

III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

505TH EESC PLENARY SESSION OF 18 AND 19 FEBRUARY 2015

Opinion of the European Economic and Social Committee on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy and Action Plan for customs risk management: Tackling risks, strengthening supply chain security and facilitating trade

(COM(2014) 527 final)

(2015/C 251/05)

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On 1 October 2014, the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

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The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 2 February 2015.

At its 505th plenary session, held on 18 and 19 February 2015 (meeting of 18 February 2015), the European Economic and Social Committee adopted the following opinion by 141 votes to 1 with 4 abstentions.

1. Conclusions and recommendations

1.1. The EESC welcomes the Commission communication on the Strategy and Action Plan for customs risk management. To ensure that the strategy is properly implemented, customs authorities should work together, but also with other government authorities (such as health and consumer services, and security services through judicial cooperation).

For the EESC, the important thing is to ensure effective implementation of the European Union's customs rules and the proper functioning of the cooperation mechanisms provided for by EU law.

1.2. To ensure integrated customs risk management, it is also necessary to harmonise implementation of other policies and make it coherent. As Member States already have official data on these subjects, this information needs to be pooled and shared, particularly by making the official data on serious risks interoperable.

1.3. When adopting its own roles and supplementing its framework, the EU should take as a basis the rules of the Risk Management Compendium and other standards of the World Customs Organisation (WCO), to ensure that its customs rules are in line with the majority of the existing provisions governing the matter.

1.4. Under Objective 3 of the action plan, it must be clearly determined by whom, when and where controls are to be carried out, in accordance with the definition of risks and levels of risk which it is to be hoped the Commission will adopt as an implementing measure. Given the importance of this, we consider that it should be the priority action to be implemented.

1.5. As ensuring uniform implementation of EU customs rules is a priority, Objective 5 of the action plan is also of great importance as the whole strategy is based on promoting cooperation between national authorities on all types of implementation and detection and exchange of information between national and EU administrations.

1.6. The EESC emphasises that when the strategy is defined, account must be taken of the distinctive features of customs practice in the Member States — such as the size of the relevant trade flows, volumes and practices — while these systems must be compatible and respect EU principles and legislation.

1.7. The EESC endorses the importance given in the communication to cooperation between the Commission and Member States, but would also like to stress the importance of other social stakeholders involved in the strategy and the role they can play.

1.8. Although the communication implies this without dealing directly with the issue, the Committee calls for greater visibility for pilot projects on the ground, in order to encourage stakeholders to play a greater role and thus foster additional private investment that would further the communication's strategy by boosting innovation.

2. Introduction

2.1. Risk management is a basic principle of modern customs control methods. Customs authorities put in place analysis and review mechanisms in order to ensure the effectiveness of control procedures throughout the area they are responsible for. The procedures have to be constantly reviewed and updated as necessary to meet new demands.

2.2. Using risk management, customs authorities aim to strike a reasonable, fair balance between combating fraud, on the one hand, and, on the other, the need to impede as little as possible the legitimate movement of goods and persons and to keep costs as low as possible.

2.3. Given the physical impossibility of inspecting what can sometimes be a significant proportion of the goods, the SAFE programme lays the basis for the 'authorised economic operator' (OEA) mechanism, whereby businesses are accredited by means of an *ex ante* audit as reliable partners in customs matters. To this end, the authorities have to have a full understanding of the nature of the activity of the operator, a clear picture of their business processes and the business environment in which they operate, and permanent access to their accounts. In the EU, Article 5a of Regulation (EC) No 648/2005⁽¹⁾ regulates the status of 'authorised economic operator' and the granting of this status. Economic operators consider that this condition needs to be met if they are to operate properly on the market.

2.4. The TFEU provides for a customs union as an exclusive EU competence, along with import and export procedures and rights. This policy is enshrined under supranational law in primary legislation in the Title on the Free movement of goods, in Articles 28 to 37. Now, however, customs are also increasingly performing other tasks. In practice there are three strands: fiscal, security and surveillance regarding non-tariff rules, with one part, for example, governed by Article 87 TFEU on police cooperation, which is not an exclusive competence of the EU.

2.5. A Commission communication issued in January 2013⁽²⁾ introduces a common approach to integrated risk management, which, at the points of entry into and exit from the customs union, enables the following objectives to be met:

- enhancing the allocation of human and financial resources, concentrating them where necessary;
- full and uniform application of EU customs legislation;
- an integrated system of cooperation between customs, traders and carriers; and
- streamlining of practices and a reduction in transaction times and costs.

⁽¹⁾ Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005 (OJ L 117, 4.5.2005, p. 13) and other rules such as Regulation (EC) No 2454/1993 (OJ L 253, 11.10.1993, p. 1).

⁽²⁾ COM(2012) 793 final.

2.6. The EESC supported⁽³⁾ this 2013 communication, considering it vital to take a common approach to customs risk management and security of the supply chain in order to ensure uniform, non-discriminatory application of EU customs legislation by all of the authorities concerned across the whole of the customs union.

