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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE**

on Customs Risk Management and Security of the Supply Chain

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1. INTRODUCTION

The EU relies heavily on international trade for its economic development and is exposed to security and safety threats that come with this trade. Illicit international trade also undermines economic and social welfare in the EU. Effective risk management of the movement of goods through the international supply chain is critical for security and safety and essential to facilitating legitimate trade and protecting the financial and economic interest of the EU and its Member States.

Since ‘9/11’ and other terrorist attacks in Europe and elsewhere, security has become a top priority for European customs. The security of the EU, of the Member States and of citizens depends on each and every single point of entry of goods into the EU. If customs failed to act to tackle risks consistently along the EU’s external borders, the customs union and the EU single market would become unsustainable.

Customs policy is an EU competence: the Member States follow a common approach. The EU has the responsibility of supervising the Union’s international trade and upholding minimum standards of customs risk management and controls. Like many other jurisdictions and in line with international standards, the EU has a common policy framework intended to address risks and accelerate legitimate trade. In addition to adopting the relevant legislation, the customs administrations throughout the EU have taken action to overhaul control procedures, techniques and resources.

The October 2010 (Yemen) incident demonstrated weaknesses in the security standards and procedures applying to air cargo in the EU and worldwide. The debate ensued underlined the need to review security procedures and requirements more broadly for all transport modes. There are critical challenges to be tackled and these cannot be fully resolved at Member State level but require EU action to complement and reinforce the efforts made at national level.

The purpose of this Communication is to:

- review the implementation of customs risk management policy;
- put forward a strategic approach for the years ahead;
- make recommendations for action with a focus on efficient deployment of resources.

2. EU CUSTOMS RISK MANAGEMENT AND THE SECURITY OF THE SUPPLY CHAIN

2.1. Customs' security role

The role of customs in the supply chain has been constantly evolving. From revenue collector to guardian of the internal market and of other policy areas such as public health, consumer protection, environment, agriculture, it has naturally expanded, following the terrorist attacks on 11 September 2001, to become a major player in the field of supply chain security.

This role is recognised in the mission statement of EU customs authorities¹:

*'Customs authorities shall be primarily responsible for the supervision of the Community's international trade, thereby contributing to fair and open trade, to the implementation of the external aspects of the internal market, of the common trade policy and of the other common Community policies having a bearing on trade, and to overall supply chain security.'*²

The increasing security role of EU customs in the last decade is in line with worldwide developments and international standards, notably the World Customs Organisation's (WCO) 'SAFE' framework of standards.

2.2. The EU customs risk framework

The 2005 amendment to the EU Customs Code³ provided the legal basis for the development of a common framework for risk management of the supply chain. This amendment and subsequent implementing provisions introduced far-reaching changes affecting both customs and the trade community.

This common framework comprises: identification and control of high-risk goods movements using common risk criteria; the contribution of Authorised Economic Operators (AEO) in a customs-trade partnership to securing and facilitating legitimate trade; and pre-arrival/pre-departure security risk analysis based on cargo information submitted electronically by traders prior to arrival or departure of goods in/from the EU.

Operationally, the framework is underpinned by the electronic EU Customs Risk Management System (CRMS). This is the channel for wide-ranging communication between Member States and systematic risk information exchange. It is available to Member State risk analysis centres, to all external border control points in the EU and to the Commission.

Because of its scope and impact, this legal amendment required development over a number of years with full implementation of all measures scheduled in 2011.

¹ Council Regulation (EC) No 450/2008 of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code), Article 2.

² Accordingly, the strategy for the evolution of the Customs Union adopted by the Council in 2008 calls on EU customs to fulfil the objective of protecting society and the financial interests of the EU by '*applying effective measures against the movement of illicit, restricted and prohibited goods*' — Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions of 1 April 2008 entitled Strategy for the evolution of the Customs Union [COM(2008) 169 final, p.5.

³ Council Regulation (EC) No 648/2005 of 13 April 2005.

