

7529/98

LIMITE

ENFOCUSTOM 24

NOTE

from : Customs Cooperation Group

to : K.4 Committee

No. prev. doc. : 6703/98 ENFOCUSTOM 17 ; 11606/97 ENFOCUSTOM 58 ; 9026/97
ENFOCUSTOM 38 ; OJ No L 322, 12.12.96, P.3.

Subject : Joint Action of 29.11.1996 on cooperation between customs authorities and
business organisations in combating drug trafficking

- Report to the Council on the implementation of the Joint Action

INTRODUCTION

1.1 Memoranda of Understanding are written agreements which provide a formal framework for co-operation. Customs enter into MOUs with businesses such as freight forwarders and airlines. These are likely to include agreements by businesses to provide Customs with advance cargo and passenger information and access to their information systems, and for Customs to assess businesses' security arrangements and provide training in drugs awareness etc. The benefits from MOUs to both Customs and businesses are substantial: for example, *more* frequent seizures of drugs and other goods, better communication and improved intelligence flow.

1.2 The benefits of MOUS between Customs and businesses have been widely acknowledged at EU and international level, for example:

- recommendation 17 of the External Frontiers Strategy drawn up by the Mutual Assistance Group 92(MAG '92), proposed that 'relationships between customs services and the trade should be fostered, and direct access by customs services to trade computer systems should be encouraged. This might be facilitated through Memoranda of Understanding';
- the Group of Seven (G7) recommended their use at its summit meetings in 1991 and 1992;
- action Point No. 21 of the Madrid Drugs Experts Report which was agreed by the Council in December 1995 stated that "Customs authorities should conclude Memoranda of Understanding with the business world";
- the UN Economic and Social Council Resolutions 1993/41 and 1995/18 endorsed the use of MOUs as a practical means of tackling drug enforcement;
- Section 4.2.3 of the Commission communication to the European Parliament and the Council (Action plan for transit in Europe - A new customs policy), which followed the European Parliament Temporary Committee of Inquiry into Transit, recommends the use of MOUs;
- the Enforcement Committee of the World Customs Organisation further endorsed the use of MOUs at its annual meeting in February 1998; and
- it is understood that the draft High Level Group on Alcohol and Tobacco fraud will also be recommending their use.

1.3 On 29 November 1996 the Council adopted the Joint Action (JA) on Memoranda of Understanding between customs authorities and business organisations in combating drug trafficking. The Council recognised that a high degree of co-operation between Customs and business organisations is essential to increased efficiency and effectiveness in the fight against drug trafficking at European Union level. In adopting the JA the Council set itself the objective of encouraging the wider use of Memoranda of Understanding between Customs authorities and trade operators.

1.4 Article 4 of the JA requires Member States to inform the Council through the General Secretariat of progress within a year of the measures they have taken to implement the provisions of the JA. This report meets that requirement by informing the Council of measures taken in response to the JA, and making recommendations for further action.

QUESTIONNAIRES

2.1 An initial evaluation of existing MOU programmes was undertaken by the Irish Presidency in July 1996 through the issue of a questionnaire (Enfocustom 23) to all Member States. A second questionnaire was issued to Member States in June 1997 (Enfocustom 38) providing for a second assessment of progress. A summary of replies to these questionnaires is given in the Annex attached to this document.

2.2 This report evaluates the replies to these questionnaires. It gives a summary of findings and the benefits derived from MOU programmes and goes on to consider where further progress can be made.

FINDINGS

Existence of MOU Programmes

3.1 In 1996 nine Member States had MOU programmes. This increased to eleven during 1997 when two Member States introduced a programme.

3.2 The JA required Member States to introduce an MOU programme where none existed; however, replies show that four Member States still do not have MOU programmes. Of these:

- two are in the process of carrying out preparatory work to implement a programme;

- one reports that it operates a system of verbal agreements with trade operators. It states that this allows their Customs authority access to information held on trade operators databases. That Member State considers that this offers similar results to those provided by MOUs. *However, it is planned to initiate an MOU Programme which would be in addition to these verbal agreements;* and
- one Member State has not yet taken steps to implement the JA and is identified in the annex.