2.7. On 18 June 2013 the Council adopted conclusions on strengthening supply chain security and customs risk management, calling on the Commission to present a coherent strategy. The EU shares the common strategic objectives of protecting the security and integrity of the supply chain and the security of the public, and the financial interests of the EU and its Member States, along with the objectives of facilitating and accelerating legitimate trade to boost competitiveness.

2.8. The current recast customs code, adopted by Regulation (EC) No 952/2013⁽⁴⁾, not only incorporates risk management as a specific customs role but places a surveillance role at the basis of the Common Customs Tariff system. The incorporation of risk management into the customs code strengthens cooperation and information sharing between national customs and non-customs authorities and the Commission, and the Commission is even on occasions given implementing powers to this effect.

3. The Commission communication

3.1. The communication outlines a new strategy for improving customs risk management in the European Union, along with a detailed action plan, which will help to manage the growing volume of trade with its increasingly complex supply chain more efficiently.

3.1.1. The action plan sets out a series of measures for each objective. The measures are aimed at closing the identified gaps to achieve strengthened EU customs capacities progressively and consolidate more systematic cooperation with other agencies, economic operators and international trading partners, including support for and development of international norms and standards, where appropriate.

3.1.2. The Commission is pursuing complementarity and coherence with other EU initiatives both in customs and in other policy areas such as security, transport and protection of intellectual property rights.

3.2. Customs use risk management to implement effective and efficient controls, avoid unwarranted disruption to legitimate trading and deploy resources efficiently, organising these resources and prioritising areas posing the highest and most serious risks.

3.3. The strategy relates to the risk management and control of goods entering into, taken out of or transiting through the EU with due regard to their specific characteristics, the scale of risk and the costs. This requires the capacity to identify, evaluate and analyse the full range of threats and risks associated with goods and their movements.

3.3.1. The underlying principles of EU customs risk management of the supply chain are, according to the communication, as follows:

- ‘assess in advance, control where required’;
- multiagency cooperation;
- multi-layered and coordinated approach; and
- efficient use of resources.

3.3.2. To improve the effectiveness and efficiency of the EU-wide risk management framework, the Commission and the Member States must cooperate to implement multi-layered customs risk management in the EU with a view to taking the following necessary measures:

- improving data quality and repository arrangements;

⁽³⁾ OJ C 327, 12.11.2013, p. 15.

⁽⁴⁾ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

- ensuring availability of supply chain data and sharing of risk-relevant information among customs authorities;
- implementing control and risk mitigation measures where required;
- strengthening capacities;
- promoting interagency cooperation and information-sharing between customs and other authorities at the Member State and EU level;
- enhancing cooperation with trade; and
- tapping the potential of international customs cooperation.

3.3.3. The communication sets out the measures to be taken to achieve the strategy's objectives one by one, so that this cooperation between the Commission and the Member States can result in the adoption of the necessary measures.

4. General comments

4.1. The EESC supports the Commission communication, considering that a more common approach to risk management in the area of customs and supply chain security is essential to ensure legal certainty and uniform application of European customs rules, which will facilitate the free movement of goods.

4.1.1. The intention is to strengthen certain well-established customs instruments for them to be applied by national authorities, the Commission and economic operators, incorporating a risk management role in addition to the existing roles of applying tariffs and trade measures and developing statistics.

4.2. The Commission's action plan sets out objectives and means of achieving them which will strengthen the EU's customs capacities and bring about more systematic cooperation with other agencies, whether economic operators or even international trade partners.

4.2.1. The approach of complementarity with other competent authorities playing a part in supply chain movements should be explicitly provided for. Proper implementation of the strategy requires closer, more effective cooperation between customs authorities at international level, and between customs and other public authorities such as health and consumer authorities, among others.

4.2.2. Although 'official data' already exists at Member State level relating to the different border controls, it is managed using IT systems (external human, animal and plant health controls, controls on pharmaceutical and cosmetic products, etc.). However, it is neither centralised nor shared, and so the system's operation and customs' work will be made easier, as this instrument shows the risk data associated with goods throughout the supply chain.

4.2.3. Given the transnational dimension of the threats and, therefore, the related solutions, it is even more necessary to pool the 'official data' which is already produced at Member-State level. It is therefore proposed that the criteria established at EU level be based on common international standards, supplementing them for EU application. The EESC therefore stresses the need for interoperability of data to ensure effective implementation of the measures referred to in the strategy, as the transnational dimension reinforces the need for pooling of the 'official' data which already exists at national level.

