



Brussels, 15.12.2023  
SWD(2023) 428 final

**COMMISSION STAFF WORKING DOCUMENT**

**EVALUATION**

**Evaluation of Council Regulation (EC) No 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters**

{SWD(2023) 429 final}

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## Glossary

<i>Term or acronym</i>	<i>Meaning or definition</i>
ACAs	Administrative cooperation arrangements
ADD	Anti-dumping duties
AES	Automated Export System
AFIS	Anti-Fraud Information System
AGRIM	Agricultural Imports
ATIS	Anti-fraud transit information system
CCWP	Customs Cooperation Working Party
CEN	Customs Enforcement Network
CIS	Customs Information System
COM	European Commission
COPIS	anti-COUNTERFEIT and Piracy System
CRMS	Customs Risk Management System
CSM	Container Status Messages
CUP	Customs Union Performance
DG TAXUD	Directorate-General for Taxation and Customs Union
ECA	European Court of Auditors
ECS	Export Control System
EDPB	European Data Protection Board
EDPS	European Data Protection Supervisor
EMAC	Expert group on mutual assistance in customs matters
ENS	Entry summary declaration
EPPO	European Public Prosecutor's Office
EU	European Union
EUBAM	EU Border Assistance Mission
FIDE	Customs Investigation Files Identification Database
GDPR	General Data Protection Regulation (Regulation (EU) 2016/679)

IET	Import, Export and Transit directory
JCO	Joint Customs Operations
JRC	Joint Research Centre
JSA	Joint Supervisory Authority
MA	Mutual Assistance
MAA	Mutual Administrative Assistance
MA communication	Mutual assistance communication
MFJ	Multiannual Financial Framework
MS	Member States
NCTS	New Computerised Transit System
OLAF	European Anti-Fraud Office
RIF	Risk Information Form
SAD	Single administrative document
TOR	Traditional Own Resources
UCC	Union Customs Code
VAT	Value added tax
WCO	World Customs Organization

## 1. INTRODUCTION

### 1.1. Purpose and scope of the evaluation/fitness check

This staff working document (SWD) presents the evaluation of Council Regulation (EC) No 515/97<sup>1</sup> on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters ('the Regulation').

The Regulation is the cornerstone of mutual assistance in customs and agricultural matters at European level. It allows Member State national authorities to exchange information between themselves and with the Commission to ensure the correct application of the EU customs and agricultural legislation. To do this, the Regulation establishes and ensures the operation of a number of specific IT systems and databases.

Since the last revision of the Regulation in 2015, several developments with a potential impact on the functioning of the Regulation, for example in the areas of data protection<sup>2</sup> and cash movements<sup>3</sup>, have occurred which prompted the evaluation of the Regulation and its robustness. Moreover, new fraud risks in the customs sector, such as the surge of low-value consignments imported into the EU via e-commerce platforms and a strong increase in the number of containers transported to the EU by rail, have been identified.

This evaluation does not derive from an obligation in the Regulation. Rather, it is part of the 'Evaluate first' principle within the Better Regulation approach followed by the European Commission<sup>4</sup>. The results of the evaluation will be used as evidence in any potential future impact assessment.

As the Regulation has not been evaluated before, the evaluation exercise assesses the overall functioning of the Regulation, according to the standard evaluation criteria of effectiveness, efficiency, relevance, coherence and EU added-value. Consideration has been given to coherence with other related mutual assistance legal instruments such as the Naples II Convention<sup>5</sup> on mutual assistance and cooperation between customs

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<sup>1</sup> Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters

<sup>2</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.

<sup>3</sup> Regulation (EU) 2018/1672 of the European Parliament and of the Council of 23 October 2018 on controls on cash entering or leaving the Union and repealing Regulation (EC) No 1889/2005

<sup>4</sup> [https://myintracomm.ec.europa.eu/sg/better\\_regulation/Pages/index.aspx](https://myintracomm.ec.europa.eu/sg/better_regulation/Pages/index.aspx)

<sup>5</sup> Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on mutual assistance and cooperation between customs administrations (Official Journal C 024, of 23/01/1998 P. 0002 – 0022).

administrations, and Council Decision 2009/917/JHA<sup>6</sup> on the use of information technology for customs purposes.

The evaluation focuses on the key elements of the Regulation, such as its scope, the mutual assistance between Member States, the cooperation between them and the Commission, the relations with third countries and the IT systems and databases covered. It considers the extent to which the objectives pursued are being met and remain relevant. In particular, it assesses whether the data and data quality contained in these databases are sufficient to enable customs authorities to combat fraud effectively or whether there are gaps in the data coverage and if so, why.

