

# Minutes of the expert groups

Brussels, 04 October 2019

## Minutes

8th Meeting of the Expert Group on Mutual Assistance in Customs Matters<sup>1</sup>  
13.06.2019 – 14.06.2019, Brussels

### **1. INTRODUCTION AND ADOPTION OF THE AGENDA**

#### *Point 1: introduction*

MS were informed about the developments in the customs antifraud area since the last meeting in November 2018.

#### *Point 2: adoption of the agenda*

The agenda was approved.

### **2. ADOPTION OF THE MINUTES OF THE 7TH EXPERT GROUP MEETING OF 28-29 NOVEMBER 2018 AND UPDATE OF LISTS OF CONTACTS**

#### *Point 1: Adoption of the minutes*

The minutes of the last meeting were adopted.

#### *Point 2: List of contact points for the agreements with Third Countries and list of contact points for the implementation of Regulation 515/97*

Participants were informed that the lists have been updated. Both lists are available in AFIS library. COM informed that it has been approached by MS to update the list of contact details of Naples II and make it available in AFIS Library. COM confirmed that it would do it in close consultation with the CCWP Chair. MS agreed.

### **3. EMAC OPERATIONAL MEETING – PLATFORM OF DISCUSSION MS/OLAF**

#### Presentation:

COM informed MS on the results of the EMAC meeting on 2-3 April 2019 dedicated to operational issues related to mutual assistance, and suggested that this type of meetings should be held on a more regular basis with the involvement of all Services concerned.

#### Discussion:

MS welcomed this initiative and supported the idea of more regular operational meetings.

#### Conclusions and next steps:

COM will consider organising operational meetings on a more regular basis.

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<sup>1</sup> Published in the Register of Commission Expert Groups and Other Similar Entities, code number E03

## **4. OLAF INVESTIGATIVE ACTIVITIES**

### **4.1. Update on OLAF investigations in the trade customs fraud area**

See agenda point 3 (EMAC operational meeting).

### **4.2. Update on OLAF investigations in the area of tobacco and counterfeit goods**

Presentation:

OLAF updated participants concerning the OLAF investigations in the area of tobacco, as well as regarding counterfeit goods.

## **5. JOINT CUSTOMS OPERATIONS AND OTHER OPERATIONAL ACTIVITIES**

### **5.1. Transshipment pilot project**

This agenda point was omitted.

### **5.2. JCO HYGIEA**

Presentation:

Participants were informed JCO HYGIEA. COM stressed that the organisation of such JCOs in the context of ASEM requires a lot of efforts and money, and invited MS to take a more active part in such operations.

Discussion:

One MS pointed out that it was a challenge to find risk indicators. COM answered that this issue would be taken into account in the future.

### **5.3. JCO SNAKE II**

Presentation:

Participants were updated on the developments in JCO SNAKE II.

Discussion and next steps:

MS confirmed their support for the operation and asked questions for clarification. MS were invited to send any further comments as well as their confirmation of participation by 30 June 2019. By 30 September 2019 MS have to provide data in an electronic format.

### **5.4. JCO DAPHNE**

Presentation:

Italy presented the business case of JCO DAPHNE.

Discussion:

This business case was approved by the group.

### **5.5. JCO POSTBOX II**

Presentation:

BE informed participants of the preliminary results of JCO POSTBOX II.

Discussion:

MS welcomed the results of this successful operation.

## **5.6. JCO POSEIDON**

Presentation:

COM presented the preliminary results of JCO POSEIDON.

## **5.7. Other operations**

MS were given the opportunity to report from their operations. No remarks.

## **6. PROJECT ON CUSTOMS DATA ANALYSIS – INTEL4CUSTAF**

Presentation:

COM updated MS on INTEL4CUSTAF. The Hercule III funded project started last year.

After two workshops the project is facing the whole range of different needs and interests across MS. Analysts are given the opportunity to discuss amongst themselves.

There are five research projects ongoing that receive interest and support from a wide range of MS.

Kick-off meetings have been taken place throughout the last months. Each project is going forward.

For further information MS are invited to contact the OLAF team by email.

As it is important to meet and to hear from participants about their challenges there are two visits to take place this year. A main task for MS is to manage the huge bulk of data.

The 3<sup>rd</sup> workshop will take place on 23-24 October 2019 in Prague.

