

**Opinion of the European Economic and Social Committee on ‘Proposal for a Regulation of the European Parliament and of the Council establishing the “Customs” programme for cooperation in the field of customs’**

(COM(2018) 442 final — 2018/0232 (COD))

(2019/C 62/07)

Rapporteur: **Laure BATUT**

Consultation	European Parliament, 14.6.2018 Council, 27.6.2018
Legal basis	Articles 114, 33 and 207 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in section	2.10.2018
Adopted at plenary	17.10.2018
Plenary session No	538
Outcome of vote (for/against/abstentions)	191/3/5

## 1. Conclusions and recommendations

The EESC is pleased to note the importance accorded to customs within the internal market, as well as the objective of the Commission proposal, which is to assist the customs union and customs authorities by providing them with a new financial instrument supporting the implementation of customs policy with a view to ensuring uniform application of the rules. The EESC believes that in policy terms European customs, which already apply a common legal code, should function as a single entity.

### 1.1. Budget and implementation of the customs programme

1.1.1. The EESC believes that the amount earmarked for the customs programme of EUR 950 million over seven years, or EUR 5,02 million on average annually per Member State (EU-27), may prove to be insufficient in view of the breadth of the proposal's objectives and the targets set in relation to staff, networks, technology and equipment. Given that the burden will fall on the Member States for what lies within their remit, the Committee recommends that the Commission make it easier for national customs authorities to benefit fully from the programme, and from the promised synergies between programmes, and it would like the Commission to ensure flexibility between the budget priorities of the Multiannual Financial Framework (MFF).

1.1.2. The EESC recognises the difficulty of making quantitative forecasts about the cost of Brexit, which could well be very high, and recommends that the proposal under discussion be adjusted as and when needed without compromising the completion of the internal market between the EU-27 and taking into account the critical requirement of having well-trained customs officials and common customs instruments and procedures that can match those of countries like the United States and China.

### 1.2. Role of IT in the programme

Given that this represents the main added value expected of the programme and mindful of the need to ensure progress of the IT strategy for customs <sup>(1)</sup>, the EESC welcomes the provision for instruments to finance and facilitate the development and maintenance of EU-wide IT customs systems, especially the inclusion of IT planning tools, above all where these tools help to reduce disparities between the Member States.

1.2.1. **Technological innovation:** the EESC recommends that the programme be run in a way that ensures simultaneous roll-out of technological innovations to all the participating Member States.

<sup>(1)</sup> Report from the Commission to the European Parliament and the Council of 11 April 2018 — COM(2018) 78 final.

1.2.2. **Digital cooperation:** to maximise digital cooperation, the EESC recommends encouraging the Member States to take steps to reduce disparities in their practices and skills, and to increase their willingness to tackle fraud together.

### 1.3. *Strengthening skills*

The EESC believes that enhancing the skills of administrative staff and customs training are essential to the smooth operation of EU customs cooperation. It recommends making full use of the programme to build on progress already made<sup>(2)</sup>. With the Mattheus programme from many years ago in mind, this progress could be amplified through an Erasmus for customs (temporary exchanges of customs officials of all categories).

1.3.1. The Committee recommends that customs authorities be guaranteed the status of 'authorised authorities' that can access interoperable systems for conducting checks on people at borders<sup>(3)</sup>.

### 1.4. *Fundamental rights*

The EESC recommends that the programme help to strengthen respect for fundamental rights and data protection within its sphere of application.

### 1.5. *Indicators*

The EESC recommends that participating countries be helped to meet their obligation to report on implementation of the programme using the proposed indicators, considering that budgetary constraints mean national administrations may not always have sufficient time or staff. The EESC suggests that comparisons be carried out between all the Member States at least during the first five years.

### 1.6. *Governance*

The EESC would welcome an open dialogue about implementation of the programme between the Member States, the Commission and the relevant stakeholders. At Union level, it would like to see renewed support from the European Council, which would give the programme long-term visibility, and recommends maximising the chances of its complete success. This includes fiscal harmonisation between the Member States, commitment of all participating countries to training, and a willingness on their part to invest in cooperation, combat fraud, and trade on fair terms.

## 2. **Introduction**

2.1. Under the Commission's proposed MFF, the customs programme is intended to **support cooperation** between customs authorities and to **protect the Union's economic and financial interests**. Fifty years on from its inception, the customs union has a harmonised legal framework at EU level. However, progress still needs to be made in ensuring that the Member States' customs authorities fulfil their duties in a uniform and equivalent way. There is a common customs territory and a common external tariff, prohibiting customs duties and charges having equivalent effect between Member States. However, disparities continue to exist and 'customs shopping' that represents unfair competition creeps in when the rules are applied, which falls to national jurisdictions which can impose customs sanctions.

