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Subject : Action to tackle fraud

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Fraud in the areas for which customs services are responsible involves matters which are appropriate to both the first and the third pillar. Many aspects of fraud relating to the Community's own resources and turnover taxes provided for under Article 99 of the EC Treaty are matters for the first pillar, in particular ensuring that Community procedures and systems are as well proofed as possible against fraud. However, once fraud has been committed, efforts to detect and prosecute it are primarily a matter for the third pillar. Indeed the new Amsterdam Treaty, Article 29 (TEU), identifies fraud as a particular subject for closer co-operation between customs and other law enforcement authorities.

The Presidency considers that it would be useful to identify the various existing recommendations on tackling fraud which affect Customs services and assess whether the CCWG has tackled them or has yet to act. It is important in assessing the progress customs services have made to enhancing co-operation in tackling fraud that the contribution of the third pillar should be fully taken into account. The Presidency therefore proposes that the attached document should be sent to the Heads of EU Customs services and to the Commission to inform them of the contribution to tackling fraud which customs in the third pillar has already made and plans to make in the future.

It is also proposed that the paper should be communicated to the Multidisciplinary Group on Organised Crime for their consideration in assessing progress against the recommendations of the High Level Group on Organised Crime which were agreed by the Amsterdam European Council.

Recommendations contained in the body of the paper have been highlighted using shading and are grouped together in the Conclusions section.

DRAFT COMMUNICATION FROM CCWG TO THE HEADS OF EU CUSTOMS SERVICES, THE COMMISSION AND TO THE MULTIDISCIPLINARY GROUP ON ORGANISED CRIME.

#### ACTION BY CUSTOMS SERVICES TO TACKLE FRAUD

1.1 Fraud is a serious problem in a number of areas for which Customs services have responsibility. Relevant recent reports that have had recommendations on tackling such fraud include: the Commission communication on an action plan to tackle transit fraud; the report of the High Level Group on Organised Crime; and the External Frontiers Strategy. The report of the High Level Group on Alcohol and Tobacco fraud can be expected to add to this list.

1.2 It is striking that the recommendations from these various groups often have similarities. Indeed some recommendations are almost identical. Particular themes which emerge from all of these documents are;

- the need for the 15 customs administrations to seek to function as if they were one;
- the need for inter-agency co-operation; and
- a need to recognise that organised crime is involved in many aspects of fraud and is no respecter of institutional barriers between first and third pillars.

1.3 If we are to act coherently to tackle fraud it is necessary for the various first and third pillar groups dealing with aspects of this issue to try to work in unison in order to ensure that work is neither duplicated nor inadvertently overlooked. The Customs Co-operation Working Group has therefore prepared this paper to outline the work which it has been doing in this area and intends to carry forward over the next period in order to meet the outstanding recommendations.

#### Anti-fraud work undertaken by Customs in third pillar

1.4 Many of the activities and negotiations undertaken by the CCWG have been designed to tackle both illicit trafficking in prohibited goods such as drugs and fraudulent activity involving licit goods. In particular the CCWG believes that the following measures have a significant part to play in combating fraud:

- Customs Information System Convention (OJ C 316, 27.11.1995, p.1).
- Naples II Convention (OJ C 24, 23.1.1998, p.1).
- Joint Action on Memoranda of Understanding with businesses (OJ L 322, 12.12.1996, p.3).
- Joint Surveillance Exercises, such as Operation Taboo (OJ C 193, 24.6.1997, p.4).
- Work on risk analysis techniques (OJ L 159, 17.6.1997, p.1).

1.5 By examining the various anti-fraud recommendations made in different reports and communications it can be seen that these measures have an important part to play.

