pdf](http://ec.europa.eu/anti_fraud/documents/reports-olaf/rep_olaf_2007_en.pdf)

**Figure 2: Effects of introduced Anti-Dumping Measures**



**Legend:**

- Imports from China
- Imports from Asian country 1
- Imports from Asian country 2

• *What are the loopholes in the current system?*

In order to verify the authenticity of the declared origin of the goods, customs authorities perform a document-based check, relying on supporting documentation such as the invoice, certificate of origin and bill of lading. However, none of these documents contain detailed information about the full transport-logistic steps followed by the sea-container transporting the goods; hence the customs officers do not have the means to verify whether the declared origin of goods is consistent with the route actually followed by the sea-container which transported the imported goods. This makes the identification of potential cases of mis-declaration of origin very difficult. In order to make a full use of the existing risk assessment methods, one needs to know ‘who is moving what, to whom, from where’. Data on the real parties behind the transaction and the movement of goods (buyer and seller or owner), and on the precise goods involved, is essential but so is information on the routing of the goods throughout the supply chain.<sup>26</sup>

• *Scale*

While Member States reported 186 cases of detected fraud and irregularities amounting to a damage of 17.6 million EUR, related to incorrect origin or country of dispatching in 2011<sup>27</sup>, in reality such breaches of the customs rules are likely to be considerably more numerous. Analysis for evaded duties indicates that there must have been in 2011, for EU27, more than 1.500 cases of false declarations of origin which resulted in loss of revenue for the EU for the total value of at least 25 million EUR and likely to exceed 100 million EUR<sup>28</sup>.

<sup>26</sup> Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on Customs Risk Management and Security of the Supply Chain, COM(2012) 793 final.

<sup>27</sup> OWNRES database; Period: 2011.

<sup>28</sup> Analyses based on ConTraffic Project.

### Example: Preliminary results of ConTraffic

After a quick automatic analysis of a huge number of declarations (over 230.000 import declarations – ca. 30% of the 2011 import declarations for containerised goods for one MS) 42 highly suspicious cases have been identified. The total evaded duties for these cases were estimated at around **3 million EUR**. The cases found involved evasion of import duties, anti-dumping duties and VAT payment.

The values provided above illustrate the magnitude of the problem. Overall estimation of losses incurred due to the relevant type of the customs-related fraud is provided under the scale of the problem analysis.

- *Drivers: Gaps in the existing system for the detection of mis-declaration of origin.*

There exist various duties, taxes, rates and quantitative limits which have to be respected by traders in order to carry out legitimate trade in the EU. The financial benefits resulting from the avoidance of these charges constitute an incentive for fraudsters to commit fraud in the form of mis-declaration of origin. As already explained, there are currently limited means of checking true origin of imported goods and it is not possible for the customs officers to verify whether the declared origin of goods is consistent with the route followed by the sea-container transporting the imported goods. Such information is crucial for detecting cases of mis-declaration of origin.

#### 3.3.1.2 Mis-description of goods

- *What does mis-description of goods entail?*

“Mis-description of goods” means that the goods are classified incorrectly. The classification of different goods largely determines what duties and controls will apply to them. Member States use commodity codes found in the TARIC<sup>29</sup> to classify individual products. The correct description of goods ensures that correct amounts of duty and VAT are paid. Many goods are subject to specific controls – e.g. those falling under the Common Agricultural Policy of the EU or those subject to anti-dumping duties or tariff quotas. Incorrect classification has a negative impact on the EU budget as illustrated by the examples below.

#### Examples: Mis-description of goods

In 2010, OLAF received information that fresh garlic of the species *Allium Sativum* was suspected to have been mis-declared as *Allium Ampeloprasum*. More than 1,200 tons of fresh garlic had been mis-declared for an **estimated loss of 1.5 million EUR to the EU budget**.<sup>30</sup>

In 2011, six containers containing a total of 144 tons of smuggled fresh garlic disguised as onions have been intercepted in Poland. The financial impact on the EU budget of the garlic seized is 180.000 Euro in terms of customs' duties - this loss has been prevented. However, the total impact, in terms of evaded customs' duties for garlic declared as onions in this way, is estimated at **more than 1 million EUR**.<sup>31</sup>

- *What are the loopholes in the current system?*

<sup>29</sup> TARIC – When declared to customs in the Community, goods must generally be classified according to the combined nomenclature or CN. Imported and exported goods have to be declared stating under which subheading of the nomenclature they fall. This determines which rate of customs duty applies and how the goods are treated for statistical purposes.

<sup>30</sup> [http://ec.europa.eu/taxation\\_customs/dds2/taric/taric\\_consultation.jsp?Lang=en](http://ec.europa.eu/taxation_customs/dds2/taric/taric_consultation.jsp?Lang=en)

<sup>31</sup> [http://europa.eu/rapid/press-release\\_OLAF-10-06\\_en.htm](http://europa.eu/rapid/press-release_OLAF-10-06_en.htm)

<sup>31</sup> [http://europa.eu/rapid/press-release\\_OLAF-11-1\\_en.htm](http://europa.eu/rapid/press-release_OLAF-11-1_en.htm)

In order to verify the authenticity of the declared description of the goods, customs authorities perform a document-based check, relying on visual check of goods as well as supporting documentation such as the invoice and the bill of lading. The selection of suspicious cases is based on possible notifications received from various sources (such as for example other customs authorities or economic operator) and analysis based on limited data available. The main drawback of the current procedure is that the targeting of such controls is not systematically based on broad analysis using global data. For this reason the investigations in this area can only be performed sub-optimally. In order to strike the right balance between the security and trade facilitation, the customs authorities cannot check every single consignment and therefore they must base their work on the risk assessment. This risk assessment approach helps to select the suspicious cases. However, in order to create risk profiles, different Commission services make currently repetitive requests for the same data. This creates an unnecessary burden for the Member States and negatively influences their efficiency.

- *Scale*

Member States reported 1.905 cases of detected fraud and irregularities amounting to a damage of 107.7 million EUR, related to mis-description of goods in 2011<sup>32</sup>. This is, however, only a damage detected by the Member States and the Commission. The actual losses are most likely substantially higher.

The values provided above to illustrate the magnitude of the problem may to a certain extent overlap with the numbers provided in the examples illustrating the problem.

- *Drivers: Gaps in the existing system for the detection of mis-description of goods.*

As already explained, classification of goods constitutes a basis upon which the applicable duties and controls are determined. Therefore, similarly to the cases of mis-declaration of origin, there is a great scope for undue financial benefits resulting from incorrect classification of goods. Fraudsters have a great incentive to profit from the existing gaps in the system which unless addressed will continue to be used to commit mis-description of goods.

### 3.3.1.3 *Misuse of the transit system*

- *What does the misuse of the transit system entails?*

The main risk related to the misuse of the transit system is that goods are incorrectly declared or partially or completely unloaded or loaded without authorisation. Misuse of the transit system can take place at the start of the transit procedure, during the transport and at the end of the transit procedure.

#### **Example: Misuse of the transit system**

In recent years, significant quantities of fresh garlic of Chinese origin had entered the European Union and had been declared for transit to consignees in third countries. It was established that a large number of these consignments were unlawfully cleared at customs offices located at the external borders of the European Union and that these consignments in fact remained within the European Union with the aim of evading the applicable customs duties. Based on transit data received from Member States, OLAF discovered more than 1.400 suspicious shipments which included more than 300 concerning garlic. The standard average of 30.000 EUR per truck results in the loss of **9 million EUR** to the EU budget.<sup>33</sup>

<sup>32</sup> OLAF Report 2011, page 18.

<sup>33</sup> Example from OLAF investigation case.

- *What are the loopholes in the current system?*

In order to verify the goods in transit customs authorities perform a document-based check and visual check. However, these methods are limited, as far as their effectiveness and efficiency is concerned, by the available man-power. They also miss the opportunity to profit from the technical development allowing automatic analysis, as demonstrated by ConTraffic. Without proper analysis it is necessary to carry out more controls which in turn may lead to serious disruptions of trade flows and would encounter staff constraints. It is certainly an advantage that Member States and OLAF can use ATIS which is a system for the analysis of transit-related data in order to detect abnormal patterns in the transit movement and diversion of destination (as described in chapter 2.4.4.2). This system suffers, however, from two main shortcomings. Firstly, information available is limited to movements between Member States and does not include the movements inside one Member State (national movements). This means that a suspect movement of a transit consignment inside a Member State cannot be detected. For instance, goods from third countries can be temporarily imported at Marseille without paying duties and put in transit to Le Havre where they can be exported from the EU. A suspicious movement inside the country could mean that part of the shipment has been unloaded and duties were avoided. Secondly, the administrative arrangement in place provides only for the insertion of the initial transit information, thus important subsequent information is missing, such as modifications in the routing schedule or results of controls. These messages exist already and are stored in the national databases.

- *Scale*

The overall results of cases detected in transit by OLAF from 2006 to 2010 show for EU27 more than 3.800 breaches of customs legislation related to the transit movements which resulted in loss of revenue for the EU. The total value of those detected cases appears to be around 60 million EUR. On average, this would imply a loss of more than 12 million EUR per year. Importantly, this sum represents only the losses that can be traced back to detected cases of misuse of the transit services as identified by Commission Services. The scale of the actual damage caused by the misuse of transit system is arguably much higher.<sup>34</sup>

The values provided above to illustrate the magnitude of the problem may to a certain extent overlap with the numbers provided in the examples illustrating the problem.

- *Drivers: Gaps in the existing system for the detection of misuse of transit*

As is the case with two previous problems, also here the main drivers behind the misuse of the transit system are the existing loopholes in the procedure.

### **3.3.2 Other problems**

#### **3.3.2.1 Delays in OLAF investigations**

Until recently, the documentation related to the customs operations has been kept by the responsible national authorities. From 2011 on, to simplify the customs processes and communication, e-Customs<sup>35</sup> has been introduced. Since then, a substantial part of these documents (i.e. declarations) is recorded and shared in the electronic customs database<sup>36</sup> and

<sup>34</sup> Statistics provided by OLAF investigation units.

<sup>35</sup> See e-Customs Decision 70/2008/EU for a paperless Customs environment.

<sup>36</sup> NCTS, ECS (export computer system) and ICS (import computer system).

the other part – the so-called supporting documents – is kept by the economic operator for 3 years.<sup>37</sup> Up until now, if needed in the course of OLAF investigations, OLAF approached Member States to receive the necessary documentation (supporting documents - i.e. invoice, certificate of origin, etc.) and received it in due time as it was already in possession of the Member States. However, since 2011, the procedure is prolonged by several months as the national authority is no longer keeping those supporting documents, and has to approach the economic operator first to be able to provide them to the Commission/OLAF. Importantly, the fact that Member States are no longer in possession of the supporting documents means that they are often unable and sometimes even reluctant (due to the fact that they may not be directly involved in the investigation in question) to assist OLAF in obtaining them.

There are several examples, demonstrating the difficulties related to obtaining supporting documents which prolong the process of investigation and hence hinder the possibility to recover the amounts related to relevant fraud. One example is the difficulty to retrieve the information in cases where several Member States and several companies are involved, often further complicated by the involvement of subcontractors or forwarding companies. In such cases not only a lot of time may be lost but the relevant information may not become available at all.

#### **Example: Problem of obtaining supporting documents**

A company established in MS1 imported aluminium road wheels from Malaysia, allegedly evading anti-dumping duties. The goods were declared by a customs agent for free circulation in MS2. OLAF requested documents related to the importation, but customs authorities from MS2 were not able to provide them because the customs agent did not possess them. In this case, there is of course a possibility to send a request to MS1 authorities but since they have no knowledge about the importation in question it will further prolong the whole procedure.

The importance of fast procedures for obtaining supporting documents is linked to the possibility of proving the breach of legislation and recovering financial losses before they are time-barred. To be successful, the investigation related to customs area must be closed within three years from the moment the fraud is discovered.<sup>38</sup> The first challenge is the fact that the allegation often comes to the attention of OLAF only about a year after the fraud has happened. Thus, one of the three years has passed already. The next problem with the current system is that, for the time being, OLAF investigators have to wait 3 to 7 months out of this three year period for obtaining supporting documents from the Member States.<sup>39</sup> This is because OLAF cannot obtain this information directly from the private companies. Additionally, several more months are needed for obtaining translations of the relevant documents once they have been provided to OLAF. Moreover, as the examples demonstrate, Member States may finally not be in the position to assist OLAF in obtaining the documents in question because the importing company is established in a different Member States. In view of the above, sometimes a case might not even be opened because the prospects of closing it before the deadline are small.

The established practice of OLAF investigators is to respect the time limits by calculating approximately how long the investigation is likely to last. They then focus on the fraudulent activity that will fall within the prescribed time frame by deducting from the time limit period

<sup>37</sup> See Customs Code.

<sup>38</sup> The time barring is based on Article 221 of the Community Customs Code. This has been confirmed by the Court of Justice of the European Union in ECJ C 201/04 Molenbergnatie [2006] ECR I 2049.

<sup>39</sup> Source: OLAF experience.

time to be spent on the investigation. This assumption as to the length of the investigation takes into account the time needed for obtaining supporting documents. Hence, the time lost with Member States for obtaining supporting documents is actually money lost to the EU budget because the longer the investigation the shorter the period of the actual fraud that can be addressed.

- *Scale*

OLAF's experience shows that obtaining documents supporting imports and exports takes between 3 to 7 months. The European Court of Auditors, in a 2010 audit<sup>40</sup>, found that “In the 274 declarations checked, 49 errors<sup>41</sup> were found, giving rise to 558 000 EUR of loss of duty. These amounts are time-barred and therefore can no longer be recovered and are definitively lost for the Community budget.”

- *Drivers: No legal provision accommodating the need for faster procedures relating to OLAF investigations*

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

### **3.3.2.2 Issues requiring further clarification**

As mentioned in the introduction, other issues were identified that would need further clarification. Due to their technical nature and/or being formal clarifications, they will not be discussed in this Impact Assessment. Nevertheless, the main points concerning these issues are briefly explained below.

- *Restricted visibility as a technical feature in databases*

Feedback from the database users revealed the lack of possibility for the user to select who will be able to access the data inserted in databases established on the basis of Regulation 515/97. However, given the fact that this is a problem of a purely technical nature which requires technical changes of the already existing system, it is not further considered in this report. For the sake of clarification and to raise awareness, an explicit reference to the possibility of the so-called "restricted visibility"<sup>42</sup> will be inserted in the modified legislation.

- *Data protection supervision and related recommendation*

As already described in chapter 2.4.3, the central databases CIS<sup>43</sup> and FIDE<sup>44</sup> are split into two parts and governed by different supervisory bodies. Applying recommendations of one of the two bodies affects both databases. Consequently, the approval of the other supervisory body needs to be sought before any recommendation can be implemented. This causes

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<sup>40</sup> European Court of Auditors, Special Report No 1 (2010), available at: <http://eca.europa.eu/portal/pls/portal/docs/1/7912988.PDF>

<sup>41</sup> Including errors because of missing documents.

<sup>42</sup> Restricted visibility is a technical feature which allows users to determine who will have access to data they insert.

<sup>43</sup> CIS – Customs Information System.

<sup>44</sup> FIDE – Fichier d'Identification des Dossiers d'Enquêtes Douanière, Customs Files Identification database.

inefficiency and generates additional costs in terms of resources and time. Carrying out the recommendations can continue even one year after the audit took place. Given the fact that this problem is of a purely internal nature, it will be addressed via encouraging a closer collaboration of the two supervisory bodies. Therefore, this problem will not be discussed further in this Impact Assessment.

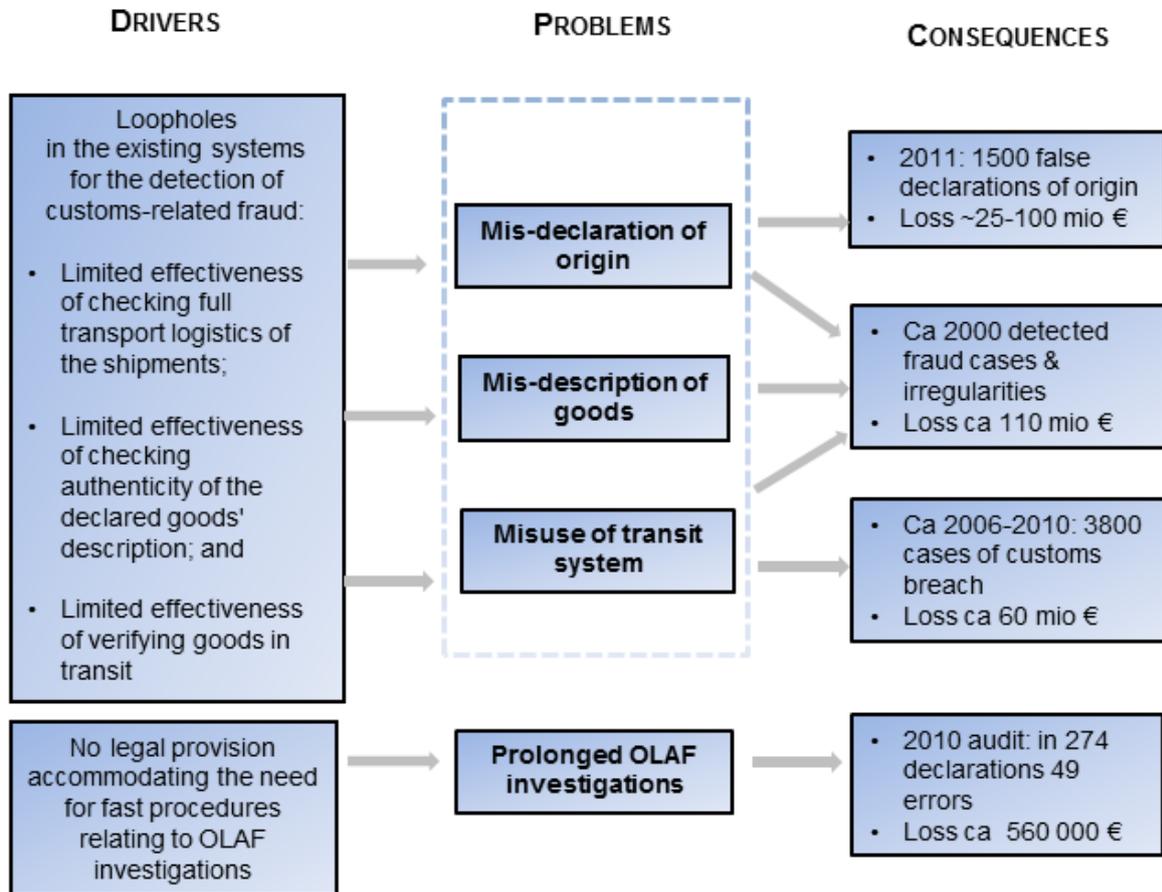
- *Admissibility of evidence in national courts*

The objective of mutual assistance is to provide other Member States with information and documents. This, as a matter of principle, should include the possibility of using such information and documents as evidence in criminal proceedings. However, on a number of occasions OLAF was informally notified that there are cases of reluctance to use documents obtained via mutual assistance channels as evidence in criminal proceedings because the provisions of Regulation 515/97 are not sufficiently clear on this point. This inevitably causes delays in proceedings or may even result in the dismissal of the case due to time barring. Importantly, it also undermines the principle of legal certainty given the fact that relevant provisions of Regulation 515/97 are subject to differing interpretations. In particular, Article 12 of Regulation 515/97 which merely provides that "Findings, certificates, information, documents, certified true copies and any intelligence obtained [...] may be invoked as evidence by the competent bodies of the Member States of the applicant authority". It appears that the term "competent bodies of the Member States" needs clarification. Consequently, this issue will be addressed in the proposal for the amendment of the regulation but will not be further discussed in this Impact Assessment.