2.2. Uniform implementation is difficult to achieve in particular because **customs authorities have a multifaceted role**, poised politically between national, EU and international rules governing trade and free movement. Customs is about goods — promoting their circulation where they are legal, intercepting it where they are illegal, and halting it where they are dangerous. In some Member States, customs authorities produce external trade statistics.

2.3. The customs system **also ensures that numerous non-customs rules are complied with:**

- a. Among other things it protects the population from terrorism, environmental and health risks, firearms and drugs, and oversees currency movements, copyright, public safety and health, product safety, protection of wildlife and the environment, etc., and its role in all types of security matters is expanding;
- b. Customs authorities also play a critical role in securing the integrity of the supply chain. There will be many synergies between other MFF financial programmes and the customs programme.

<sup>(2)</sup> SWD(2017) 34 final.

<sup>(3)</sup> COM(2017) 793 — 2017/0351 (COD) and COM(2017) 794 final — 2017/0352 (COD).

2.4. Customs authorities are already using digital equipment and technology that have cut the time needed for checks and reduced public spending, despite the increase in global trade volumes and in cross-border crime. The customs system is an **essential tool of national governments and the Union**. It can be deployed across the entire territory of the EU to protect the Union's financial interests (e.g. customs duties/United States) and those of its citizens (e.g. 'mad cow disease'). The European Border and Coast Guard<sup>(4)</sup> will back this up.

### 3. Gist of the proposal for a regulation

3.1. The European Commission has aligned its general draft budget for 2021-2027<sup>(5)</sup> with the **political priorities of the EU-27**. Among those priorities, the new customs programme follows on from the Customs 2020 programme, which it consolidates and broadens, and is intended to support implementation of the Union Customs Code (UCC)<sup>(6)</sup> and customs policy. To that end it focuses on structured collaboration in relation to methods and budgets, as well as projects to strengthen operational cooperation between the Member States, and beyond them with 'participating countries', which include countries in the process of accession.

3.2. The total number of customs declarations is growing (at around 310 million in 2016 or 10 declarations per second, with 98 % of customs declarations being made electronically). **A massive programme** has already been launched under the UCC **to digitise 17 electronic systems** by 2020-2025. This is intended to promote the competitiveness of European companies, and the Commission believes it will provide the biggest added value of the customs programme.

3.3. Impact studies have identified a need to **enhance skills and coordination between EU customs authorities**, and for **simplified indicators** to reduce the red tape they have to deal with. The proposal mentions reinforcement of actions, both at operational level with systematic exchanging of good practice and operational knowledge between Member States, and through a range of IT infrastructure and systems, in order to achieve fully electronic customs systems<sup>(7)</sup>. The projects will take place over several years, obviously in synergy with the Fiscalis programme.

3.4. The Commission will **meet the international obligations** of the EU at the WTO. To be in line with the political message contained in the Commission's communication on *Developing the EU Customs Union and Its Governance*<sup>(8)</sup>, customs authorities of the Member States should operate as if they were **one single entity**.

3.5. Combining savings from Brexit, reforms and austerity policies with new contributions to be requested from the Member States, the Commission is proposing an overall multiannual financial framework for the Union of EUR 1 279 billion for the period 2021-27, which amounts to 1,11 % of the EU-27's GNI. This would provide **EUR 950 million for the customs programme**.

3.5.1. Combining funding will allow synergies based on more flexibility between different priorities in management of the overall budget, e.g. for IT. National customs authorities will be able to draw on the Integrated Border Management Fund to improve their customs control equipment (purchase, maintenance and upgrading of eligible equipment), while the customs programme will support all related actions, such as cooperation actions for the assessment of equipment needs or, where appropriate, training in relation to the equipment purchased.

3.5.2. The Structural Reform Support Programme could improve the administrative capacity of EU customs. The customs programme will help customs authorities to protect EU financial interests and will also be backed up by the anti-fraud programme which will succeed the current Hercule III Programme<sup>(9)</sup> and by the anti-fraud information system that supports mutual assistance in the sphere of customs. There will also be synergies with Fiscalis, with the activities of the European Public Prosecutor Office and with the Justice Programme of the Justice, Rights and Values Fund when it comes to training in the application of EU customs law.

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<sup>(4)</sup> Regulation (EU) 2016/1624.

<sup>(5)</sup> COM(2018) 322 final.

<sup>(6)</sup> Under the UCC (Union Customs Code, Regulation (EU) No 952/2013, which came into effect on 1 May 2016), an operator can submit declarations to a single customs office in the Union (centralised system), even if the goods pass through different places. Its stated objective is for all customs formalities to be paperless by 31 December 2020.