4.2.4. In principle, to enhance administrative cooperation on using a system of risk detection, the EESC advocates basing the system employed, inter alia, on the following principles:

- the risk measures, criteria and standards and amendments thereto, to accurately identify the products which present associated risks, should be covered by the 'Customs Risk Management System' (CRMS) established under Regulation (EU) No 952/2013, taking into account early warning systems and data protection legislation;

- links with all other relevant systems such as the ones developed under Council Regulation (EC) No 515/1997 ⁽⁵⁾ are encouraged;
- use of the basic principles of the Internal Market Information System (IMI), in the knowledge that the system contains tools that have already been evaluated, and adapt them to customs;
- measures, criteria and standards defining levels of risk relating to products, materials, itineraries, origin or other factors identifying the risk, using the TARIC system to highlight major risks as far as possible and whenever feasible;

Furthermore, the EESC reiterates the need for authorities to pool information.

4.2.5. With regard to the complementary cooperation provided for in the strategy, relevant political measures in the area of product safety, animal well-being, food and feed safety and environmental protection should also be taken into account, along with related initiatives in the area of intellectual property rights (IPR). The EESC attaches great importance to information-sharing relating to serious public health and environmental problems and serious public safety and protection problems.

4.3. With regard to the World Customs Organisation (WCO) Risk Management Compendium and other rules, the criteria established at EU level should be based on common international standards, supplementing them for EU application.

4.4. It is encouraging that the authorised economic operator (AEO) programmes associate this entity with risk management, given the comprehensive evaluation process to which the operator and their environment are subjected in order to receive the certificate, which is consistent with the simpler customs procedures from which the holder benefits.

4.5. In the implementation of risk mitigation and control measures, where required, the methodology set out in the World Customs Organisation compendium should be considered.

4.6. In the context of the definition of levels of risk to be adopted by the Commission, after appropriate, transparent consultation of Member State experts and eliciting the views of economic operators under Articles 50(1) and 284 of the code, Objective 3 of the Action Plan should be fleshed out further in order to clarify exactly by whom, when, at what time and to what the advance assessment procedure is to be applied. In fact, this should be the first action to be completed, as it would lend greater clarity to the implementation of the action plans and risk assessment and provide greater legal certainty.

4.7. Objective 5 of the Action Plan is also extremely important, given that the main aim of the strategy is to promote cooperation and information sharing between national and EU authorities, which the EESC has always deemed to be extremely important. For the sake of brevity, the EESC points to the recommendations it made on this issue in points 1.9 and 1.10 and point 4 'Risk management of the supply chain' in its 2013 opinion, relating to more structured, systematic cooperation between customs and other authorities operating in the internal market, and the coherent, coordinated implementation of the measures of the action plan.

4.8. The EESC stresses that this risk management strategy should not prevent Member States from implementing customs legislation, so that they can continue to take into account the volume of relevant trade flows while preserving the consistency of EU law.

4.9. To this end, the EESC believes that it is possible to maintain a high level of protection while at the same time stepping up Member State measures to facilitate trade, cutting red tape by promoting paperless processes and simplifying application of the authorised operator status and related procedures.

4.10. It is important to promote close cooperation with other national government departments and relevant national enforcement bodies in this area, inter alia, to minimise burdens — including administrative burdens — for traders. To this end, the Committee recommends using the basic principles of the IMI. Whether, at the end of the day, the option chosen is harmonisation, customs cooperation or a combination of the two, the proposals should be based on best practices rather than a European average level.

⁽⁵⁾ OJ L 82, 22.3.1997, p. 1.

4.11. The Committee calls for the forthcoming amendments to Regulation (EC) No 515/97 on mutual assistance in customs matters (proposal COM(2013) 796) to be taken into account in the definition and implementation of the strategy, given the huge similarity between the cases dealt with.

4.12. The EESC reiterates the need to give the pilot projects greater visibility, promoting use of these projects in order to encourage stakeholders to play a more important role. This could facilitate private investment, which would in turn continue to advance the strategy referred to in the communication, driving innovation.

5. Specific comments

5.1. In the activities described by the Commission as support and development of international rules and standards, as referred to in point 3.1.1, it should be possible to promote legislation providing for customs seal checks by automated systems, in order to integrate it into the regulatory framework of the World Customs Organisation to Secure and Facilitate Global Trade (SAFE).

5.2. The strategy does not mention the risk of fraud in the information or the possibility of 'taking advantage of' a good reputation ('identity tag'). Risk management should allow customs authorities to detect fraudulent information and abuse of a good reputation in order to prevent counterfeit and dangerous products being imported.

5.2.1. Although the Commission already mentions this in Objective 6, the Committee calls for pilot projects intended to introduce innovations in control systems to be more clearly authorised — with a number of conditions, of course — and, if positive results are obtained, for the subsequent implementation thereof to be authorised as well.

5.3. According to the European Commission, the new strategy will help to manage the growing volume of trade with its increasingly complex international supply chain more efficiently (point 3.1), and it should therefore involve greater management efficiency, which will lead to an improvement in the supply chain.

5.4. The EESC regrets that the Commission strategy only provides for cooperation between Member States and the Commission, ignoring the recommendations made in previous opinions regarding the need to provide for cooperation with economic operators.

Brussels, 18 February 2015.

The President
of the European Economic and Social Committee
Henri MALOSSE