### 3.4 Overview - Problem description

Below is an overview of problems which will be discussed in this Impact Assessment.

Figure 1: Overview of drivers, problems and consequences



Source: Analysis by OLAF (2013)

The problems of mis-declaration of origin, mis-description of goods and misuse of the transit system are interlinked in the above graph because they essentially concern instances of customs fraud (albeit in a different form).

### 3.5 Coherence with other Commission policies

Action against customs fraud is an important part of the Union's overall activities against fraud and contributes to the overarching objective of protecting the Union's financial interests as enshrined in Article 325 of the TFEU. The customs cooperation is premised on Article 33 TFEU.

This Impact Assessment has been drafted in line with various Commission policies in order to ensure complementary approach across the Commission's departments.

- Risk analyses in the area of customs fraud*

Strategic objectives of the EU Customs Strategy include, inter alia, developing effective risk assessment (in order to contribute to the fight against terrorist and criminal activity) and

enhancing effective and systematic sharing of risk information.<sup>45</sup> The proposal discussed in this Impact Assessment would complement the work of the Commission in the area of risk analysis.

Furthermore it is in line with the recent Directive 2010/65/EU on reporting formalities for ships arriving in and/or departing from ports of the Member States and provides for a more complete data picture.

- *Protection of the EU's financial interests*

The protection of the EU's financial interests is an important element of the Commission's political agenda, in order to consolidate and to increase public trust and give assurance that taxpayers' money is being used correctly.<sup>46</sup> Importantly, information on transit declarations can be helpful in ensuring that Member States' procedures comply with the relevant regulations and that traditional own resources (TOR) have been properly calculated, established and accounted. For the time being, information on transit declarations is available to OLAF only partially and is usable for strategic or operational analysis only. Broadening availability and sharing collected information within the scope of the cooperation in this area (protection of the financial interests) would lead to more efficient and effective use of resources for both, the Member States and the Commission which would contribute to the overall aim of protecting the EU's financial interests.

- *Interoperability of electronic systems*

Rationalisation of reporting formalities required by EU legislation is an important consideration not only for OLAF but for the whole Commission. In view of this, a careful consideration was given to the way in which the possible new databases could be linked with the already existing ones and how they may supplement each other.

### **3.6 Main actors affected by the current situation**

- *Industry & economic operators*

The customs controls are time-consuming for both the controller and the controlee. It is necessary to concentrate on improving the risk-assessment approach because otherwise the controlees who are compliant with the existing rules unnecessarily lose time and therefore also money on controls that should rather be targeted at the suspicious cases/consignments. The current situation is problematic not only for the shipping lines but also for the economic operators/customers whose consignments might be delayed due to these controls. It is also important to note that by suffering from inefficient control measures, the compliant controlees might perceive fraud as a relatively 'attractive and safe' method of doing business. Therefore it is critical to ensure that the system serves as a successful disincentive for potential fraudsters and protects traders from unfair competition.

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<sup>45</sup> See: EU Customs Strategy, available at:

[http://ec.europa.eu/taxation\\_customs/resources/documents/customs/com\(2008\)169\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/customs/com(2008)169_en.pdf)

<sup>46</sup> See: Communication from the Commission on the protection of the financial interests of the European Union by criminal law and by administrative investigations, available at:

[http://ec.europa.eu/justice/criminal/files/comm\\_pdf\\_com\\_2011\\_0293\\_f\\_communication\\_en.pdf](http://ec.europa.eu/justice/criminal/files/comm_pdf_com_2011_0293_f_communication_en.pdf)

Communication from the Commission on the Commission Anti-Fraud Strategy, available at:

[http://ec.europa.eu/anti\\_fraud/documents/preventing-fraud-documents/ec\\_antifraud\\_strategy\\_en.pdf](http://ec.europa.eu/anti_fraud/documents/preventing-fraud-documents/ec_antifraud_strategy_en.pdf)

- *Member States*

Fraud not only affects the EU budget but it is also a matter of great importance for the Member States' national resources. Member States directly lose revenue in cases when fraudsters avoid customs duties (and subsequently also the inadequately paid VAT) by mis-description of origin, mis-declaration of goods and misuse of the transit system.

- *The European Union*

The main reason behind anti-fraud legislation is the need to protect the Union's financial interests. Mis-declaration of origin, mis-description of goods and misuse of the transit directly affect the EU budget by circumventing different types of duties that should normally be collected by the EU such as for example anti-dumping duties. The amount of money that is lost yearly due to these illegal activities is substantial.<sup>47</sup> However, it is also important to note that the protection of financial interests has a much broader dimension in a sense that each euro lost because of fraud can then not be invested into growth and jobs, which is the main objective of the EU budget. In addition, benefits to EU **citizens** and **business**, whether it is through blocking unsafe or illegal imports, facilitating smooth trade and a strong Internal Market cannot be realised. Therefore, ineffective detection, investigation and ultimately prevention of customs fraud not only undermine the budget of the EU but also have a negative effect on the policies and initiatives of the Union that are designed to benefit all European citizens.

- *Commission (OLAF)*

OLAF makes a substantial contribution to the protection of the financial interests of the EU and Member States' budgets every year by ensuring, through administrative investigations and policy initiatives, that EU and national budgets are well protected against fraudulent activities. However, as the preliminary results of different pilot projects (e.g. ConTraffic) illustrate, there is a great potential for more effective and efficient investigations.

### **3.7 Baseline scenario**

If no action is taken, problems in the current situation are expected to evolve as follows:

- Customs-related breach of legislation would continue to remain partially undetected, causing the continuing financial losses to the EU and allowing a lower degree of implementation of related legislation.
- Fraud related to mis-declaration of origin will further increase. ConTraffic proved the usefulness of the Container Status Messages but as a research project will arrive to its end soon. Until a new method helping to detect mis-declaration of origin is adopted, fraud will continue to occur. One can even expect that fraud will be growing with fraudsters gaining experience. Hence the above mentioned 100 million EUR linked to the mis-declaration of origin will not only remain but will most likely grow even further.
- Similarly, no improvement in the fight against the mis-description of goods and misuse of the transit system is to be expected. The financial losses of about 110 million EUR for mis-description and 60 million EUR for cases involving misuse of transit might even be growing.

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<sup>47</sup> Annex 2 – Scale of the problem.

- As regards the transit, the current solution - ATIS, despite being very useful, reveals also some shortcomings. Apart from the fact that large parts of data remain outside its scope, the most important shortcoming is that several Member States request that this arrangement between OLAF and the Member States is formalised and based on an appropriate legal basis, possibly in Regulation 515/97<sup>48</sup>. Not respecting this request could eventually lead to the annulment of the current arrangement and thus an interruption of the functioning of the database. With less means, the detection success may decrease; hence undetected fraud will inevitably grow.
- The delays in OLAF investigations and the related time-barring depend on each particular case. There are various factors which affect the time devoted to a particular investigation, including timely responses to OLAF requests. Unless a change to the existing procedure is made, no improvement is to be expected in the near future. It is unlikely that the situation will change without any action being taken.

### **3.8 Subsidiarity, proportionality and fundamental rights**

- *Subsidiarity and proportionality*

The need for EU legislation on mutual administrative assistance and customs co-operation was already recognized by the European legislator with the adoption of Regulation 515/97 and Council Decision 2009/917/JHA. The necessity of action at EU level continues to the extent that the transfer of goods happens across borders of more than one Member States. Consequently, Member States alone cannot efficiently observe, detect and mitigate risks of breach of customs legislation; nor are they capable of pursuing investigations properly if cross-border transfer of goods is involved. Organising activities in the area of customs cooperation at national level would further create significant practical challenges, lacking coherence and coordination of activities.

It is also important to note that the EU has an exclusive competence in fraud prevention and protection of its financial resources in customs matters. Customs fraud has a cross-border character and is a problem common to all Member States. Therefore, it needs to be tackled collectively. The EU is best placed to serve as a driving force behind such collective action because it already possesses the necessary experience, systems and expertise to ensure proper gathering, communication and sharing of information. It is also important to note that the fight against customs-related fraud requires a broader European approach given its international dimension. This view is shared by a majority of Member States as confirmed by the questionnaire carried out by the Commission in which most of them opted for the creation of necessary databases at the EU level.<sup>49</sup>

More specifically the following should be mentioned:

- The establishment of trends by using transit information or CSM is only possible by means of centralised processing, in order to ensure the pan-EU view and an analysis free from national interests.
- EU-wide information on import, export and transit which is needed for the global analysis and identification of trends is by definition more efficiently collected centrally than at national level.

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<sup>48</sup> Some MS (i.e. Belgium, Denmark, Lithuania, Sweden, the Netherlands & UK) stated that they "cannot support any administrative arrangement which lacks a legal basis."

<sup>49</sup> Annex 8 – Questions 9 and 10.

Effective sharing of information and large-scale fight against breach of customs legislation cannot, at a reasonable cost, be conducted by national customs authorities alone. Indeed, obtaining the data necessary for the detection of fraud and identification of fraud patterns would be of disproportional effort to 28 individual Member States and, if achieved, of lower effectiveness and efficiency, compared to such action at EU level.

Following these arguments and given the EU's exclusive competence in customs union matters, it can be concluded that the EU is both entitled to and better placed to act than the Member States.

- *Value added*

Action at EU level would enable a significant improvement in the fight against customs-related fraud, by increasing the available evidence, improving the possibilities for detection and repression of fraud and rendering the action more efficient and effective.

- *Relations with Fundamental Rights*

The initiative examined in this Impact Assessment concerns in particular the fundamental right of the protection of personal data. This right is enshrined in the Charter of Fundamental Rights of the European Union (the Charter) and Article 16 TFEU, based on Directive 95/46/EC as well as in Article 8 of the European Convention on Human Rights.

Article 8 of the Charter reads that "everyone has the right to the protection of personal data concerning him or her". The Article lays down a number of criteria for the processing of personal data. First of all, personal data must be processed fairly and lawfully. The processing of personal data should also take place on the basis of legislation defining in sufficient detail appropriate data protection conditions and requirements. Moreover, personal data must be collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes. The processing of personal data must also be adequate, relevant and not excessive in relation to the purposes for which they were collected and/or further processed. Finally, one of the requirements is that personal data must also be accurate and, where necessary, kept up to date. To guarantee the observance of all these requirements, individuals enjoy legally enforceable rights, notably the right to access and rectify personal data relating to them.

The respect for the protection of personal data has already been duly considered and applied in Regulation 515/97 and Council Decision 2009/917/JHA through rigorous rules as regards the content, coverage of data, data preservation and data protection supervision.

## 4 Objectives

### 4.1 General objectives

- Reinforce the **protection of the financial interests of the EU** (fraud detection and investigation).
- Strengthen customs **cooperation between Members States and between the latter and the Commission** by ensuring the correct application of law on customs.

## 4.2 Specific and operational objectives

Figure 2: Overview –From problems to operational objectives

Problem	→ Specific Objective	→ Operational Objective
<b>Mis-declaration of origin</b> and related financial losses	Increase the <b>detectability, prevention and prosecution</b> of customs–fraud by <b>enhanced collaboration</b> between the MS and between the MS and the Commission (when fighting fraud related to mis-declaration of goods origin, mis-description of goods and misuse of transit system)	1. Create conditions for improved fighting of customs fraud related to <b>mis-declaration of goods origin</b>
<b>Mis-description of goods</b> and related financial losses		2. Create conditions for improved fighting of customs fraud related <b>mis-description of goods</b>
<b>Misuse of the transit system</b> and related financial losses		3. Create conditions for improved fighting of customs fraud related to <b>misuse of the transit system</b>
Delays in OLAF investigations (and time-barring)	Improve the process relating to OLAF investigations linked to R. 515/97	4. Speed-up OLAF investigations

## 5 Policy options

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

The breaches of customs legislation mentioned in chapter 3 (mis-declaration of origin, mis-description of goods and misuse of transit) are often interlinked, and so are the means to fight them. Hence they will be addressed together. Nevertheless a distinction is made between three separate operational objectives to demonstrate through the analysis of impacts to which extent and how each of the problems will be solved. Several options proposed are presented and analysed below.

- **Option 0: Keep status quo**<sup>50</sup>

This option follows a description of the baseline scenario. The detection of fraud related to mis-declaration of origin will profit from (limited) information available in ConTraffic, and the ATIS arrangement might be additionally used to help to fight fraud related to misuse of transit. No additional measures are envisaged as regards the mis-description of goods. The work load of the customs officers and OLAF investigators is expected to remain at the same level.

- **Option 1: Soft law - With appropriate recommendations increase the detectability, of customs fraud related to mis-declaration of goods origin, mis-description of goods and misuse of transit**

This option involves the introduction of soft law measures (i.e. recommendations issued by the Commission to the Member States) to achieve the objectives.

As regards **objective 1** (mis-declaration of origin), the difficulty is premised on the verification of the necessary documents. The control requires a check of relevant documents which is a manual process involving a cumbersome procedure vulnerable to human mistakes.

<sup>50</sup> See Baseline scenario, chapter 3.7.

A common method used by fraudsters is to mis-declare the true origin of the goods by "trans-shipment" containers via a third country. Therefore, as demonstrated by ConTraffic results described earlier on, tracking the real movements of containers transporting the goods can be an effective way of identifying potentially fraudulent operations.

Data considered useful/necessary for the analysis of container movements can be received from ocean (deep sea) carrier companies. It is data on the status of the fleet of containers they handle. The companies store this information in the form of CSMs where the status and location of a container is registered along with the time and date. The companies use this information for their own logistics as well as to inform their customers of the whereabouts of booked containers.

The recommendation to Member States would focus on inviting Member States to support the Commission in its attempts to obtain CSMs from economic operators. It would be left to the Member States to decide on specific measures that could be taken. For instance, Member States could adopt national rules which would require shipping lines to provide the information in question either to the Commission directly or to the Member State that would then forward it to the Commission. It is also important to note in this context, that for the time being contractual obligations vis-à-vis their clients prevent economic operators from disclosing certain information which may also include the required CSMs. In order to respond to this risk, Member States would be invited to adopt relevant statutory obligation that would prevail over any contractual duty of confidentiality.

In relation to **objectives 2 and 3** the recommendation would invite Member States to provide the Commission (OLAF) with the respective data. In reality this means authorising OLAF to access/copy the data, provided by Member States, which is currently available in another Commission platform<sup>51</sup> in a similar fashion to what is done for transit data as illustrated by ATIS example. However, the recommendation concerning the transit data would also include additional data (on national transit and other subsequent transit information, such as modifications in the routing schedule or results of controls), i.e. ATIS arrangement would be enlarged.

- **Option 2: Responsibility to increase the detectability of customs fraud related to mis-declaration of goods origin, mis-description of goods and misuse of transit is vested in the EU (Commission)**

This option involves the creation of an EU central database for CSM and data related to import, export and transit as a tool to achieve the objectives 1, 2 and 3. The central database should be the basis for the analysis related to the detection, prevention and prosecution of the three main types of customs fraud by exchange of necessary data, new analysis, identification of trends and international collaboration.

This database would build on experience gained from ConTraffic and from ATIS. The national transit and other subsequent transit information, such as modifications in the routing schedule or results of controls would also be included in the EU central database.

The responsibility to collect and analyse the data would be allocated to the Commission, which would be obliged to regularly provide the Member States with the results of the analysis and support them by targeting national controls of customs-related fraud. It is

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<sup>51</sup> Transit data is currently contained in NCTS, import data is stored in Surveillance tool system and export data is included in the Export Control System. All three systems are operated by DG TAXUD.

envisaged that the new databases will have analytical and reporting services available to the competent Commission services and to the Member States via the AFIS platform.

The use of the AFIS platform also guarantees the appropriate level of security for data storage and transfer. AFIS implements a security policy approved by the Member States and relies in the CCN network for secure data transmission to the Member States customs authorities. In addition, AFIS is regularly audited by the relevant data protection supervisory bodies (i.e. EDPS, CJSA).

The data would be obtained from the following data sources: CSMs – container tracking systems operated by the shipping lines. Transit declarations – New Computerized Transit System ("NCTS"). Import declarations – Surveillance II. Export declarations – Export Control System ("ECS").<sup>52</sup> It should be noted that, because the ECS does not contain data on direct export, these data would have to be supplied by the Member States in addition to what is already included in ECS. Centralised implementation of the system would avoid any direct impact on the infrastructure of the Member States. Option 2 is the preferred option both by the industry and by the Member States. In particular, the industry recognises that formal obligation at the EU level would resolve an issue of confidentiality which is currently preventing them from sharing CSM data. In addition, it is envisaged that under option 2, specific provision would be inserted in Regulation 515/97 providing for a transitional period for economic operators which would give them additional time to re-negotiate their existing contracts and change standard contract clauses in full conformity with the new EU obligation.

- **Option 3: Responsibility to increase the detectability of customs fraud related to mis-declaration of goods origin, mis-description of goods and misuse of transit is vested in the Member States**

This option involves, contrary to the above, entrusting the Member States with the responsibility for collection and analysis of additional data (CSM, import, export and transit data). Therefore, each Member State would create its own national databases for CSM, import, export and transit related data. Regular exchange and open access should allow Member States to communicate and exchange data and to prepare regular analysis. This option is contrary to the wishes expressed both by the industry and the Member States,

This option would require Member States to make it obligatory for the economic operators to provide CSMs to national databases. Such obligation would most likely be enshrined in a statutory provision at national level and it would override the confidentiality obligations which currently prevent businesses from disclosing this type of information. Consequently, the risk related to legal implications of requiring data (i.e. CSMs) from operators who have contractual obligation not to disclose it would be mitigated. Under this option, carriers would have to submit CSM data to 28 Member States. Since some carrier may opt for selective reporting, each Member State would then have to forward the CSM data received to other Member States in order to achieve an EU-wide national CSM data repository.