<sup>(7)</sup> See Decision No 70/2008/EC of the European Parliament and of the Council of 15 January 2008 on a paperless environment for customs and trade.

<sup>(8)</sup> OJ C 434, 15.12.2017, p. 43.

<sup>(9)</sup> Hercule III (Regulation (EU) No 250/2014) has a budget of EUR 104,9 million and is intended to protect the EU's financial interests by supporting activities to combat irregularities, fraud and corruption affecting the EU budget. The programme is run by the European Anti-Fraud Office (OLAF).

#### 4. General comments

##### 4.1. *Implementation of the customs programme*

4.1.1. On 24 March 2018 the European Parliament was recommending that the total budget of the Union be increased by EUR 219 billion. The Commission emphasises the **added value of a European programme** compared with national expenditure. However, the total budget is just **1,11 % of EU GNI**<sup>(10)</sup> (compared with 1,13 % for the previous period). The average budget between 1993 and 1999 was 1,25 %. The EESC has been calling for an increase in the EU's own resources for years<sup>(11)</sup>, and would like to see a political willingness to complete the internal market in respect of customs policy and help provided to national customs authorities to implement this.

4.1.2. The EESC would like to know how the sum of **EUR 950 million** for 2021-2027 was arrived at (first paragraph of point 4 in the Explanatory Memorandum). EUR 137,7 million per annum, or **EUR 5,02 per annum per country (EU-27)**, with countries at different levels of development, seems low.

4.2. The proposal provides for **contracts and subsidies to be granted** by direct management. The **flexibility** of the new MFF model would allow **synergies** to be created between different programmes and between different customs tasks, relations between customs and other authorities, other spheres of EU activity, such as the Digital Europe programme<sup>(12)</sup>, Fiscalis, Justice, etc., and related parts of the budget. The EESC sees this as a sound principle, but would like to know what the **eligibility criteria** will be for allocating support requested **between the** permeable **components** of each programme. It fears the risk of a **gulf between the theory and practice** of these funding combinations in cases where different actions are scheduled at the same time with support from the same fund, which would then be overextended.

4.3. The Commission seems to be optimistic about the prospects for **Member State and EU revenue**, but this is simply conjecture and difficult to substantiate over a period of seven years.

4.4. The proposal leaves **much of the budget responsibility to the Member States**, which will have to develop components at national level taking national constraints into account, and still in the face of the **austerity policies** imposed under the European semester, as well as **economic growth that is only slowly picking up**, especially in the euro area. However, the structured collaboration system which the proposal provides for will enable Member States to work together, including in developing the components of IT systems.

#### 5. Specific comments

##### 5.1. *IT*

5.1.1. IT is considered the **biggest added value of the programme**<sup>(13)</sup>. Customs is probably the first stone of e-governance laid by the Union. The hierarchy of customs control and declaration tools requires ever more **connectivity and interoperability**. This will require firstly that all the Member States have efficient IT customs **infrastructure**, with super-fast broadband everywhere. The EESC would like the customs authorities of the 27 to also be recognised as 'authorised authorities' that can use the future architecture of interoperable border control systems<sup>(14)</sup>.

5.1.2. Articles 7(5) and 8 of the proposal state that the Commission may fund measures up to a rate of 100 % for collaborative activities. If an activity involves the development and operation of a *European* electronic system, the Union will only bear costs relating to common components and coordination, while the Member States will bear costs relating to their responsibilities under the proposal.

##### 5.1.3. *IT innovation*

5.1.3.1. Super-fast broadband networks support all **innovative digital services**. For IT in customs procedures to have the hoped-for results, all private operators (companies) and public operators (third-country authorities) involved in customs must have access to top quality equipment and services.

<sup>(10)</sup> GNI: gross national income.

<sup>(11)</sup> OJ C 74, 23.3.2005, p. 32, point 4.5.15.

<sup>(12)</sup> COM(2018) 434 final.

<sup>(13)</sup> SWD(2018) 322 final, Impact Assessment.

<sup>(14)</sup> COM(2017) 793 final.

5.1.3.2. If the Multiannual Strategic Plan for electronic customs systems (e-customs MASP) <sup>(15)</sup> includes the customs programme, any digital innovation will become part of it. The EESC would like any innovation approved by the authorities to be securely shared across the whole interconnected customs network in the Union so that no time is lost after proof of concept by authorities and there is no diversion of trade.

5.1.3.3. Cybersecurity in relation to data and networks is essential in every sphere: the greater the interconnectivity, the greater the risk. The EESC believes this is important enough to be mentioned in the programme and to be allocated funding, especially as customs activities have a strategic dimension.

