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Subject: Draft revised strategy for customs cooperation in the third pillar

Delegations find in the Annex the draft revised strategy for customs cooperation in the third pillar as agreed by the Customs Cooperation Working Party at its meeting on 21 October 2009.

The Article 36 Committee is requested to approve the document.

I. INTRODUCTION

In its Resolution 2009/C 260/01 of 23 October 2009 on a reinforced strategy for customs cooperation¹, the Council underlined the need for customs administrations and other authorities of the Member States with responsibility for the implementation of customs legislation, to carry out a reinforced strategy, within the framework of the creation of an area of freedom, security and justice, to enable the better protection of society and the economy against smuggling and fraud, cross-border organised crime within the Union and at the EU external borders, and money laundering, threats to the environment and the cultural heritage and any other threats within their competencies.

This document constitutes the strategy for customs cooperation in the third pillar as referred to in the abovementioned Council Resolution. It is based on the provisions of Articles 29 and 30 of the Treaty on European Union (TEU).

1. THE ROLE OF CUSTOMS

Together with its classic tasks, such as checking legitimate trade, controlling the movement of goods, cash and other monetary instruments and combating the smuggling of prohibited goods e.g. drugs and weapons, customs plays, and will continue to play, an important role in the protection of financial, economic, cultural, environmental, health, safety and security interests, thus contributing to the fight against cross-border crime, including counterfeiting and piracy, money laundering, and terrorism. These tasks are significantly supported by actions undertaken by the customs authorities of the EU, with due regard for the competencies of other parties concerned to tackle organised crime which gains huge undue profit from all illegal movements of cigarettes, mineral oils, alcohol and other commodities.

Activities in such priority areas are directly related to customs' core business, i.e. the control and supervision of cross-border movement of goods. Organised crime increasingly focuses on customs fraud as a source of criminal income. Furthermore, the contribution of customs to the fight against terrorism provides a further example of the outcome of this process.

¹ OJ C 260, 30.10.2009, p. 1.

These developments have resulted in a growing awareness in EU Member States of the role of customs authorities in fighting cross-border organised crime and in protecting the health, safety and security of the Union's citizens.

As a consequence, the customs administrations and other authorities of the Member States with responsibility for the implementation of customs legislation need investigative and other powers to enable the effective and professional combating of such crime within their national competencies.

2. CUSTOMS COOPERATION IN THE THIRD PILLAR

Customs cooperation in the third pillar is based on the provisions of Title VI of the TEU (in particular, Articles 29 and 30 describe the objectives of law enforcement cooperation and thus provide the basis for this strategy) and on legal instruments such as the Convention on mutual assistance and cooperation between customs administrations (Naples II Convention) and the Convention on the use of information technology for customs purposes (Customs Information System (CIS) Convention).

The TEU facilitates operational cooperation between specialised law enforcement services of the Member States, including customs, in relation to:

- a) the prevention, detection and investigation of criminal offences;
- b) the collection, storage, processing, analysis and exchange of relevant information;
- c) cooperation and joint initiatives in training, the exchange of liaison officers, secondments and the use of equipment; and
- d) the common evaluation of particular investigative techniques in relation to the detection of serious forms of organised crime.

There is a long history of practical EU customs cooperation in the law enforcement area, reinforced by the Naples Convention of 1967 and further enhanced with the formation of the Mutual Assistance Group in 1992 (MAG 92). In 1993 the Customs Cooperation Working Party (CCWP) was established. There are a number of features that are at present unique to third pillar customs cooperation where customs administrations have led the field in the EU (such as the special forms of cooperation in the Naples II Convention and data exchange through the CIS).

A growing number of criminal organisations are no longer engaged in just a single criminal activity or confined to operating in only one country. Modern criminal organisations are more likely to be engaged in a multitude of transnational criminal activities, e.g. smuggling of arms, drugs, counterfeit products or cigarettes/tobacco, illicit cross-border trafficking of human beings, etc. These activities are often carried out using the same or similar means of transport, routes, infrastructures and even personnel. Responsibility for combating them is spread across a variety of law enforcement agencies.