Size of MOU Programmes

- 3.3 Figures provided by Member States in 1996 indicated that there were 191 MOUs in existence. This increased to 221 in 1997; a percentage increase of around 16%.
- 3.4 The size of MOU programmes varies considerably between Member States. The largest programme has 118 MOUs in force and the smallest has two. One Member State has established an MOU programme, but has not yet formally agreed any MOUs.
- 3.5 Approximately two thirds of existing MOUs are with individual operators e.g. individual airport authorities, carriers, freight forwarders. The remainder have been concluded with representative bodies e.g. Road Hauliers Association, Association of Travel Agents.

Content of MOUs

- 3.6 Article 2 of the JA lists seven aspects of co-operation which it recommends should be included in MOUs. These are:
- exchange of contact names in Customs and in the Signatory Organisation;
 - provision to Customs, by the Signatory, of advance cargo or passenger data as appropriate;
 - access by Customs to the Signatory's information systems;
 - assessment by Customs of the Signatory's security procedures;
 - development and implementation of plans to improve such security;
 - checking of newly recruited staff by the Signatory;
 - provision by Customs of training for the Signatory's staff.

Some Member States have included all aspects of co-operation listed above in MOUs while others focus on three or four of these.

Extending scope of MOUs beyond drugs trafficking

- 3.7 Article 5 of the JA provides that Member States may extend the scope of their MOUs established under the programme to other offences for which the Customs authorities are competent in addition to drug smuggling.
- 3.8 Seven Member States indicate that MOUs have included other objectives alongside that of fighting drug trafficking. These include such areas as the fight in trafficking against sensitive goods and goods which are subject to high levels of taxation, as well as fiscal fraud.

BENEFITS DERIVED FROM MOU PROGRAMMES

4.1 Member States reported numerous positive results from the introduction of MOU Programmes. These include:

- More frequent and larger seizures: for example one Member State reports that 48% of seizures in one region were as a result of information from a freight forwarder;
- Better targeting of resources;
- Better Customs/trade relations: for example one Member State reports that the provision of training to trade operators' staff has heightened their drugs awareness and resulted in enhanced company security and improvement in the quality of feedback to Customs; and
- Improved flow of information for use by intelligence units.

CONCLUSIONS

- 5.1 Progress has been made in the introduction of MOU programmes by Member States since the JA came into force. Eleven Member States now have MOU programmes in existence, a further two are in the process of implementing a programme. The remaining two Member States have yet to act on the JA.
- 5.2 The number of individual MOUs in force since the JA was agreed has increased by 16% to 222 in 1997.
- 5.3 The content of MOUs varies between Member States. Some Member States included all aspects of co-operation listed in the JA, while others have included only three or four of these.
- 5.4 The number of individual MOUs in existence varies greatly between Member States.
- 5.5 There is *still much work* to be done in fully implementing the JA. There is much to be gained by Member States from the use of MOUs and *in these circumstances* it is *rather* surprising that a number of Member States have yet to introduce a programme. As outlined in paragraph 1.2, the use of MOUs between Customs and businesses has been recommended in many different fora at both EU and international level. MOUs are of significant benefit in the fight against organised crime and a valuable tool in risk analysis. The following recommendations focus on encouraging Member States to fulfil their individual obligations in respect of the JA to implement an MOU programme.
- 5.6 More work remains to be done in expanding the scope of application of MOUs into areas other than drugs trafficking. The recommendations look at ways of helping Member States to do this. This is in keeping with the Madrid Drugs Experts Report which recommends the use of MOUs between customs and business in the fight against drugs and fraud; with the Commission's Action Plan for transit in Europe which specifically refers to the use of MOUs between trade operators and Customs authorities in tackling transit fraud; with the draft report from the High Level Group on Alcohol and Tobacco Fraud which commends their use in tackling alcohol and tobacco fraud; and with the High Level Group on Organised Crime recommendation for measures to prevent organised fiscal fraud.