## Section 2: Transit Fraud

2.1 The Commission communication to the European Parliament and the Council (Action plan for transit in Europe - A new customs policy) follows a European Parliament Temporary Committee of Inquiry into Transit Fraud. The Commission Communication estimates the loss from such fraud to the Community and national budgets at some ECU 1.27 billion over the years 1990-96. It also suggests that this loss is at least in part attributable to organised international crime groups. Amongst the conclusions of the Commission communication were that the 15 customs administrations should seek to function as if they were one, reflecting the concept of the Customs 2000 programme. The Action Plan annexed to the communication sets out a number of proposed measures, showing where relevant how these measures correspond to the recommendations by the European Parliament Inquiry. The section of the Action Plan to which the CCWG believes it can make the greatest contribution is Section 4.3 "Fraud Prevention and Law Enforcement" and in particular the following items:

### *4.3.1 Secure Movement of Goods in Transit*

- *Co-ordinate surveillance measures with the operator's own security measures (see 4.2.3 - this refers to conclusion of MoUs between operators and customs authorities)*

2.2 The Presidency considers that the Joint Action on Memoranda of Understanding (ENFOCUSTOM 36/96 agreed by the Council on 29.11.1996) and the follow-up Report being prepared for 28-29 May JHA Council should be regarded as contributing to this objective. Article 5 of the Joint Action provides that Member States may at their discretion extend the scope of MoUs established under the programme to other offences for which the customs authorities are competent in addition to drug trafficking. The follow-up Report will pay particular attention to this possibility.

#### 4.3.2 Co-ordinating Risk Management

*"The development of a common risk management policy, and especially setting up a Community risk analysis unit, would enable all customs administrations to define precise criteria for targeting inspections, record checks and enquiries."*

*The Commission are to prepare a plan in the first half of 1998.*

2.3 The work which the CCWG has done on the question of risk analysis (ENFOCUSTOM 58 of 1996 and ENFOCUSTOM 11, 23, and 50 of 1997) should be taken into account by the Commission when preparing their plan. The Commission should also take into account relevant recommendations in the draft Customs Strategic Action Plan (ENFOCUSTOM 51 10988/97). For example, Section 3 of that Plan calls on Member States to examine the feasibility of setting up a central reference service or reference services for assessing risks and threats. Improvement of risk analysis techniques is also a feature of the emerging recommendations from the High Level Group on Alcohol/Tobacco fraud (see 3.18).

#### 4.3.3 Targeted Checks on Operators

*"Europe wide co-ordination of each customs administration's control plans and the development of joint control operations would considerably enhance all areas of anti-fraud work."*

*"Organise one-off joint control operations for the different modes of transport (air, sea, rail, road) at European level, with Commission assistance."*

2.4 The CCWG has been doing this for some time and will continue to do so. It is to be hoped that the Commission will continue to play a role as appropriate in the organisation of the Joint Surveillance Exercises. [The CCWG considers it important that it should continue to be responsible for organising EU-wide customs surveillance exercises and does not think it would be sensible for a separate attempt to be made to organise EU Joint Exercises.] On the basis of the work already undertaken by it, the CCWG considers that it is well placed to tackle this recommendation.

#### *4.3.4 Fraud Detection and Law Enforcement: Administrative Investigations and Judicial Procedures*

*"In addition to fraud prevention, we need to develop a policy for detecting and dealing with fraud, particularly as regards large-scale, organised financial and economic crime. This should be done by implementing the present legislation in practice (some of it recent) and developing other tools and schemes needed to crack down on crime."*

*Timetable refers to "follow-up of the ratification and implementation of the CIS...Convention: 1997"*

2.5 The CCWG believes that this area in particular is a matter primarily for the third pillar to develop. The UK Presidency is keen to encourage the ratification and implementation of the CIS Convention (ENFOCUSTOM 8 5913/98 refers). The Report of the High Level Group on Organised Crime (see below) recommends that all Member States should have completed ratification by end 1998. The CCWG also believes that the conclusion of the Naples II Convention should be seen as an outstanding contribution to this objective.

