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**COUNCIL OF  
THE EUROPEAN UNION**

Brussels, 2 August 1999 (20.08)  
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**SEMDOC**

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10520/99

**LIMITE**

**ENFOCUSTOM 38**

**NOTE**

from :	Presidency
to :	Customs Cooperation Working Party
No. prev. doc.:	5520/99 ENFOCUSTOM 4, 6175/99 ENFOCUSTOM 9, 9260/99 ENFOCUSTOM 32
Subject :	Setting up of a computerised records system for customs purposes in the European Union Member States

**1. Introduction**

During several meetings held in 1999, the Customs Cooperation Working Party discussed the proposal on a common register which may be created with a view to preventing customs offences. The discussions were held on the basis of 5520/99 ENFOCUSTOM 4 and 6175/99 ENFOCUSTOM 9. A preliminary draft Convention was drawn up for the purpose of creating a new register (9260/99 ENFOCUSTOM 32).

The proposed register would include individual information on persons and firms who/which have been proven guilty of customs offences or in respect of whom/which customs investigations are under way. The information would be kept in the register for information purposes only, so that the customs administration registering the information would hold information relating to customs offences committed by persons or firms. On the basis of information obtained via the register it would also be possible on the basis of other agreements (e.g. Naples I and Naples II) to ask for additional information from the registering customs administration. In this way any overlap of crime investigations could be avoided.

The Customs Cooperation Working Party is basically of the opinion that the proposed register is necessary and that the conclusion of a Convention (EVYL C 316, 27.11.1995) on data technology use in the area of customs would fill a gap in the established customs information system (CIS).

However, the Customs Cooperation Working Party has not yet agreed on the choice of legal form for the register. The matter has already been discussed several times and it would appear that adopting the right decision calls for a broader knowledge of the facts.

## **2. Legal forms**

Four different alternatives were put forward for the legal forms of the proposed register :

1. An entirely new Convention.
2. Altering the content of the CIS Convention by means of an Additional Protocol.
3. Drafting own rules for the register for inclusion in the Protocol to the CIS Convention.
4. Amendment of the Naples II Convention.

There was broadest support for alternatives 1 and 3 in the Customs Cooperation Working Party. According to the views expressed in the Working Party the following factors were important as regards the choice of legal form:

- If the CIS Convention was altered the introduction of the CIS might well be further delayed;
- From the point of view of, inter alia, data protection, the CIS Convention might become too complicated an entity legally if amended or supplemented by means of a new Protocol;
- As just such a legal instrument relating to a single register already exists, it would be simpler to supplement it;
- If the CIS Convention were to be supplemented, the framework and institutions for the protection of personal data for example would already exist;
- Although a separate Convention would mean a new register, connecting this register as closely as possible to the CIS would pose no problem technically.

### **3. Relationship between the proposed register and certain other records**

A significant difference between the CIS and the proposed register is the fact that at present no personal data can be included in the CIS solely to enable the other Member States' customs authorities to obtain information on an individual's criminal past. In addition to reasonable suspicion regarding a customs offence in the making, the fact that the Member State which has included the information wants the customs administrations of the other Member States to conduct searches or keep an eye on the suspect will also constitute grounds for including the information. Apart from where sufficient suspicions about an ongoing customs offence exist, an additional reason for including information would be where the Member State which has included the information wants the customs authorities of the other Member States to carry out checks or to keep an eye on the suspect. In this way, additional information can be obtained on a possible suspected customs offence. Where there is no longer any reason to keep the data or any need for sighting or for carrying out inspections, the personal data should be removed.

Information could be stored in the proposed records for a long time, even for several years. In order to ensure its use and a long storage period, the register would contain a considerably broader range of personal information than the CIS. Mere entry in the register would not result in the adoption of measures relating to persons, such as for example checks.

There would also be a considerable difference in application. The CIS Convention is applied only on the matter of acts contrary to national legislation; the CIS of pillar I has been based on Community legislation needs in Council Regulation 515/97. The proposed registers would contain information on persons and firms who/which have committed offences against Community and national legislation.

The proposed register would nevertheless also partly overlap with the CIS so that both registers would contain information on the same persons at least when crime investigations relating to them are under way.

Partial overlapping with data systems and the Schengen data information system would also arise under the EUROPOL Convention (SIS). A clear difference from the proposed register would exist at the level of application, since no information relating to fiscal offences would be stored in those registers.

