Mutual assistance and cooperation between administrations to ensure the correct application of the law on customs and agricultural matters: antifraud system and customs risk management

2013/0410(COD) - 25/11/2013 - Legislative proposal

PURPOSE: to improve customs risk management and strengthen the detection and prevention of customs-related fraud.

PROPOSED ACT: Regulation of the European Parliament and of the Council. .

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the fight against breach of customs legislation entails extensive exchange of information in the framework of cooperation both between Member States and between the latter and the Commission.

While such cooperation has already been successful, a number of areas have been identified where **further action is necessary**, mainly as regards the functioning of the antifraud system in the customs field and the improvement of customs risk management at national and Union levels.

There are several challenges.

- ***Address loopholes in the existing systems for the detection of customs-related fraud****:* the Commission considers that the effectiveness of current measures might be improved if the relevant services are supported by systematic availability of high-quality and timely data on container movements (Container Status Messages - CSMs) carrying goods, imports, exports and transit at national and EU levels.

- ***Enhance customs risk management and supply chain security at national and EU levels:*** there is a need to: (i) establish an equivalent level of customs controls for goods brought into/ taken out of the customs territory of the Union; (ii) introduce a Union-wide risk management framework to support a common approach.

- ***Address delays in OLAF investigations***: the documents supporting import and export declarations (invoice, certificate of origin, etc.) are no longer kept by customs administrations but by economic operators. Member States must first obtain this information from economic operators before transmitting the information to the Commission. Such a system is inefficient because it delays OLAF's investigations.

- ***Clarify the possibility of restricting visibility of data***: the AFIS IT system is currently underused because Member States are not able to select the potential users of the information they insert in the system. Users would more readily share information that they possess within the AFIS system if they were able to shield sensitive data.

- ***Streamline data protection supervision***: it is necessary to have closer collaboration between the two supervisory bodies: the European Data Protection Supervisor – EDPS and Customs Joint Supervisory Authority – CJSA. Another issue in the area of data protection which needs to be further clarified is the responsibility for the technical systems established by the Commission.

- **Clarify the admissibility of evidence collected under mutual assistance**: it appears necessary to clarify that the evidence obtained through mutual assistance may be used by prosecutors in the national criminal proceedings.

IMPACT ASSESSMENT: the assessment of policy options concluded that the main amendments would comprise **the following objectives**: (i) create conditions for improved fighting of customs fraud related to misdeclaration of goods origin, misdescription of goods and misuse of the transit system; (ii) speed up OLAF investigations.

The proposed options are in line with the fundamental rights.

CONTENT: the Commission proposes to amend Regulation (EC) n° 515/97 so as to improve the detection, investigation and prevention of customs-related fraud, by increasing the exchange of information and the available evidence, and improving the functioning of the established system.

Specifically, the proposal aims to:

- update the concept of customs legislation, in order to have the terminology aligned with the customs field, adding **references to entry and exit of goods;**

- remove the legal uncertainty that currently exists in relation to the possible use of information collected through mutual assistance as **evidence** in national criminal proceedings;

- oblige carriers to supply the Commission with the **information on container movements** (i.e. Container Status Messages — CSMs);

- create a **central database** for import and export data;

- create a **centralised repository** for transit-related data;

- enable the Commission to **obtain directly from private sector operators** documents supporting import and export declarations, in order to speed up OLAF's investigations;

- introduce the possibility of **selecting the potential users of data** (restricted visibility) so that Member States might increase the use of databases and consequently contribute to efficiency;

- simplify and harmonise the **rules for the supervision of data protection rules applicable to the EDPS and the CJSA.** The proposal also introduces a maximum retention period of ten years for data stored in the CIS, stipulating that in cases where personal data are stored for a period exceeding five years, the EDPS should be informed accordingly.

BUDGETARY IMPLICATIONS: the budgetary cost is estimated at EUR **60.526 million** (including human resources and other administrative expenditure) for the period 2014-2020.

The budgetary effort concerns mainly the IT costs to maintain and further develop the existing AFIS system. The costs related to the implementation of the proposal will be handled within the framework of

the existing forecast in the context of Multiannual Financial Framework and therefore no additional request for budgetary allocation is required.

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.