



**COUNCIL OF
THE EUROPEAN UNION**

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REV 1

LIMITE

ENFOCUSTOM 95

NOTE

from :	Presidency
to :	Customs Cooperation Working Party
Subject :	Draft report to the Council on implementation of the Action Plan for the strategy for customs cooperation in the third pillar (1 January 2007 – 30 June 2008)

1. Introduction

In its Resolution of 2 October 2003¹ the Council underlined the need for customs administrations, and other authorities of the Member States with responsibility for implementation of customs legislation, to carry out a 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 other threats within their competencies.

According to the Strategy for customs cooperation in the third pillar², to implement the Council Resolution the Customs Cooperation Working Party (CCWP) plans and coordinates activities aimed at fulfilling the objectives laid down in the strategy, by means of action plans.

¹ OJ C 247 of 15.10.2003, p.1.

² 11167/5/03 REV 5 ENFOCUSTOM 29

The Article 36 Committee (CATS) approved the first Action Plan (2004-2006)³ in December 2003.

Pursuant to the strategy document, the CCWP reviewed the Action Plan during the UK Presidency in 2005 and concluded that a shorter 18-month Action Plan would provide greater flexibility to react to changing circumstances in the future.

In November 2006 the Article 36 Committee approved the second Action Plan⁴ for 18 months, which expired on June 30th, 2008.

2. The Strategy and the Action Plan

The 2007-2008 Action Plan for customs cooperation took into account the Council's priorities identified in the following documents:

- the Hague Programme and the Action Plan adopted for its implementation,
- the EU Drugs Action Plan (2005-2008),
- the EU Action Plan on combating terrorism,
- the Strategy for the External Dimension of JHA,
- the Council conclusions setting the EU priorities for the fight against organised crime based on the OCTA and
- the Architecture of Internal Security.

The Action Plan contained 15 actions to implement the strategy and customs-related activities. It was divided into four areas of work, as follows:

- Border management and security
- Intelligence
- Operational cooperation
- Information exchange.

³ 15315/2/03 REV 2 ENFOCUSTOM 41

⁴ 13424/2/06 REV 2 ENFOCUSTOM 64

According to the strategy for customs cooperation in the third pillar the overall aims were:

- To consider new forms of cooperation
- To take practical steps towards implementing these new forms of cooperation
- To improve and make more flexible the existing cooperation process
- To enhance public confidence in customs.

3. Working method of the Customs Cooperation Working Party

The CCWP maintained the method used under the previous Action Plan for the period 2004-2006:

- Delegations, including the Commission and EUROPOL, volunteer to participate in carrying out an action;
- One delegation proposes to lead a project group in charge of carrying through one of the 15 actions of the plan. A mandate, including methods, trends and aims of the project group, is submitted for approval to the CCWP;
- The project group has to produce a document (report, analysis, handbook...) to be presented to the CCWP, including if necessary conclusions and recommendations for the attention of delegations.

The method consisting of establishing a working group with several delegations enhances cooperation and improves mutual understanding between the administrations of the 27 Member States.

The great majority of delegations participated in working groups. It is to be regretted that a few delegations did not take part in any of the actions and that leadership of project groups was assumed by a limited number of delegations, nevertheless improvement on these two matters is noted with regard to the 2004-2006 Action Plan.

4. Results and follow-up

At the end of the 18-month Action Plan, only 2 actions had not been implemented by the CCWP.

Actions 3 and 14 were not implemented because their subjects were no longer such an acute concern.

As action 9 dealing with special forms of cooperation under the Naples II convention could not be implemented under this plan, it has been transferred to the new 2008-2009 Action Plan.

The still-relevant action 2 relating to the fight against terrorism is also maintained under the new Action Plan.

The ISEC financial programme facilitated the implementation of Action 8 of the Action Plan.

A detailed description of the results of these actions is set out in the Annex to this report.

A great number of recommendations mentioned in documents submitted to the CCWP were adopted. The CCWP has to assess their degree of implementation.

A review of the recommendations should be made in 2009 to monitor their implementation by the Member States, the Commission, Europol and the CCWP.

With action 8, the CCWP fulfilled the requirements of the Action Plan for the implementation of the Hague Programme to carry out an “evaluation regarding Member States’ implementation of customs cooperation (Naples II convention).