It is expected that Member States would rely also on the CCN network<sup>53</sup> for secure data transmission and that the security of the databases would be guaranteed by applying the IT security standards in place for national customs IT systems.

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<sup>52</sup> All three systems are operated by DG TAXUD.

<sup>53</sup> Common communication network is a private secure network operated by DG TAXUD which is used by customs authorities of the Member States.

Each Member State would have to adapt and extend its national systems for import, export and transit data in order to forward to other 27 Member States its own data on a regular basis and to integrate the data received. The case of transit is even more complex due to the involvement of non-Member States. Potential overlaps could be avoided if Member States would rely on the existing IT systems operated by the Commission (e.g. ECS or Surveillance II) to partially lower the risk and cost of implementing this option. In any case, Member States would have to implement their own reporting, alerting and analysis system to exploit data. The use of different analytical tools would represent a challenge when it comes to the exchange of results of the analysis.

- **Option 4: Shared responsibility between the Commission and the Member States to increase the detectability of customs fraud related to mis-declaration of goods origin, mis-description of goods and misuse of transit**

There are several possibilities how such a 'mixed' option could be realised and there are various ways in which the responsibility between the national authorities and the EU could be shared. Among those possibilities, some involve a very disproportionate burden for MS and are manifestly inefficient and undesirable; such are the possibilities that involve parallel creation of systems all doing global analysis (for example one ConTraffic per MS). These combinations were not further considered.

To illustrate the possible operation of this option the following mix of responsibilities is considered. The CSM and transit data would be collected at the EU level and the Member States would be responsible for data related to import and export. This is the most plausible mixture because it takes into account the current settings (Commission handling the ConTraffic and ATIS) hence, allocates the responsibility accordingly. The responsibilities retained by the Commission would be implemented according to the principles of option 2, whereas the considerations made under option 3 would apply to the implementation of the competencies retained by Member States. The data security considerations under options 2 and 3 are also applicable.

This option would require the Commission to make it obligatory for the economic operators to submit CSMs. Such requirement would take a form of legal obligation included in Regulation 515/97 and it would prevail over any contractual duty of confidentiality.

- **Option 5: Baseline scenario plus**

This option suggests increasing (doubling) the man-power assigned to the detection and prevention of the relevant customs fraud. The necessary controls are carried out by a number of customs authorities using varying techniques. By relying upon more control officers and more investigators, it is expected that more fraud would be detected and possibly also prevented. The proposed doubling of resources could concern both Member States and the Commission (OLAF).

After thorough analysis this option is discarded at this stage. First of all, suggestion of increasing the number of staff in Member States as well as in the Commission, working on controls and investigations, appears delicate in the time of the economic crisis and global resource constraints. In addition, this option would inevitably impose a substantial financial burden on both the Member States and the Commission. Finally, the main drawback of this option is that it would not improve the efficiency of controls (by improved targeting of controls) but it would rather increase the amount of controls and investigations as such.

## 5.2 Options addressing other problems (Objective 4)

Difficulties related to the length of the investigation procedures and the related time-barring of OLAF investigated cases contribute to the continuous misuse of the existing rules and provide unfair advantages to fraudsters, while causing financial losses to the Member States as well as to the EU budget. Several options as to how this problem should be addressed are presented below.

- **Option 0: keep status quo**

As already explained in the baseline scenario (chapter 3.6), OLAF investigations cannot be conducted faster without additional measures and human resources. Therefore no improvement can be expected in the near future. On the contrary, due to "resource crunch" in public administration it is expected that the situation may further deteriorate. Moreover, a reduction of 2% in the overall number of available posts in Commission was implemented in 2012. Further reductions are foreseen for the future.

- **Option 1: Soft law - Issue a recommendation to speed up the procedure and request Member States to provide the supporting documents within a deadline**

This option suggests issuing a recommendation inviting Member States to contribute to a faster procedure. A recommendation is a non-binding instrument, which can be understood as an appeal to Member States to improve the current practice and contribute to the process of speeding up the investigations and fraud detection. The Member States would be invited to speed up their national procedures in order to ensure that the Commission receives the requested documentation in due time. It would be left up to the Member States to decide how to meet the deadline imposed by the Commission. One solution would be, for instance, to oblige the companies at the national level to provide requested documents within a specified period of time so that the Member State could meet its deadline.

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

Similar to sectoral rules relevant for other OLAF investigations, the Commission would be empowered to request supporting documents directly from the economic operators. This option involves a change of the role of the Member States in the communication chain. (Member States would be informed but would not play an active role.) In practice, this option enables the Commission to directly address the private sector operators with the request for the provision of relevant documentation without the need for Member States' intermediation.

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

This option suggests the improvement of the working flow at OLAF by increasing the number of investigators employed by OLAF. It is assumed that by increasing the number of investigators working in OLAF, the time spent on investigation should be shortened. It is expected that speedier work at OLAF would alleviate the problem of lengthy investigations. This option presents a different solution as compared to options 1 and 2 because it focuses on shortening the time spent by OLAF on investigations, rather than shortening the time spent on obtaining relevant documentation.

- **Option 4: Request economic operators to additionally provide information at national level through a modification in the relevant EU legislation<sup>54</sup>**

This option implies the return to the situation from before 2010 (i.e. before e-Customs was introduced). Under this option, economic operators would be obliged to provide information and all supporting documents to their respective national authorities, as they did before e-Customs was implemented. Hence, when OLAF investigators would need such information, the national authority should be in position to provide it immediately without the need to contact relevant private sector operators.

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

This option suggests the imposition of a specific deadline for Member States to provide the Commission with the relevant documents. However, such a requirement may be considered by the Member States as too intrusive. Moreover, a single deadline for all cases will fail to take into account the fact that each investigative case is different; there are various degrees of complexity of cases and therefore the types of documents and the volume differ from one case to another. It is also assumed that the Member States provide the requested documents as soon as they are available to them but the national procedures, depending also on the above mentioned complexity of any given case, can vary. Not respecting the deadline for justifiable reasons, would nevertheless create the obligation for the Commission to start infringement procedure against the Member State in question, resulting in additional administrative burden on both sides. Therefore, this option was discarded at this early stage as bringing fewer benefits than potential disadvantages and/or costs.

## 6 Assessment of impacts of the policy options

### Common considerations

- *Fundamental rights*

All the options under this initiative respect the fundamental rights, freedoms and principles contained in the **Charter of Fundamental Rights** of the Union and in particular protection of personal data, as described in the chapter 3.8. In this context it is important to note that the envisaged CSM database would contain no nominal data. Databases on import, export and transit would contain personal data and protection of this data is to be monitored by EDPS according to already applicable standards laid down in Regulation 515/97.

- *Environmental impact<sup>55</sup>*

There are no environmental impacts associated with any of the options within this initiative. In theory there is a possibility, under options 3, 4 and 5 addressing the operational objective 1, that shipping lines may shift a burden associated with additional reporting obligation on their clients by increasing the prices for the services they provide and this price increase may arguably initiate changes in trade patterns (i.e. a modal shift from sea to less environmentally friendly means of transport such as road or rail). However, such modal shift may occur only if the relative price of shipping by sea increases sufficiently to cause shippers to look for shorter sea routes and move more cargo by land. Since port infrastructure is also a large determinant of freight costs, it may take significant changes in relative freight rates to cause any modal

<sup>54</sup> The legislation to be considered is Regulation 515/97 and/or E-Customs Decision.

<sup>55</sup> Environmental impacts are relevant only in so far as a core problem is concerned.

shift.<sup>56</sup> In any case, given the fact that proposal presented in this Impact Assessment should not in practice result in freight rates changes, it is considered that no **environmental impacts** would be caused by this initiative.

- *Impact on SMEs*

The **impact on SMEs** is relevant only for that part of the options addressing the operational objective 1. However, the ocean carrier companies are already obliged to submit similar data to the US authorities.<sup>57</sup> Therefore, in principle these companies should not be burdened with additional costs. In any case, it appears that no SMEs are present in the relative branch of industry (i.e. shipping lines). WSC which represents 90% of global liner vessel capacity is composed of 29 companies none of which can be considered as SMEs. However, there are also freight forwarders companies (sometimes renting containers from the shipping lines) that may be also burdened with the new obligation. Therefore, in order to avoid potentially negative impacts on SMEs in freight forwarding sector, it is envisaged that the only obligation which directly affects economic operators (i.e. obligation to provide CSM related data) should apply exclusively to economic operators who already possess this data. Since all companies other than SMEs are already producing this information (for their own analysis and for their clients) such condition would ensure that SMEs are not negatively affected by the proposal.

For all other objectives, the impact on SMEs is out of the scope, as the SMEs are not concerned.

- *Social impact*

No specific **social impacts** can be associated with any of the options under this initiative. The proposal will neither lead to new job creation nor to job losses. In other words, the proposal will not affect the functioning of the labour market.

However, some general positive impact created by the reduction of smuggled goods onto the EU market could be envisaged. Such reduction may result from an increased targeting of customs-related fraud (in particular IPR related infringements). An in-depth analysis related to this phenomenon was conducted by DG ENTR. It is important to note that original products must pass a number of quality controls to ensure their conformance with safety measures. These controls are in most cases not respected by fake products, therefore counterfeit goods do not offer any guarantee for public health; they in fact can even be dangerous for the consumers.

In particular, one could speak of potential aspect of **health hazard**, especially in the context of smuggled food products, medicines and cosmetics. They may cost less, but they can have serious adverse effects as they can be of poor quality, made of the wrong components/ingredients and have questionable effectiveness, if any. An increased risk can also be associated with the products where the risk is less obvious, for example car parts, toys or even shoes and garments.

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<sup>56</sup> ICTSD Background Paper, International transport, Climate Change and Trade – What are the options for Regulating Emissions from Aviation and Shipping and what will be their impact on trade? <http://ictsd.org/downloads/2011/12/international-transport-climate-change-and-trade.pdf>

<sup>57</sup> Given the fact that trade is global the underlying assumption is that there are no companies in the relevant sector that do not trade with the US. In any case there would be no impact on the economic operators who decide to submit the CSM by means of global dump.

Last but not least, it is also recognised that trade in counterfeit goods also increases citizens' tax bills; EU residents pay taxes and get public services in exchange, but their honest contribution is increased because of counterfeit goods. Therefore, the increased and better targeted actions against customs fraud (related to IPR) would have a broad positive social impact.

- *Impact on sector competitiveness*

No negative impacts on sector **competitiveness** are expected to arise from this initiative. The proposal does not affect in any way the costs of doing business or the international competitiveness. As already explained, the only obligation affecting directly the industry (i.e. obligation to provide CSMs) should not in principle impose additional financial burdens on the companies, as there is a way for a quasi no cost option, building on the experience these companies have with the reporting of the CSMs to the US authorities. In addition, no impact on international competitiveness can be associated with this proposal because the obligation to provide CSMs would not only be limited to companies in the EU. In addition, the obligation to provide CSMs also applies in the US.

It is expected that less fraud will have a positive impact on the fair competition of the market, in particular thanks to better targeting of customs fraud related to IPR infringements. This is because counterfeit products do not usually follow the requirements of the internal market resulting in a situation whereby the economic operators and fraudsters compete under unequal conditions.

- *Simplification potential*

Simplification potential is the main reason behind the proposal addressing delays in OLAF investigations. Faster procedures would simplify the current system for conducting OLAF investigations as much as the administrative burden on Member States would be decreased as the Commission would take care of obtaining the necessary documents directly. In addition, albeit to a lesser extent, the successful achievement of objectives 1, 2 and 3 would create a simplification potential in the process of identifying customs fraud, which is mentioned below, where pertinent, under the option-specific assessment of impacts.

#### Final assessment

In relation to the objectives, the criteria for assessing the policy options used include:

- **effectiveness** – the extent to which options are expected to achieve the objectives. In particular, this criterion measures the expected contribution to achieving operational objectives. If an option contributes more effectively, it will receive a higher score.
- **efficiency** – the extent to which objectives can be achieved for a given level of resources/at least cost (cost-effectiveness).
- **coherence** – the extent to which options are coherent with the overarching EU objectives, strategies and priorities (e.g. Strategy for the evolution of the Customs Union, Better Regulation initiative).

In addition to the above described common impacts, the options were assessed according to the economic impacts they are deemed to generate and their simplification potential.

## 6.1 *Impact related to operational objectives 1, 2 and 3*

### 6.1.1 Option 0: Status Quo

Overall: While no additional costs would be created, one could not expect any positive evolution as regards losses to national and European budgets. Furthermore, it is important to bear in mind the need to continuously expand the existing processes for the fight against fraud. The option of keeping the status quo could result in a situation whereby fraudsters would increasingly take unfair advantages from the loopholes in the current procedures. In addition, this option fails to take into account the need for simplifying the processes as envisaged by the Better Regulation initiative. Furthermore, it is **incoherent** with the Strategy for the evolution of the Customs Union which recognises, inter alia, the need for continuous adaptations and improvements in the common working methods for customs and the fact that only continuous development and strategic investment in resources can maintain customs efficiency and effectiveness.

- *Objective 1: Create conditions for improved fighting of customs fraud related to mis-declaration of goods origin*

Without any intervention, no improvement of the current situation can be expected. On the contrary, ConTraffic, being a research project, will at certain point come to an end (depending on the achievements, progress as well as financial resources). In general, economic operators expressed their reluctance to provide the Commission with CSMs on a voluntary basis (as envisaged in Article 18a of Regulation 515/97). Indeed, the representatives of the companies argue that contractual obligations with their clients (obligation of confidentiality) do not allow the disclosure of these data. Nevertheless, there is some information about container movements freely available online, depending on shipping carrier. There is however a growing trend to limit the availability of this information, which already creates a burden for the project. While, during the years of the ConTraffic project, a number of cooperating companies remained stable, there is a significant risk that the lack of progress in creating a solid legal framework would discourage companies from allowing the Commission to obtain the data necessary for the functioning of the ConTraffic project.

The financing of the ConTraffic would continue as long as the initiative is still on-going.<sup>58</sup> The effectiveness of this solution is therefore limited in the long-run by the fact that the project would end at some point in time.

- *Objective 2: Create conditions for improved fighting of customs fraud related to mis-description of goods*

Due to the currently prevailing financial constraints, there is no indication that the existing practice will change. Therefore, no improvement in the achievement of objective 2 can be expected. The mis-description of goods would continue to be addressed by document-based check, visual check of goods as well as the examination of supporting documentation such as the invoice and the bill of lading. The selection of suspicious cases would continue to be premised on risk assessment systems founded on incomplete information and porous risk profiling.

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<sup>58</sup> Currently a prolongation for one year is in preparation.

- *Objective 3: Create conditions for improved fighting of customs fraud related to misuse of the transit system*

As is the case with the achievement of objective 2, also here the current global economic situation would imply that there will be no improvement in the existing practices. For the time being, there is no indication of any planned changes that could be introduced into the customs procedure in order to facilitate the fight against misuse of the transit system. Nonetheless, the ATIS system would continue its operation at least for a certain period of time. However, without any additional action being taken, there is a substantial risk that the situation would deteriorate given the fact that six Member States have expressed strong disagreement on the current legal basis of the ATIS arrangement (see chapter 2.4.4.2).

### 6.1.2 Option 1: Soft law

**Overall:** This option is expected to have a positive *economic impact* since it would create some conditions for an improved fight against customs fraud and recuperation of the customs induced financial losses. It is nevertheless estimated that this economic impact will be lower than in the best-case scenario (option 2 as described below) as it is likely that not all Member States would commit themselves to follow the recommendation.

As far as *simplification* is concerned, the positive impact in this context is similarly reduced. Such partial contributions would additionally create a risk of incomplete data picture, which would hamper the effectiveness of the entire initiative. This option has a positive impact as far as the *coherence* with overarching EU strategies is concerned. Assuming that at least some of the Member States decide to follow the recommendation, this option would contribute to Better Regulation initiative and would be in line with the Strategy for the evolution of customs which, inter alia, aims at enhancing effective and systematic sharing of risk data.

With regard to the operational objectives that this option should aim to satisfy, the following specific benefits, costs and impacts can be identified:

- *Objective 1: Create conditions for improved fighting of customs fraud related to mis-declaration of goods origin*

The main drawback of this option, as mentioned above, is the fact that such recommendation would most likely be followed only by some of the Member States. Also, the Member States would face similar difficulties in obtaining data from the companies which would create a risk of incomplete data sets. On the other hand, however, the introduction of a soft law is a relatively straightforward and inexpensive solution; this option would not imply substantial costs on the part of the Member States; the only cost would relate to the actual implementation of the recommendation.<sup>59</sup>

- *Objective 2: Create conditions for improved fighting of customs fraud related to mis-description of goods*

The same considerations related to the take up of the recommendation by the Member States apply to Objective 2. And just as above, this option constitutes a relatively fast solution that can be quickly and easily incorporated by the Member States. Moreover, the supply of relevant information would not create any costs as this information already exists and is

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<sup>59</sup> Assuming that the recommendation was implemented by creating a new national legislation obliging the shipping companies entering the EU Member State to provide the Commission with the CSM.

exchanged among Member States in another Commission's platform<sup>60</sup>. However, despite of this possibility, the information in question cannot be accessed by OLAF because currently OLAF lacks the legal bases for doing so. Therefore, the supply of data would simply take the form of the Member States' consent to copy the existing data, similarly as was done in the ATIS case. Importantly, there is still a risk that the Member States might feel dissatisfied with the adoption of only a temporary solution.<sup>61</sup>

- *Objective 3: Create conditions for improved fighting of customs fraud related to misuse of the transit system*

Currently ATIS is based on a voluntary agreement and so far it has proved to be a useful and effective method of detecting customs fraud related to misuse of the transit system. Member States certainly use ATIS in their investigations, and currently a PCA is taking place for which the ATIS is used. However, as it was already explained in the problem description (section 3.3.1.2), the experience gained since the creation of ATIS reveals certain shortcomings which to a certain extent impede its effectiveness (i.e. unavailability of data on national movements and subsequent transit information). Moreover, under this option a clear need expressed by several Member States to formalise ATIS by giving it a legal base would be disregarded. For this reason, soft law approach does not appear to be in line with the wishes of the Member States.

- *Costs*

Figure 3: Overview – Costs related to option 1 (objectives 1, 2 and 3)

Actor	Objective 1	Objective 2	Objective 3
<b>MS</b>	Costs of implementing recommendation - negligible	None – MS provide solely their assent to copy/use data managed by TAXUD	None – MS provide solely their assent to copy/use data managed by TAXUD. Costs for providing remaining data (on national transit) are negligible as the data exist on national level already
<b>Commission</b>	Administrative cost of issuing a recommendation	Administrative cost of issuing a recommendation	Administrative cost of issuing a recommendation
<b>Economic operators</b>	If global dump: no costs If selective reporting <sup>62</sup> : 3.000 to 200.000 EUR <sup>63</sup>	n.a.	n.a.