Law enforcement competencies vary between the customs authorities in the Member States. The need for enhanced inter-agency cooperation has been recognised at the political level and reflected in the TEU, amongst other legislation.

3. THE AIMS OF CUSTOMS COOPERATION

The key purpose of customs cooperation in the third pillar is to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action amongst Member States' customs authorities. That objective will be achieved by preventing and combating crime in the following ways:

- a) by increasing the ability of customs authorities to prevent goods-related offences and to enforce laws and regulations applying to the international movement of goods;
- b) by detecting crime and apprehending criminals with the use of multilateral or bilateral collaboration;
- c) by developing mutually supportive techniques and systems;
- d) by developing and sharing good practice;
- e) by identifying and addressing common threats; and
- f) by coordinating actions and strengthening communication between the various administrations and bodies concerned.

4. THE ROLE OF THE CUSTOMS COOPERATION WORKING PARTY (CCWP)

The CCWP is the coordinating group within the Council structure with responsibility for taking forward initiatives in the field of customs cooperation. Its main tasks are to:

- a) coordinate and forward proposals to improve customs cooperation in the third pillar, including discussions on initiatives for new legislation;
- b) encourage the operational implementation of the legal bases needed for operational European cooperation and for the exchange of information, including the Naples II and CIS Conventions;
- c) review the development of working methods, in particular risk analysis and targeted inspection techniques; and adapt to new methods and trends;
- d) develop assistance by Member States' customs authorities to acceding countries and third countries;
- e) agree strategic and tactical objectives and detailed arrangements for operational cooperation between the EU's customs authorities, including the development of Joint Customs Operations (JCO). The benefits of these include the development of intelligence about trans-national crimes, the seizure of contraband and the identification of organisations conducting the activities;
- f) promote closer cooperation with other law enforcement agencies either directly, through the European Police Office (Europol), or through the coordination mechanism developed between the CCWP, the Police Cooperation Working Party, FRONTEX and the Police Chiefs Task Force (PCTF);
- g) promote closer cooperation with the European Commission and its relevant services within the terms of its mandate;
- h) promote cooperation with new relevant bodies or platforms, in particular by strengthening the presence of customs officers in anti-drug coordination and intelligence centres or their contribution to them.

5. THE SUCCESSES OF CUSTOMS COOPERATION

Both through EU agencies and bodies and less formally through direct liaison on a bilateral and multilateral basis, customs authorities within the EU work closely together to address the aims of customs cooperation. Within law enforcement circles this work is well regarded.

Member States' customs authorities are actively developing new tools based on the use of new technologies. Such development must take into account the need for compatibility between the IT systems used by customs and other law enforcement authorities.

Joint Customs Operations are carried out on the basis of regular plans and in accordance with the priorities set by the Council based on the Organised Crime Threat Assessment (OCTA) and the strategic and tactical objectives for JCOs decided by the CCWP. The results of these JCOs are reported initially to the CCWP and then to the Article 36 Committee. They are a useful and effective means of establishing personal contacts, improving working practices and procedures between administrations, and monitoring new routes, trends and types of customs fraud. JCOs, especially those with the acceding countries and third countries, have been successful in this respect and have resulted in significant detections as well as in increased operational intelligence.

There has already been a long history and a wide range of successful customs cooperation in addition to the abovementioned JCO. This includes: contacts and coordination between the CCWP and other Council Working Parties to ensure continuity and understanding in cross-cutting matters involving justice and home affairs issues; bilateral work with third countries; detections of illegal movements whilst in transit; the liaison officer network; and wide-reaching and effective legal instruments.

6. THE NEED FOR A REVISED STRATEGY FOR CUSTOMS COOPERATION

It is appropriate to have an up-to-date strategy for customs cooperation in the third pillar in order to take account of major changes which are under way or which will occur in the near future.