2.3. The risk management process

The risk posed by cargo entering and leaving the EU is analysed on the basis of cargo information submitted electronically in a single declaration⁴ by operators prior to departure or arrival. For exports (Export Control System) this is carried out by customs at the office of export. For imports (Import Control System) risk analysis is performed by customs at the first point of entry on all goods entering the EU regardless of destination.

Risks are assessed by means of electronic application of common risk criteria and standards for security and safety risk analysis. The electronic output is then assessed by customs risk analysts using multiple sources of information, including information from other Member States. Customs authorities at the first point of entry decide, based on the seriousness of the risk posed, whether checks are needed and, if so, whether at the border or at the place of unloading. If the risk analysis is positive (checks are requested), the results are sent to customs authorities in Member States of unloading.

2.4. Gaps in the current approach

Following a preliminary assessment of initial implementation of the new legislation made with the Member States' customs authorities, the Commission commissioned a more in-depth study of EU risk analysis and targeting capabilities⁵. The study concluded that several issues require urgent action, including data quality, supply chain modelling and certain aspects of the methodology applied.

2.4.1. Data quality and the role of the economic operators

The main goal of risk management is to ensure the correct implementation of all legislation and avoid unwarranted controls while focusing on areas that pose the most serious risks. Economic operators are crucial to risk management because of the information available to them and the measures they take to secure their supply chain.

To make full use of risk assessment methods, one needs to know 'who is moving what, to whom, from where'. Data on the real parties behind the transaction and the movement of goods (buyer and seller or owner), and on the precise goods involved, is essential as is information on the routing of the goods throughout the supply chain

The foundation for this approach is the advance cargo information submitted electronically by economic operators in relation to goods movements entering and exiting the European Union. It is critically important that this data be available as early as possible, be relevant and be of high quality. Conversely, significant weaknesses in the standard or relevance of the data will undermine later, electronically based risk identification and evaluation.

Relevant, high-quality data is fundamental to electronic data-based risk management, but the study suggests that current input does not meet minimum requirements. Moreover, there is a systemic gap in the provision of information on the parties behind the transaction and some other data elements provided are of low quality. In many cases the information available in the entry summary declaration (ENS) is not precise enough to conduct effective risk analysis.

⁴ ENS: Entry Summary Declaration.

⁵ Study on possible ways to enhance EU-level capabilities for customs risk analysis and targeting, PricewaterhouseCoopers, 31 May 2012.

Furthermore, valuable data available to operators should be more fully exploited by the authorities for risk analysis purposes.

2.4.2. Secure supply chains and economic operators

Securing and safeguarding the integrity of the supply chain is a shared interest among citizens, business and government. It requires high levels of partnership between customs and the trading community.

Identifying legitimate and low-risk trade makes it easier for customs authorities to focus on higher risks and to accelerate the movement of legitimate trade through the supply chain.

A robust Authorised Economic Operator (AEO) programme is now firmly established in the EU (with more than 11 000 certificates in use in July 2012) and formally recognised by some major trading partners. The programme is closely monitored at EU level.

Authorised Economic Operators take significant measures to secure their supply chain and are formally validated by customs authorities. These measures relate to investment in physical security and internal control systems, financial solvency, risk assessment of the business and the reliability of business partners. In the EU, these measures should be recognised by non-customs authorities and regulators concerned with supply chain risk evaluation and mitigation.

Currently, however, similar initiatives in other public policy areas are not linked to the AEO programme. This may lead to situations where an operator is assessed twice for the same criteria by two different public administrations.

There is a need for a more concerted effort to broaden formal recognition of the AEO programme across policy areas for risk management purposes and to ensure that the benefits accruing to compliant businesses are maximised. Aligning the customs authorised economic operator programme with the secure trader programme in aviation security is one example.

2.4.3. Operational methodologies

Putting the EU common risk management framework into operation poses significant challenges. Significant variance in the levels of risk analysis performed by Member States and associated countermeasures has real and undesirable consequences.

Implementation is uneven and not as effective as expected for several reasons:

- Variance in capacity

A common minimum standard of automated risk analysis for security and safety has not yet been achieved due to variance in the development, capacity and technical capability of national electronic risk analysis systems.