### 6.1.3 Option 2: EU centralised approach (Commission is responsible and uses a central database)

**Overall:** This option is expected to have strongly positive *economic impact*, since it would maximise the opportunity for an improved and effective method of detecting customs fraud

<sup>60</sup> Operated by DG TAXUD. For more details see footnote n.52.

<sup>61</sup> ATIS arrangement is considered as a temporary solution until the Commission will be able to propose a legal base for this arrangement, as requested by the Member States.

<sup>62</sup> There are two possible methods of the provision of CSMs: i.e. "global dump" and "selective reporting". In case of a global dump, the economic operator 'dumps' all available data to the Commission, and the Commission selects what is relevant. In case of selective reporting, the economic operator would first select the required message and provide only part of the information. For further details see Annex 5.

<sup>63</sup> Estimate based on the experience of reporting to the US authorities.

and recuperation of the customs induced financial losses. The estimated revenue recuperation is detailed below under each of the operational objectives that this option aims to achieve.

The adoption of a centralised (EU-level) approach will also provide a substantial *simplification* in the area of customs. One centralised system with common features and interface would significantly improve the processes and both the collection and utilisation of relevant data. In addition, it is also sound to collect data centrally given the fact that trade is usually trans-national and so it requires a global overview. Centralised approach would also ensure that EU customs legislation is applied in a uniform way, so that treatment of traders, fraud prevention, and legal obligations do not vary. Importantly, centralised approach is considered by the Member States as well as the industry as the most efficient and least burdensome option.

Moreover, this option offers a solution which is *coherent* with the overarching EU objective of ensuring Better Regulation and reducing the "red tape" by creating centralised databases and eliminating the encumbrance on Member States and the industry. The creation of centralised databases on CSMs, import, export and transit data is also coherent with the Strategy for the evolution of the Customs Union which recognises the need to improve the capacity in the fight against customs-related fraud by, inter alia, streamlining and improving current IT systems. In particular, the Strategy stipulates that an approach must be developed to further adapt and advance the common working methods for customs.

With regard to the operational objectives that this option should aim to satisfy, the following specific benefits, costs and impacts can be identified:

- *Objective 1: Create conditions for improved fighting of customs fraud related to mis-declaration of goods origin*

The Commission has proved to be in a good position to collect data and maintain the ConTraffic database which can be considered as a basis for tracking the container movements and should provide the possibility to verify the declared origin of the goods. Based on the results of ConTraffic project, the JRC has estimated that if all EU imports were cross-checked using the full range of CSM data more than **100 million EUR** could be recovered per year from the importers that have mis-declared the origin of goods.

Furthermore, from the experience of OLAF and of national customs authorities, it has been proven that the use of CSM data can help in their investigations. If it becomes mandatory for ocean (deep sea) carrier companies to provide their relevant CSM data, then: (i) it will become possible to cross-check all EU imports regarding the declared origin and identify the highly suspicious cases based on the route followed by the container; and (ii) the quality of analysis will increase, so that the patterns for container movements will become more precise and will also cover geographical areas that are currently not available.

The centralised option offers a great advantage in terms of costs. It appears more efficient to create one single database for the whole EU in order to avoid repetitive set up and maintenance costs by the Member States. The positive impacts of shared IT databases are also sought in the harmonisation of the interface for the shipping lines, with one interface for the whole EU rather than 28 separate ones. This would trigger further reduction in administrative burdens on businesses.

- *Objective 2: Create conditions for improved fight against customs fraud related mis-description of goods*

Centralised database on import and export would allow the Commission to base its analysis of market behaviour on data covering the whole EU. Given the sophisticated techniques used by fraudsters to commit fraud (i.e. using different routes, transiting goods via numerous countries, etc.) it is imperative to have a complete picture of movements of the goods in all 28 Member States in order to be successful in the fight against mis-declaration of goods. The estimated recuperation of lost revenues for this type of customs breach is estimated at **107.7 million EUR**<sup>64</sup> that are currently incurred.

Given the fact that the data in question already exists and it is proposed to obtain only consent to copy that data, no extra costs would accrue to either Member States or economic operators. Also, there would be no need to impose new reporting obligations because the data is already existent and shared on the common platform used by the Member States.<sup>65</sup>

- *Objective 3: Create conditions for improved fighting of customs fraud related to misuse of the transit system*

ATIS may be considered as a proof of the effectiveness of a centralised approach. The regularly provided reports developed on the basis of this database are much appreciated by the Member States as they support them in carrying out further analysis of fraud. In the 2012 questionnaire (Q9), 22 out of 24 Member States confirmed that these data are necessary. 18 out of 19 welcomed such a centralised approach and 18 out of 21 would like the Commission to take the lead on this. Among main comments, the Member States requested that a solid legal basis is in place and that the purpose of this database is clearly defined. It is worth noting that both the European Parliament<sup>66</sup> and the European Court of Auditors have offered support to the prospect of the Commission obtaining access to import, export and transit data. The European Parliament stated that it “notes the Court of Auditors' request that the Commission be granted full access to information systems available or foreseen for all kinds of goods - not only for sensitive goods - for the purpose of operational and strategic analysis and risk management, while ensuring adequate protection of personal data”. The adoption of a centralised approach would facilitate a significant minimisation of the yearly financial losses of **60 million EUR** currently incurred as a result of the misuse of the transit system.<sup>67</sup>

The advantage of this option is the already available expertise and information. The EU possesses the necessary infrastructure and systems to successfully run the proposed database, hence creates an added value. The impacts of shared IT databases will also reduce the costs for Member State governments thanks to the possibility to use compiled EU analyses. As a result of improved detection of customs fraud, the legitimate trade will be supported by faster and better targeted customs controls.<sup>68</sup>

<sup>64</sup> OLAF Report 2011, page 18.

<sup>65</sup> Transit declarations would be copied from the New Computerized Transit System ("NCTS"); import declarations from the Surveillance II; and export declarations from the Export Control System ("ECS"). Direct export could be sourced via Customs Communication Network gateways.

<sup>66</sup> Commission Follow-up Report 2010 to European Parliament Resolution P6 TA (2007 0432) of 11. 2007; [http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0432+0+DOC+XML+V0//EN#def\\_1\\_6](http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0432+0+DOC+XML+V0//EN#def_1_6)

<sup>67</sup> See chapter on Problem description, page 11.

<sup>68</sup> Importantly, a study by the World Bank suggests that a reduction in customs clearance times by one day can bring the equivalent of around 0,5% to 0,8% of cargo value in increased income; halving the standard deviation of customs clearance times is the equivalent of a 0,2% increase. This reduction in costs would increase the external competitiveness of the EU business.

A short description of the prospective databases is given in Annex 4.

- *Costs*

The establishment of the new databases for Import/Export and CSMs rely on the existing AFIS infrastructure and the experience built up by OLAF and TAXUD by setting up the ATIS database. The new databases project must be seen as an extension of ATIS that leverages on the existing services from the AFIS platform (further details can be found in Annex 4: Anti-fraud Information System).

For the development and operation of the future databases for Import/Export and CSMs, the starting point is a retrospective cost analysis for the development and operations of ATIS:

Figure 4: **Overview – ATIS costs**

ATIS Costs	2008	2009	2010	2011	2012	Total	Av./Year
<b>Development</b>	€3.850	€113.300	€47.300	€201.300	€11.550	<b>€377.300</b>	<b>€75.460</b>
<b>Operations</b>	N/A	€82.726	€23.461	€139.625	€142.559	<b>€388.372</b>	<b>€7.093</b>

The table above shows that the accrued development costs of ATIS for the period 2008-2012 are in the region of EUR 400.000 and the average operational costs per year is in the region of EUR 100.000. The total costs for objective 2 (Import/Export) plus objective 3 (additional transit data) is a cost similar to the cost of ATIS<sup>69</sup>. That is why cost estimations for objectives 2 and 3 together are set at the level of the ATIS costs. The breakdown of estimated cost is 80% for import/export and 20% for transit.

The CSM database implementation project has significant elements in common with the implementation of ATIS. Similarly to ATIS, where the data are pushed in an automated manner from an existing system (NCTS<sup>70</sup>) to AFIS/ATIS using an existing network infrastructure (CCN<sup>71</sup>); in the case of the CSM database, the data source is the Logistical Information Systems of the shipping lines which will push the data over an existing infrastructure, encrypted transfer over the Internet. Both the shipping lines and OLAF would be ready to use an existing and proven solution (public internet with standard data encryption) at no additional cost for OLAF and minimal set-up cost for the carriers.

Once the data are being received by OLAF, the CSM will have to be processed and loaded into the database. This database will be a repository of known containers identified by their unique container number. The theoretical limit is 20 million entries as this is estimated size of the fleet of containers in circulations worldwide. Each time a CSM is received, the entry in the database corresponding to the container mentioned in the CSM will be created (or updated if it already exists in the system). The volume of CSMs to be processed per year is estimated to range from 100 to 500 million (depending on whether the carriers finally perform data dump or apply a selective approach submitting only CSMs with the EU nexus). The volume

<sup>69</sup> Assuming that TAXUD's systems ("*Surveillance III*" and "*ECS*") will be the automated data source for the new databases, in the same way that "*NCTS*" is the automated data source for ATIS.

<sup>70</sup> New Computerised Transit System which is a European wide system, based upon electronic declarations and processing.

<sup>71</sup> Common communication network is a private secure network operated by DG TAXUD which is used by customs authorities of the Member States.

of data processing and data storage is expected to be similar to that of the ATIS system currently operational.

The ATIS project has demonstrated that the data processing and storage volumes are not the main cost drivers for the implementation of such a database. Instead, the main cost driver is the complexity of the incoming data, which need to be decoded, parsed and validated prior to loading into the database. Once again, there is an important similarity between the ATIS database and the future CSM database - the incoming raw data follows the EDIFACT format.<sup>72</sup>

Based on the above-mentioned commonalities between the ATIS and CSM implementation projects, OLAF concludes that the retrospective costs analysis of ATIS is a solid basis for the estimation of the CSM database implementation costs. However, the CSM database has an additional degree of complexity as the data will come from economic operators (shipping lines) rather than from IT systems operated by DG TAXUD. This results in the potential risk of having to process the incoming data in multiple formats. For this reason, the development cost estimation for the CSM database is set at EUR 450.000 (ATIS implementation costs plus 20% to account for additional complexity and potential risk), while the yearly operational costs are estimated at the same level (100.000 EUR/year) as ATIS or Import/Export.<sup>73</sup>

The Import/Export and CSM and additional transit data will increase the amount of data to be stored in comparison to the data currently stored in ATIS by factor 10. The cost of the necessary upgrade of the AFIS storage infrastructure is foreseen as part of the development costs of the new databases, therefore in reality, these costs would not cause any increase in the AFIS budget.

The table below summarises the cost estimates for the new databases in terms of one-off development expenditure and yearly recurrent operational costs:

Figure 5: Overview – Costs related to option 2 (objectives 1, 2 and 3)

Actor	Objective 1	Objective 2	Objective 3
MS	0	0	0
Commission <sup>74</sup>	450.000 EUR -development of the database 100.000 EUR – maintenance cost (yearly)	320.000 EUR – establishment of the databases 80.000 EUR– maintenance cost (yearly)	80.000 EUR– establishment of the database 20.000 EUR– maintenance cost (yearly) <sup>75</sup>

<sup>72</sup> EDIFACT is the international EDI (Electronic Data Interchange) standard developed under the UN.

<sup>73</sup> It is assumed that the costs for the development and operation of a centralised database would be equal to the cost of a national database developed by one Member State. This extrapolation is based on the assumption that while some aspects would allow Member States to save the resources (e.g. smaller size of the database), the Commission would also save on a variety of different communication channels needed (e.g. translations, harmonized rules and interface).

<sup>74</sup> There is a budget covering AFIS related development and maintenance. The estimated amounts for suggested modifications should be accommodated within the current financial perspective. Hence, these costs will not require additional budget increase.

<sup>75</sup> Costs of provision of data on national transit by Member States. The costs are estimated on the basis of the current costs incurred by 4 Member States who are currently voluntarily providing transit data on national movements that the cost will be negligible.

<b>Economic operators</b>	If global dump: no costs If selective reporting: 3.000 to 200.000 EUR	n.a.	n.a.
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#### 6.1.4 Option 3: National approach (Member States are responsible and use national databases)

**Overall:** This option addresses the problem in the same way as option 2 (i.e. collecting and using/analysing additional data). Therefore, the *economic impacts* are considered to be equivalent to these generated under option 2. The main difference is with the distribution (and ultimately multiplication) of respective financial and administrative burdens. As it is demonstrated in Figure 6 below, the economic benefits will come at a much higher cost for the Member States and the potential of the economies of scale and added value of acting at the EU level will not be exploited. In addition, under this option also the *simplification* element is reduced due to multiplicity and therein complexity of any procedures based on different national approaches and systems adopted by the Member States. This may arguably add even further to the overall complexity of the existing customs system. It is important to emphasise that Member States expressed their reluctance to the establishment of national databases (see Annex 8: Questionnaire). The industry is also against the adoption of the national approach as it would create significant burden on the shipping companies and would add unnecessary layer of complexity to the system of transmission of data. Because this option involves the imposition of a heavy burden on various stakeholders, it is considered as *incoherent* with the Better Regulation initiative and with the Commission Action Programme for Reducing Administrative Burdens in the EU.<sup>76</sup>

With regard to the operational objectives that this option should aim to satisfy, the following specific benefits, costs and impacts can be identified:

**Objectives 1, 2 and 3** would be achieved by ensuring that Member States are in possession of all data concerning the entire EU, not only data that may potentially be relevant for their national controls and investigations. The maximum possible effectiveness of the implementation, operations and inter-operability of the national systems is here assumed. However, the danger associated with this option is that Member States may nonetheless tend to give priority to national interests and loose from sight the EU dimension of the problem. This risk can manifest itself through setting wrong priorities. Furthermore, as the Commission will in this case neither develop nor operate the IT systems to be used by national administrations, it will inevitably create some divergence in the applied approaches. While mere existence of divergence must not necessarily hamper the overall effectiveness of this option, the establishment of 28 separate databases with different interfaces and procedures poses however a *greater risk* of underexploiting the intelligence. It also possibly distorts competition<sup>77</sup> and the functioning of the Internal Market and ultimately undermines the effectiveness of this approach in combatting customs-related fraud and safeguarding the financial interests of the Union. On the other hand, the Member States will be in possession of all the information that can be utilised for a more successful fight against mis-declaration of origin, mis-description of goods and misuse of the transit system.

<sup>76</sup> Action Programme for Reducing Administrative Burdens in the EU, COM(2007), 23 final.

<sup>77</sup> Generally, diverse systems will be put in place and can possibly create advantages for certain companies depending on which country they are operating.

Inevitably this option creates additional burden on the Member States because a new obligation to collect data would have to be put in place. This runs counter to the Better Regulation initiative which aims at simplifying the procedures and reducing the administrative burdens. The total amount that would have to be spent by each Member State on the establishment of all databases amounts to approximately 850.000 EUR. In addition, each Member State would have to face yearly maintenance costs of all databases amounting to approximately 200.000 EUR. This option shifts the financial burden from the Commission to the Member States. The data to be collected and the process for the establishment of patterns and detectability of fraud as well as the structures in each of the Member States should be similar to the one that would have been established by the Commission under the centralised approach. Consequently, the structures and costs would be multiplied, the analysis would inevitably be divergent and action to be taken would have to be coordinated among Member States through extensive cross communication.<sup>78</sup> It is therefore assumed that the costs for the establishment and operation of the national systems would be corresponding to the estimated costs incurred by the Commission. Importantly, not only does this option imply the replication of a set-up costs but it also means that yearly maintenance cost would be 28 times higher compared to maintenance costs of one central database. There would also be a significant administrative burdens imposed on the businesses because they would have to face different interfaces for databases in all 28 Member States<sup>79</sup>. This would entail a significant loss of resources and unnecessary duplication of efforts. Consequently, this option is highly inefficient (see Figure 6).

- *Costs*

Figure 6: Overview – Costs related to option 3 (objectives 1, 2 and 3)

Actor	Objective 1	Objective 2	Objective 3
MS	(per MS) 450.000 EUR -development of the database 100.000 EUR – maintenance cost (yearly)	(per MS) 320.000 EUR – establishment of the databases 80.000 EUR– maintenance cost (yearly)	(per MS) 80.000 EUR– establishment of the database 20.000 EUR– maintenance cost (yearly)
Commission	0	0	0
Economic operators	If global dump: no costs If selective reporting: 3.000 to 200.000 EUR	n.a.	n.a.

The IT infrastructures of the 28 Member States customs administrations are very heterogeneous and diverse in terms of size and technologies employed. Therefore, the implementation of new databases at national level would vary greatly, which also makes it difficult to establish precise cost estimates on a case by case basis. The table above is based on the assumption that the implementation and operation costs at national level would be **on average** similar to the costs of the central implementation by the Commission; although Member States already possess their national portion of import and export data, the effort to

<sup>78</sup> As opposed to option 2 where there would be an overall (central) coordination assured by the Commission.  
<sup>79</sup> Even if the shipping companies were submitting the data directly to the national database, they would need to establish communication channels with all of them. In the consultation process between the Commission and the World Shipping Council, the latter expressed a clear wish to use one (central) communication channel.

collect and integrate in a national database the data originating from the other 27 Member States (plus in the case of transit also from participating EFTA countries) would be similar to the effort incurred by the Commission if in both cases the source of the data is an existing IT system (e.g. ECS or Surveillance II).

**6.1.5 Option 4: Mixed approach (shared responsibility between the MS and the EU)**

**Overall:** This option is a mixture of options 2 and 3. For the achievement of objectives 1 and 3, the Commission will be responsible for the relevant database on CSMs and therefore the same considerations apply as mentioned under option 2. The achievement of objective 2 will be vested in Member States thus the same considerations apply as mentioned under option 3. In terms of *economic impacts* it is therefore justified to assume the same level of potential benefits to the national and EU revenues stemming from better detection of customs-related fraud. The *simplification* potential in turn, will be realised only to a certain extent, depending on the specific objective in question, i.e. for **objectives 1 and 3** simplification potential identical to the one of option 2; for objective 2 similar to option 3. Similar division will apply in the context of considerations relating to coherence.

This option seeks to assign the respective responsibility for the databases to both the Commission and the Member States. The idea is to profit from the Commission's experience as far as the collection of CSMs and transit data is concerned, and build on the experience of the Member States and their national systems with regard to collection of import and export data. In this context, the Commission is considered to be better placed to be responsible for the relevant databases (i.e. CSM and transit) because it already possesses the necessary experience, expertise and systems to store and process this information, while continuing collection of import and export data at the Member State level as it has been done till now. However, with regards to the latter, the Member States would still have to obtain information from the remaining 27 counterparts on movements relevant to them. The collection, processing, interpretation and communication of that data to other Member States increases the administrative burden and puts a *greater risks* of underexploiting the intelligence and ultimately undermining the effectiveness of this approach in combatting customs-related fraud and safeguarding the financial interests of the Union. This split approach would also bring additional operational challenges in the context of carrying out effective analysis for fraud prevention and detection since this requires cross analysis involving different sets of data (e.g. import data needs to be correlated with CSM data in order to detect anomalies pointing out to mis-declaration of origin).

