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EUROPEAN UNION
THE COUNCIL

Brussels, 22 November 1994

10092/2/94

REV 2
RESTREINT

ENFOCUSTOM 37

NOTE

from : Steering Group II

to : the K.4 Committee

No. prev. doc.: 4988/94 ENFOCUSTOM 7

Subject: **Contribution to the development of a strategic Union plan to combat customs fraud in the internal market** [1]

Under the Working Party's priority work programme as approved by the Council of Justice and Home Affairs Ministers at its meeting on 29 and 30 November 1993, a report and contribution to a strategic Union plan to combat fraud must be submitted to the Council for approval by the end of 1994 at the latest.

The Working Party is proposing the following report and contribution to the Council of Justice and Home Affairs Ministers:

I. INTRODUCTION

The completion of the internal market has brought a major challenge for customs authorities in connection with the fight against fraud. The abolition of controls linked to the crossing of internal borders has increased the potential risk of fraud and the nature of fraud has become more international in character with the perpetrators operating in or across several EU Member States. This situation calls for closer cooperation and greater, joint efforts by EU Member States to combat contraventions of customs legislation.

(1) Scrutiny reservation of Belgium and Denmark.

Even before the Union Treaty entered into force, the customs authorities of the EU Member States and the Commission were in agreement that a common, general policy to combat fraud should be developed. In its work programme for 1994 (10684/93 RESTREINT JAI 12), which was approved by the Council of Justice and Home Affairs at its meeting on 29 and 30 November 1993, the Customs Cooperation Working Party therefore included as a priority action the drafting of a contribution to the development of a strategic Union plan to combat customs fraud in the internal market. In order to obtain initial guidelines to be followed in the fight against fraud, a questionnaire was prepared and circulated to the EU Member States (4988/94 RESTREINT ENFOCUSTOM 7, Annex 1). The questionnaire concerns aspects of customs cooperation within the meaning of Article K.1(8) of Title VI of the TEU. The individual questions relate to the areas of information exchange, controls and other measures to tackle fraud, deployment of resources to the best effect, liaison between the national and EC-wide bodies concerned with combating fraud, training and the need for harmonization of legal and administrative provisions. In this connection the EU Member States were asked not only to provide information on the current situation, but also to say how they thought improvements could be made.

The cooperation between customs authorities in the sphere of fight against fraud touches upon the first and third pillar of the TEU. In the framework of the first pillar of the TEU the Commission distributed a questionnaire (identical with the questionnaire in doc. 4988/94 ENFOCUSTOM 7) for its sphere of jurisdiction (XXI/A/2 No 3870 of 7 March 1994). The replies of the Commission's questionnaire will be evaluated by the Commission from the standpoint of Community law.

Therefore, attention is drawn to the need for congruity in setting up a comprehensive policy to combat customs frauds in the European Union.

II. EVALUATION OF THE QUESTIONNAIRE ON THE GUIDELINES TO BE FOLLOWED IN THE FIGHT AGAINST FRAUD

A. Summary of the priorities which emerge from the content of the replies

The priorities which emerge from the content of the replies point to the main outlines of a future strategy to combat fraud.

The central theme of the replies received is increased cooperation and EU-wide harmonization of action to combat fraud. **For example, a desire for harmonization was expressed as regards information transmission and technology, risk evaluation, national legislation and the powers and working methods of customs administrations. However, as regards the latter aspects namely national legislation, powers and working methods, there are still widely differing views on the extent of such harmonization and also on where harmonization should take place.**

The aim of a future new strategy should be to give substance to these desires for harmonization and to translate them into common agreement.

At the heart of a strategy to combat fraud will be increased cooperation and improved exchange of information between the customs authorities of the EU Member States and with the Commission. Great importance is attached in this connection to the use of computer technology and in particular the setting-up of information systems at EU level. This will be a dynamic process since hard and software equipment will have to be adapted both to technological development and also to the increasing demands made on customs authorities. It may also be necessary to adjust the current laws to the changed circumstances, while weighing up all the factors to be considered in the interest of an effective campaign against fraud.

The Member States considered comprehensive training, supplemented by specialized continuing training, to be of particular importance. This is especially necessary to satisfy the changed and growing demands, e.g. as a result of numerous new laws, the shift of activity from controls at the border to controls in undertakings and as a result of modern technologies. As regards training and specialized continuing training, attention should be drawn to the possibilities offered at European Community level (first pillar) by the MATTHAEUS-(CUSTOMS) programme. Customs authorities have been very satisfied with this programme, and we should examine whether it might be useful to base a similar programme for customs cooperation under Title VI of the TEU on the excellent experiences already made.

B. Replies received to the individual questions

1. Information

a) Current situation

The quality of intelligence available was judged to be satisfactory in principle, but also capable of improvement. All EU Member States have appropriate methods of exchanging intelligence and accessing that intelligence. However, the level of provision of data-processing equipment varies widely. The subjective assessment ranges from adequate to insufficient.

b) Potential for improvement

Potential for improvement is seen in particular in connection with the quality of the exchange of intelligence, e.g.:

- standardizing and systematizing the intelligence to be exchanged,
- speeding up the exchange of intelligence,
- improving the content of the intelligence (e.g. accuracy and completeness).