This means that the common risk criteria are not fully implemented in all Member States and cannot be properly monitored and evaluated for effectiveness at EU level. The absence of 24 hour/7 days a week (24/7) capacity and support in some Member States also inhibits the achievement of common EU standards.

This limits EU capacity to adapt and respond to common risks and hinders innovation in risk management.

- Differential burden

Differences in the volume of trade to be risk-assessed means the burden of the work also varies between Member States. This is mainly due to geographical location and to the nature of supply chain logistics. In addition, threats may vary according to time and place.

Analysis of the Import Control System data and risk assessment resources available in Member States indicates wide variations in the workload of customs risk analysis and targeting officers. In some instances this ranges from 9 times the EU average for air cargo to over 50 times greater than the EU average for maritime traffic.

- Operational coordination and exchange of information

As the advanced cargo information is sent to the first point of entry in the EU, the challenge in risk assessing ‘who is moving what, to whom, from where’ is further complicated because the proportion of trade entering the EU that is bound for a Member State other than that of first entry or is transiting the EU is significant⁶. Traffic arriving at first points of entry frequently includes cargo bound for other Member States as well as cargo transiting the EU en route to a final destination in third countries.

This means that the knowledge and information available at national and local level in the Member State of destination is critical for effective risk analysis and risk mitigation at points of first entry. In addition, information on parties and their characteristics, including vulnerabilities relating to parts of the supply chain outside the EU, is clearly of common relevance and significance for risk analysis all along the external border.

Systematic, real-time sharing or pooling of information, knowledge and expertise is essential to ensure that common equivalent minimum standards apply and that important information affecting supply chain risk is available to those who need it. Conversely, any significant weaknesses in information-sharing undermine the effectiveness of risk management at different entry points and for the EU as a whole.

The available data on information-sharing over a 12-month period suggests that not enough risk-related information is made available under current operational methodologies and structures⁷. Since the exchange of information between customs at first point of entry and other relevant Member States is not working properly, information relevant to risk assessment at EU level is being overlooked.

In the aftermath of the Yemen incident, the High Level Working Group Report on strengthening air cargo security also addressed EU coordination and exchange of information:

‘An adequate response to the terrorist threats must involve streamlined coordination and cooperation at EU level between the transport and the Justice and Home Affairs sector and different government agencies as well as a rapid exchange of information between the authorities of the EU Member States. This principle goes beyond the specific threat giving

⁶

E.g. more than 50 % of goods entering via Rotterdam — a major sea hub — are bound for another Member State.

⁷

Over 36 million ENS were lodged but the number of requests from EU first points of entry for information from other Member States was 382. This is not consistent with proactive risk assessment and credible risk analysis and mitigation for goods crossing the external border.

rise to this Report, and is part of the broader reflection on how the EU should be able to respond to incidents which could also occur in other areas.'

However, exchanges of information between customs and other authorities vary significantly at national level and are sometimes lacking at EU level (e.g. during the Fukushima crisis). The current situation is unsatisfactory and requires remedial action⁸.

3. RISK MANAGEMENT OF THE SUPPLY CHAIN — THE BROAD VIEW

Risk management is a continuous process that involves identifying threats and risk, evaluating and analysing them and devising appropriate counter-measures. It is time-constrained and characterised by the need for knowledge of logistics and supply chains and the management and integration of multiple information and intelligence flows. It requires assessment of the quality and reliability of information, including an appreciation of the risk that data may be compromised by misinformation, manipulation or falsification. Its effectiveness lies in its flexibility, adaptability and responsiveness to the potential occurrence not only of events with knowable consequences but of those with less calculable effects. Dealing with the consequences and aftermath of risks that materialise is also of vital importance.

3.1. The scale of the challenge: trade growth and the complexity of the supply chain

The scale of the challenge can be gauged by considering the volume and rate of trade movements and the profile of modern-day logistics. This needs to be balanced with the constraints on the control environment both in terms of resource capability and the need to avoid unwarranted disruption of the legitimate supply chain.