RECOMMENDATIONS

- 6.1 The 1996 JA required all Member States to establish a programme. Eleven Member States have done this. Urgent action should now be taken by those Member States who do not have a programme to establish one by the end of 1998.
- 6.2 To further encourage the take up of MOUs, Member States should give consideration to the setting of quantitative and qualitative targets for the setting up of new MOUs. *An example of a quantitative target could be the setting of numerical targets for the agreement of new MOUs and qualitative targets could be set in respect of the range and type of operators with which MOUs are agreed. Qualitative targets could also cover reviewing existing MOUs with a view to identifying areas for further improvement. These targets could* act as a benchmark against which to measure future progress.
- 6.3 In keeping with Article 5 of the JA Member States Customs services should attempt to broaden the scope of application of MOUs to include other areas beyond drug smuggling for which they have competency e.g. transit and excise fraud, which have been identified as the target of activity by organised crime. *This could be done by Member States prioritising other areas and seeking to include these accordingly.* To facilitate this Member States who have already extended MOUs in this way could share their experiences and results. This could be done by the production of a list of areas targeted and resulting benefits.
- 6.4 Consideration should also be given to expanding the content of MOUs with the aim of including all aspects of co-operation covered in the JA.
- 6.5 To further explore the benefits and practicalities of establishing an MOU programme and give some impetus to points 6.1 to 6.4 it is recommended that a seminar be held on the JA. This should build on the Dublin *Matthaeus Seminar organised by Ireland in November 1995* and consider methods to address points 6.2 to 6.4 of these recommendations. Funding for this could be applied for under the OISIN programme.
- 6.6 A further report should be made to Council within a year which should address particularly the progress that has been made against the areas in Section 6 of this report.

Annex: QUESTIONNAIRE TO MEMBER STATES' CUSTOMS AUTHORITIES CONCERNING THEIR USE OF MEMORANDA OF UNDERSTANDING (MOUs) WITH COMMERCE

OPERATORS

1. COUNTRY	AUS		BEL		DEN		FIN		FRA		GER		GRE	
2. Does your administration currently have an MOU programme in place?	N		Y		Y		Y		Y		Y		Y	
3. If yes, (i) When did it commence? (year and month)			(1)		1987		1994		1992 JAN		1991		1997 JAN	
(ii) How many MOUs has your administration entered into to date?														
	96	97	96	97	96	97	96	97	96	97	96	97	96	97
- currently in force					1	2	9	12	5	10	9	9		1
- under negotiation					1	0	0	0	2	2	2	330		3
(iii) With whom were the MOUs concluded?														
(a) how many with representative bodies?														
(b) how many with individual operators?														
- importers														
- exporters														
- carriers:														
• air carriers														
• sea carriers													1	
• express delivery													1	
• freight													3	
- freight forwarders														
- authorities:														
• port authorities														
• airport authorities														
- customs agents														
- others													3	


(NL) This refers to MOUs concluded with shipbrokers.

(1) B : Action programme in place but none concluded as yet.

1. COUNTRY	IRL		IT		LUX		NETH		POR		SP		SWE		UK	
2. Does your administration currently have an MOU programme in place?	Y		N		N		Y		Y		N		Y		Y	
3. If yes, (i) When did it commence? (year and month)	1993 JAN						1993		1994 DEC				1987 AUG		1990 JUL	
(ii) How many MOUs has your administration entered into to date?																
	96	97	96	97	96	97	96	97	96	97	96	97	96	97	96	97
- currently in force	30	38					6	16	14	7			9	9	108	118
- under negotiation	16	13	1				7	2	0	5			3	2	2	1
(iii) With whom were the MOUs concluded?																
(a) how many with representative bodies?	11	12					4	10	14	1			5	5	30	36
(b) how many with individual operators?	19	26					2	6		6			4	4	18	82
- importers																
- exporters																
- carriers:																
• air carriers		3											1	1	27	22
• sea carriers		5								1						12
• express delivery		4														1
• freight		1														6
- freight forwarders								3 ⁽¹⁾					3	3	9	
- authorities:																
• port authorities		4								1						23
• airport authorities		7								1						12
- customs agents																
- others	19	2						3							42	6

⁽¹⁾ (NL) This refers to MOUs concluded with shipbrokers.