#### *4.3.5 Co-ordination of Means and Resources and Harmonisation of Customs Officials Powers*

*"Draft a Community plan to ensure that the Community's external borders are properly resourced."*

*Carry out a general study on the role and powers of customs officials."*

2.6 On the former of these actions the CCWG has done a considerable amount of work (notably ENFOCUSTOM 17, 56, 57 and 61 of 1996) to which it is recommended that the Commission should pay particular attention in preparing a Community plan. These contain substantial documentation on the resources allocated to the external border.

On the question of the study on the role and powers of customs officials, this is also a recommendation of the External Frontiers Strategy Report and is contained in the draft Customs Strategic Action Programme (ENFOCUSTOM 51 10988/97 part 35). This activity has yet to be completed but will be undertaken by the CCWG over the course of the next year. In addition the Commission Anti-Fraud Unit (UCLAF) has already produced on CD Rom a database which provides details of customs officials powers and relevant legislation in Member States. This is known as the DAF database.

### Section 3. High Level Group on Organised Crime

3.1 The report of the High Level Group on Organised Crime was endorsed at the Amsterdam European Council in June 1997. Its preamble and recommendations are interwoven with points relevant to Customs services, some key extracts are attached for information in an Annex to this paper. In particular it notes that because the major driving force behind organized crime is the pursuit of financial gain, this attracts it into an ever-increasing number of areas for which customs have a responsibility (counterfeiting, fiscal fraud, and fraud against the Community's financial interests). To counter this the Report:

- stresses the need for developing closer co-operation, at the national level, between fiscal and law enforcement authorities;
- calls for the prevention and suppression of organized fiscal fraud such as VAT and excise fraud, including in particular its transnational aspects, to be considerably improved at both national and European level; and
- seeks to optimize the role Europol might play at each stage of the fight against organized crime.

3.2 These observations are then translated into an Action Plan containing 30 recommendations of which a number clearly involve Customs services. The CCWG and other customs groups have begun to tackle some of these matters but by no means all. The most significant recommendations for customs services are as follows:

*Recommendation 10. The Member States should consult regularly the competent services of the Commission with a view to analysing cases of fraud affecting the financial interests of the Community, and deepening the knowledge and understanding of the complexities of these phenomena within existing mechanisms and frameworks. If necessary, additional mechanisms shall be put in place with a view to arranging such consultations on a regular basis. In this context, future relations between Europol and the Commission's anti-fraud unit (UCLAF) should be taken into account.*

*Target date: end 1997*

*Responsible: Member States/Commission/Europol*

3.3 In the Customs/fiscal first pillar sector such consultation between Member States and the Commission is already a regular feature. Amongst the standing Commission-chaired groups which focus on fraud are:

- SCAC (Standing Committee on Administrative Co-operation)
- High Level Group on Alcohol/Tobacco Fraud
- Transit Committee
- COCOLAF (Commission Committee for the Fight Against Fraud)

3.4 UCLAF is represented on these groups. Whether co-ordination of customs policy development between the pillars is as extensive as should be the case is less certain. There are some good examples of collaboration between customs in both pillars (for example developing the CIS and UCLAF involvement in Joint Surveillance Operations such as Operation Taboo) but the phenomenon of organised crime suggests that there is room for improvement. In particular as this recommendation of the HLG on Organised crime indicates, there is a need to consider how the respective expertise of Member States customs services, Commission, UCLAF and Europol can be harnessed productively.

To this end it is recommended that the possibility of a seminar financed by the Falcone programme and involving all these organisations should be rapidly progressed in order to consider means of responding to organised crime affecting the financial interests of the Community and in particular the opportunities for improved working between the bodies involved.

*Recommendation 11. The Council should adopt a joint action establishing a specific multi-annual programme to combat organized crime, including fraud affecting the financial interests of the Communities, permitting specific actions in the fields of training for key players responsible for preventive policies exchanges of information, research and other forms of improving skills and operational methods.*

*Target date: end 1997*

*Responsible: Council /Commission.*

3.5 The Falcone programme (CRIMORG 20 12369/97) [has been adopted] to meet this Recommendation. The terms of that programme make explicit that persons responsible for the fight against organized crime include amongst others "judges, public prosecutors, police and customs departments, civil servants, public tax authorities....".