Between 2004 and 2010, despite the impact of the financial crisis, the value of EU external trade grew by almost 50 %⁹. The EU is at the centre of global trade and supply chain logistics. It is the number one trading partner for the United States, China and Russia. More than 90 % of global trade (8.4 billion tons of merchandise) is carried annually by sea along more than 25 800 global trade lanes. More than 20 % of this seaborne trade is unloaded in Europe. There are 25 400 transport nodes world-wide for cargo and passengers moved by air, a substantial proportion of which are linked to more than 250 international airports in the EU. The numerous parties involved in the management of these trade lanes add to the complexity of supply chain logistics. The eastern land border runs to 9 890 km, with 133 commercial road and rail entry points. Along the entire EU external border there are more than 1 000 customs offices of entry.

In 2011, EU customs processed 36 million pre-arrival cargo declarations (entry summary declarations), 140 million import declarations, 96 million export declarations and 9 million transit declarations. These figures represent an average of 8.9 declarations per second handled by the Member States' customs administrations.

Although the bulk of trade is lawful, a recent study by the World Economic Forum estimates illicit trade at between 7 % and 10 % of the global economy¹⁰.

⁸ On this subject the PWC study concluded '...there is room for improvement in the exchange of intelligence and information at all levels (between organisations at the national level, between the national and the EU level and between organisations at the EU level).'

⁹ External and intra-EU trade: A statistical yearbook — Data 1958-2010, p16.

¹⁰ World Economic Forum, New Models for Addressing Supply Chain and Transport Risk, An initiative of the Risk Response Network, 2012. P9.

3.2. Range of risks and customs interconnection with other authorities

The policies and role of agencies and authorities other than customs are also a core concern. The need to align and ensure complementarity between measures taken by different authorities with due regard for their respective powers is a constant and vital feature of supply chain security management. Measures to enhance transport security, for instance, are clearly relevant to risk assessment of goods movements, most obviously in relation to cargo moved by air, a mode of transport now considered to be at high risk of terrorist acts. Equally, security measures required to safeguard transport of dangerous goods are significant factors to be taken account of.

More generally, when customs acts in conjunction with, or on behalf of, other authorities systematic communication and exchange of risk-related information is required¹¹. In matters posing serious risks to public health and the environment or to the security and safety of citizens such communication is vital to ensure timely intervention by the appropriate authority to mitigate and control risk. This is especially important where there are likely to be attempts to conceal or misrepresent such goods when they enter the EU. The objective should be to ensure that key information residing with different agencies at national and EU level is incorporated in risk assessment to improve its efficiency.

3.3. The challenge for customs risk management: a multi-layered approach

The current risk management framework is not sufficient to address security and safety risks uniformly at the external border. Action to fill in the existing gaps is required and a new approach to EU risk management is needed.

The assessment of the nature of the risk and the likely impact should the risk materialise should drive decisions on whether action is considered appropriate and, if so, the location, type and timing of the checks or countermeasures to be taken.

Different risks require different responses: trade between identifiably secure traders is considered to pose a lesser risk than other trade; certain goods movements are readily identifiable as high risk. For this reason the EU does not support 100% scanning or control but considers control measures should be commensurate with the risk assessment.

The Yemen incident illustrated very clearly several key points to be considered in formulating EU customs supply chain security policy. These include the time-sensitive nature of risk mitigation measures, the simultaneous involvement of several Member States in a single transaction and their interdependence, the multi-agency and international dimension to the issue and the core interest of industry and stakeholders in the international trading and supply chain system. These interlinked elements underline the need for a proactive, interconnected approach to risk management involving multiple actors.

Addressing the risk of an explosive device being loaded with air cargo requires action prior to loading in a third country, whereas other risks, including those with security and financial implications such as illicit trade used to fund criminal or terrorist purposes, may be subject to control further on in the supply chain. Yet other risks may well be dealt with more efficiently and with the least disruption at traders' premises. Many financial and commercial policy risks

