



**COUNCIL OF
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OPINION

From : The Joint Supervisory Authority

Subject : Supervising the Customs Information System

Introduction

The Customs Information System (CIS) was created to allow national customs authorities to exchange information so that they might prevent, investigate and prosecute serious contraventions of national customs law. Since it came into operation in March 2003, however, the CIS has been underused and the system currently holds only a limited amount of data.

In an attempt to address this, the Customs Co-operation Working Party (CCWP) initiated a review of the CIS under the Irish Presidency and this culminated in the adoption of a strategy intended to maximise use of the system.¹

¹ Doc 9085/1/04 REV1 (2 June 2004)

The Joint Supervisory Authority is responsible for supervising the operation of the CIS and for examining any difficulties of application or interpretation which arise during its operation.² This opinion sets out some key points that should be borne in mind when options for developing the system are being considered, and it concludes by making a number of recommendations with a view to ensuring that there is effective supervision of the system in future.

Strategy for the CIS

The members of the Joint Supervisory Authority will be interested to see whether the CCWP's strategy is successful in encouraging national customs authorities to make full use of the CIS, not least because the amount of personal data held in the CIS will in part determine the level of supervision required.

The CCWP identified a number of reasons why the CIS was underused; these ranged from technical problems to the confusion caused by the existence of so many EU-wide customs systems.

As well as proposals to improve awareness of the CIS at national level and increase staff training, the CCWP's strategy includes a number of suggestions that might have implications for the processing of personal data in the CIS. Notable examples include the suggestion that the CCWP should consider using the CIS for analysis purposes and that the option of allowing other authorities direct or indirect access to the system should also be considered.

The Joint Supervisory Authority would urge the CCWP to bear the following points in mind when considering proposals to develop the CIS:

- Any changes to the CIS must be made in accordance with the principle of proportionality: new applications and functionalities must not go beyond what is necessary to achieve the purpose of the system.

² Article 18, Convention on the use of information technology for customs purposes (Official Journal C 316 of 27 November 1995)

- A test of necessity is particularly important when a decision is being taken on whether to allow other authorities access to the CIS; if other authorities are to be allowed to access the system, the tasks for which access is granted must be consistent with the purposes of the CIS.
- If the CIS is changed from a hit/no hit system, the implications for individuals' rights must be taken into account and, where necessary, the applicable data protection provisions should be revised in order to ensure that safeguards keep pace with the system's development.
- Suggestions that EU-wide information systems might be made interoperable ought to be approached with caution;³ if approved, such a project would have to be preceded by a comprehensive privacy-impact assessment, with consultation of all relevant parties.

Supervision of the CIS

The Joint Supervisory Authority does not have a dedicated budget and relies on the Council for assistance. However, the Council has so far refused to fund inspections by the Joint Supervisory Authority. An audit of the CIS has been planned for some time and is now due to take place at the expense of the national data protection authorities. It is a cause for concern that the Joint Supervisory Authority has had no option but to request assistance from the national data protection authorities, whose resources are limited. This situation cannot continue if there is to be effective supervision of the system in future.

The CIS comprises two databases, with one database coming under EC law and the other having an intergovernmental convention as its legal basis. Consequently, the Joint Supervisory Authority has to co-ordinate supervision of the CIS with the European Data Protection Supervisor, who is responsible for supervising the processing of personal data by Community bodies. Meetings of a 'planning group' attended by both the chair of the Joint Supervisory Authority and the European Data Protection Supervisor provide a forum in which a strategic approach to supervising the CIS in its entirety might be developed.

³ This subject was recently raised in a document drawn up by the Dutch delegation to the CCWP 12952/1/04 REV1 (28 October 2004)

In order to ensure that supervision takes place in a constructive atmosphere, it is also important that there should be a close working relationship between the Joint Supervisory Authority and those bodies responsible for managing the CIS. With this in mind, recent meetings between the members of the Joint Supervisory Authority and representatives of the CCWP and OLAF are a welcome development – and one which the Joint Supervisory Authority is keen to formalise, so that such meetings might take place on a regular basis.

It seems likely that as the CCWP implements its strategy to encourage use of the CIS, the Joint Supervisory Authority will have to increase its supervisory activities. Therefore, in order to ensure that there is proper supervision of the CIS in future, the Joint Supervisory Authority:

- calls on the EU institutions to provide the funding required to allow effective supervision of the CIS. There cannot be effective supervision of the CIS while the Joint Supervisory Authority lacks the resources to conduct an audit of the system;
- proposes a system of regular contact with the CCWP and OLAF, perhaps holding annual meetings with representatives of these bodies, so that the Joint Supervisory Authority can keep abreast of developments affecting the CIS; and
- urges the CCWP to consider the implications for data protection when proposing changes to the CIS. The Joint Supervisory Authority expects to be consulted on such developments and will contribute to this process by analysing proposals and making recommendations where necessary.