Discussion:

MS confirmed their support for the project.

### **6a. AMT tool - automated monitoring tool**

Presentation:

The automated monitoring tool (AMT) is an algorithm that transforms trade data from Eurostat's external trade database (COMEXT) into alerts/signals about substantial deviations from previous trends in trade. AMT was developed by the Joint Research Centre (JRC) in cooperation with OLAF. It is funded under the Hercule Programs. AMT is based on assumptions. It contains a baseline to determine the level of long-term trends and a threshold beyond which observations deviate substantially from long-term trends. After aggregation the input data is saved in a table.

The user should have a basic concept of statistics, understand the large scale data-processing (Big Data) and understand the role of Customs.

An AMT signal as such does not prove fraud. It can be used to trigger a verification or open an investigation, and it can help to find proof.

Discussion:

One MS asked if the AMT information was only available in Excel. The information that is generated by AMT can be downloaded under different formats (Excel, basic format or exported as pictures).

Another MS wanted to know how often the data in AMT was updated. The AMT data should be updated monthly.

## **7. DATA PROTECTION**

Presentation:

COM updated MS according to the questions and answers provided in the AFIS portal following the last meeting. Progress has been made in the implementation of data protection rights at OLAF level. In

OLAF investigations information on the adoption of rules on possible restrictions of data subject rights have been implemented. An update of the privacy notices online and in the AFIS portal has been made.

Concerning the new legal framework there is Regulation 2016/679 (GDPR) applicable to MS. Regulation 2018/1725 (EUDPR) is applicable to EU institutions, bodies and agencies.

The GDPR is the applicable legal framework for administrative procedures. BUT: If the MS authority processes data for the prevention, investigation, detection or prosecution of criminal offences and the prevention of threats to public security or if the MS authority is considered by law as criminal law enforcement authority, Directive (EU) 2016/680 and the relevant national legislation would apply.

In both cases the national authorities would act as controllers and have to keep records of the processing and provide data subject rights.

Commission Decision (EU) 2018/1962 allows restricting the data protection rights of persons and witnesses concerned in OLAF investigations.

#### Discussion:

MS discussed mainly about the influence of the GDPR on AFIS. It was suggested that an EMAC meeting dedicated to data protection issues be organised to discuss the application of GDPR.

#### Conclusion and next steps:

COM will incorporate these questions in the Q&A paper. COM will take note of the suggestion of a dedicated meeting with MS.

## **8. HIGH LEVEL CONFERENCE ON CUSTOMS CHALLENGES IN THE ANTIFRAUD AREA, HELSINKI, NOVEMBER 2019**

#### Presentation:

COM presented general information of the High Level Conference on customs challenges in the antifraud area, with special focus on e-commerce, which will be organised by OLAF and the Finnish Presidency on 14-15 November 2019 in Helsinki. In agreement with the Finnish Presidency the agenda of the Conference will frame its topics on the law enforcement life cycle.

The Conference will also offer an opportunity to provide substantial input to the current evaluation of Regulation 515/97.

#### Discussion and next steps:

MS welcomed this event. More information will be communicated to MS as soon as possible.

## **9. AFIS-RELATED ISSUES**

### **9.1. AFIS applications developments**

#### **9.1.1. CIS+**

##### Presentation:

COM presented the latest developments on CIS<sup>+</sup>, namely the connection with DG TAXUD's COPIS system, the WCO CEN and MS national systems (B2B interface). Information was provided on the work being developed, in cooperation with DG TAXUD, in the framework of the new cash regulation and its CIS related provisions.

#### **9.1.2. Mutual Assistance System (MAS)**

##### Presentation:

COM briefed MS on the current state of play of the Mutual Assistance System (MAS), in particular on the conclusions of the 2<sup>nd</sup> MAS Workshop with MS, held in January 2019 and the latest system developments.

#### Discussion/questions:

MS had the opportunity to comment and ask questions which were mainly related to the scope of the 1<sup>st</sup> release and the technical part of the system (language support/translation check).

### **9.1.3. Container Status Messages (CSM)**

#### Presentation:

COM presented the state of play of the AFIS-CSM application, specifically the number of active carriers and the number of received messages. COM presented the new features that were implemented or close to finalisation, respectively the search for estimated arrivals and the computation and search of container trips. COM also presented the indicative planning of availability for these new features.