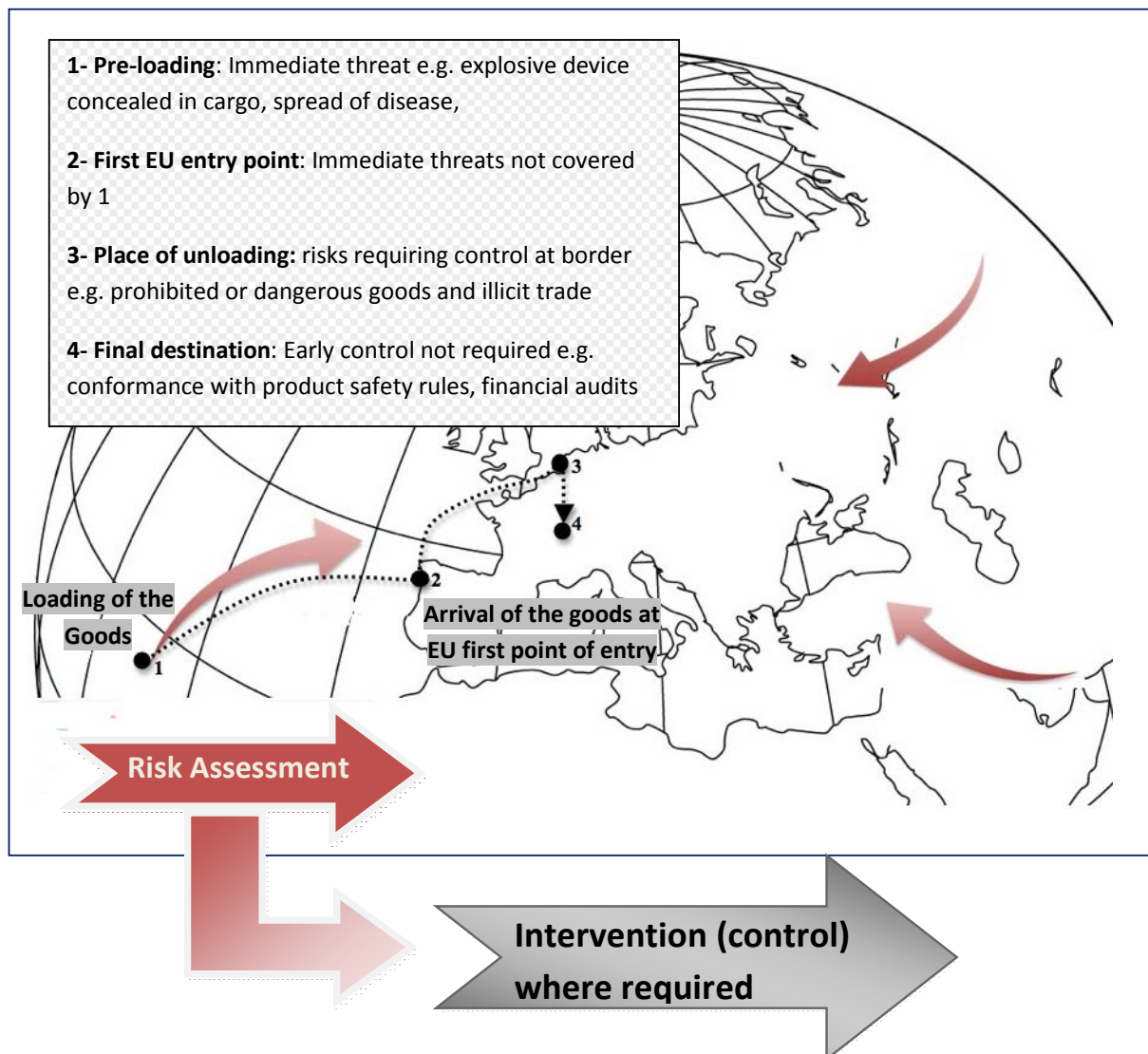
¹¹

'The term security is used in the widest sense here. It covers not only threats to public security in the movement of goods (criminal, terrorist or other trafficking or illegal trade in firearms, biological products or explosives, for example), but also the threats to society's security from trade in goods which pose a risk to public health, the environment and consumers.' The role of customs in the integrated management of external borders, COM(2003) 452. .

will continue to be controlled more effectively at the time of customs clearance and by means of post-clearance audits when more detailed data and documentation is available. Effective risk analysis is essential for targeting such controls.