COUNTRY	AUS	BEL	DEN	FIN	FRA	GER	GRE	IRL	IT	LUX	NETH	POR	SP	SWE	UK
(iv) What are the main provisions of the MOUs?															
(a) Exchange of contact names in customs and signatory organizations				+	+	+	+				+			+	+
(b) Provision by signatory of advance cargo data					+	+		+			+	+			+
(c) Provision by signatory of advance passenger data				+		+		+						+	+
(d) Access by customs to signatory's information systems				+				+			+	+		+	
(e) Assessment by customs of signatory's security procedures				+				+			+				
(f) Development and implementation of plans to improve security			+	+		+		+			+	+		+	+
(g) Checking of new staff by signatory						+		+							
(h) Training of signatory's staff															
(i) Other (specify)			+			+	+	+			+			+	
(measures that are typically included in Member States' MOUs are marked +)				+ ²	+ ⁴		+ ⁷	+ ¹			+ ⁶	+ ⁵		+ ³	+
4. If no, what steps have been taken to set up an MOU programme?	see Annex 1														

- 
- (1) IRL :
1. free and continuous exchange of information at an operational level between the customs authorities and the various signatories;
 2. notify customs of any suspicious packages or persons;
 3. training programmes provided by the signatory to help customs officials become familiar with the signatory in information systems.
- (2) FIN :
1. promote suitable methods of preventing drug-trafficking and the smuggling of other illegal goods;
 2. hold regular discussions, outside training programmes, with senior officials of the signatory companies.
- (3) SWE : encourage communication of suspicious data to customs intelligence units
- (4) FRA :
- target consignments by increasing the quantity and quality of advance information supplied to customs;
 - set up procedures for passing on information about suspicious data;
 - improve security arrangements for facilities and infrastructures (establish more effective standards);
 - develop and implement specialized training courses for customs staff and company personnel.
- (5) POR :
- support in carrying out laboratory analysis
 - use of equipment of the signatory company during physical checks on goods in exportations.
- (6) NL :
- where possible, the computerised provision of data by trade and industry.
- (7) GRE :
- enhance of information at an operational level between the customs authorities and the co-signatories.
 - notification to the customs authorities of all suspicious consignments, shipments and persons.

COUNTRY	AUS	BEL	DEN	FIN	FRA	GER	GRE	IRL	IT	LUX	NET H	POR	SP	SWE	UK
5. Do the MOUs concern solely the fight against drug-trafficking, or do they allow for other objectives (such as combating trafficking in other sensitive goods, or other types of fraud)?	DT SG (1)		DT	DT SG	DT SG (3)	DT SG (2)	DT SG (7)	DT SG (5)		DT		DT SG (6)		DT	DT SG (4)
6. Other useful information (e.g. experience, positive results)	see Annex 2														

DT Fight against drug-trafficking.

SG Other objectives: fight against trafficking in sensitive goods; other types of fraud.

(1) AUS: wishes to include serious types of customs fraud in the current joint action.

(2) GER: the national MOU programme is confined to combating drugs. MOUs have also been concluded in areas other than those related to drug-trafficking. Unlike MOUs concluded in the fight against drug-trafficking, these MOUs are applied in a more restrictive manner, as it is impossible to cooperate with carriers or commercial operators involved in certain areas of customs fraud, particularly fraud concerning goods subject to high rates of tax.

(3) FRA: has extended the scope of the memoranda to all types of customs fraud.

(4) UK: has implemented specific MOU programmes for excise goods.