The implementation of the Action Plan remains an efficient method to lead successfully targeted actions towards enhancing cooperation in areas of work under the competence of customs administrations. In order to pursue implementation of the Strategy for Customs cooperation in the Third Pillar, the Article 36 Committee approved on 14 May 2008 the CCWP third Action Plan for the period 1 July 2008 to 31 December 2009 (8284/1/08 REV 1 ENFOCUSTOM 48).

Result of actions

- **Action 1: To assess the role of CCWP and customs administrations in relation to EU Integrated Border Management (IBM) strategy taking into account the evaluation report on the External Border Agency (FRONTEX) and the review of the future role of customs (cf. Action Plan implementing the Hague Programme point 2.8(h))**

Following the publication of the FRONTEX evaluation on 13 February 2008 (COM(2008) 67 final), the mandate presented by SI was adopted in April 2008 by the CCWP (doc. 8285/08 ENFOCUSTOM 49) in order to examine and to propose recommendations on the future role of the CCWP and customs authorities in the area of justice, freedom, security (current third pillar), taking especially into account, in relation to EU Integrated Border Management (IBM) strategy, the evaluation report on the External Border Agency (FRONTEX).

After several joint meetings, the project group produced a final report which was approved by the CCWP in October 2008 (14598/08 ENFOCUSTOM 92).

The project group recommends that the role of customs in the management of the external borders be better taken into account and reflected in the post-Hague programme and any other future strategies. Therefore the group recommends that when the CCWP revises the Strategy for customs cooperation in the 3rd pillar the role of customs in relation to IBM and cooperation with other agencies including Frontex should be taken into account.

- **Action 2: To explore implementation measures for the CCWP and the customs administrations in relation to the Architecture for Internal Security (cf. 9596/1/06 JAI 271 REV 1)**

UK suggested that the Counter-Terrorism Project Group (CTPG), as subgroup of the CCWP, lead this action towards exploring implementation measures for the CCWP and the customs administrations in relation to the Architecture for Internal Security (9596/1/06 REV 1 JAI 271).

The CCWP endorsed in February 2008 the conclusions drawn by the CTPG (6505/08 JAI 78) and decided that no further action was necessary in relation to the Architecture for Internal Security. It was agreed that the work currently done within the framework of the usual tasks of the CCWP, the CTPG and Action Plans fulfilled the requirements arising from the Architecture for Internal Security document.

- **Action 3: To examine the security amendment of the Community Customs Code and the implementing provisions, development of secure supply chains, to establish the actions, where necessary, can be taken within the third pillar**

Having regard to developments relating to the implementation of the Community Customs Code, the CCWP did not take any steps under this action.

- **Action 4: To continue identifying and implementing actions that customs administrations can undertake to play an active role in the fight against terrorism**

The CCWP mandated the CTPG under the leadership of UK to implement this action (7290/1/07 REV 1 ENFOCUSTOM 25).

The CCWP approved the revised documents relating to the third action plan of the CTPG (13532/2/06 REV 2 ENFOCUSTOM 66, 7290/1/07 REV 1 ENFOCUSTOM 25, 6507/1/08 REV 1 ENFOCUSTOM 28), as well as the fourth action plan of the CTPG (10349/08 ENFOCUSTOM 63 + COR 1).

The CCWP decided to strengthen the CTPG missions and to pursue this action in the next action plan, in force from 1 July 2008 to 31 December 2009.

- **Action 5: To identify possibilities for improving the exchange of information between risk analysis units of the competent authorities of the Member States as well as with OLAF, Europol and WCO/RILOs.**

The working group led by NL was mandated in April 2007 by the CCWP to implement this action (8281/07 ENFOCUSTOM 42).

On the basis of answers provided by Member States to the questionnaire circulated within the CCWP and of discussions in the project group in coordination with the work carried out in the group in charge of the action 6, the final report was adopted by the CCWP in June 2008 (6536/1/08 REV 1 ENFOCUSTOM 29).

The working group was responsible for pursuing its activity by gathering risk analyses produced by Member States and for considering how to exchange these analyses through an information system such as AFIS network or CIRCA platform.