Conducting early risk assessment is key to identifying the type and level of risk and the range of possible responses. Assessing the risks in advance of the arrival (and even the loading) of the goods enables customs and other enforcement authorities to implement a multi-layered response to risks, allowing them to decide where best in the logistics chain to deal with the risk without jeopardising the security of EU Member States and citizens. This optimal vision of risk management is illustrated below.

Figure 2: Optimal risk management process:
Assess in advance — intervene where required



This pro-active risk management requires 24/7 surveillance of the supply chain in real time 365 days of the year. It requires all actors with a shared interest in safeguarding the integrity of the supply chain to play their part and a framework for the process. Legitimate business interests must provide relevant supply chain information for risk analysis. A structure may be envisaged to cater for the multi-agency coordination and information sharing required in the EU. Ways of taking information from third countries into account must also be considered.

Such an approach underlines the need for much greater convergence in the use of the information, data sources, tools and methods used by customs to pinpoint risks and analyse commercial supply chain movements. Distinctions, e.g. between risk management to protect citizens from security and safety risks and more general anti-fraud concerns including goods smuggling, seem counterproductive and inefficient.

The lack of a uniform approach hampers planning and targeted use of limited resources and represents an EU-level vulnerability.

4. EU CUSTOMS RISK MANAGEMENT: THE WAY FORWARD

The effectiveness and efficiency of risk management of the movement of goods across EU borders are of critical importance for the security, health and well-being of citizens as well as for the trade, economic and financial interests of the EU and its Member States. Multiple challenges require multiple and integrated solutions to the gaps identified in the current approach.

4.1. Ensuring quality, availability and fusion of trade data

Provision by traders of quality data and its availability to the authorities involved in risk management at the appropriate level is a major priority.

4.1.1. Quality of data ('who is moving what to whom')

Based on work carried out by a high level working group on strengthening air cargo security, EU legislation and advance cargo information systems should be adapted to ensure that the data required for effective risk analysis is made available.

This includes details of the real parties behind transactions and goods movements and an adequate description of the goods for the purposes of identification and electronic risk analysis; the introduction of a mandatory HS code is needed at least for commercial consignments.

The filing arrangements required to obtain this range of data from carriers and other parties must be put in place as a matter of urgency. Some degree of differentiation to take account of different trade business models is called for (e.g. maritime container shipping; air express cargo; post). Rule-making by the EU should consider the administrative burden on economic operators and small and medium enterprises. It also must take account of the need to develop and promote international standards.

4.1.2. Data availability to all customs authorities concerned

The sooner risk assessment of supply chain goods movements can be undertaken, the better control requirements can be tailored to the type of risk identified and adapted to fit the logistics process. Trade data must be recorded as soon as possible in a way that facilitates effective risk analysis and management.

Data need to be accessible at the same time to multiple Member States to support flexible use, management and exploitation. The change in filing arrangements can allow data from different parties obtained in more than one Member State to be fused. Cost-effective methods of achieving this should be explored.

4.2. Engaging with economic operators

Securing and safeguarding the integrity of the supply chain is a shared interest among business interests and government authorities.

4.2.1. The EU Authorised Economic Operator (AEO) programme

Successful implementation of the Authorised Economic Operators (AEO) programme in the EU is vital to recognise the investment made by these operators and ensure that significant benefits accrue.

Recognition of AEO status within the EU by other non-customs authorities and regulators concerned with supply chain risk evaluation and mitigation could be an important source of economies and benefits for operators. Likewise, customs recognition (full or partial) of similar EU status in other spheres (e.g. regulated agent in the air transport legislation) could improve the effectiveness of risk targeting.

Broadening the benefits accruing to EU AEOs internationally and mutual recognition of similar programmes established by third countries should also be a priority.

4.2.2. Cooperation with legitimate business to target illicit traffic

Full engagement with economic operators offers the prospect of further significant benefits to risk management through raising trade awareness of the importance of the quality of data to be supplied and increasing knowledge of the supply chain in order to better identify vulnerabilities and threats.

Valuable data available to operators should be exploited by authorities for risk analysis purposes.

4.3. Addressing risk management capacity differentials

There is a need to overcome not only differences in capacity to analyse information but also the varying levels of information in different Member States. A combination of action at Member State and EU level must be considered.