(5) IRL : recent MOU with a representative body covers the fight against drug trafficking and trafficking in fiscal goods. Future policy will be to extent MOUs beyond drug trafficking and to include other types of fraud.

(6) POR : Extended the purpose of the Memorandums to cover all customs frauds

(7) GRE : Fight against diversion of precursor substances and fight against drug trafficking.

QUESTIONNAIRE TO MEMBER STATES' CUSTOMS AUTHORITIES
CONCERNING THEIR USE OF MEMORANDA OF UNDERSTANDING (MOUs) WITH
COMMERCIAL OPERATORS

Replies to question 4
on the steps taken to set up an MOU programme

Austria

Working Party set up to carry out preparatory work. Talks with commercial operators can be held as soon as the results of the working party's discussions become available.

Luxembourg

Several Memoranda of Understanding are currently being prepared.

Belgium

Even though, to date, the Belgium Customs and Excise Administration has not yet concluded any MOUs, it has nevertheless established a working programme in order to be able to conclude agreements with various partners in commerce as quickly as possible.

Various stages have thus been embarked upon.

1. A wide-ranging survey of the market has been launched in order to target economic operators who are interested in this form of cooperation.
2. As the World Customs Organisation is a forerunner in this field, our administration has approached it in order to acquire a certain amount of expertise regarding the way we should initiate and administer a MOU programme at national level. As this possibility had been mentioned by the said Organisation, a particular wish has been expressed for assistance from another country which is well versed in all the questions involved in MOUs (negotiation, administration, technical aspects, staffing, etc.).

3. Discussions are currently in progress with BIMCO (Baltic and International Maritime Council). Following these, a draft MOU has been submitted for our examination.
4. Meetings with representatives of international express air couriers will be organised very shortly - there is interest from DHL and TNT.

Spain

1. At the current time written memoranda of understanding with private companies do not exist in our country, as the spirit of collaboration governing these memoranda is imposed either generally or by means of an individual demand, by our fiscal legislation (art. 111 of the General Tax Law (I.G.T.)).
2. Nevertheless, our administrative practice provides for the existence of verbal agreement which enable the Spanish Customs Administration to handle the same information as that held by the companies involved with external trade, by means of connection to their databases.
3. We can therefore conclude that this type of verbal agreement offers our Administration similar results to those provided by the Memoranda of understanding, besides being closer and more akin to our administrative practice.
4. These verbal agreements have been concluded with the following operators :
 - air transport 1
 - sea transport 2
 - urgent mail 3
 - ordinary mail 1

QUESTIONNAIRE TO MEMBER STATES' CUSTOMS AUTHORITIES
CONCERNING THEIR USE OF MEMORANDA OF UNDERSTANDING (MOUs) WITH
COMMERCIAL OPERATORS

Replies to question 6

on other useful information (e.g. experience, positive results)

Ireland

See point 3(v) in 1996 questionnaire in ENFOCUSTOM 17

For the record:

Improved channels of communication, which have led to increased cooperation between customs and the business sector.

1. An increase in the regular flow of reliable, and quality information, via trade information systems, to customs.

The provision of training by customs to company staff in key operational areas has heightened the drugs awareness of such staff, which has resulted in the enhancement of company security and better quality feedback to customs.

A number of drug seizures have been directly or indirectly attributed to MOUs.

Germany

Memoranda of Understanding concluded with commercial operators are currently being implemented.

Various issues remain to be resolved with regard to the confidentiality of computer data.

An increase in the flow of information is already evident.

Experience with MOU programmes has generally been satisfactory.

Finland

Improved channels of communication between customs and businesses.

Access to information before means of transport arrive.

1. Better targeting of resources through access to trade information systems.
2. Seizures of larger quantities of drugs.
3. Improved intelligence services.

France

The main measures undertaken in 1997 to strengthen the customs/business partnership have involved:

- the development and implementation of a teaching module for vocational training centre in transport firms;
- the production of an information handbook allowing rapid identification of the main drug and trafficking networks, entitled "Drogues: sachez les reconnaître pour mieux les combattre";
("Improving knowledge of drugs in order to fight them more effectively.")
- the setting up of a free-phone number (*"numéro vert"*) to facilitate the exchange of information.