- **Action 6: To examine ways for improving coordination of production and use of EU-wide threat assessments within the EU law enforcement bodies and OLAF and with WCO/RILOs, in order to encourage sharing of information and experiences.**

The CCWP mandated the project group led by FR to implement action 6 (9170/1/07 REV 1 ENFOCUSTOM 49 + ADD 1).

On the basis of answers provided by Member States to the questionnaire circulated within the CCWP and of discussions in the project group in coordination with the work carried out in the group in charge of action 5, the final report was adopted by the CCWP in July 2008 (11606/08 ENFOCUSTOM 74).

As the project group concluded that coordination relating to programmes and execution of threat assessments was too weak, the CCWP agreed on the proposal to create a coordination mechanism between Member States.

- **Action 7: To produce in-depth threat analysis on the illicit production, diversion and trafficking of high-taxed goods, drugs and other substances and goods which may be subject to prohibition or restriction into and within the EU (cf. on drugs and psychotropic substances: Drugs Action Plan 18, 19, 20)**

The CCWP adopted the German Presidency proposal relating to the implementation of this action (5331/3/07 REV 3 ENFOCUSTOM 7). The CCWP agreed to carry out threat analyses in 8 specific areas.

Threat assessment: cigarettes

OLAF produced a report on cigarette trafficking (8320/07 ENFOCUSTOM 44 RESTREINT) adopted by the CCWP in June 2007.

Threat assessment: synthetic drugs

The CCWP adopted in November 2007 the threat assessment on synthetic drugs carried out by DE (12851/2/07 REV 2 ENFOCUSTOM 90 RESTREINT).

Threat assessment: cannabis

The CCWP adopted in November 2007 the threat assessment on cannabis trafficking carried out jointly by ES and FR (14673/07 ENFOCUSTOM 113 RESTREINT + COR 1(fr) + COR 2).

Threat assessment: illicit waste shipment

HU produced an analysis of illegal cross-border waste shipment which the CCWP approved in January 2008 (14667/3/07 REV 3 ENFOCUSTOM 111).

Threat assessment: doping substances

FI carried out a final report on illegal trafficking of doping substances adopted in September 2008 (10576/2/08 REV 2 ENFOCUSTOM 64 + COR 1).

Threat assessment: piracy and counterfeiting

ES made an oral report to CCWP delegations in September 2008 on a threat evaluation of piracy and counterfeiting.

Threat assessment: money laundering in international trade in goods

ES presented an oral report to CCWP delegations in September 2008 on a threat assessment of money laundering in international trade in goods.

- **Action 8: To evaluate the Member States' implementation of customs cooperation (Naples II Convention) (cf. Action Plan implementing the Hague Programme point 3.3(q))**

The CCWP adopted in January 2007 the mandate presented by DE (16808/1/06 REV 1 ENFOCUSTOM 89 + COR 1).

A comprehensive questionnaire was circulated to delegations in order to consider the practical implementation of the Naples II Convention by Member States. Further visits of experts were planned in 10 Member States in order to examine carefully how customs administrations, police forces and judicial authorities apply the provisions of the Convention. On the basis of answers to the questionnaire and expertise reports drawn up following visits in the 10 Member States, the project group carried out a final report on implementation of customs cooperation through the Naples II Convention (8282/3/08 REV 3 ENFOCUSTOM 47). The report was adopted in September 2008 by the CCWP.

The final document endorsed by the CCWP comprises, on the one hand, a management summary aiming at highlighting the main conclusions and recommendations proposed by the project group in the study and, on the other hand, a report in the annex drawing up a comprehensive state of play on the application of the Naples II Convention by customs authorities and all the other administrations concerned.

The CCWP approved the project group proposals aiming at promoting knowledge and use of the Convention not only by customs administrations but also by police and judicial authorities. In order to reinforce cooperation between administrations, the CCWP encourages Member States to pursue the ratification procedures for the Convention, and for the great majority which already apply it, to ensure that the Naples II Convention is uniformly implemented.

The document will be presented to the Article 36 Committee with an aim to give guidance on how to best apply the convention and to enable law enforcement authorities to have a better understanding of the Naples II Convention.