4.3.1. Member State level

It is necessary to build up capacity to address the gaps existing in each Member State. This involves adjusting national electronic risk engines to common technical specifications in order to ensure implementation of the required standards. It also involves committing adequate resources for 24/7 risk management and ensuring high-quality expertise in targeting and risk mitigation (e.g. through training).

4.3.2. EU level

Member State action can help overcome gaps in risk analysis capacity at national level. However, this alone is insufficient to deal with collective, EU-wide risk management issues associated with fragmentation in information flows due to geographic location and the nature of international logistics chains.

At EU level, better pooling of the capacity and resources of Member States is required to achieve EU risk management objectives more effectively at all point of the external border. While recognising and respecting specific local, regional and national risk management characteristics, additional EU-level capacity would provide a dynamic cost-effective complement to national action. This could comprise deployment in real time of an electronic risk engine to supplement national technical capacity and the development of a resource

capability to address threats and risks that are common to Member States. More specifically, a capability organised at EU level would:

- enable suitable common risk criteria or EU-level risk profiles to be applied directly to EU-level data, rather than via 27 national systems, in crisis and other situations;
- strengthen the capacity to identify common risks and ensure they are treated in the same way across the external border.
- increase the visibility of international supply chains and ensure that important risk information is not overlooked at external border level;
- improve the capacity to identify more rapidly illegal trade networks that operate beyond national boundaries and address the risks of diversion and port shopping more systematically.
- permit more effective external border data quality management, risk evaluation and review;
- create a platform for information-sharing with other authorities and with third countries.

The opportunities arising from the forthcoming Customs 2020 programme, for example the stationing of Member State experts at a permanent location in the form of expert groups, should be fully exploited. Pooling such resources at EU level would help to address the fragmentation of information flows, overcome difficulties associated with differences in risk management capacity between Member States and guarantee a uniform standard of electronic risk analysis and management.

4.4. Coordinating with other authorities and agencies

The need to have more structured and systematic cooperation and coordination between customs and other authorities, especially in situations where the risk can be better handled at the EU level, is one of the main conclusions drawn from the Yemen case. In particular:

- There is a need to streamline risk information and intelligence from specific agencies on serious threats related to cargo movements, make it available and have it acted upon immediately using the advance cargo information system. The type of information, and procedures for its transmission in a way that optimises the results for common risk management, depends on the structure and organisational setting of the relevant authorities (including customs) and needs to be determined and agreed together with those authorities.
- Customs should participate in EU-level supply chain security threat and risk assessment and ensure its integration in customs risk management.

The added value of such arrangements would be magnified if such information were applied uniformly and instantly at EU level in real time, as this would ensure the earliest possible reaction to common threats and risks and overcome the gaps identified above.

4.5. Cooperating internationally

Effective risk management also depends on strong international cooperation, both bilaterally and multilaterally. Close cooperation with our main trading partners will expand knowledge and information. It will also contribute to spreading knowledge of risk management methods and techniques internationally.

The EU should pursue initiatives to develop information exchange with major trading partners and neighbouring countries, promote mutual recognition of trade partnership programmes and support joint training of staff through exchanges of officials and developing common standards; it should complete on-going work on a common framework for risk management with partners participating in the EU customs security area; finally, it should continue to support international work on standards (e.g. under 'SAFE') in multilateral organisations such as the WCO, ICAO, IMO and UPU with regard to risk management and supply chain security, including pre-departure information for all cargo, exchanges of information, trade partnership programmes and detection technologies.

5. CONCLUSION

Traders, Member States and citizens in the EU all have an interest in effective risk management. Closer engagement with economic operators is required to attain the desired standards of data for risk analysis, facilitate the efficient movement of legitimate trade and better combat illicit trade. This, together with more systematic exchange of risk information and coordination between customs and other authorities or agencies and closer international cooperation, will reinforce the security and integrity of the supply chain.

Before taking concrete initiatives for action to reinforce customs risk management the Commission invites the Council, the European Parliament and the Economic and Social Committee to consider the approach set out in this communication.