Furthermore, with regard to the cross-Channel link, French and British customs are shortly due to sign a memorandum with the EUROTUNNEL company.

Sweden

Some drug seizures have been made as a result of information received from signatory companies.

1. Better knowledge and understanding of customs rules and functions;
 2. Improved contacts between commercial operators and customs have enabled customs intelligence units to obtain valuable information.
- Ensure the practical implementation at both regional and national level of the memoranda concluded between authorities.

United Kingdom

Numerous seizures made at Dover through access to traders' records.

For example, 400 kg cannabis resin through information from freight forwarder. 48% of seizures made in one region as a result of information from trade.

Experience:

- Network of liaison officers to service and maintain MOU locally;
- Don't expand programme too far until you have the resources to service and maintain relationships with signatories and deliver what trade expect on signing MOU.

Denmark

Memorandums of Understanding imply inter alia that relevant information is available at an early stage.

1. The customs authorities can to a larger extent use information by having access to the computer systems of the enterprise.
2. Access to the information systems of the enterprise means that the control can be targeted at relevant control objects.
3. Some drugs seizures are made on the basis of information obtained from the enterprise.

7529/98

COR 1
LIMITE

ENFOCUSTOM 24

CORRIGENDUM TO THE NOTE

from : Customs Cooperation Group

to : K.4 Committee

No. prev. doc. : 7529/98 ENFOCUSTOM 24

Subject : Joint Action of 29.11.1996 on cooperation between customs authorities and
business organisations in combating drug trafficking

- Report to the Council on the implementation of the Joint Action

Subject to study and linguistic reservations entered by Member States and with the amendments made below, the Customs Co-operation Working Group has completed its examination of the report to Council on the implementation of the Joint Action on co-operation between Customs authorities and business (7529/98 ENFOCUSTOM 24) and commends the document to the K4 Committee.

The changes shown in this document will be incorporated into the text of the draft report before it is submitted to the Justice and Home Affairs Council.

pg 3 Paras 3.1. and 3.2. - Replace these paragraphs with the following:

"In 1996 nine Member States had MOU programmes in place. By early 1998 all Member States had set up MOU programmes, although five Member States had yet to conclude actual MOUs. One Member State reports that it operates a system of verbal agreements with trade operators. It states that this allows their customs authority access to information held on trade operators' databases. That Member State considers that this offers similar results to those provided by MOUs. However, it is implementing an MOU programme which would be in addition to these verbal agreements."

pg 4 Para 3.4 - Change last sentence to read:

"Five Member States are in the process of implementing MOU programmes but have not yet formally agreed any MOUs."

pg 6 Para 5.1 - Change second sentence to read:

"Ten Member States have MOU programmes in place and have concluded MOUs. The remaining five Member States are in the process of implementing a programme."

pg 7 Para 6.1 - Change second sentence to read:

"Ten Member States have agreed MOUs. The remaining five Member States should seek to finalise the implementation of their MOU programmes and conclude actual MOUs by the end of 1998 at the latest."

pg 8 Question 2 - Change Italy, Luxembourg, Spain and Austria to YES.

pg 8 Question 3 Item (i) - Add footnote for Italy, Luxembourg, Spain and Austria stating:

"Action programme in place but no MOUs concluded as yet."

pg 10 Question 3 Item (iv), (a) and (h) - Insert cross for Ireland.

pg 10 Question 3 Item (iv), (a), (d), (e) and (h) - Insert cross for Denmark.

pg 10 Question 3 Item (iv), (d) and (e) - Insert cross for the UK.

pg 10 Question 3 Item (iv), (b) - Insert cross for Finland.

pg 10 Question 3 Item (iv), (e) - Insert cross for Germany.

pg 12 Footnote 2 - Delete entire footnote.