COM addressed the subject of carrier compliance with CSM reporting. COM has so far favoured cooperative approach and highlighted the importance of MS support.

#### Discussion:

MS complained that the weight of the containers is sometimes inaccurate and it doesn't reflect the reality. COM answered that there are several problems with the weight: different types of weight are specified in the message and, sometimes, the carriers use different units of measure. COM will try to improve the accuracy of the data.

MS expressed the need to be able to correlate the container movements with other sources of data in order to have more detailed information related to the Bill of lading. COM expressed the intention to provide correlation between CSM data set and IET data set (especially transit data set in a first step), in order to give more detailed information on the Bill of lading which is not present in CSM data set.

#### Conclusion and next steps:

The cooperative approach with carriers will be continued, having the MS support when appropriate. The compliance issue is a continuous exercise (as carriers change, merge, etc.).

### **9.1.4. Import, Export and Transit (IET)**

#### Presentation:

COM updated MS on the IET project. Data is gained from the CC network. From statistics it can be concluded that transit, export and surveillance run very smoothly.

2019 has been a busy period so far. The re-engineering of several items should take place.

At the moment COM develops IET 3.1. A full data migration will take place and it will be possible to see the containers from CSM inside IET.

Furthermore, IET has been adapted to accept National Transit and Direct Export.

#### Next steps:

To finalize its compliance assessment COM asked MS to send samples of messages on national transit and direct export. COM invited MS who support the extension of export data to other products than excisable products to indicate whether they agree that the data are made available in IET on a voluntary basis.

## **9.2. AFIS Work Programme – Progress review**

#### Presentation:

COM presented a review of the progress made by the AFIS team in implementing the work programme for 2019. The AFIS team has been working on 90 releases since the beginning of the year.  
Budget:

COM presented the status of the 2019 budget. The overall budget consumption is in line with the planning for 2019. Only for the MAS project a budget overrun is expected. More efforts as anticipated were required for requirements definition, and additional efforts will be needed for the training supporting the application go-live.

COM launched an AFIS user satisfaction survey and asked delegates to encourage their AFIS end-users to participate. The survey will run until beginning of July 2019.

COM informed that the annual user account review exercise will be launched in September 2019.

Browser strategy:

COM supports AFIS on the following browser versions: IE 11, Firefox ESR 60 and Chrome 75. By December 2019, COM will support IE 11, Firefox ESR 68, Chrome n-1 and also Microsoft Edge. First preliminary tests with Edge have been successful.

Discussion and next steps:

One MS proposed to provide users more details on changes in new application releases. COM welcomed this proposal and promised to announce new releases upfront and to provide more information on changed application features.

### **9.3. Technical Group on IP Enforcement and Data**

Presentation:

EUIPO reported about the work of the "Technical Group on IP Enforcement and Intelligence Data Exchange" (Technical Group), which has been created as a follow-up to a series of meetings that took place to improve collaboration between enforcement authorities in the fight against IP crime.

One of these meetings was a high-level workshop for a shared strategy on enforcement, which was organised by the EUIPO at its Liaison Office in Brussels on 30 March 2017. It called for a better and more efficient use of the existing enforcement tools. Besides the EUIPO, DG GROW, DG TAXUD, DG TRADE, Europol, OLAF and the CCWP participated in the workshop and agreed that proper data collection on IP enforcement was key, and once data has been collected, it is important to exploit existing data and also IP enforcement tools by sharing this information between authorities and using it for risk analysis.

The overall aim of the Technical Group is "to harness information already available and use existing databases to close gaps in intelligence and work in a complementary manner".

Practically this should lead a) to easier retrieval and visualisation of data that is needed by officers in their daily work of IPR enforcement and b) to the facilitation of data entry of detentions/seizures into different databases.

Discussion and next steps:

In order to achieve this goal the Technical Group needs input from the users. For this purpose a questionnaire will be sent to the participants of the EMAC.

## **10. PRACTICAL ASPECTS OF MUTUAL ASSISTANCE**

### **10.1. Commercial databases**

Presentation:

COM updated participants on recent developments with regard to commercial databases. In particular, MS were informed that OLAF is beginning preparations for new calls for tenders on trade, vessel movement and company data to ensure availability of this data in 2020 after current contracts expire. Calls for tenders will be launched by Eurostat and/or by OLAF. COM thanked MS for their contributions to draft technical specifications.