The aim of this strategy is to build on past and current successes and identify areas where there are positive opportunities for further or deeper cooperation. It acknowledges both the possibility of continuing to strengthen the operational bonds between customs authorities, and the need to work with all relevant agencies dealing with organised crime which has trans-national links.

A coordinated approach to combating the different forms of threat to the citizens and businesses of the EU should include close and efficient multilateral cooperation, not only between customs authorities but also between customs authorities and other law enforcement authorities both within their own countries and in other Member States. Examples of strong and fruitful cooperation at all levels exist within the EU but full coverage remains a target to be achieved.

Such cooperation plays a crucial role in a strategy for customs cooperation in the third pillar. Within the framework of the area of freedom, security and justice, the free movement of goods, persons and capital entails a concentration of effort on identifying and intercepting illegal activity within the customs territory of the European Community. Furthermore, the simplification of customs procedures and regulations for economic operators has led to a new approach to systematic control.

The increase in electronic commerce, the increased ease of international travel and the above-mentioned refocusing of controls within the Single Market have all contributed to an increased understanding of the risk of organised cross-border crime. International organised crime (including the activity of terrorist groups) does not recognise national borders or competencies.

Therefore any exclusively national approach and crime-combating strategy is insufficient and has to be complemented by a multi-national and multi-agency approach and strategy. Furthermore there is an increasing recognition that organised crime can be tackled by disrupting the flow of criminal cash and assets across internal and external frontiers.

Due note must be taken of work to coordinate border management between other, non-customs, European law enforcement agencies. The customs strategy must be complementary, whilst recognising the respective competencies of agencies and administrations. There should also be increased cooperation with, and where appropriate between, EU bodies, institutions and agencies such as the Commission (OLAF), Europol, Eurojust and FRONTEX.

Increased use of effective cooperative partnerships with third countries will further support the fight against international crime.

Apart from being a means of maintaining and improving the current situation, a strategy is particularly useful for dealing with new developments. Such a strategy, in order to be effective, must be capable of being amended during its lifetime to take account of outcomes achieved and external factors.

Part II of this document defines, in more detail, the strategic aims and objectives to be achieved in the field of third pillar customs cooperation as well as the mechanisms for implementing and reviewing the strategy.

II. STRATEGIC PLAN

1. STRATEGIC AIMS AND OBJECTIVES

Overall aims of this strategy

- A. To consider new forms of cooperation and new investigative techniques;
- B. To take practical steps towards implementing these new forms of cooperation and to continue to further develop existing forms of cooperation;
- C. To improve the existing cooperation process and make it more flexible.

A. To consider new forms of cooperation and new investigative techniques

For customs authorities of the Member States:

- a) To consider future developments relevant to customs law enforcement, such as coordinated border management (the communication from the Commission regarding the Stockholm Programme (Brussels, 10.6.2009 COM (2009) 262 final)), etc.;
- b) To consider the possibility of improving interoperability between third pillar databases used by different law enforcement authorities, regarding necessities, legal requirements and technical possibilities, etc.;
- c) To consider an exchange of best practices relating to training between their customs authorities as well as between those authorities and other law enforcement authorities.

For CCWP:

- d) To examine the need for common analysis in the fight against organised crime and to protect citizens and the economy from the customs standpoint;
- e) To look for additional opportunities for effective cooperation;
- f) To consider the use of modern communication technologies.

B. To take practical steps towards implementing these new forms of cooperation and to continue to further develop existing forms of cooperation

For customs authorities of the Member States:

- a) To ensure an effective relationship with customs authorities in third countries, especially those along the external border. Customs cooperation between the EU and these third countries should be enhanced by the use of all competencies and instruments at the EU's disposal and the possibilities offered by the TEU and in particular through:
 - i. the use of common strategies and agreements based on Article 38 of the TEU;
 - ii. the implementation of customs cooperation agreements and customs cooperation protocols to partnership and cooperation agreements;
 - iii. Joint Customs Operations involving the relevant third countries.