3.6 Earlier this year the CCWG considered the use of the third pillar financing programmes, notably the Oisín programme, (5149/98 ENFOCUSTOM 1) and concluded that the CCWG should have a strategic approach to funding; that Presidencies should ensure there is proper consideration of funding for activities every Autumn; that considering funding for exercises should be part of a rolling programme; that all MS should be involved in the bidding process; and that MS who had made successful funding applications in the past would assist other MS with their applications for projects.

*Recommendation 14. The following European Union Conventions should each be ratified by the target dates set out ....*

Moreover all efforts should be made to ensure that ....Naples II draft Convention on customs co-operation [is] finalized by the end of 1997.

3.7 The Naples II Convention was concluded on 18 December 1997. Customs DGs will recall that the Harrogate Declaration by the Club was a key factor in creating the momentum to develop Naples II. An Explanatory Report (5932/98 ENFOCUSTOM 9) will be submitted to the Justice and Home Affairs Council in May. The Report should enable ratification procedures in all Member States to be completed rapidly. •

The CCWG suggests that having been involved in starting this process Customs DGs may wish to participate in its conclusion by entering into an undertaking to use their best endeavours to complete ratification by end June 1999 and to take up the option to apply the Convention with other participating Member State immediately upon completing ratification procedures.

3.8 To date (three - UK, Denmark and Sweden) Member States have ratified the CIS Convention. This Recommendation, endorsed by the European Council, commits all other Member States to completing this procedure before the end of this year. The CIS Convention envisaged that the System would come into operation once eight Member States have ratified. To achieve this it will be necessary for the technical and procedural issues surrounding implementation to be completed this year.

*Recommendation 20. Political guideline No 6 underlines the importance of co-ordination between competent law enforcement agencies at national level. Therefore while taking into account constitutional structures and national traditions, and taking into account the fact that each Member State decides on its own internal structures, it is advisable that multidisciplinary integrated teams should be set up at national level, if they do not already exist, specifically in the area of organized crime.....*

3.9 This recommendation goes on to cover a number of other points also but the Report to the May JHA Council on the follow-up to the 1996 JHA Council Resolution on Police/Customs Co-operation (Enfocustom 10) addresses some of this ground and can be regarded as contributing to fulfilling this objective.

*Recommendation 24. The possibilities for Europol to co-operate and liaise with third countries and international organizations should be elaborated. To that end, the Council should draw up one or more suitable legal instruments which ensure that contacts may be entertained with the Commission and third countries which are the most important partners for the Member States in the fight against organized crime, with relevant organizations such as Interpol and the World Customs Organization (WCO).*

*Recommendation 25. (a) Europol should be enabled to facilitate and support the preparation, co-ordination and carrying out of specific investigative actions by the competent authorities of the Member States, including operational actions of joint teams comprising representatives of Europol in a support capacity. the legislation of each Member State will determine which authority is competent, be they police, customs or judicial authorities;*

3.10 The UK Presidency has this year extended an invitation to Europol to attend all CCWG meetings.

The CCWG believes that this has proved valuable and intends that the practice should continue.

3.11 The CCWG has begun discussions on a Protocol to the CIS Convention in order to extend the CIS database to international organisations notably Europol and the WCO.

The CCWG intends that this Protocol should be put to the Council for agreement before the end of 1998.

3.12 The principle of involving other organisations in EU-funded Customs Joint Surveillance Exercises has already been established for example; in the case of the Balkan Route operation undertaken this Spring with the assistance of the World Customs Organisation and involving law enforcement agencies in 29 European countries; and in the case of Operation Taboo organised in consultation with UCLAF.

The CCWG proposes that in its preparation of future exercises it will give systematic consideration to the possibilities for involving Europol and other appropriate organisations.

