



EUROPEAN COMMISSION
Impact Assessment Board

Brussels,
D(2012)

Opinion

Title

DG OLAF - An EU initiative on Mutual assistance to ensure correct application of law on customs and agricultural matters

(draft version of 10 September 2012) *

(A) Context

Mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters is regulated by Regulation No 515/97. In addition, Council Decision 2009/917/JHA regulates the use of information technology for customs purposes. The current regulatory set-up at EU level does not provide customs authorities and OLAF all the necessary information for better preventing and detecting breaches of customs legislation. This gives a possibility to companies importing and exporting goods to gain illegal profits by avoiding paying appropriate taxes and VAT, thus causing losses to the EU budget. This IA therefore looks at possible ways to improve the current situation.

(B) Overall assessment

The report does not inform decision making and should be significantly improved in several important respects. Firstly, the problem definition needs to be strengthened, by better explaining how the weaknesses in the current regulatory set-up have affected the prevention and detection of breaches in customs law. The baseline scenario should be improved by illustrating how the situation will evolve, using quantitative estimates such as of financial losses due to breaches in customs law, where possible. Secondly, the report should develop options that present alternative ways of reaching the objectives. In doing so, it should better describe the content and practical implementation of each option, as well as link the options more concretely to objectives and identified problems. Thirdly, it should assess the impacts of each option separately. The report should present a more detailed and quantitative analysis of the costs and benefits, particularly with respect to the implementation and compliance costs for the EU, Member States and businesses. Finally, the report should compare the options against a fully developed baseline scenario in terms of effectiveness, efficiency and coherence.

Given the nature of these recommendations, the Board asks DG OLAF to submit a revised version of the report, on which it will issue a new opinion.

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted

(C) Main recommendations for improvements

(1) Strengthen the problem definition and the baseline scenario. The problem definition section should identify and elaborate on the weaknesses and deficiencies of the current regulatory set-up, particularly with regard to the introduction of the electronic customs system in 2011, and use concrete examples to illustrate how they have affected the possibility of preventing and detecting breaches in customs law. The report should describe the problems in such a way that does not prejudge possible solutions. The report should better distinguish between the issues regulated at the EU level and those addressed at the Member State level, and clarify the legal basis given the concerns raised by some Member States. Furthermore, it should clarify what information is currently available in various databases to prevent and detect breaches in customs law, and what information would still be necessary to improve it, clearly distinguishing between information that is readily available to operators and information that would need to be specifically produced and provided, for the purposes of this initiative. The problems identified should be based on evidence where possible, using evaluations of existing legislation. On the basis of a clear problem definition, the report should develop a robust and complete baseline scenario that can serve as a reference for the comparing policy options. The baseline scenario should be expressed in quantitative terms where possible, for example, by providing estimates of financial losses due to breaches in customs law without any policy change. The report should clarify the scope of the initiative, by stating that it concerns only the customs legislation and not agricultural matters, and by explaining why it only focuses on deep sea shipping as opposed to other types of transport. Moreover, when focussing on deep sea shipping, the report needs to take into account the position of all the parties affected in this industry, not just the views of the World Shipping Council.

(2) Better define the policy options. The report should formulate policy options not only with regards to the instrument of intervention, but also with regards to its content. It should develop options that present alternative measures that would respond to the objectives and identified problems, or clearly explain why alternative options are not possible or feasible. Options should be complete and sufficiently well developed to allow a clear differentiation among them in terms of performance against the criteria of effectiveness, efficiency and coherence. The report should therefore better describe the content of each option and how it will be implemented in practice. In doing so, it should describe the envisaged databases/information systems by explaining in detail how such a database would function, for example; what information it would contain, its capacity, how it will be managed and by whom, how much it will cost, what are the risks in running it (risks related to data security and legal implications of requiring data from operators that have contractual obligations not to disclose it). In addition, the report should link the options more concretely to the specific objectives and identified problems in order to present a clear intervention logic. It should present more concrete progress indicators that would allow for an assessment of the initiative's success, and discuss the timing, scope and nature of the evaluation of this initiative.

(3) Strengthen the assessment of impacts and comparison of options. The report should assess and present the impacts of each option separately to allow for a clear comparison of each option against the fully developed baseline. As impacts are only described qualitatively, the report should make greater efforts to present costs and benefits of each option in quantitative terms where possible, and explain the underlying methodology and assumptions. The stated impacts should be based on evidence or otherwise corroborated. The report should strengthen the assessment of economic impacts by assessing implementation and compliance costs for the EU, Member States

and businesses. It should also explain why none of the options are expected to have significant direct or indirect environmental and social impacts. The report should also assess if any of the options has significant impacts on simplification, administrative burden, SMEs and sector competitiveness. The report should assess in more detail what implications the envisaged database/information system would have on fundamental rights, including data protection and privacy. Finally it should present a more comprehensive comparison of options against a fully developed baseline scenario using a clear and consistent set of criteria that measure their effectiveness, efficiency and coherence.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report

(D) Procedure and presentation

The report should streamline the language making it less technical so that it becomes easier to understand for the non-expert reader.

(E) IAB scrutiny process

Reference number	2011/OLAF/001
External expertise used	No
Date of IAB meeting	3 October 2012