#### **4. Examination by the Article 36 Committee**

As this matter concerns legal, e.g. data protection considerations and possibly other projects associated with the IIIrd pillar, there is reason to refer it to the Article 36 Committee. The Article 36 Committee is also asked to consider what legal form should be chosen for the proposed new register.

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**COUNCIL OF  
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**ENFOCUSTOM 39**

**NOTE**

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from :	German delegation
to :	Customs Cooperation Working Party
Nos prev. docs:	9260/99 ENFOCUSTOM 32; 6175/99 ENFOCUSTOM 9 5520/99 ENFOCUSTOM 4; 10520/99 ENFOCUSTOM 38
Subject :	Setting up of a computerised records system for customs purposes in the European Union Member States – Preliminary draft Convention

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At its meeting on 8 and 9 July 1999, the Customs Cooperation Working Party discussed the pros and cons of the German preliminary draft of a legal act for a pan-European system of recording customs offences. Delegations commented on:

1. the fact that the preliminary draft had been submitted even though many details still needed to be discussed;
2. general questions of principle concerning use of the computerised records file;
3. the fact that the proposed computerised records file was needed by the experts, and
4. the limitations and advantages of the proposed computerised records file as compared with other data banks.

The German delegation's position is as follows:

1. The preliminary draft Convention was drawn up by the German delegation in the knowledge that there are a variety of possibilities for the legal instrument (e.g. supplement to the CIS Convention, Protocol to the CIS Convention, supplement to the Convention on Mutual Assistance and Cooperation between Customs Administrations of 18 December 1997, separate Convention) and its implementation (e.g. separate software and hardware, use of CIS system software and hardware). For this reason, the preliminary draft was purely intended to enable delegations to hold a structured and targeted discussion on the basis of a written formulation. Without the preliminary draft, there is a danger that discussion would just "flounder about" and the draft was intended to avoid this.

2. Outline of the usefulness of the records system in practice:

(a) Data supply

All Member States supply the data bank with personal data on customs offences. The data records are – with a view inter alia to data protection – as brief and simple as possible. They indicate simply that particular proceedings are or have been conducted against a particular person by a particular department. The data records are made available to all Member States. They are in the nature of a "shop window" (available of course only to those entitled to access) in which all aspects of customs offences are "displayed".

(b) Data interrogation

Investigating departments which wish or need to know:

- whether another Member State has already conducted investigations into similar customs offences and – if so – whether the findings of such proceedings are still available;

- whether other Member States are currently investigating the same person and searching for that person in the data bank.

(c) Outcome of interrogation

If the person is not found, the interrogating department can assume that no other EU Member State has any information.

But if the person is found in the data bank ("hit"), this indicates to the interrogating department that the department referred to in the data record may have important information for the interrogating department. A "hit" gives no indication as to whether the person in the data record and the person sought are in fact identical and that is something which has to be carefully checked in subsequent work.

(d) Start of bilateral cooperation

The interrogating department submits a request for assistance to the supplying department in the usual way. That request for assistance gives a brief outline of the interrogator's own investigations and the file number of the supplying department found in the "hit".

The requested department checks whether the persons are in fact identical and – if this is the case – whether any available information or current investigations are relevant to the request. If they are, an exchange of information on the case concerned can start.

3. Reasons why the introduction of a pan-European records system is needed by the experts, giving examples

Case I and current approach

A German cigarette smuggler "X" resident in Belgium is arrested in the United Kingdom for smuggling cigarettes. A fax requesting information is sent to the German Customs Criminal-Police Office and the Belgian Customs Administration and three days later a reply comes to the effect that neither the Belgian nor the German customs administrations have any information on "X".

### Advantage of the pan-European computerised records system

A pan-European records system would have enabled the customs officials of the United Kingdom to find out a few seconds after supplying the personal data on "X" that there was no information on "X" in either Belgium or Germany. There would have been no need for any written request for information and the workforces of the requesting and requested departments would not have been involved.

### Case II and current approach

The aforementioned cigarette smuggler "X" had already attracted attention four years earlier in France and Spain by smuggling cigarettes.

The initial findings of the United Kingdom customs investigation officials in the present case of smuggling have not, however, provided any indication of offences in France and Spain. No request for information would therefore be addressed to France and Spain.