Given the fact that responsibility is to be shared the same principle applies to financial burdens. The costs of setting up and running necessary systems will be shared between the Member States and the Commission. By consequence, the overall efficiency of this approach will be hindered accordingly.

- *Costs*

Figure 7: Overview – Costs related to option 4 (objectives 1, 2 and 3)

Actor	Objective 1	Objective 2	Objective 3
MS	0	(per MS) 320.000 EUR – establishment of the databases 80.000 EUR– maintenance cost (yearly)	0

<b>Commission</b>	450.000 EUR -development of the database  +100.000 EUR – maintenance cost (yearly)	0	80.000 EUR– establishment of the database  20.000 EUR– maintenance cost (yearly)
<b>Economic operators</b>	If global dump: no costs If selective reporting: 3.000 to 200.000 EUR	n.a.	n.a.

### 6.1.6 Assessment and comparison of the proposed options

Figure 8: Overview of the overall assessment of options (related to objectives 1, 2 and 3)

Criteria Option	Effectiveness			Efficiency (all objectives)	Economic impacts (all objectives)	Simplification			Coherence (all objectives)	Overall assessment
	Obj. 1	Obj. 2	Obj. 3			Obj. 1	Obj. 2	Obj. 3		
Option 0	0	0	0	0	0	0	0	0	--	0
Option 1	+	+	+	+	+	+	+	+	+	+
Option 2	++ +	++ +	++ +	++ (Total cost for the Commission: 850 000 EUR – set up 200 000 EUR – yearly maintenance Total cost for economic operators: If global dump – no cost, if selective reporting - 3 000 to 200 000 EUR )	+++	++ +	++ +	++ +	+++	+++
Option 3 <sup>80</sup>	++	++	++	--- (Total cost for the MS: 850 000 EUR – set up 200 000 EUR – yearly maintenance Total cost for economic operators: as per Option 2	+++	++	++	++	-	+

<sup>80</sup> Although maximum possible effectiveness is assumed, in the perceived risks associated with the options are taken into account in the scoring and affect the expected overall effectiveness;

Option 4	++ +	++	++ +	- (Total cost for MS: 320 000 EUR – set up 80 000 EUR – yearly maintenance Total cost for the Commission: 530 000 EUR- set up 120 000 EUR – yearly maintenance Total cost for economic operators: as per Option 2	++	++ +	++	++ +	+	+
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*Annotation: Magnitude of impact indicated compared to the baseline scenario:*

*+++ strongly positive, ++ quite positive, + positive, 0 like baseline scenario, - negative, -- quite negative, --- strongly negative*

As illustrated in the baseline scenario, option 0 will not only fail to achieve the objectives but it would also possibly lead to worsening of the current situation due to ignoring the Member States' wish as well as the position of the industry, both calling for a legal base as regards obtaining and use of information in question.

Option 1 is considered as positive because it would improve to some extent the situation as compared to status quo. However, its assessment is not higher than positive because the voluntary nature of this option inevitably creates a risk of incomplete data which undermines its overall assessment.

Option 2, on the other hand, is considered as strongly positive because the Commission is already in possession of the necessary systems and experience to run successfully the databases in question. Moreover, option 2 is preferred not only by the Member States but also by economic operators as it creates a cost-efficient and effective solution to the problem of customs-related fraud. The questionnaire<sup>81</sup> carried out earlier in 2012 confirms that Member States share the view that real-time availability of such data, in a synchronised format, would be very useful to fight fraud related to mis-declaration of origin; 22 out of 25 Member States that responded to the question, expressed their appreciation to the ConTraffic project and confirmed that such a database is needed and should be run by the Commission. Importantly, the industry shares the view that this initiative provides a great advantage to the ocean carriers of offering just a single EU interface for data filing, rather than 28 interfaces with their own individual technical and functional specifications and data formats.<sup>82</sup> It is the most effective option in achieving all three objectives as it would offer Member States and the Commission a complete data picture that could be used for detecting customs-related fraud. This option is also considered as the most coherent with the overarching EU objectives, strategies and priorities.

<sup>81</sup> See Annex 8.

<sup>82</sup> Views expressed by WSC during the EU High Level Seminar on Strengthening the Security of the Supply Chain (Customs Risk Management in the EU), 26 March 2013.

Option 3 is considered as positive but, unlike option 2, the idea is to create separate national databases which will create overlaps and would also add a layer of complexity as the same data would be gathered, processed and interpreted by several Member States.<sup>83</sup> Even though economic impacts are considered to be equivalent to those generated under option 2, option 3 imposes a substantial financial burden on the Member States, which diminishes its overall attractiveness. The effectiveness of this option is lower than in option 2 also because of the substantial administrative burdens which render it unacceptable not only for the Member States but also for the industry. Moreover, the overall assessment of option 3 had to be lower because of its low rank in relation to the coherence with overarching EU objectives, strategies and priorities.

In this sense, option 4, avoiding the imposition of excessive financial burdens on Member States and sharing them with the Commission, appears to offer a better solution. However, when compared to option 2, it risks losing sight of the EU dimension in the context of collection and use of data on imports and exports. It also presents additional operational challenges in the context of carrying out effective analysis for fraud prevention and detection since this requires cross analysis involving different repositories. In addition, option 4 takes into account views of the stakeholders only partially (i.e. the preferred option for the industry relating to the CSMs would be maintained, however, decentralised approach for import and export data would be contrary to the explicit wish of the Member States). Also, similarly to option 3, option 4 leads to potential duplication of data on import and export in multiple national databases. Given all these considerations the overall assessment of option 4 is ranked as simply positive.

On the basis of the above comparison of the options, **option 2** is considered as the preferred option.

## **6.2 Impact related to operational objective 4 (speed up OLAF investigations)**

### **6.2.1 Option 0: Status quo**

**Overall:** While no additional costs would be created, one could not expect any positive evolution as regards recuperation of the losses incurred to the European budget currently caused by the prolonged procedures.

### **6.2.2 Option 1: Soft law**

**Overall:** As explained in the description of the problem, timely availability of supporting documents is currently causing unnecessary delays during OLAF investigations. This option presupposes a recommendation issued to the Member States to provide the Commission with the requested documents within a prescribed deadline.

As with option 1 for the objectives 1-3, here too the positive *economic impacts* as regards recuperation of the financial losses to the EU budget would be limited by the fact that most likely not all of the Member States would commit themselves to follow the recommendation and even if they did, this tool's effectiveness would be limited.

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<sup>83</sup> From long term perspective (10 years), the maintenance costs for the option 3 for 10 would be 54 million EUR (27 MS x 10 years x 200 000 EUR (100 000+ 100 000)), while maintenance costs for the option 3 would only be 2 million (200 000 EUR x 10 years).

Firstly, it is unlikely that such a non-binding deadline will indeed ensure speedier investigations as it is assumed that Member States are providing OLAF with relevant documents as soon as they receive them and are not causing intentional delays. In this context, one must keep in mind the fact that after the introduction of the e-Customs, Member States are no longer in possession of the supporting documents and consequently they have to first obtain them from the relevant economic operators themselves. Therefore, an appeal for faster provision of the documents will have a small chance of effectively shortening the time of the estimated 3 to 7 months that is currently needed for obtaining supporting documents.

As far as the *simplification* is concerned, the positive impacts that can be associated with the best-case scenario under option 2, are similarly reduced. The soft law option is however *coherent* with the principle of sincere cooperation as it would ensure (at least to a certain extent) that those Member States who decide to follow the recommendation are cooperating with the Commission by means of better facilitating its work in the field of investigations.

This option would not imply substantial direct costs on the part of the Member States; the only cost would relate to the actual implementation of the recommendation. Other potential costs related to implementation of any internal procedures are not considered here as they are uncertain and quasi impossible to estimate not knowing the exact mechanisms.

### 6.2.3 Option 2: Direct access

**Overall:** This option presupposes empowering the Commission to directly ask economic operators for supporting documents, eliminating the intermediary of the Member State. It is expected that this option may generate the greatest *economic impact* amongst the considered options, leading to recuperation of losses currently caused by prolonged procedures. Based on the experience of OLAF investigators, it is expected that shortening of the investigation process would avoid one-quarter of the time-barred cases which amounts to approximately 140.000 EUR being saved each year.<sup>84</sup> This greater potential creates the opportunity to reduce the average time of 3 to 7 months waiting time for the supporting documents to 2 months<sup>85</sup>, making it possible for OLAF to conclude investigations on time or even to launch investigations which might have been deemed so far unfeasible (as described in chapter 3.3.2.1). In addition, this option would greatly contribute to the *simplification* of the process, by eliminating a need to unnecessarily engage a third party (i.e. the Member States). This option is *coherent* with the Commission's Communication on Customs Risk Management and Security of the Supply Chain<sup>86</sup> which emphasises the need for enhanced cooperation with legitimate business to target illicit traffic. Under this option, currently applicable electronic system governing customs declaration (as explained in section 3.3.2.1) will remain intact which is coherent with the e-Customs Decision and with Modernised Customs Code (both instruments support the idea of computerisation of customs declarations).

Economic operators would not be burdened with any additional costs for storing relevant data as they are already obliged to keep relevant documentation for 3 years. Nor will there be a requirement for automatic reporting from their side. This option was discussed with experts from Member States at the AFIS conference of April 2012. Member States were cautious

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<sup>84</sup> Calculation method used: one quarter of 558.000 EUR (the amount discovered by the Court of Auditors).

<sup>85</sup> The 2 months is the expected duration for obtaining documents in case the Commission is in charge.

<sup>86</sup> Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on Customs Risk Management and Security of the Supply Chain COM(2012) 793 final.

about OLAF obtaining direct access to information from private sector operators but they acknowledged the need for such access.

### 6.2.4 Option 3: Increase resources

**Overall:** This option foresees an increase of a number of investigators working in OLAF and will thus have a substantial impact on OLAF resources. More man-power would inevitably increase chances of speedier conduct of investigations, at least on the OLAF side and thus may lead to a higher level of recuperated revenues. However, timely investigations depend not only on how quickly OLAF processes the files but to a large extent on the fast reactions of other actors (i.e. Member States and economic operators). As a consequence, this option would not address the issue of late responses to information requests.

It is also worth noting in this context that any increase of staff would be incompatible with the medium-term staff reductions planned by the Commission.

### 6.2.5 Option 4: Returning to pre-2010 situation

**Overall:** This option implies that delays could be avoided because the Member States would automatically be in possession of the supporting documents and so they would be able to quickly communicate this data to OLAF. The *economic impact* associated with recuperation of due customs duties thanks to successful (i.e. timely) investigations would be equal to the one analysed under option 2. On the other hand, however, this option would not only be costly in terms of reversing the investments made for introducing e-Customs but mainly it would mean doing away with wide-ranging policy options taken by the Member States and the Commission. In addition, it would add extra burden on the Member States related to the unnecessary collection (and creation of electronic versions) of *all* supporting documents, of which the costs can be considered disproportionate (as not all of them would be needed/used).

The *simplification* potential is substantially hampered under this option as it would be required from the Member States to return to the procedure that has already been once changed by the EU. Moreover, this option would create a possible *incoherence* with the e-Customs Decision and with the Modernised Customs Code which emphasise the need for computerisation of customs declarations. Returning to paper-based system would be against Commission Action Programme for Reducing Administrative Burdens in the EU.<sup>87</sup>

This solution is not expected to affect business because they are already required to keep the relevant documentation for a period of 3 years. Nonetheless, they would have to face some administrative costs of supplying all the documents to the relevant customs authorities.

### 6.2.6 Overview of costs per option

Figure 9: Overview – Costs related to proposed options (linked to objective 4)

Actor	Option 1	Option 2	Option 3	Option 4
MS	0	0	0	Costs of possible expansion of IT systems to store electronic versions of supporting documents

<sup>87</sup> Action Programme for Reducing Administrative Burdens in the EU, COM(2007), 23 final.

<b>Commission</b>	Administrative cost of issuing a recommendation – negligible cost	0	The exact cost estimation depends on the extent of the increase in resources, difficult to quantify.	Administrative cost related to the amendment of the current customs system (R.515/97 and/or E-Customs Decision).
<b>Economic operators</b>	No additional costs to store relevant information as economic operators are already obliged (by the Customs Code) to keep these documents for 3 years.	No additional costs to store relevant information as economic operators are already obliged (by the Customs Code) to keep these documents for 3 years.	0	Significant costs for economic operators of providing all supporting documents to MS. Such costs are difficult to quantify as they depend on the size of the enterprise and the number of operations.

## 6.2.7 Overview assessment and comparison of the proposed options

Figure 10: Overview of overall assessment of options (related to objective 4)

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

*Annotation: Magnitude of impact indicated compared to the baseline scenario:*

+++ strongly positive, ++ quite positive, + positive, 0 like baseline scenario, - negative, -- quite negative, --- strongly negative

Option 1 is considered as quite positive because firstly it creates a potential for simplification of the procedures in cases where Member States would follow the recommendation and secondly it should not impose any significant financial burdens on the stakeholders concerned. In addition, it is considered as quite positive as far as the coherence is concerned. However, since it is expected to bring about only limited positive impact and achieve the objective to a low extent due to the voluntary nature of the solution proposed therein and the current legal set-up (i.e. the e-Customs), it is ranked lower than option 2. Option 2 is expected to bring the greatest economic results in the form of recuperated revenue from unduly evaded customs duties, at the lowest price; by eliminating the intermediary of a third party, i.e. the Member States, it presupposes that the only time spent on obtaining relevant documents would be the time needed by economic operators to supply information which they already have to OLAF. Also, the problem that OLAF is currently facing (namely cases where MS are not in position to assist OLAF in obtaining those documents – see example in the problem definition) would be eliminated by addressing requests directly to those who are in possession of the documents in question. This option is considered as positive from a coherence perspective because it is in line with the Commission's Communication on Customs Risk Management as well as e-Customs and the Modernised Customs Code. For these reasons, option 2 is regarded as strongly positive in the overall assessment. Option 3 is marked as positive because it has the potential of addressing the problem of speeding up OLAF

investigations. However, because of the significant financial burden, in overall it is considered less beneficial than option 2. Moreover, it can potentially encounter low acceptability in the time of global ‘resource crunch’. Option 4 is perceived to be least attractive because despite its high potential for speeding up the investigations thanks to the direct access to the supporting documents, it requests a disproportionately high price, can create legal hurdles and is incoherent with the existing legislation governing the computerisation of customs declarations.

On the basis of the above comparison of the options, **option 2** is considered as the preferred option.

**6.3 Conclusions on preferred options**

Following careful assessment of various proposed policy options from the perspective of their effectiveness, efficiency and potential impacts they are likely to generate, the following options were selected as preferred:

Figure 11: Overview of preferred options for each (set of) objective(s)

Operational objective	Preferred option
Objective 1,2,3	EU approach involving the creation of a central database for CSM, import, export and transit related data
Objective 4	Direct access to supporting documents

It is considered that the mixture of preferred options presented in the above table is the most suitable and proportionate for the purposes of achieving operational objectives. The system for fighting customs fraud is hampered by insufficient information available, hence the intention is to make the current framework more effective (by making the necessary information more easily available) without however imposing unnecessary burdens on both the Member States and the businesses. Therefore, as far as the fight against customs-related fraud is concerned, it is suggested that the centralised EU approach is to be adopted. This will ensure that corresponding administrative burdens of providing relevant data are minimised to the highest extent possible. Both the Member States and economic operators will be required to provide information in question only once to the Commission, so that it can be used for the purposes of fighting customs fraud and will therefore benefit the entire EU. The intention to minimise administrative burdens and facilitate simpler processes is also behind the preferred option for speeding up OLAF investigations. In this context, the preferred option is seeking to ensure that economic operators can be directly approached with a request to provide supporting documents when, and only then, there is an added value on the part of OLAF to obtain them (i.e. when the documents are considered as necessary for the purposes of OLAF investigations).

**7 Monitoring and Evaluation**

This section describes the monitoring and evaluation indicators that need to be put in place in order to check if the implementation of policy is on track and the extent to which the policy is achieving its objectives, with emphasis on the monitoring of the effects resulting from the implementation of the policies. The approach to monitoring and evaluation is outlined with respect to the policy objectives pursued.

## 7.1 Monitoring

**Timing:** yearly

**Scope:** monitoring the effects of the policy objectives by means of various indicators presented below

**Nature of evaluation:** presentation of the results in the Mutual Assistance Committee by OLAF

The table below provides the effects of the implementation of the policy objectives which will be monitored by means of the indicators below.

Figure 12: From problems to operational objectives

Objective	Indicator
Increase the <b>detectability</b> , prevention and prosecution of customs fraud related to <b>mis-declaration of goods origin</b>	Export/import/transit data/CSMs: number of detected breaches of legislation, number of investigations opened based on these data, number of requests for use of data by investigators, amounts recovered on the basis of such information
Increase the <b>detectability</b> , prevention and prosecution of customs fraud related to <b>mis-description of goods</b>	
Increase the <b>detectability</b> , prevention and prosecution of customs fraud related to <b>misuse of the transit system</b>	
Speed-up OLAF investigations	Duration of related OLAF investigations (whether the change resulted in faster procedures but also whether it increased the number of investigations and the amounts recovered)

The data on investigations would be collected by OLAF. New statistics will be produced focusing on specific investigations related to Regulation 515/97. As regard the databases, its use can be measured by reports prepared on data stemming from this database and cases opened on the basis of these reports (as well as related amounts recovered). Annual questionnaire with the MS should be prepared to confirm the use of the reports for detecting fraud and results to be reported to the Mutual Assistance Committee as well as to the Council group.

## 7.2 Evaluation

With respect to the operational objectives, the Commission services responsible (OLAF), will ensure that evaluation is carried out every 5 years.

**Timing:** every 5 years

**Scope:** results and impacts related to the increased detectability of fraud thanks to the database and the analysis carried out on the basis of the available data and information (effectiveness);

efficiency and relevance of the introduced measures.

**Nature of evaluation:** presentation of the results in the Mutual Assistance Committee by  
OLAF

The evaluation will be premised on data gathered during the monitoring activities.