*Recommendation 26. (a) to improve the operational exchange of police data, it is necessary to set up a system for exchanging information concerning suspected money laundering at the European level, in conformity with the relevant rules relating to data protection. To this end the Europol Convention should be supplemented with a provision permitting Europol to be instrumental therein.*

*(b) criminalization of the laundering of the proceeds of crime should be made as general as possible, and a legal basis should be created for as broad a range of powers of investigation into it.....*

*(e) the reporting obligation in Article 6 of the Money Laundering Directive should be extended to all offences connected with serious crime....At the same time fiscal authorities should be subjected in national law to a similar reporting obligation for transactions connected with organized crime, at least for transactions relating to VAT and excise.*

*Target date. end 1998*

*Responsible: Council/Europol/Commission*

3.13 The Customs Information System includes provision for data exchange on the transfer, concealment or disguise of property or proceeds derived from, obtained directly or indirectly through or used in, illicit international drug trafficking.

3.14 The Naples II Convention encompasses a wider area of money laundering activity by providing for information exchange on the laundering of money deriving from any infringements constituting acts in conflict with national or Community customs provisions. Such infringements are defined as including "the body of provisions adopted at Community level for harmonized excise duties and for value added tax on importation together with the national provisions implementing them."

3.15 The CIS Convention pre-dates Naples II and took as its underpinning legal basis for information exchange the original 1967 Naples Convention.

Accordingly, acting on a proposal from the Presidency the CCWG will consider extending the scope of the CIS Convention in order to bring its provisions on money laundering into line with Naples II.

3.16 Such a measure, coupled with the development of a Protocol extending the CIS to Europol and other appropriate international organisations, could be regarded as making a significant contribution to this recommendation.

3.17 On section (e) of the recommendation, as a first step it will be necessary for the Presidency working in close consultation with the Commission to develop and issue a Questionnaire to the Member States concerning national legal reporting obligations in respect of VAT/excise transactions connected with organised crime.

*Recommendation 29. Legislation to combat organized crime in connection with fiscal fraud should be developed in conformity with the relevant rules relating to data protection.....the prevention and suppression of organized fiscal fraud such as VAT and excise fraud, including its transnational aspects, should be improved at both the national and European level.*

3.18 Clearly developing legislation and improving co-operation in the area of VAT and excise to prevent organized fiscal fraud is an area where the first pillar must shoulder the prime responsibility. The High Level Group on Alcohol and Tobacco Fraud met for the fourth time on 28 January. It is intended that its Report and Recommendations will be put to Customs Director Generals on 23-24 April and subsequently to ECOFIN. Taking forward the recommendations of the Group will be very largely for the first pillar but in drawing attention to the need to improve risk analysis, the exchange of information between customs services and the benefits of Memoranda of Understanding with businesses, there is a readacross to areas in which the CCWG should assist.

3.19 As indicated earlier the Naples II Convention should also be regarded as a significant third pillar contribution to this objective. The scope of Naples II includes mutual assistance and co-operation with a view to prosecuting and punishing infringements including those relating to provisions adopted at Community level for harmonized excise duties and for value added tax on importation together with the national provisions implementing them. Amongst the purposes for which the special forms of cross-border co-operation provided for in Title IV of Naples II may be used are "illegal cross-border commercial trade in taxable goods.....where the extent of the risk to taxes and subsidies is such that the potential financial costs to the budget of the European Communities or the Member States is considerable. "

3.20 The organisation of Joint Surveillance Exercises targeting relevant sectors and the follow-up to them also has a part to play in the effort to tackle fraud in this area.