- **Action 9: To raise awareness and promote the use of the special forms of cooperation under the Naples II Convention (controlled deliveries, covert investigations, cross border surveillance, JITs etc) and prepare a best practice guide (cf. Action Plan implementing the Hague Programme point 3.4(m))**

SE was mandated by the CCWP to carry out this action (13163/07 ENFOCUSTOM 92).

In view of the time required to examine the co-funding file submitted within the framework of the EU ISEC programme, SE proposed to pursue this action within the current 2008-2009 action plan.

- **Action 10: To examine and report on possibilities for improved and simplified procedure for executing joint customs operations in the CCWP and regional framework (cf. e.g. Drugs Action Plan point 18)**

DE was mandated by the CCWP to carry out this action (16884/06 ENFOCUSTOM 92 + COR 1).

The project group produced a final report (10453/07 ENFOCUSTOM 64 + COR 1) giving practical recommendations to make for easier and more flexible planning and implementation of JCOs.

The CCWP widened the mandate of the project group which presented the JCO recommendations monitoring file (7598/1/07 REV 1 COR 1 ENFOCUSTOM 32) as well as the updated JCO handbook (14520/1/07 REV 1 ENFOCUSTOM 108), adopted respectively in November and December 2007.

- **Action 11: To monitor the application by customs administrations of the Council Decision on common use of liaison officers (2003/170/JHA as amended by Council Decision 2006/560/JHA) including an update of the CCWP study on liaison officers of Member States and possibly a contact points list.**

FI was mandated by the CCWP to carry out this action (7321/07 ENFOCUSTOM 26).

On the basis of answers provided by delegations to the questionnaire circulated by the project group, the latter produced a final report on common use of liaison officers. This final report was adopted in December 2007 (14941/1/07 REV 1 ENFOCUSTOM 114 + ADD 1 REV 2).

- **Action 12: To examine and report on the possible use of the financial framework programmes 2007-2013 in the JHA sector for customs purposes, including proposals for other measures than JCOs**

The CCWP mandated DE to carry out this action (5258/07 ENFOCUSTOM 5).

On the basis of answers provided by delegations to the questionnaire circulated by the project group, DE produced a report aiming at presenting to Member States the possibilities available under the Community financial programmes and at promoting their better use for customs activities. This report was adopted by the CCWP in July 2007 (11576/1/07 REV 1 ENFOCUSTOM 80).

- **Action 13: To examine, report and, where necessary, draft proposals to amend CIS Convention, taking into account:**
 - **options for 3rd pillar risk analysis**
 - **options for interoperability between CIS/AFIS and other systems such as WCO CEN and Europol information system**
 - **options for providing full access to the data for the Commission**
 - **options for providing access to the data for Eurojust and Europol**
 - **changes to Regulation 515/97⁵**

⁵ Council Regulation (EC) 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, amended by Regulation 766/2008 of 9 July 2008

The project group led by FR was mandated by the CCWP (8078/1/08 REV 1 ENFOCUSTOM 42), to consider the advisability of amending the Convention on the use of information technology for customs purposes (CIS), especially with regard to the revised provisions of Regulation 515/97. On the basis of answers provided by delegations to the questionnaire circulated by the project group as well as discussions within this group, a final report was drawn up and being presented for approval to the CCWP in October 2008 (14600/08 ENFOCUSTOM 93). This report recommends amending the CIS Convention by a Council decision which would contain the whole Convention and some amendments such as the extension of the objectives of the CIS to operational and strategic analyses or the granting of access to CIS data to Europol and Eurojust.

- **Action 14: To analyse the use of the 3rd pillar CIS and the quality of data stored in the system**

The CCWP did not take any steps under this action, especially because the Commission made CIS follow-up visits to the Member States from October 2006 to May 2008.

- **Action 15: To consider ways for Member States to enhance co-operation between customs administrations and the private sector to combat crime (cf. Council conclusions setting up the EU priorities for the fight against organised crime based on the OCTA, doc. 10181/06)**

FI was mandated by the CCWP to carry out this action (7322/07 ENFOCUSTOM 27).

On the basis of answers provided by delegations to the questionnaire circulated by the project group as well as discussions within this group, a final report was drawn up and adopted by the CCWP in December 2007 (13858/2/07 REV 2 ENFOCUSTOM 100).