## Annex 1: Glossary

- AFIS – Anti-Fraud Information System; an umbrella term for a set of anti-fraud applications operated by the Commission (OLAF) under a common technical infrastructure aiming at the timely and secure exchange of fraud-related information between national and EU competent administrations. AFIS includes CIS, FIDE and ATIS, as well as a number of specialised applications.
- ATIS – Anti-Fraud Transit Information System; a system operated by OLAF used for analysis of transit-related data in order to detect abnormal patterns in the transit movement and diversion of destination.
- CIS – Customs Information System; an automated information system which helps to prevent, investigate and prosecute breaches of customs legislation. This database contains both data relating to the exclusive and the shared competences of the Commission.
- CJSA – Customs Joint Supervisory Authorities; established by Council Decision 2009/917/JHA on the use of information technology for customs purposes. CJSA is responsible for supervising the CIS part related to Member States competence. The Authority inspects the central CIS database, offers advice and can examine issues relating to access requests by data subjects.
- CSM – Container Status Message(s); detailed information on the movement and status changes of a container as it travels through certain parts of the supply chain.
- EDPS – European Data Protection Supervisor; an independent supervisory authority devoted to protecting personal data and privacy and promoting good practice in the EU institutions and bodies. It does so by monitoring the EU administration's processing of personal data; advising on policies and legislation that affect privacy; and co-operating with similar authorities to ensure consistent data protection.
- FIDE – (Fichier d'Identification des Dossiers d'Enquêtes Douanières – Customs files identification database) is a database which facilitates investigations carried out by the Commission and the competent national authorities. It brings together files relating to persons and businesses that have been suspected or found guilty of offences. This database contains both data relating to the exclusive and the shared competences of the Commission.
- MS – abbreviation for Member State
- NCTS – New Computerised Transit System; electronic data interchange system for transit declarations; due to replace the traditional paper procedure in the Community as well as in the EFTA countries (Iceland, Norway, Switzerland) and two new members of the Common Transit Convention, Croatia and Turkey.
- WSC – World Shipping Council; industry trade group representing the international liner shipping industry. Its goal is to provide a coordinated voice for the liner shipping industry in its work with policymakers and other industry groups with an interest in international transportation.

## Annex 2: Scale of the problem

The table below provides a quantified summary of the scale of the problems areas addressed.

<b>Table 1: Estimated scale of the problem</b>	
<b>Problem</b>	<b>Scale</b>
Mis-declaration of origin	<ul style="list-style-type: none"> <li>- MS reported 186 cases of detected fraud and irregularities</li> <li>- 2011: damage of 17.6 million EUR</li> <li>- 2011, for EU27, more than 1.500 cases of false declaration of origin, estimates of losses: min 25 million EUR; more likely exceeding 100 million EUR.</li> </ul>
Mis-description of goods	<ul style="list-style-type: none"> <li>- MS reported 1905 cases of detected fraud and irregularities</li> <li>- a damage of 107.7 million EUR</li> </ul>
Misuse of the transit system	<ul style="list-style-type: none"> <li>- 2006 to 2010 for EU27: more than 3800 breaches of customs legislation</li> <li>- damage around 60 million EUR (related to transit)</li> </ul>
Delays in OLAF investigations and the resulting time-barring	<ul style="list-style-type: none"> <li>- 2010 audit: In the 274 declarations checked, 49 errors were found, giving rise to 558 000 EUR of loss of duty. These amounts are time-barred and therefore can no longer be recovered.</li> <li>- IPR example: 2011: 91 000 cases with almost 115 million articles involved, retail value of the infringing articles: over 1.2 billion EUR.</li> </ul>

## **Annex 3: Working document: Commission requirements for the Container Status Messages**

Subject: Working document addressing the collection of the CSM (Container Status Messages) under the to-be-revised Regulation 515/97 – Requirements for container transport operators (container carriers)

Reference: Draft Version 3.1

### **DISCLAIMER:**

This is a working paper. It has been drafted with the aim of promoting discussions with the relevant stakeholders. The requirements expressed in this paper do not necessarily embody future rules of law, and should not be presented as such.

## **SECTION 1: REQUIRED DATA**

### *a) Container Status Messages (CSMs)*

Ocean carriers shall, subject to the general conditions set forth in Section 2, submit<sup>88</sup> to the central repository created for this purpose by the European Commission / OLAF Container Status Messages (CSMs) for all containers laden with cargo destined to arrive within the limits of an EU port from a third country port by vessel:

- Whenever occurs an event specified in b),
- Within the time limits specified in c1),
- During the time period specified in c2),
- Reporting the data elements specified in d),
- In the message formats specified in e), and
- By means of a data-interchange communication protocol specified in f).

### *b) Events to be reported*

The following events must be reported if the ocean carrier creates or collects a container status message in its electronic equipment tracking system reporting that event:

- When the booking relating to a container which is destined to arrive in the customs territory of the Union by vessel is confirmed,

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<sup>88</sup> or make electronically available

- When a container, which is destined to arrive in the customs territory of the Union by vessel, arrives or departs a facility<sup>89</sup>,
- When the container, which is destined to arrive in the customs territory of the Union by vessel, is loaded on or unloaded from a conveyance<sup>90</sup>,
- When a container which is destined to arrive in the customs territory of the Union by vessel is confirmed stuffed or stripped,
- When a container which is destined to arrive in the customs territory of the Union by vessel undergoes an intra-terminal movement,
- When a container which is destined to arrive in the customs territory of the Union by vessel is ordered stuffed or stripped.

NB: At its convenience, a carrier may transmit other container status messages in addition to those related to the events specified in paragraph (b) of this section.

#### *c1) Time limits for reporting*

For each event specified in b), the ocean carrier must transmit the CSM no later than 24 hours after the CSM is entered into the ocean carrier's electronic equipment tracking system.

NB: For containers destined to arrive in the EU, and at its convenience, a carrier may postpone the time of transmission of CSMs to the moment the transmission of the ENS (Entry Summary Declaration) is due.

#### *c2) Time period of reporting CSMs*

The time-period of CSM reporting starts when the ocean carrier knows that the container is destined to arrive within the limits of an EU port – that is to say, when an EU-nexus can be established. If, at this point in time, the container is not empty, carriers shall communicate – in addition and simultaneously to the first reported event – all past CSMs related to the container, back from the moment the container has been reported empty<sup>91</sup>.

The time-period of CSM reporting ends when the container is reported again empty after the arrival in the EU.

NB: At its convenience or in case it is not possible to determine specific "empty-container events", a carrier may report CSMs corresponding to the following time-periods: 3 months prior to arrival in EU and 1 month after the arrival or when a non EU location is reached (whichever happens first).

#### *d) Content of messaging*

Each CSM submitted to the central repository operated by OLAF for this purpose must include the following data fields:

1. Event code being reported as defined in the ANSI x.12 or UN EDIFACT standards;
2. Container number;
3. Date and time of the event being reported;

<sup>89</sup> These events take place when a container enters or exits a port, container yard, or other facility. Generally, these CSMs are referred to as "gate-in" and "gate-out" messages.

<sup>90</sup> This includes vessel, feeder vessel, barge, rail and truck movements. Generally, these CSMs are referred to as "loaded on" and "unloaded from" messages.

<sup>91</sup> Indicated as backward-reporting (A) in Fig 1.

4. Status of the container (empty or loaded);
5. Location where the reported event took place; and
6. Vessel identification (IMO number) associated with the CSM in case the container is associated with a specific vessel.

NB: At its convenience, the carrier may transmit other data fields in addition to those required pursuant to paragraph (d) of this section.

*e) Message formats*

Commission's preferred format for messages is UN EDIFACT (namely COARRI, CODECO, COPARN, COREOR, COSTOR and COSDCO). ANSI X.12 (namely 322 v4010/5010 and 315 v4010/5010) format will also be accepted.

*f) Methods of transmission:*

Commission's preferred protocol of transmission is sFTP. Until January 2015, other communication protocols will need to be agreed upon with the Commission.

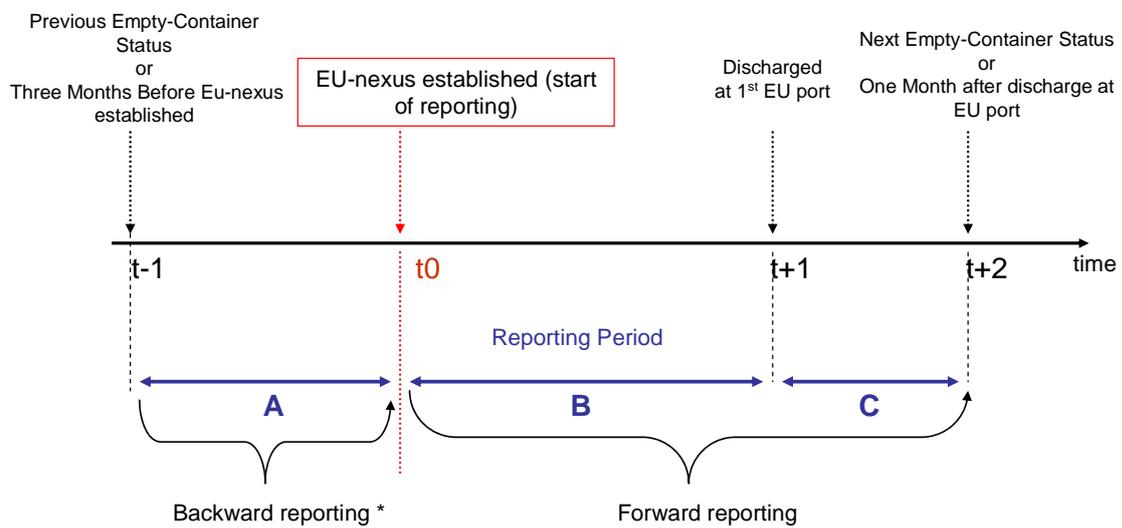
## **SECTION 2: GENERAL CONDITIONS**

Ocean carriers are only required to submit CSMs that are created or collected in the carrier's electronic equipment tracking system. Ocean carriers are not required to create or collect any CSM data other than those the carrier already creates or collects on its own and maintains in its electronic equipment tracking system.

An ocean carrier may, at its convenience,

- a) submit on a daily basis, and in batches, all CSMs generated or collected in the carrier's electronic equipment tracking system within the last 24 hours,
- b) submit all CSMs generated or collected in the carrier's electronic equipment tracking system regardless of whether the CSM concerns a container which is destined for the Union or not ("global data dump").
- c) provide the Commission daily with a list of 'active' containers and with a password, hence enable the Commission to (pull) obtain the necessary information through requests to carriers online services for clients.

By submitting all of its CSMs without pre-filtering for destination/origin, the container carrier authorizes the European Commission and the competent MS' authorities to use the "global data dump" in the same way and for the same purpose as the specified requested data concerning EU destination. If the ocean carrier opts for this mode of reporting, all information obligations are considered to be fulfilled.



\* Backward reporting is required only in case the container is not empty at moment EU-nexus is established

Figure 13 - Reporting Time-Period

## **Annex 4: Anti-fraud Information System (AFIS)**

### **The current situation**

OLAF has developed, maintained and operated the Anti-Fraud Information System (AFIS) for more than 10 years.

AFIS is an umbrella term for a set of anti-fraud applications operated by the Commission (OLAF) under a common technical infrastructure aiming at the timely and secure exchange of fraud-related information between national and EU competent administrations.

AFIS supports Mutual Assistance in Customs Matters with collaboration tools like OCU (Operations Coordination Unit) used for Joint Customs Operations; secure web mail (MAB-Mail), specific information exchange modules and databases like MAB (Mutual Assistance Broker), CIS (Customs Information System) and FIDE (Customs Investigation Files Identification Database); and analysis tools like ATIS (Anti-Fraud Transit Information System).

The mutual assistance databases CIS and FIDE are in fact four databases (CIS-EU, CIS-MS, FIDE-EU, FIDE-MS) due to the split between the EU exclusive competence (ex-1<sup>st</sup> Pillar) and the MS shared competence (ex-3<sup>rd</sup> Pillar).

CIS is a database where cases of customs fraud (established or suspected) are stored for the purposes of discreet surveillance, specific controls and sighting, reporting, operational analysis and strategic analysis. Its aim is to assist in preventing, investigating and prosecuting operations which are in breach of customs agricultural legislation by making information available more rapidly.

CIS cases may contain (including personal data) the following data categories: commodities, drugs, weapons, means of transport, businesses, persons, goods and cash (retained, seized or confiscated), fraud trends and available expertise.

FIDE is a French acronym derived from "Fichier d'identification des dossiers d'enquêtes douanières". FIDE enables the identification of competent authorities (and contact persons) of other Member States which are investigating (or have investigated) the same legal or natural person in order to coordinate their investigations. FIDE cases may contain (including personal data) the following data categories: commodities, cash, drugs, weapons, businesses, persons, suspicions, infringements and sanctions.

There is a major difference between FIDE and CIS cases in practical terms, whilst the later can be very detailed and may contain large amounts of information fields and attached documents, the first are very succinct.

### **Financing**

The funding of the AFIS service platform is based on the Regulation 515/97 amended by Regulation 766/2008, in particular its title VI, financing, article 42a.

AFIS has been funded in the period 2007-2013 from the operational budget line 24 02 03, with a funding of 6.2 million € in 2012 and 6.7 million € planned for 2013.

The planned funding for AFIS in the new MFF 2014-2020 is earmarked at an average of 7 million €/year. This level of funding is sufficient to achieve the objectives of the reform of Regulation 515/97 and Council Decision 2009/917/JHA. The IT infrastructure costs of the initiatives proposed by OLAF shall be borne by the planned budget and are designed to have minimal or no impact on the IT infrastructure cost for the Member States combined with a significant reduction in the operational costs of both the Commission and Member States.

AFIS is regularly audited by Data Protection supervisory authorities (EDPS, CJSA) as well as audit and control bodies (ECA, IAS, IAC).

### **The need for restricted visibility for Mutual Assistance databases**

Progress towards the establishment of restricted visibility would enable the Commission to develop solutions for two problems inherent to the system, complexity and trust; both represent severe obstacles preventing wider and smoother use of the Mutual Assistance databases and information exchange modules as they are today.

The problem of complexity arises from the fact the AFIS/MAB (Mutual Assistance Borker) integrates different databases (CIS-EU, CIS-MS, FIDE-EU, FIDE-MS) and information exchange modules to support the work of expert groups or user communities: MARINFO for the illicit traffic by sea container, YACHTINFO for the illicit traffic by small or pleasure vessels and CIGINFO for the illicit traffic of genuine or counterfeit tobacco products.

The seizure of a container of counterfeit cigarettes illustrates the problem of complexity that both the users of the system providing the data and the analysts who have to exploit it face today. Such a seizure can be potentially recorded in CIS-EU, FIDE-EU, MARINFO and CIGINFO, one individual case can create up to four different records. Although the current system has eased the input of the case following the vision of "one seizure, one report" and the case can be created in the four modules at once (CIS-EU, FIDE-EU, MARINFO and CIGINFO), the difficulties starts after the initial publication of the case, when it splits into four different cases that have to be maintained separately.

Depending on the nature of a case, the access rights of the user and the policy applied by each Member State, a single case may be published in one or more, up to four, different databases and/or modules. This variable multiplicity makes very difficult the management of the case life-cycle (updates, cancelations, etc) and it complicates enormously the exploitation of the data to fulfil the purpose of the system as statistics and trend analysis often suffer from data duplication and other quality issues.

Another inherent problem to the system is that of trust. Some Member States have been reluctant to use the database and exchange modules because they cannot control who can have access to their cases, in other words, once a case is published, all EU Member States have access to the data and even some Third Countries if MARINFO, YACHTINFO and CIGINFO are used. Some Member States feel that the current model is inappropriate to handle sensitive cases, hence the seldom use the system.

Restricted visibility is the solution addressing problems, complexity and trust, explained above. This mechanism would enable an individual case to be stored only once. A single record to manage will make the system simpler and more user-friendly and would also streamline its technical implementation and operational costs.

The restricted visibility works through the application of two layers of constraints. The first layer of constraints is automatically applied by the system based on a predefined set of business rules on the basic parameters from the case, such as the fraud type, the commodities or the means of transport involved. For instance, a case involving drugs seized on a yacht can become a CIS-MS, FIDE-MS and/or YACHTINFO case, but this case can never become a CIS-EU, FIDE-EU, MARINFO or CIGINFO case.

The second layer of visibility constraints is applied by the case owner, who will control who can have access to his case. These visibility restrictions chosen by the case owner can be applied with different levels: at user community / experts group level, at Member State level and at organisation or service level. Using the same example of a drugs seizure in yacht, the case owner will first decide who can see the case at user community / experts group level, having the possibility to choose one or more from the available options for this case: CIS-MS, FIDE-MS and/or YACHTINFO. Further restriction of visibility can be applied at Member State level, the users will be able to establish a list of Member States who can access the case. And finally, if the sensitivity of the case requires it, the user could specify specific services within Member States who can have access to the case.

When a user searches the system to retrieve cases from the new database with restricted visibility, the system will take into account the organisation and Member State the user belongs to as well as the access rights that he has been granted. These user details will be crossed with the access restrictions of the cases in the search results; the user will only have access to those cases where the access restrictions are satisfied.

The search could implement a "hidden hit" functionality, whereby the user will be notified by the search results of those cases that match his search criteria but he could not access due to unfulfilled visibility restrictions, the user could still contact the data owner to request access to case. This "hidden hit" function will provide transparency and foster cooperation amongst the different national services using the system. This feature has been implemented in other systems and has proved to be very useful.

### **The need to extend the transit database**

OLAF has a repository of transit declarations called ATIS (anti-fraud transit information system) which is operational since July 2009, initially for movements of sensitive goods only (goods involving higher risk of fraud, listed in Annex 44c to Regulation 2454/93 and Annex 1 of Appendix 1 to the Common Transit Convention) which represent less than 1% of the transit movements. Since fraud cases often involve the false declaration of sensitive goods as non-sensitive ones, ATIS was extended to transit movements of all goods as of September 2011.

The ATIS repository is automatically fed from the NCTS (New Computerized Transit System) system operated by DG TAXUD, which means that Member States incur no extra operational cost to maintain this repository. In addition, the extension of ATIS was implemented using message duplication services in the gateways of the CCN network, thus no

modification of the national transit systems was required, the implementation took place with no cost for the infrastructure or IT budgets of the National Customs Authorities.

The ATIS database has proved to be very useful for OLAF analysis in the support of investigations. ATIS is as an AFIS service, therefore the database and its weekly analytical reports are available to the 27 Member States and participating EFTA countries.

However there are limitations and shortcomings. ATIS only covers 70% of the movements in the transit regime; the majority of national transit movement (within only one country) are not present in ATIS. OLAF receives the AAR (advanced arrival record) of the transit movement and audit files from NCTS. Audit files allow only limited tracking and tracing possibilities; for instance, changes of destination while in transit and controls of the load are very important events in anti-fraud analysis, the NCTS audit files allow the detection of such events but the relevant details (new office of destination and control result) are unknown.