#### Section 4: External Frontiers Strategy/Customs Strategic Action Programme

4.1 The External Frontiers Strategy was agreed in 1991 and updated in 1996. The draft Customs Strategic Action Programme is designed to carry this work forward into the next millennium. The Presidency hopes that the Strategic Action Programme can be agreed by the Justice and Home Affairs Council as soon as possible and is continuing to make efforts to find a solution to the one outstanding problem. The principal focus of this work has been and will continue to be combating the illicit trafficking of drugs and other prohibited goods but the following elements of the Strategy are also particularly relevant to the area of tackling fraud:

- Study of powers
- Study of Resources/equipment at the external frontier
- Development of MOU programmes
- Improving risk analysis techniques
- Building improved relations with other law enforcement agencies.

#### Section 5: CONCLUSION

Customs Director Generals are invited to endorse the contents of this paper and in particular to:

- Underline the need for first and third pillar customs sectors to work together in tackling the phenomenon of organised criminal activity targeting fiscal fraud against national taxes and against the Community's financial interests;
- Issue a Declaration of intent to use best endeavours to secure completion of national ratification procedures for the implementation of the Naples II Convention by end June 1999 and application of the Convention with other participating Member States immediately upon completing ratification;

- Call upon the CCWG and the Commission to ensure that the Customs Information System is up and running by end 1998 in accordance with the requirement of the European Council that the CIS Convention should have been ratified in all Member States by that date;
  
- Support the recommendation that the possibility of a seminar financed by the Falcone programme involving Member States customs services, the Commission, UCLAF and Europol should be rapidly progressed in order to consider means of responding to organised crime affecting the financial interests of the Community and in particular the opportunities for improved working between these bodies involved.
  
- Agree that the practice of inviting Europol to attend CCWG meetings should continue and that in its preparation of future Joint Surveillance Exercises the CCWG should give systematic consideration to the possibilities for involving Europol and other appropriate organisations;
  
- Support development of a Protocol to the CIS Convention to extend the CIS database to international organisations, notably Europol and the WCO.
  
- Agree that a proposal from the Presidency to extend the scope of the CIS Convention in order to bring its provisions on money laundering into line with Naples II should be negotiated by the CCWG.

Request the CCWG to report progress in a year's time.

CUSTOMS RELEVANT EXTRACTS FROM THE PREAMBLE TO THE REPORT OF THE HIGH LEVEL GROUP ON ORGANIZED CRIME (OJ C 251, 15.08.1997, p.1)

*Crime is increasingly organizing itself across national borders,...taking advantage of the free movement of goods, capital, services and persons....Fraud and corruption take on massive proportions defrauding citizens and civic institutions alike.*

*Prevention is no less important than repression in any integrated approach to organized crime....It is particularly important that legislation does not invite fraud and other undue exploitation. The Member States and, where applicable, the institution issuing such rules should ensure that this is not the case.*

*The major driving force behind organized crime is the pursuit of financial gain. This both attracts it into an ever-increasing number of areas of activity where it sees possibilities for economic crime (corruption, counterfeiting, VAT and other fiscal fraud, piracy, fraud against the Community's financial interests) and also faces it with the need to launder the profits thereafter;*

*The adoption, ratification and effective implementation of all instruments directly or indirectly relevant to the fight against organized crime will continue to be an essential part of the Union's armoury. Political input from the European Council is needed to ensure:*

- that any remaining obstacles to the finalizing of ....the Naples II Convention concerning customs co-operation are quickly overcome,*
- that any necessary ratification procedures are urgently put on the agenda of national parliaments,*
- that the necessary implementing measures are rapidly and fully introduced;*

*There is an urgent need for an effective system to be introduced to monitor the implementation by Member States of all the relevant instruments adopted by the Union to combat organized crime.*

*The problem of imperfect co-operation between the various authorities responsible for law enforcement and prosecution has to be addressed both within and among Member States.*

*It is important to optimize the role Europol might play at each stage of the fight against organized crime.*

*The European Council stresses the need for developing closer co-operation, at the national level, between fiscal and law enforcement authorities, in the fight against organized crime.*

*Moreover, the prevention and suppression of organized fiscal fraud such as VAT and excise fraud, including in particular its transnational aspects, should be considerably improved at both national and European level.*

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