Following the implementation of the information systems provided for in the CIS Convention and the Regulation following on from Regulation (EEC) No 1468/81 (in the first pillar of the TEU), an improvement in the exchange of intelligence is **already** expected.

An increase in the quantity of intelligence exchanged would also be welcome, but in order to prevent a flood of data a choice would have to be made from the viewpoint of the risks involved (e.g. importance of the case, extent of the loss anticipated, possibility of several EU Member States being affected and so on). In this context special training for those employed in the information exchange sector would also be necessary.

2. Controls

The questions under this heading mainly concerned the use of risk assessment in tackling fraud and the harmonization of rules governing intervention and powers of investigators.

a) Current situation

Apart from two EU Member States, all other Member States apply fairly extensive risk assessment systems in order to carry out controls on that basis. More extensive risk assessments (not limited to specific areas of responsibility or goods) for the purposes of drawing up risk profiles are currently being carried out in only four EU Member States.

Special forms of cooperation such as, for example, coordinated and concerted activities in the case of controls on the ground are being carried out at present only in exceptional cases on account of the considerable coordination effort required (e.g. sea and air monitoring activities). In the absence of an appropriate legal and organizational framework there is still no intervention by joint teams of customs officers from several EU Member States.

b) Potential for improvement

In connection with risk assessment the following were seen as possibilities for improvement:

- deployment of more staff and the setting up of a central body for data and risk assessment **in each Member State,**
- greater use of computer technology for risk assessment,
- fixing of **Union**-wide uniform risk parameters,
- introduction of a **Union**-wide data collection system for collecting risk assessment data,
- drawing up of **Union**-wide examination plans, taking into account national **circumstances and priorities.**

The intervention of joint teams and of coordinated and concerted activities is seen as an appropriate means of combating fraud. For reasons of economy and effectiveness (considerable effort of coordination and hence a longer lead-time to implementation) an across-the-board extension of coordinated and concerted activities is not advisable for all cases. These should continue to be restricted to important, far-reaching cases of EU-wide importance. There are, however, differing views on the extent to which intervention of joint teams would be possible, ranging from "generally appropriate" to "only in the case of specific operations or audits". Problems with the deployment of such joint teams are also envisaged because of the organizational structures and powers of customs authorities in the EU Member States and for data protection reasons.

However, it is necessary to consider the competencies of the EU Member States, especially in criminal law, and the work **on this** matter **in** the Working Parties under Title VI of the TEU.

3. Resources

a) Current situation

Financial resources are regarded in some cases as a problem and as insufficient. As for technical resources (e.g. information systems, data-processing equipment) there is a great need for harmonization and coordination. No information was given about human resources (staffing levels).

b) Potential for improvement

From the standpoint of deploying resources to the best effect the following are seen as possibilities for improvement:

- better training and provision of specialized continuing training for staff of customs authorities,
- greater use of modern means of communication and working methods,
- greater use of compatible computer technology,
- improvement of information exchange and access to information,
- standardization of the application of laws and of controls,
- introduction of common databanks,
- greater coordination between departments involved in tackling fraud,
- development of risk-oriented control systems.

4. Liaison with other administrations

a) Current situation

In the vast majority of EU Member States it is primarily the customs authority which is responsible for combating fraud in the broader sense. However, in certain sectors (excise duties, agriculture, criminal investigations) other authorities (e.g. Ministries of Food and Agriculture, general tax authorities and police) are responsible and liaison with the latter is found to range from satisfactory to good. The infrastructure for liaison between the EU Member States and between those States and the Commission is regarded as satisfactory and adequate, but capable of being improved.

b) Potential for improvement

The replies were confined to the aspect of improving the infrastructure for liaison between the EU Member States and with participation of the Commission. The following measures were proposed in particular:

- possibility of direct contact on a local level by means of appropriate agreements,
- establishment of permanently manned central offices for matters of customs assistance in all Member States,
- greater use of the potential afforded by modern information technology.

As to the greater deployment of liaison officers the overwhelming majority of Member States either made no statement at all, preferred to wait for the time being to see what results were achieved by the liaison officers already in place, or did not think any extension was necessary.

5. Training and continuing training

The question was directed at the potential for improving anti-fraud operations, so that the answers did not give any information about the current situation regarding training and continuing training for staff.

Potential for improvement

As regards training and specialized continuing training, attention should be drawn to the possibilities offered at European Community level (first pillar) by the MATTHAEUS-(CUSTOMS) programme. Customs authorities have been very satisfied with this programme, and we should examine whether it might be useful to base a similar programme for customs cooperation under Title VI of the TEU on the excellent experiences already made.

6. Monitoring

The assessment of the progress being made in the fight against fraud was generally favourable. Most Member States failed to answer the question whether targets were set and whether the results should be collated EU-wide. Where answers were given, collation and evaluation of results at EU level was generally welcomed.