Over the past years, OLAF has performed operational analysis for a variety of cases involving the withdrawal of goods from the transit regime. For a great majority of transit movements either suspected or proven to be fraudulent, the transit procedure had been 'broken down' into several smaller legs. An example of such movements took place when a specific commodity carried out by one operator as either consignor or consignee; whilst some consignments were shipped directly from The Netherlands and Germany to the external Polish border, the vast majority were literally transhipped via an internal Customs office to be put immediately after in transit to the external border offices for export. No considerable storage times took place in between the two transit procedures.

Due to the absence of national movements in the current ATIS database, the intended export of goods is not visible at the moment (including e.g. the information of the intended final consignee of the goods). This is particularly vital for cases as the example above, as it was suspected that the withdrawal of goods had taken place during the second transit procedure destined for export.

ATIS is based on an administrative arrangement approved by the Member States and participating EFTA countries. However, further modification of the arrangement to realize the full potential or to include new participating countries, for instance Croatia before it becomes EU member, is almost impossible due to the fact that some Member States have expressed that ATIS would require a more solid legal basis than an administrative arrangement for further evolution or extensions, thus any modification attempt risks to be blocked. In order to guarantee the needed evolution, the legal basis for ATIS has to be migrated from its administrative arrangement to the new regulation on mutual assistance.

### **New databases for import and export declarations and container status messages**

The ATIS database contains as of October 2012 information on some 8.3 million transit movements representing more than 40 million movements of goods, the database grows at the rate of 600.000 transit movements (representing 3 million movements of goods) per month.

The ATIS project demonstrates that OLAF not only has the experience to set-up and to operate new large scale databases. Furthermore, thanks to the excellent cooperation with DG TAXUD, it is proven that this can be done in fast and cost effective manner based on the interconnection of existing system.

The same way that ATIS is automatically fed from the NCTS system, the table below shows the intended automated data source for the new databases:

<i>Database</i>	<i>Data Source</i>	<i>Operated by</i>
<b>Transit declarations</b>	New Computerized Transit System (NCTS)	EC, DG TAXUD
<b>Import declarations</b>	Surveillance II	EC, DG TAXUD
<b>Export declarations</b>	Exports Control System (ECS)	EC, DG TAXUD
<b>Container Status Messages</b>	Container Tracking Systems	Shipping Lines

It is emphasised that the new databases will be implemented as new services of the AFIS platform, leveraging on an infrastructure that has been operational for 10 years for which governance and an IT security frameworks are in place. The use of the AFIS platform also guarantees the user management, access to the infrastructure and economies of scale by sharing common infrastructure elements and management tools across multiple services.

The implementation of the new AFIS databases for import and export declarations and container status messages will be based on the same principles as the implementation of the ATIS extension, these are:

- Automated data processing from existing systems as data source (table above) to avoid additional operational costs for Member States and redundant processing of the same data.
- Centralized implementation in cooperation between OLAF and TAXUD with no direct impact on the infrastructure of the Member States.
- The new databases will have analytical and reporting services available to the competent Commission services and to the Member States via the AFIS platform.
- The development costs and subsequent operational costs are planned to be absorbed by the AFIS budget with no need to increase the funding above the current level. The project of new databases will not give rise to any costs for the Member States.

The table below contains the expected data volumes to be gathered by the new databases:

<i>Database</i>	<i>Volume</i>	<i>Development Cost (one time)</i>	<i>Operational Cost (per year)</i>
<b>Transit declarations (with national movements)</b>	11 Million / year	400.000 €	100.000 €
<b>Import declarations</b>	37 Million / year		
<b>Export declarations</b>	12 Million / year		
<b>Container Status Messages (CSMs)</b>	20 Million *	450.000 €	100.000 €

\* Based on the current estimation of the number of containers in circulation worldwide.

## **Annex 5: Need for Container Status Messages and the ways to obtain them**

In its consultations with the deep sea carrier companies and the World Shipping Council, the Commission put emphasis on the potential administrative burden that the mandatory supply of CSMs could put on the companies. It is noted in this respect that such a practice is already present in US legislation, known as the 10+2 rule<sup>92</sup>, which requires cargo information, for security purposes, to be transmitted to the authorities at least 48 hours before goods are loaded onto an ocean vessel for shipment into the U.S. Ten elements are requested from the importer and two from the carrier; one of these two are the 'Container Status Messages'.

Providing the required CSMs to the Commission would represent a very limited burden on the carrier companies. This is partly because the companies have already experience and, to some extent, the equipment necessary for supplying such information; this is because this data is similar to the one required under US law<sup>93</sup>. In addition, companies may choose to provide the required data in ways that are less costly than others; for example, allowing the Commission to gain access to the data through the use of a password, or providing the data through a 'global dump' approach<sup>94</sup> is clearly less expensive than supplying data specifically selected.

A measure that should definitely reduce cost of implementation for the companies concerned is the intended centralisation of data on CSMs. It will be more efficient and less problematic for companies to provide CSM data once to the Commission, which would then be responsible for disseminating the same data to each individual Member State. This was clearly stated during the consultation with the deep sea carrier companies and the World Shipping Council.

In addition, analysis of movements of containers, will allow a better targeting of controls. In this way, there is a possibility that the controls affect more the carriers for which no data is available. Consequently, companies may benefit from providing data, in the way of avoiding time consuming customs controls.

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<sup>92</sup> [http://www.cbp.gov/xp/cgov/trade/cargo\\_security/carriers/security\\_filing/](http://www.cbp.gov/xp/cgov/trade/cargo_security/carriers/security_filing/) and <http://cfr.regstoday.com/19cfr4.aspx>

<sup>93</sup> [http://www.cbp.gov/linkhandler/cgov/trade/cargo\\_security/carriers/security\\_filing/ra.ctt/ra.pdf](http://www.cbp.gov/linkhandler/cgov/trade/cargo_security/carriers/security_filing/ra.ctt/ra.pdf) . Section 4-29 presents an estimation of the costs associated with CSMs. From the US example, it seems that "global dump" is by far the cheapest solution and similar 'low costs' can be estimated by an EU "global dump" solution. As regards the "selective reporting" the EU relevant costs might differ from US cost-estimations, because the EU "reporting rules" are more complex than the ones used by US.

<sup>94</sup> 'Global data dump' is an approach whereby the companies would put at the disposal of the Commission all their CSM data and the Commission would select the ones that are required for analyses.

## **Annex 6: References to official documents:**

### *Legislation:*

- Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters
- Regulation (EC) No 766/2008 amending Council Regulation (EC) No 515/97
- Council Decision 2009/917/JHA of 30 November 2009 on the use of information technology for customs purposes
- e-Customs Decision 70/2008/EU for a paperless Customs environment
- Council Regulation No 2913/92 of 12 October 1992 establishing the Community Customs Code

### *Case Law:*

- ECJ C 201/04 Molenbergnatie [2006] ECR I 2049
- Joint cases C 124/08 and C 125/08 Snauwaert and Others [2009] ECR I 0000

### *Communications:*

- Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on Customs Risk Management and Security of the Supply Chain, COM(2012) 793 final
- Communication from the Commission, Strategy for the evolution of the Customs Union COM(2008) 169 final
- Communication from the Commission, Protection of the Communities' financial interests, The fight against fraud For an overall strategic approach COM(2000) 358 final
- Communication from the Commission on the protection of the financial interests of the European Union by criminal law and by administrative investigations, An integrated policy to safeguard taxpayers' money, COM(2011) 293 final
- Communication from the Commission on the Commission Anti-Fraud Strategy, COM(2011) 376 final

### *Reports:*

- Report of the European Anti-Fraud Office; Summary version; 8<sup>th</sup> Activity Report (2007)
- OLAF Report 2011
- Commission Follow-up Report 2010 to European Parliament Resolution P6 TA (2007 0432) of 11. 2007

*Additional documents:*

- ICTSD Background Paper, International transport, Climate Change and Trade – What are the options for Regulating Emissions from Aviation and Shipping and what will be their impact on trade?, available at:  
<http://ictsd.org/downloads/2011/12/international-transport-climate-change-and-trade.pdf>
- Member States' Questionnaire: Member States Responses to “Questionnaire regarding the upcoming AFIS conference on 10-11 May 2012 and the planned review of the Council Regulation 515/97 and the Council Decision 2009/917/JHA”
- Documents related to the US 10+2 rule: “19 CFR Parts 4, 12, 18, et al. Importer Security Filing and Additional Carrier Requirements; Final Rule”, Federal Register, Department of Homeland Security, 25 November 2008
- Document “110621\_1403 rev6 final ATIS ADMINISTRATIVE ARRANGEMENT-original-for translation.doc”, the Administrative Arrangement on the Anti-Fraud Transit Information System (ATIS)

*Press releases:*

- Press release: Chinese garlic smugglers intercepted, OLAF/10/06 available at:  
[http://europa.eu/rapid/press-release\\_OLAF-10-06\\_en.htm](http://europa.eu/rapid/press-release_OLAF-10-06_en.htm)
- Press release: Smuggled garlic intercepted in Poland, OLAF/11/1, available at:  
[http://europa.eu/rapid/press-release\\_OLAF-11-1\\_en.htm](http://europa.eu/rapid/press-release_OLAF-11-1_en.htm)

## **Annex 7: List of formal consultations with Member States conducted in preparation of the Impact Assessment**

1. The "Mutual Assistance Committee", also called "**Art. 43-Committee**", consisting of the representatives of Member States responsible for mutual assistance matters, established by Article 43 of Regulation 515/97, examines all matters relating to the application of the Regulation. In its latest meetings in May and September 2012, Member States' representatives were informed about the state of play of the review process for Regulation 515/97.
2. A consultation of the Member States by means of a **questionnaire** was launched in February 2012.<sup>95</sup>
3. In May 2012, the Commission organised the **AFIS<sup>96</sup> Conference** to collect feedback and suggestions from Member State experts on the overall functioning of the Anti-Fraud Information System, also including the implementation and prospects of Regulation 515/97. The discussions focused primarily on the possible ideas for the improvement of Regulation 515/97. Germany, for instance, emphasised the need to ensure that the Regulation contains clear legal provisions. It also proposed to provide for the legal basis for coordinated audits – similarly to what has been done in the area of VAT and excise duties.

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<sup>95</sup> See Annex 8.

<sup>96</sup> AFIS: Anti-Fraud Information System – see Annex 1, Glossary.

## **Annex 8: Questionnaire**

### **Questionnaire regarding the AFIS conference on 10-11 May 2012 and the planned review of the Council Regulation 515/97 and the Council Decision 2009/917/JHA**

*Questionnaire summary – 05.07.2012*

Prepared by Gartner  
Gartner reference: 33006852

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### 1. Introduction

In accordance with the Commission Work Programme 2012, the European Anti-Fraud Office OLAF has been reviewing the Council Regulation 515/97 and the Council Decision 2009/917/JHA (replacing the CIS Convention) on the basis of the legal provisions of the Lisbon Treaty.

As part of this review, an impact assessment has taken place. To gather evidence for this impact assessment, OLAF has further issued a survey to all 27 EU Member State representatives to better understand the representatives' viewpoints on the recast.

This survey is the subject of the document at hand.

The survey took place in April 2012. The response rate to it was 100%, meaning that all 27 Member State legates have responded to the questionnaire.

The scope of the survey was limited to mutual assistance in customs matters.

### 2. Set up of the questionnaire

The Member State questionnaire was divided into three parts, covering:

1. The AFIS conference;
2. Current issues of concern for the fight against customs fraud;
3. Possible amendments to the current procedures and means to fight fraud.

While sections 1 and 2 of the questionnaire contained open questions giving Member State legates the possibility to provide descriptions and/or comments, section 3 of the survey was composed of both quantitative binary (yes/no) questions as well as comment fields for further annotations.

The survey contained 12 questions (some of which were split into sub-questions) in total.

#### 2.1 Content coverage Section 1- AFIS conference

*This first section of the survey covered off 2 questions (out of a total of 12 questions).*

It focused on the AFIS Conference which was organised by OLAF in May 2012 after more than 10 years of Anti-Fraud Information Services being delivered to the Members States through the AFIS system.

The scope of the AFIS Conference was exclusively the AFIS applications for mutual assistance in customs matters with the aim of assessing together with a delegation from each Member State's customs administration

the fitness-for-purpose of the services delivered and the desired future evolution of OLAF's Anti-Fraud Information Services from the business, legal and technical perspectives.

The questions posed under this section looked into identifying topics of interests among Member States as well as speakers for the conference.

*Question 1a. Do you have particular requests to be included for discussion at the conference?*

*Question 1b. If you were interested to participate as a speaker, on which subject would that be?*

## **2.2 Content coverage Section 2- Business issues**

*This section covered off 5 questions (out of a total of 12 questions).*

This section of the survey focused on business issues, i.e. matters which today reduce the efficiency and effectiveness of the fight against customs fraud. The questions of this section aimed at identifying shortcomings to the ways international collaboration is organised, the availability of information, and overlapping IT systems in the area of anti-fraud policies.

*Question 2. What do you consider the top-three shortcomings in the joint international fight against customs fraud today?*

*Question 3. What information do you typically lack when identifying customs fraud cases?*

*Question 4. What information do you typically lack when investigating customs fraud cases?*

*Question 5. What in your opinion are the primary reasons why joint customs operations are not always initiated even though there is a well-founded suspicion?*

*Question 6. Do you experience difficulties due to potential overlaps between different IT systems in the Customs anti-fraud domain offered to your Service by EU and/or International Bodies? If yes, please provide details.*

## **2.3 Content coverage Section 3- Impact assessment**

*This section covered off 6 questions (out of a total of 12 questions).*

This section built strongly on the previous one. Its purpose was to assess the extent with which Member State legates would agree with possible amendments to the procedures, IT systems and the availability of data in order to improve the fight against fraud compared to the as-is situation.

The fraud detection and investigation processes make use of information stored in different repositories, governed by different legal regimes, prohibiting updating and storage of these data and creating problems with synchronizing and managing different versions of data. Question 7 reflected whether Member State legates would be in favor of harmonizing and integrating the existing data bases to obtain more user-friendly, higher quality and better protected information as well as to integrate repositories.

*Question 7. Would your Member State be in favor of such a harmonization and integration process?*

Owners of data stored in CIS and other MAB modules (CigInfo/MarInfo/YachtInfo) require an option to specify user access rights to data, in order to ensure that information becomes only available to relevant user groups or domains. Question 8 sought to know whether Member States would be in favor of formally developing such an option for restricted visibility in the CIS and MAB modules.

*Question 8. Would your Member State encourage the development of such an option in the CIS and other MAB modules (CigInfo/MarInfo/YachtInfo)?*

Import, export and transit data are inputs into the fraud detection and prevention process. Currently, national customs authorities have access to customs-data (declarations) regarding import, transit and export of goods only in case the respective country is directly concerned as entry, transit, or exit point. In view of increasing the efficiency and effectiveness of fraud-detection and fraud-investigation, Questions 9a-9c were asked to find out to

what extent Member State legates would require additional data and in turn be in favour of centralized information improving the data's accessibility.

*Question 9a. Do you need access to customs-data (import, transit and export) relative to transactions occurred in a Member State other than yours?*

*Question 9b. If indeed needed, would you (in order to achieve access to EU-wide customs-declarations) be in favour of building a centralized database, where customs data are gathered, normalized and stored in a central repository and then made easily accessible to customs-authorities and EC services, as opposed to the alternative which is to connect 27 different national customs systems?*

*Question 9c. Do you believe that the Commission should take the initiative to build and make available such a centralized database to give customs authorities access to any import, transit or export transaction occurred within the EU customs union?*

National customs authorities today have access to data relative to movements of deep-sea containerized cargo, but only in relation to the last part of the logistic chain (following the loading operation in the declared foreign port). Access to container status messages (CSMs) is believed to improve fraud-detection and fraud-investigation, particularly with fraud of the type "false declaration of origin". Questions 10a to 10c assessed to what extent CSMs are perceived as valuable by Member State authorities and how this information should be managed.

*Question 10a. Do you believe that a timely and easy access to container-status-messages (CSMs) would improve fraud-detection and investigation?*

*Question 10b. Would you prefer that CSMs are collected, normalized and stored in a central repository, and then made easily accessible to customs-authorities and Commission – as opposed to the alternative, which is to achieve the access to CSMs by means of connecting to the container-operators information systems?*

*Question 10c. Do you believe that the EC should take the initiative to build and make available such a centralized information system (database) to give customs authorities timely access to CSMs?*

Certain data may be beneficial to share with Europol and the World Customs Organisation in order to increase the efficiency and effectiveness of combating fraud in today's cross-border context. Questions 11a and 11b evaluated the extent with which Member States would provide their consent for sharing data with the cited international organizations.

*Question 11a. With your prior consent on a case by case basis, would you be willing to share with Europol the nominal data from CIS and other MAB modules (CigInfo/MarInfo/YachtInfo) under the exclusive competence of the EU?*

*Question 11b. With your prior consent on a case by case basis, would you be willing to share with WCO the non-nominal data from CIS and other MAB modules (CigInfo/MarInfo/YachtInfo)?*

Joint Customs Operations are currently organized and set up on a case-by-case basis. Question 12 asked whether Member States would be in favor of a more permanent organizational and operational structure to support Joint Customs Operations. It described the option of a more permanent structure as a structure supporting liaison officers from the Member States and, if appropriate, from other organizations (e.g. Europol, Frontex, Interpol, WCO).

*Question 12. Would you consider such a permanent structure to be beneficial? Please explain why?*

### **3. Key results**

This section presents the key results of the Member State questionnaire.

The response rate to the survey was 100%.

For the qualitative questions 1-6, the most frequent i.e. recurring topics highlighted by Member State legates in their answers are summarized below.

For questions 7-12, both the key quantitative results as well as the main qualitative feedback are provided.

As regards the quantitative results, the percentage score obtained puts in relation the number of affirmative ('yes') answers with the number of total answers provided. Where a country did not provide an answer, this was disregarded in the calculation.

*Example:* In case a question was answered affirmatively by 23 out 25 total responses (with 2 countries not providing any answer), the score is calculated as 23/25 i.e. 92%.

The total number of responses is always provided in addition to this calculation for information purposes.

### **3.1 Quantitative survey results**

The quantitative results are provided per question below. Subsequently, the results are represented graphically.

#### *Question 7.*

- 26 Member States answered this question.
- 25 of these Member States answered 'yes', which is a percentage of 96.2 %.

#### *Question 8.*

- 26 Member States answered this Question.
- 22 of these Member States answered 'yes', which is a percentage of 84.6 %.

#### *Question 9a.*

- 24 Member States answered this question.
- 22 of these Member States answered 'yes', which is a percentage of 91.7 %.

#### *Question 9b.*

- 19 Member States answered this question.
- 18 of these Member States answered 'yes', which is a percentage of 94.7 %.

#### *Question 9c.*

- 21 Member States answered this question.
- 19 of these Member States answered 'yes', which is a percentage of 90.5 %.