The evaluation covers the time period from 1 September 2016, which is the date of the entry into application of its last revision by Regulation 2015/1525<sup>7</sup>, until 1 September 2019.

All Member States as well as third countries, to the extent the implementation of Articles 19 to 22 and of Article 30(4) of the Regulation is concerned, are covered by the evaluation. Information relating to the United Kingdom has been included as appropriate. The deadline for replies to the consultation was after the UK's withdrawal from the EU, and no reply had been received from this country.

## **2. WHAT WAS THE EXPECTED OUTCOME OF THE INTERVENTION?**

### **2.1. Description of the intervention and its objectives**

Combating fraud in the context of the customs union and the common agricultural policy calls for close cooperation between the administrative authorities responsible in each Member State and cooperation between these national authorities and the Commission. Effective cooperation in these fields strengthens the protection of the financial interests of the Union and contributes to the safety and health of citizens and the protection of the environment.

The Regulation sets out the rules under which customs and agriculture administrations may cooperate administratively at bilateral and Union level to ensure the correct application of customs and agriculture law. This cooperation is carried out by using mutual administrative assistance mechanisms in the form of exchange of information, joint operational actions, training courses or collection of evidence and other support provided during administrative enquiries. It can take place between Member States or between these and the Commission or at international level with non-EU countries. The nature and outcome of such activities varies considerably in terms of duration, number of

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<sup>6</sup> Council Decision 2009/917/JHA of 30 November 2009 on the use of information technology for customs purposes.

<sup>7</sup> Regulation (EU) 2015/1525 of the European Parliament and of the Council of 9 September 2015 amending Council Regulation (EC) No 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters

authorities involved, allocated resources and necessary efforts to achieve the proposed aim.

It took a few years and several updates to arrive to the current wording of the Regulation.

The first legal instrument setting up the provisions for mutual assistance in the customs domain was the Naples Convention (later known as Naples I Convention) adopted in 1967, which recognised that cooperation between customs administrations would help to ensure accuracy in the collection of customs duties and other import and export charges and improve the effectiveness of preventing, investigating and prosecuting contraventions of customs laws. It covered all customs aspects. After the creation of the Customs Union, in 1973 the Commission made a proposal for a Regulation on mutual assistance between Member States and cooperation with the Commission in customs and agricultural matters. This proposal was adopted in 1981 as Regulation 1468/81<sup>8</sup>. Regulation 1468/81 became the counterpart of Naples I for EU aspects, while this Convention applied for issues not covered by the new Regulation.

In 1997, as part of a far-reaching reform, Regulation 1468/81 was replaced by Council Regulation (EC) No 515/97. One of the main achievements was the creation of a database for the collection and storage of customs information at European level for anti-fraud purposes. This database was named Customs Information System (CIS). The aim of CIS is to assist in the prevention, investigation and prosecution of operations in breach of customs and agricultural legislation by increasing, by means of a more rapid circulation of information, the effectiveness of the cooperation and control procedures of the competent authorities. The elements to be included in the CIS were defined by the Commission Regulation (EC) No 696/98<sup>9</sup>. This Regulation also defined the operations concerning the application of agricultural legislation for which information had to be introduced in CIS.

At the same time, two new Conventions were discussed. The first one, the Naples II Convention introduced in 1997, replaced the previous Naples Convention with a view to preventing and detecting infringements of national customs provisions and prosecuting and punishing infringements of Community and national customs provisions not harmonised at Union level.

The second one, the CIS Convention<sup>10</sup> adopted in 1995, focused on the use of information technology for customs cooperation in areas of the competence of Member

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<sup>8</sup> Council Regulation (EEC) No 1468/81 of 19 May 1981 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs or agricultural matters

<sup>9</sup> Commission Regulation (EC) No 696/98 of 27 March 1998 implementing Council Regulation (EC) No 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters

<sup>10</sup> Convention of 26 July 1995 on the use of information technology for customs purposes (OJ C 316, 27.11.1995, p. 33).

States. In 2009, the CIS Convention was transformed in Council Decision 2009/917/JHA (CIS Decision)<sup>11</sup>.

These two legal instruments relate to cooperation activities in the fight against criminal offenses, established by Member State national laws and falling under Article 87 of the Treaty on the Functioning of the European Union (TFEU). Together with the Regulation, they cover the customs mutual assistance spectrum at EU level.

The mutual assistance with non-EU countries is based on mutual administrative assistance (MAA) provisions, often in the form of a protocol, in international cooperation or free trade agreements.

The Regulation complements the MAA provisions under international agreements, allowing information to be communicated to/exchanged with third countries that do not have an international agreement with the Union.