## 5.2. Indicators

5.2.1. The Commission focuses on the way in which the programme can contribute to uniform implementation of customs policy and legislation, and proposes novel qualitative indicators for evaluating this.

5.2.2. The EESC recommends that the training provided for in the programme prepare participating countries for gathering this interesting data, in terms of both collecting and processing it. In a period of budget austerity, customs authorities may well lack the time and/or staff to develop these surveys, whose reliability might then be uncertain. Measurement tools already exist, and software programmes could provide direct information on, for example, the 'Availability of European electronic systems'.

## 5.3. Governance

5.3.1. To avoid trade diversion and distortion of competition, the Commission plans to coordinate activities so as to **ensure uniform conditions for implementing the rules**. As on previous occasions it wants to surround itself with **committees and groups of experts**, emphasising civil society participation.

5.3.2. Such coordination must be organised in collaboration with national customs authorities and with experts at operational level and over the long term. The EESC would welcome an **open dialogue with players** such as external experts and representatives of public authorities, including third-country authorities, and representatives of international organisations, business and civil society. The Committee would like to see: (1) before its completion, the European Council promoting the customs programme and signalling its interest in the programme being fully realised; (2) details in the programme about the civil society participants and citizens' access to review mechanisms to **protect their rights**.

5.3.3. The EESC believes that achieving a uniform system would require all the Member States and European institutions to work **transparently** towards the same goals. After the policy decisions on priorities, the Committee would have liked to see a clear separation between measures relating to control of legal and illegal goods, and border checks on individuals (in compliance with customs policy and migration policy).

5.3.4. General factors should be mentioned that would underpin the success of the customs programme, including fiscal harmonisation between the Member States, involvement of all participating countries in training and a willingness on their part to invest in cooperation, combat fraud, and trade on fair terms.

## 5.4. Building human capacity

5.4.1. Customs is not starting from scratch: it already has human resources, equipment and skills. This key point is noted in the programme, but not expanded on. Every national customs authority should be eligible for support to **develop** infrastructure and **knowledge**.

5.4.2. The Committee advocates making **common EU training** widely available, following Europol's example. This could be subject-based, e.g. on interoperability, AEO <sup>(16)</sup> audits, fighting fraud, cybersecurity, internal security, etc. The online modules that have already been developed by the European Commission might be complemented by a special Erasmus programme for customs might devoted to continuing learning, through which temporary exchanges of all grades of customs officials could take place, and which would be financed under the customs programme.

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<sup>(15)</sup> e-customs MASP-C Multi-Annual Strategic Plan, Taxud.a.3(2017)6498377.

<sup>(16)</sup> AEO: authorised economic operator.

5.4.3. The EESC firmly believes that for cooperation between national authorities with **different cultures** to succeed and for **good practices to be identified and shared**, customs officials must have learned to understand each other and to practise their profession in a similar way<sup>(17)</sup>, in terms of how they use digital tools as well as in other areas (e.g. administrative skills). The EESC believes it would be good policy for both the Member States and the Union to maintain customs operations on the ground, notwithstanding the ever-increasing technical requirements. It does not want to see the combination of austerity and the stated objectives of the programme result in reductions in administrative staff, and would like **everyone to have access to ways of improving their skills in order to cooperate with their counterparts in other EU countries**.

#### 5.5. *Protection of fundamental rights*

5.5.1. The Committee points out that as well as being an instrument for implementing customs policy, the customs programme encourages the upholding of fundamental rights by providing standard training to customs officials and representatives of participating third countries. It is important to take full advantage of this opportunity.

5.5.2. The General Data Protection Regulation (GDPR<sup>(18)</sup>) applies across the Union. Economic operators, businesses and officials must comply with the GDPR, and must be able to invoke it. **Protection of data** — whether of individuals, industry or businesses — can be vitally important and it must be guaranteed by national and EU systems, in the case of routine procedures and disputes, as well as in e-commerce and in statistics relating to the programme assessment indicators.

5.5.2.1. Management of the Union's external borders, in cooperation with Frontex, may involve cases where human rights are threatened. The customs authorities concerned must respect the **human rights** of both the presumed perpetrators and their customs officials.

Brussels, 17 October 2018.

*The President*  
*of the European Economic and Social Committee*  
Luca JAHIER

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<sup>(17)</sup> See Matthaëus programme.

<sup>(18)</sup> GDPR: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2016.119.01.0001.01.ENG&toc=OJ:C:2016:119:TOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.119.01.0001.01.ENG&toc=OJ:C:2016:119:TOC)