7. Legislation/procedures

The following suggestions were repeatedly made for facilitating the fight against fraud at national and Union level:

- harmonization of rules on competence,
- simplification and clearer drafting of existing legislation
- revision of the Naples Convention,
- closer convergence of the legal definition of contraventions bearing in mind the work under Title VI of the TEU,
- agreement on new forms of cooperation such as cross-border surveillance and the right of pursuit.

8. Existing initiatives

Tackling fraud has become an increasingly important issue. Member States have stepped up their national initiatives to take account of this. Accordingly,

- new offices have been set up and/or staff have been increased,
- cooperation between customs authorities and the other authorities concerned has been improved, and
- new techniques and technologies have been developed and introduced.

9. Other suggestions

The following suggestions for improvement, not covered in answers to previous questions, were made under this heading:

- greater use should be made of the potential for preventive action against fraud, i. e., when planning and drafting new legislation, it should be scrutinized for any potential abuses, so that efforts can be made to minimize them; weak points should be highlighted by means of simulation exercises and defensive mechanisms developed,
- setting up special data banks with data on offenders.

III. CONCLUSIONS FROM THE ANSWERS

Some of the work under way under the **third** pillar is relevant to a common anti-fraud strategy, and would allow a number of the EU Member States' suggestions for improvement to be put into effect already. The following projects are of a special relevance:

1. Draft Convention between EU Member States concerning the use of information technology **(the Customs Information System)**

   The Convention is designed to set up a data bank for areas of national responsibility that would be identical in technical structure to the information system in the new EC Regulation on mutual assistance. The Member States have so far been unable to agree on the role of the ECJ and the date from which the system can be used (provisionally, when a majority of Member States have ratified the Convention, or only when ratification is complete in all Member States).

2. Draft new Convention between the EU Member States on mutual assistance between Customs Administrations in the internal market **(Naples II)**

   The German Presidency has submitted a draft whereby the existing Convention on mutual assistance between customs administrations, concluded in 1967, is to be adapted to the developments which have taken place in the intervening period; it also proposes new forms of cooperation, such as cross-border surveillance operations, the right of pursuit, controlled **deliveries** and the deployment of joint investigation teams and covert investigators. Discussions in the Working Party have just begun, **and** there **is as yet** no agreement.

3. Formulation of an External Frontiers Strategy by the Customs Cooperation Working Party

Measures against customs fraud are concentrated to a great extent at the borders with third countries. Development of an External Frontiers Strategy is therefore a further element in building up a comprehensive anti-fraud strategy for the European Union.

4. Proposals for a Council European Union Act on the Protection of the Communities' financial interests

These proposals include a definition of serious fraud.

Work on these projects must be pushed ahead and brought to a conclusion as soon as possible.

5. Extensive discussions are still required on the remaining suggestions for improvement not covered by theses projects, in particular

- the provision of comprehensive training and specialized continuing training,
- application of risk assessment,
- simplification **and convergence** of customs legislation, and
- **closer** alignment of the working methods.

There must be detailed scrutiny to see whether these proposals can be put into practice, and if so, how.

IV. PROPOSAL FOR A COUNCIL DECISION/RECOMMENDATION

The Customs Cooperation Working Party suggests the following first step, as part of measures to be supplemented and extended in the course of further scrutiny:

1. The Council calls on the Member States to use their joint endeavours, with due regard for one another's respective fields of responsibility,

   A. in the short term, to work towards

   - adoption of the project referred to in section III (1) and entry into force as soon as possible

   - in order that national customs authorities may very soon have updated and improved legal bases for cooperation both between themselves and with the participation of the European Commission, and that the Customs Information System (CIS) for the Member States' areas of responsibility can then be set up.

   B. in the medium term, to work towards

   - adoption and entry into force of the proposals referred to in section III (4) as soon as possible, for the protection of financial interests of the EU,

   - adaptation of the Convention between the EU Member States on Mutual Assistance between Customs Administrations of 7 September 1967 to changed circumstances, in particular in the internal market, and introduction of new forms of cooperation, to make available an updated and extended legal instrument, even for cooperation in areas exclusively the responsibility of Member States **(referred to in Section III (2))**,

C. in the medium term, to ensure that, considering the abolition of border controls within the internal market

- when employees of customs authorities are receiving training and continuing training, the changed demands are taken into consideration and they are given the best possible preparation for their duties,

- attention is paid to EU-wide compatibility, especially where information technology is concerned, when installing equipment and developing programs which are to be used in direct cross-border cooperation between authorities.

D. in the long term, to work towards

- simplification of customs legislation and, in order to combat fraud more effectively, **more convergence**.

2. Measures against customs fraud are concentrated, to a large extent, at the borders with third countries. **The Customs Cooperation Working Party's forthcoming discussions on setting up an External Frontiers Strategy (referred to in Section III (3))** constitute a further building block for a comprehensive anti-fraud strategy for the European Union. The Working Party is called upon to push ahead with its discussions on this matter.

3. Risk assessment is a good means of combating fraud effectively and ensuring the best use of resources. The Customs Cooperation Working Party is called upon, as a next step, to consider the development of a risk analysis, in order to be able to produce specific options, working on that basis for coordinated actions against customs fraud at EU level.