#### *Question 10a.*

- 25 Member States answered this question.
- 23 of these Member States answered 'yes', which is a percentage of 92.0 %.

#### *Question 10b.*

- 23 Member States answered this question.
- 22 of these Member States answered 'yes', which is a percentage of 95.7 %.

#### *Question 10c.*

- 24 Member States answered this question.
- 22 of these Member States answered 'yes', which is a percentage of 91.7 %.

#### *Question 11a.*

- 25 Member States answered this question.
- 22 of these Member States answered 'yes', which is a percentage of 88.0 %.

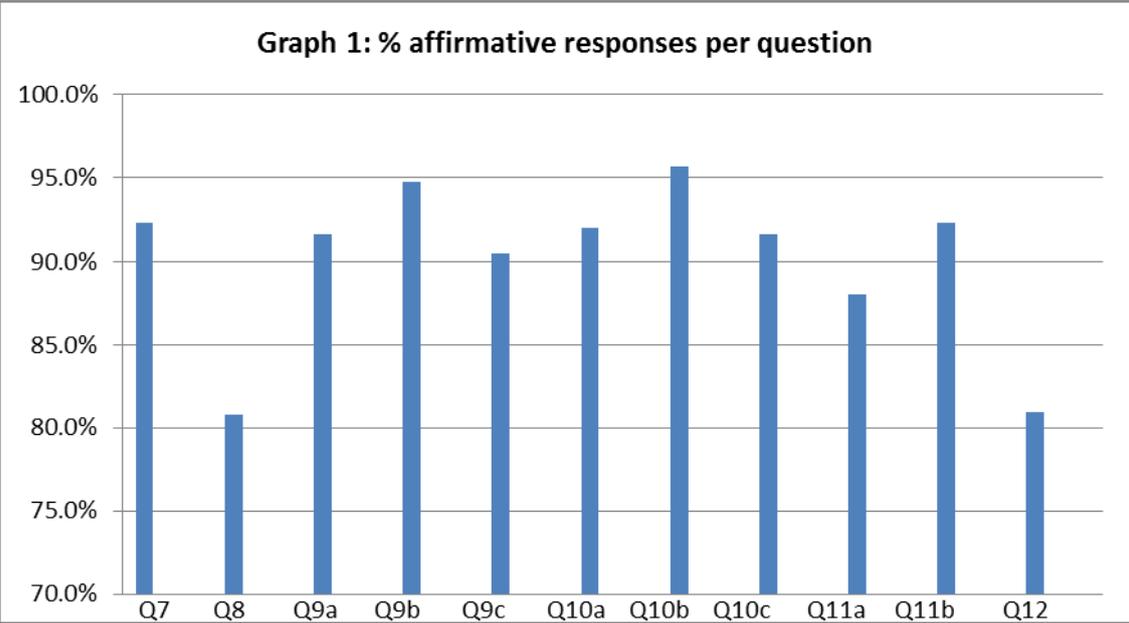
#### *Question 11b.*

- 26 Member States answered this question.
- 25 of these Member States answered 'yes', which is a percentage of 96.2 %.

#### *Question 12*

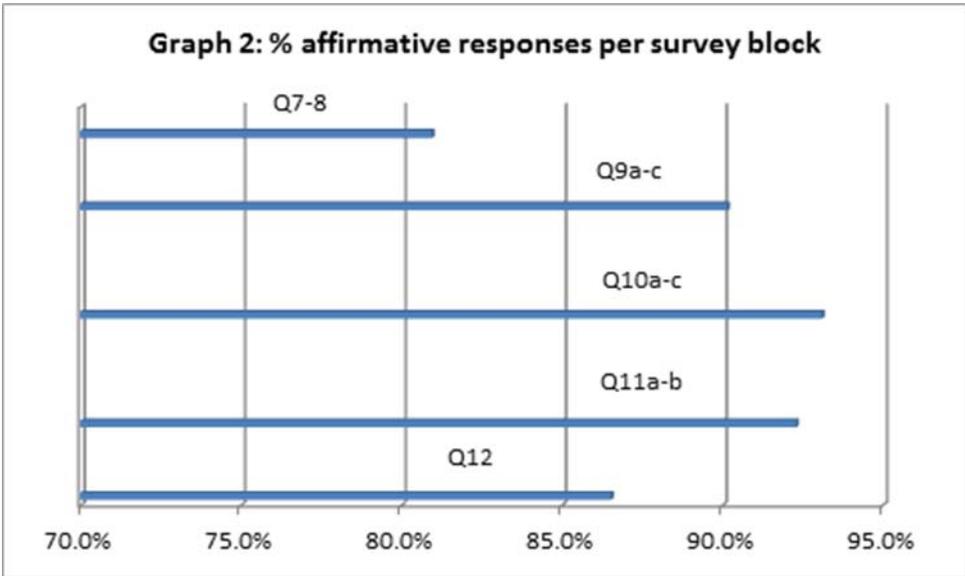
- 21 Member States answered this question.
- 18 of these Member States answered 'yes', which is a percentage of 85.7 %.

What now follows are three visualizations for the above results.  
 First, the answers are displayed as a traditional bar chart per question.



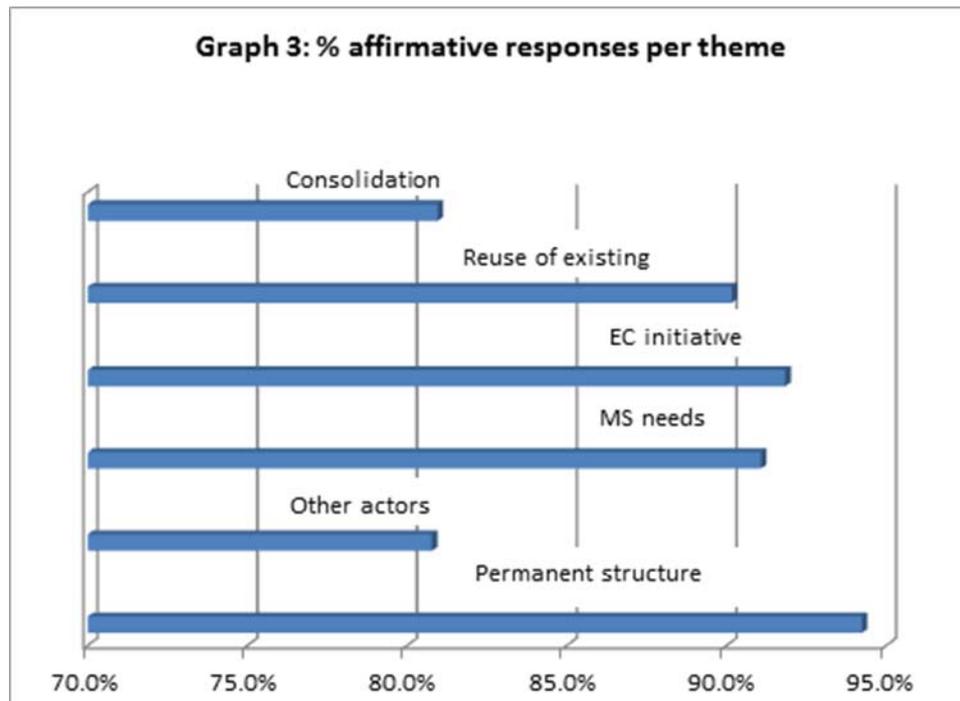
Second, the answers are displayed per theme of questions, combining the answers to:

- Questions 7 and 8 (Member State support to changes in CIS and MAB modules);
- Questions 9a-c (access to import, export, transit data);
- Questions 10a-c (access to Container Status Messages);
- Questions 11 a and b (information sharing with the World Customs Organization and Europol)
- Question 12 (Joint-Customs Operations).



Third, the answers are grouped according to action or item they relate to:

- Whether a consolidation is desirable (Questions 7, 9b, 10b);
- Whether the re-use of existing data and systems should be favoured (Question 8);
- Whether the EC should take a certain initiative (Questions 9c, 10c);
- Which needs Member State have (Questions 9a, 10a);
- What the extent of collaboration with other, non-EU actors should be (Questions 11a, 11b);
- The set up of a permanent structure (Question 12).



### 3.2 Qualitative survey results

The following main comments were provided per question:

*Question 1a- Do you have particular requests to be included for discussion at the conference?*

Concerns- Overlap in systems:

- High Member State burden through redundant data entries;
- Decreased effectiveness through search in multiple data bases

Concerns- Delimitation of competences:

- Mutual Administrative Assistance Committee versus other competent fora (CPG,...), OLAF versus TAXUD,...

Concerns- Improvements to cooperation:

- Between MS; between EC bodies and working groups (TAXUD-OLAF-DAPIX); EC versus MS; with international bodies (WCO); third countries
- The future of AFIS; Recast of legislative acts Reg.515 and
- Council Decision 917

Others:

- Low usage of AFIS, CIS, FIDE
- Including good practices for usage, wiki, better usability through technical upgrades and through manuals (CIS)
- Management of access rights for MAB
- Quality and relevance of data and cases in various data bases (CIS, CIGINFO, MARINFO,...)
- Analytical value of data including Data mining, archiving and exporting functionalities, translation capabilities

*Question 1b- Speakers*

Germany and DK proposed to speak at the conference.

*Question 2- What do you consider the top-three shortcomings in the joint international fight against customs fraud today?*

Lack of comprehensive, timely, precise exchange of data:

- Quality of information and intelligence; coverage of data: agent only, lack of data on real consignor and
- consignee, real origin of goods, insufficient data on suspicions, descriptions of goods, procedure 4200

Legal obstacles:

- Diverging competences amongst MS;
- Diverging investigation powers in law enforcement and criminal matters versus customs; and investigation versus prosecution (reactive rather than proactive approaches);
- Overlap in organizations' activities

Financial and staff constraints:

- Too few JITs;
- Long delays to launch JIT as well as to obtain evidence;
- Lack of 'central' coordinating authority

Limited scope of collaboration:

- Neglected areas: mineral oils, alcohols, eCommerce...;
- Divergent MS priorities

*Question 3- What information do you typically lack when identifying customs fraud cases?*

- Fraud patterns, results from controls, data on suspicions
- Persons, carrier, activities of companies incl. production capacity and geographic pattern of activity
- Real consignee and consignor, passenger, description of goods (CN code and end use), real origin of goods, transport routes, import/export data, railway
- Authenticity of documents, existence of company
- Import statistics of raw materials, cash, cigarettes, counterfeit-IPR

*Question 4- What information do you typically lack when investigating customs fraud cases?*

- Holder of certificate of vehicle registration
- Criminal records
- Telephones subscribers
- Nominative data
- Information on customs procedures and transactions in other EU MS
- Real consignor-consignee and origin of goods
- Movement of companies located in 3rd countries
- Modus operandi
- Customs clearance data including from 3rd countries

*Question 5- What in your opinion are the primary reasons why joint customs operations are not always initiated even though there is a well-founded suspicion?*

- Complex application and financing procedure, time lag to set up (preparatory time)
- Overlap with other organizations' interventions (international, regional, etc.) and other intervention mechanisms (PCA-TAXUD)
- Lack of staff and resources (resource demands are high)
- Limited scope of JITs (control operations mostly)
- Diverging MS priorities
- Limited willingness of MS to effectively share information
- Lack of permanent organizational and operational structure
- Lack of legal basis for cooperation with third countries

*Question 6- Do you experience difficulties due to potential overlaps between different IT systems in the Customs anti-fraud domain offered to your Service by EU and/or International Bodies? If yes, please provide details.*

- Administrative burden on MS to enter the data in multiple data bases is disproportionately high.
- 'One seizure-one report' principle far from being achieved.
- Complex, limited data exchange modalities with 3rd countries and parties (WCO)
- Redundant responsibilities within the EU (AFIS, RIF)
- Responsibilities around data management, mining and analytics and similar are unclear, insufficiently centralized

*Question 7- The fraud detection and investigation processes make use of information stored in different repositories, governed by different legal regimes, prohibiting updating and storage of these data and creating problems with synchronizing and managing different versions of data. The new Commission initiative intends to harmonize the databases to get more user-friendly and better protected and to integrate repositories, which would strongly add to the quality of available information.*

*Would your Member State be in favor of such a harmonization and integration process?*

- At practical level it is necessary to observe the principle "One case-one report" including providing data to Europol.
- More information on what data are exactly meant and how they are used is requested.
- Harmonization and integration would enhance fraud detection.
- Under the condition that there will be an adequate legal framework supporting such an approach. There should be a guarantee for a correct use of the information by authorized authorities.

*Question 8- From your feedback we understand that owners of data stored in CIS and other MAB modules (CigInfo/MarInfo/YachtInfo) require an option to specify specific user access rights of data, in order to ensure that information becomes only available to the relevant closed user groups or domains. Would your Member State encourage the development of such an option in the CIS and other MAB modules (CigInfo/MarInfo/YachtInfo)?*

- In theory yes, draft amendments of legislative acts should be provided to MS.
- We would agree only if by the above proposal is meant that all the MS will keep receiving all the exchanged information, and the data owner will only be able to specify specific users in each MS that are members of the relevant user-groups.
- Yes, indeed we would encourage this, as the MAR-Info group consists of Non-EU Member States, in which case we will be able to decide on a case by case basis, to which group a specific case should be made available.

*Question 9- National customs authorities have access to customs-data (declarations) regarding import, transit and export of goods. This is only the case when the respective country is directly concerned as entry, transit, or exit point. In view of increasing the efficiency and effectiveness of fraud-detection and fraud-investigation:*

*Question 9a. Do you need access to customs-data (import, transit and export) relative to transactions occurred in a Member State other than yours?*

- Involve appropriate forum (CPG etc.)
- Much additional information is needed such as which information is included, criteria and specifications for use of the database, etc.
- Occasionally in the course of an investigation

- Within the transit operations a very frequent problem is that a destination of concrete goods consignments of interest domestic company is in other MS.
- Under the current system it is already possible to access this kind of data.

*Question 9b. If indeed needed, would you (in order to achieve access to EU-wide customs-declarations) be in favour of building a centralized database, where customs data are gathered, normalized and stored in a central repository and then made easily accessible to customs-authorities and EC services, as opposed to the alternative which is to connect 27 different national customs systems?*

- As far as no restriction are raised in the analysis, by the Member States, of these data and that the use of these data is only for antifraud purposes.
- We are not against of the building of such centralised database, provided that other legislations, such as Personal Data Protection, are taken into consideration
- A centralised solution raises serious questions in connection with Art. 8 of the Charter of Fundamental Rights of the European Union. What is the position of the EDPS? What can be the legal basis for such a system?

*Question 9c. Do you believe that the Commission should take the initiative to build and make available such a centralized database to give customs authorities access to any import, transit or export transaction occurred within the EU customs union?*

- Involve appropriate forum (CPG etc.). Quid delimitation of competences Mutual Administrative Assistance Committee's competences
- No. A centralized database without a legal basis, without regard to existing IT structures and without any apparent need is not supported.
- Yes we believe that it would be useful.

*Question 10- National customs authorities today have access to data relative to movements of deep-sea containerized cargo, but only in relation to the last part of the logistic chain (following the loading operation in the declared foreign port). Access to container status messages (CSM's) is believed to improve fraud-detection and fraud-investigation, particularly with fraud of the type "false declaration of origin". CSM's are today provided by operators to the U.S. Government.*

*Question 10a. Do you believe that a timely and easy access to container-status-messages (CSMs) would improve fraud-detection and investigation?*

- In this sense we welcome an initiative of the project Contraffric-SAD.
- OLAF is requested to explain the differences between CSM-messages and the Database "CONTRAFFIC" as it provides benefits to customs investigations now.
- It would improve the on-going investigation and tracking of containers. You would also be able to compare the tracking results with the data from CONTRAFFIC.
- No. The Entry Summary Declaration gives information which is considered to be sufficient

*Question 10b. Would you prefer that CSMs are collected, normalized and stored in a central repository, and then made easily accessible to customs-authorities and Commission – as opposed to the alternative, which is to achieve the access to CSMs by means of connecting to the container-operators information systems?*

- If it would be possible to have all this data to one place in one format, yes it would be a good solution.
- With the perspective that the information will be available to MS in real-time.
- Cost efficiency

*Question 10c. Do you believe that the EC should take the initiative to build and make available such a centralized information system (database) to give customs authorities timely access to CSMs?*

- We support this initiative as it would enhance the fraud detection very much if the data is available easily.
- Define very clearly what the terms "under the exclusive competence of the EU" mean.
- No. A new information system without a legal basis and outside of a strategic concept is not supported.

*Question 11- In order to facilitate the sharing of data and avoid duplication of data entry, OLAF would see an advantage in sharing some data from CIS and other MAB modules (CigInfo/MarInfo/YachtInfo) with Europol and WCO.*

*Question 11a. With your prior consent on a case by case basis, would you be willing to share with Europol the nominal data from CIS and other MAB modules (CigInfo/MarInfo/YachtInfo) under the exclusive competence of the EU?*

- Yes, we would on a case by case basis, but we are of course restrained by our national provisions governing data processing.
- What kind of consent from the member States would you intend to introduce in this case?
- The German customs administration decides what information she gives to EUROPOL throughout the national Central unit (BKA).
- Under the condition that there will be an adequate legal framework supporting such an approach. There should be a guarantee for a correct use of the information by authorized authorities.

*Question 11b. With your prior consent on a case by case basis, would you be willing to share with WCO the non-nominal data from CIS and other MAB modules (CigInfo/MarInfo/YachtInfo)?*

- The German Customs Administration does already, on a case-by-case basis, share certain non-personal data with the WCO, either directly or via AFIS/ MAB.
- One information, one system. It would be useful if the information can be store only once and it could be transferred to other systems as well on case by case basis.
- Under the condition that there will be an adequate legal framework supporting such an approach. There should be a guarantee for a correct use of the information by authorized authorities.

*Question 12- In addition to the existing infrastructure available in OLAF, the Commission is suggesting to set up a permanent organizational and operational structure to support joint customs operations. This structure would support liaison officers from the Member States and, if appropriate, from other organizations (e.g. Europol, Frontex, Interpol, WCO). This would provide a more solid basis for improving the efficiency of the international fight against customs fraud.*

*Would you consider such a permanent structure to be beneficial? Please explain why?*

- Under the condition that there is an alignment with the joint customs operations (JCO's) organised by the Customs Cooperation Working Party (CCWP).
- A permanent structure to support joint customs operations can have several advantages.
- The OLAF Helpdesk significantly assisted during the operations which took place in the past. Without additional information relating to a permanent organizational and operational structure it is difficult to answer this question. Generally it can be welcomed any initiative that is aimed to improve the functioning of the OCU during the JCOs.
- It will mean that all the future JCO's can rely on experienced staff that have participated in many different JCO's and therefore are able to solve any problems that might occur during a JCO.