COM also pointed out that a significant number of vessel movement database licences remained inactive for a considerable period of time and recalled that unused licences might be reallocated.

## **10.2 Article 6 (2) of Regulation 515/97**

### Presentation:

Further to the discussion at the last meeting COM consulted MS on their common practice concerning Art. 6(2) of Regulation 515/97 and presented a table on the results.

Following the request of one MS, all MS were asked about the common practice in their country whether or not the required translation in the official language of the requested authority refers to the request for notification itself or to the enclosed instrument or decision which should be delivered to the consignee in the MS of the requested authority.

COM gave its opinion on the matter. The wording of Art. 6(2) of Regulation 515/97 does not contain the obligation to translate the enclosed instrument or decision. But the requested authority has to observe the rules in force in the MS in which it is based. According to the national legislation the MS has to decide if a translation not only of the request for notification but also for the enclosed instrument or decision is required.

### Next steps:

MS not listed in the table were asked to send their contribution on their common practice by 30 September 2019.

## **11. LEGISLATIVE DEVELOPMENTS**

### **11.1. Evaluation of Regulation 515/97**

#### Presentation:

COM informed MS of the state of play on the evaluation of Regulation 515/97. A solid evaluation process is ongoing. It is based on the evidence of the past performance. MS will be consulted by questionnaires and if necessary by face-to-face interviews within the 2<sup>nd</sup> half of the year. Another possibility for MS to give input to the evaluation will be future EMAC meetings and the High Level Conference on customs challenges in Helsinki in November 2019.

#### Discussion and next steps:

One MS asked for the further strategy as well as for transparency and involvement of MS in the process. Clarification was asked about the scope of the evaluation and the involvement of external bodies.

COM confirmed that the whole regulation would be taken under consideration. A targeted consultation would be done and CCWP and CUG would be informed. Nevertheless the EMAC should be in the lead. The procedure will be done by COM without any external consultants.

MS confirmed their support for the evaluation of Regulation 515/97.

### **11.2. Proposed EU anti-fraud programme**

#### Presentation:

COM briefed MS on the state of play of the regulatory procedure for the adoption of the regulation establishing the EU Anti-Fraud Programme for the next multi-annual financial framework (MFF) 2021-2027. The programme will largely replicate Hercule III and include the financial basis for AFIS and IMS as well.

Both the Council and the Parliament adopted their texts as basis for the negotiations phase (the so-called "trilogues").

The trilogues did not take place yet and will start after the summer break between the Parliament, the Finnish Presidency and the Commission. The Regulation needs to be adopted by the end of year 2020 at the latest.

### **11.3. Revision of Regulation 883/2013**

#### Presentation:

COM briefed MS on the current state-of-play of the negotiations on the COM proposal to amend Regulation No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations. The presentation introduced the situation under the current Regulation 883/2013 (the OLAF Regulation) and provided an overview of the planned reforms. It explained that the reform was driven by two factors, namely the establishment of the European Public Prosecutor's Office (EPPO) and the evaluation of the OLAF Regulation. COM then underlined the continued role and relevance of OLAF and outlined the future OLAF-EPPO relationship. In this context, the presentation highlighted in particular the articles in the proposal on support to the EPPO and complementary investigations.

## **12. TOBACCO ISSUES - RECENT DEVELOPMENTS AND PROSPECTS**

#### Presentation:

MS were updated on the recent developments with regard to tobacco issues including the implementation of the 2<sup>nd</sup> Action Plan to fight the illicit tobacco trade and the follow-up to MOP1 of the FCTC Protocol. Priority issues include the application of the new EU traceability system for tobacco products and the fight against the illicit production of cigarettes inside the EU. COM emphasized that it had been the wish of MS to advance this system. This should be done very fast.

## **13. INTERNATIONAL ASPECTS**

### **13.1. Implementation of Article 12 of the WTO Trade Facilitation Agreement**

#### Presentation:

COM gave a brief overview of the state of play of the implementation of the WTO TFA, i.e. Article 12 on Customs Cooperation. The Agreement has been in force since February 2017 and currently counts 143 Members. Although the TFA does provide for exchange of information, in countries where MAA provisions are currently in force, they will continue to be privileged as a legal basis for exchange of information (61 countries). In cases where the EU does not have a MAA agreement with the third country in question, MS will have to rely upon Article 12 if they wish to make a request (54 countries, mostly in Asia, Africa and South America).