- b) To contribute to making customs and police work complementary through the adoption of an institutional, multi-agency approach. Besides working with each other, customs authorities of the EU Member States already work, or should aim to work in the future, with other law enforcement agencies at national and international level and with EU agencies and bodies such as Europol, Eurojust, the Commission (OLAF) and other international bodies such as the World Customs Organisation;
- c) To contribute to the creation and extension of effective coordination and cooperation with immigration and other relevant border agencies, including FRONTEX.

For customs authorities of the Member States and the Commission:

- a) For customs authorities of the Member States, to make clear to the Commission their objectives and requirements in the customs law enforcement area; for the Commission, to provide, to the maximum possible extent, the necessary financial, technical and logistical support for the achievement of the objectives set and for the implementation of measures to improve customs cooperation, in particular the development of third pillar IT systems;
- b) To do their utmost to reinforce the coordination of their actions and preventive measures in the field of law enforcement and combating criminal activities through available channels, especially the CCWP.

For the CCWP and the Commission:

To consider options for improved operational cooperation which will support the JCOs, and Joint Operations with other law enforcement agencies, in particular the Police, according to the sectoral and geographical priorities.

C. To improve the existing cooperation process and make it more flexible

For customs authorities of the Member States:

- a) To ensure a structured and measurable approach to sharing good practice through benchmarking and other appropriate methods, so as to meet the expectation of an effective approach to seizing illicit goods and combating cross-border organised crime throughout the EU;

- b) To share operational expertise and responsibility for the implementation of JCO, supporting both operations adopted by CCWP and the current trend towards smaller and more tightly focused operations;
- c) To enhance the cooperation with police and other law enforcement agencies at national and international level as well as with Europol, FRONTEX and other EU agencies and bodies;
- d) To increase mutual sharing of information between customs liaison officers by means of new methods, procedures and arrangements;
- e) To further increase regional cooperation, especially in the area of mutual exchange of information and joint operations;
- f) To develop national procedures for handling requests for cooperation which exceed the competencies of the customs authorities;
- g) To consider measures for enhancing the use of CIS and FIDE;
- h) To consider the possibilities of extending the access of law enforcement authorities to the EU IT systems with a view to implementing the existing legal instruments such as Naples II or Council Framework Decision 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union (the “Swedish Initiative”).

For the CCWP:

- a) To evaluate and, where necessary, propose improvement of existing legal instruments or to create new legal mechanisms implementing these instruments in order to enhance cooperation between customs authorities;
- b) To develop agreed approaches to common issues by regularly reviewing relevant developments and formulating agreed positions on each;
- c) To encourage closer links with other relevant Council Working Parties, in particular the PCWP, and to take forward work on border security and other frontier issues and consider further joint initiatives with these Working Parties, where necessary;
- d) To evaluate, on a regular basis, the existing forms of cooperation and propose improvement where necessary;

- e) To ensure a coordinated follow-up of the results achieved by JCOs, especially where seizures have been made or investigations have been started;
- f) To examine possibilities and procedures for funding activities aiming to implement this strategy.

For the CCWP and the Commission:

To coordinate and improve coherence in the risk management area between the first pillar activities under the Common Risk Management Framework and related activities under the CCWP.

2. IMPLEMENTING AND REVIEWING THE STRATEGY

The CCWP will play an important role in planning and coordinating the activities to be undertaken to fulfil the objectives laid down in this strategy, by means of 18-month action plans.

The CCWP will aim to adopt a new action plan at least 2 months before the end of the current action plan. Actions are incorporated into the action plans based on written terms of reference, which stipulate the main goals and expected outcome of the actions. The CCWP will evaluate the results of each action plan and will provide progress reports to appropriate bodies.

The Heads of the Customs Authorities and the Commission could be invited to discuss together the implementation of the strategy and the need to review it on the basis of the reports.

This strategy is intended to be a living document that will be amended and updated by the CCWP as circumstances change.