Since – as explained in Case I – neither Belgium nor Germany had any information, the United Kingdom customs investigation officials would wrongly have to assume that "X" was a person not hitherto known.

### Advantage of the pan-European computerised records system:

By supplying the pan-European records system with personal data on "X", the customs officials of the United Kingdom immediately find out that there is already information on cigarette smuggling by "X" in France and Spain. Since that allows targeted interrogation, it is possible to:

- make use without delay of information available in France and Spain for the interrogator's own investigations;

- avoid investigations on more than one front, which often make it difficult to achieve the desired results.
- facilitate agreement on a common approach by the officials of the various departments.

This case further makes it clear that it is also particularly important for the records system that not only current but also long since completed investigations should be recorded in the system.

#### Case III:

It was not possible in some cases to determine at the time the customs debt incurred by "X" in Spain and France since the period of three years from the date on which the customs debt was incurred had expired and there was no demonstrable criminal background.

This definitively excluded the possibility of the Member States recovering the customs duties in these cases.

#### Advantage of the pan-European computerised records system:

Since interrogation of the pan-European records system shows the customs investigation officials of the United Kingdom that "X" is known already to have also committed a similar offence in Spain and France, the customs administrations of these Member States can be given information on "X"'s methods by the United Kingdom customs investigation service.

Since "X" acted in Spain and France in the same way as in the United Kingdom, it can now be shown that the French and Spanish customs authorities were unable to determine the exact amount legally due as a result of a criminal act. The amount of duty may then in certain circumstances still be determined and levied after the event on the basis of the exchange of

information made possible by the records system (Article 221(3) of Regulation (EEC) No 2913/92).

In addition to the advantages indicated for criminal prosecution, introduction of the proposed pan-European records system offers the prospect in relevant cases of Member States being able to determine and levy quite considerable customs debts after the event.

4. Like the other delegations to the Customs Cooperation Working Party, the German delegation also thinks that the records system should not be set up if its aims could be achieved by an already existing system (e.g. Customs Information System, Schengen Information System or Europol Information System). The German delegation's view, which is in the main shared by other Member States, is however that this is not the case.

#### Customs Information System

Article 5 of the CIS Convention expressly lays down that personal data shall be included in the Customs Information System only for the purpose of sighting and reporting, discreet surveillance or specific checks.

The CIS Convention thus set up a data file intended exclusively for notification, which cannot by its nature and purpose be considered for use as a records file. This is also shown by the fact that the period for which data are to be kept under the CIS Convention (Article 12) is to be regarded as too short. Article 12 of the CIS Convention specifies that data included shall be kept only for the time necessary to achieve the purpose for which it was included. In the case of a records system, however, as delegations are aware, it is vital that it should also be possible in certain circumstances to make available information concerning proceedings which have long since been concluded.

## Schengen Information System (SIS)

Document 13110/1/98 ENFOCUSTOM 65 SCHENGEN 55 REV 1 of 15 January 1999 contains a synopsis of Member States' replies to the questionnaire on the powers of customs administrations in the framework of the Schengen agreements. The German delegation thinks this synopsis makes it clear that cooperation based on the SIS cannot be considered as an alternative to the suggested records system.

## Europol Information System

According to Articles 7 and 8 of the Europol Convention, the Europol Information System may in principle be used only to store the data necessary for the performance of Europol's tasks. Europol is at present competent for preventing and combating

- unlawful drug trafficking,
- unlawful trade in nuclear and radioactive substances,
- facilitating,
- trafficking in human beings, in particular child abuse, and
- trafficking in vehicles

as well as any money laundering in connection with these forms of crime.

Europol is not competent to prevent and combat original customs offences (with the exception of unlawful drug trafficking). Data relating to customs offences can therefore also not in principle be entered in the Europol Information System.

Information on drug-related offences which have been detected by customs administrations can therefore only be entered in the Europol Information System where there are factual indications that an organised criminal structure is involved and two or more Member States are affected by the unlawful drug trafficking in such a way as to require a common approach

by the Member States owing to the scale, significance and consequences of the offences concerned. This means that only some of the drug-trafficking cases detected by the customs administrations could be recorded in this particular data file. In the case of the records system, however, it is the aim that customs administrations should have access at least to information on all significant drug-related offences.