Among these countries, exchanges can only take place with those members having listed Article 12 under Category A (immediate implementation- 27 countries). Despite COM's efforts and some slight improvement, the lack of numerous contact points from other Members remains a problem.

To date, only 10 countries among those 27 (Category A) have provided contact points.

#### Discussion:

MS were invited to share their experience with this instrument. Several did so. OLAF confirmed its offer to coordinate the EU approach.

#### Conclusions and Next steps:

COM intends to monitor the information exchanges. To this end, COM encourages MS to report on their experience in this field and reminds MS that they can contact OLAF if they require any further assistance in this matter. COM will also continue its efforts to improve the number of contact points provided by other Members.

### **13.2. Negotiations of MAA and of antifraud measures in trade agreements**

#### Presentation:

COM updated participants on on-going negotiations of mutual assistance provisions and/or of anti-fraud measures in trade agreements with third countries, in particular with the following countries: Australia, NZ, Tunisia, Indonesia, Chile, Azerbaijan, Kyrgyzstan, Uzbekistan and Andorra.

COM informed about the Belarus proposal for a CCMAA and the preparation of negotiating directives.

### **13.3. Bilateral relations**

#### *China*

#### Presentation:

COM informed about the discussion which took place at the JCCC Steering Group held on 19 March this year:

- China informed about the internal reorganisation, which may have a positive impact on how the MAA requests are processed.
- China informed that the Mutual Assistance Request System is put on hold.
- China communicated its position on the disclaimer: it finds it justified in the light of the 2004 CMAA Agreement.
- Future revision of the agreement was mentioned as well.

COM also informed that these issues are present on the agenda of the JCCC scheduled for 26 of June in Brussels.

Then COM presented the statistics of MAA requests and replies for the reference period 1 July – 31 December 2018.

It appears that the gap between the number of requests sent by the MS and replies received from China got bigger.

In total the MS during the reference period sent 104 requests while only 8 were answered.

#### Discussion:

MS commented that the situation indeed did not improve. One MS reported a recent case where China did not provide assistance under the pretext of not keeping records for longer than 3 years.

Another MS confirmed that it stopped even sending request due to dead silence from China on previous requests.

#### Next steps:

COM noted the difficulties faced by the MS and said it would continue pressing China at all possible formal fora to improve its performance.

It suggested that if these difficulties cannot be solved at a technical level, they perhaps should be taken up at a political one.

COM also informed about the data elements China expects to see on MAA requests from the EU and invited MS to include these elements in their requests if possible.

Finally, COM informed that it received a formal written comment of China regarding the disclaimer: "...it is believed that the disclaimer represents a responsible move based on domestic laws, enforcement practices and evidence effect."

COM advised that the MS either revert to China with a request to use the information in judicial proceedings or, they act in accordance with their administrative laws and procedures.

One MS commented that the disclaimer was a real problem especially in criminal proceedings and suggested that the issue would be solved when the agreement would be revised in the future.

MS are invited to provide COM with statistics on MAA requests and answers with China for the first half of 2019 by 30 September 2019.

## ***Russia***

### Presentation:

Several MS have received information requests from Russia which might fall outside the scope of Protocol 2. OLAF proposed those MS to inform the Group so as to discuss on a coordinated position for the most appropriate follow-up of these requests.

OLAF also asked MS to provide statistics on MAA exchanges during 2018.

### Discussion:

Several MS shared their experience with information requests received from Russia and agreed on a co-ordinated position as proposed by OLAF: asking Russia to complete the requests, or simply not replying, as the requests fall outside the scope of MAA.

### Next steps:

MS are invited to provide OLAF by 31/08/2019 with statistics on MAA requests and answers with Russia for 2018.

## ***Other countries***

### Presentation:

COM briefly updated the MS on meetings with third countries concerning mutual assistance provisions, namely Albania, Israel, Egypt, Turkey and Georgia.

## **14. Next meeting**

The next meeting will take place on 12 - 13 December 2019.

## **15. List of participants**

Representatives of national administrations of the following MS were present: AT, BE, BG, HR, CY, CZ, DK, DE, ES, EE, EL, FI, FR, HU, IE, IT, LT, LV, LU, MT, NL, PT, PL, RO, SI, SK, SE, UK.