In 2008, Regulation (EC) No 766/2008<sup>12</sup> of the European Parliament and of the Council amended Regulation 515/97 and introduced two new IT systems:

- the transport directory, a directory of data reported by carriers to detect movements of goods that are the object of operations in potential breach of customs and agricultural legislation, and the means of transport used for that purpose; and
- the Customs Files Identification Database (FIDE) which contains data about companies or persons subject to investigation by the customs or agriculture authorities. FIDE was also integrated in the CIS Decision.

In 2015, Regulation (EU) 2015/1525 of the European Parliament and of the Council, which has applied since 1 September 2016, introduced the directory for Container Status Messages (CSMs) and the directory for Import, Export and Transit (IET).

Moreover, in 2016 the following acts were adopted to allow the full implementation of the new Regulation:

- Commission Delegated Regulation (EU) 2016/757, determining those operations in connection with the application of agricultural regulations which require the introduction of information into the Custom Information System;
- Commission Implementing Regulation (EU) 2016/346, determining the items to be included in the Customs Information System;
- Commission Implementing Regulation (EU) 2016/345, setting out the frequency of reporting of container status messages, the format of the data and the method of transmission.

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<sup>11</sup> Council Decision 2009/917/JHA of 30 November 2009 on the use of information technology for customs purposes

<sup>12</sup> Regulation (EC) No 766/2008 of the European Parliament and of the Council of 9 July 2008 amending Council Regulation (EC) No 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters.



Over time, a reference to the Regulation was included in a number (altogether 19) of specific legal instruments as support for mutual administrative assistance purposes. These are listed below:

- **Regulation 608/2013** - Customs enforcement of **intellectual property rights** and repealing Regulation 1383/2003
- **Regulation 273/2004** as amended by Regulation 1258/2013 - **Drug precursors**
- **Regulation 111/2005** as amended by Regulation 1259/2013 - Rules for the monitoring of trade between the Community and third countries in **drug precursors**
- **Regulation 1889/2005** - Regulation on **controls on cash entering or leaving the Community**
- **Regulation 116/2009** - Export of **cultural goods** (Codified version)
- **Regulation 428/2009** - Setting up a Community regime for the control of exports, transfer, brokering and transit of **dual-use items**
- **Regulation 258/2012** - Implementing Article 10 of the UN Protocol against the illicit manufacturing of and trafficking in **firearms, their parts and components and ammunition**, supplementing the UN Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition
- **Regulation 21/2004** - Establishing a system for the identification and registration of **ovine and caprine animals** and amending Regulation 1782/2003 and Directives 92/102/EEC and 64/432/EEC
- **Directive 2008/71/EC** - Identification and registration of **pigs**
- **Regulation 267/2012** - Concerning **restrictive measures against Iran** as amended by Regulation 2015/1861
- **Directive 2014/28/EU** - Harmonisation of the laws of the Member States relating to the making available on the market and supervision of **explosives for civil uses**
- **Regulation 332/2014** - Procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the **Republic of Serbia**, of the other part
- **Regulation 833/2014** - Restrictive measures in view of Russia's actions destabilising the situation in **Ukraine**
- **Regulation 2015/752** - Procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the **Republic of Montenegro**, of the other part
- **Regulation 2015/939** - Procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the **Republic of Albania**, of the other part
- **Regulation 2015/940** - Procedures for applying the Stabilisation and Association Agreement between the EC and their MS, of the one part, and Bosnia and Herzegovina, of the other part, and for applying the Interim Agreement on trade

and trade-related matters between the EC, of the one part, and **Bosnia and Herzegovina**, of the other part

- **Commission Implementing Regulation 2016/1239** - Application of Regulation 1308/2013 of the EP and of the Council with regard to the system of **import and export licences**
- **Regulation 2016/1076** - Applying the arrangements for products originating in certain states which are part of the **ACP** Group of States provided for in agreements establishing, or leading to the establishment of, EPAs
- **Regulation 2017/355** - Procedures for applying the Stabilisation and Association Agreement between the EU and the Euratom, of the one part, and **Kosovo** of the other part

### Anti-Fraud Information System (AFIS)

The Anti-Fraud Information System (AFIS) was set up by the Commission in 1997 as the single technical infrastructure hosting the various IT applications for the storage and exchange of information for the purposes of the Regulation. The AFIS system is available to users in Member States, partner third countries, international organisations, Commission services and other EU Institutions.

The information exchanged by Member States can be used by the Commission to disseminate fraud alerts to Member States (usually in the form of mutual assistance communications) or to initiate administrative enquiries.

The access to AFIS and its applications is granted by the AFIS liaison officers designated in each Member State.

**Two main objectives** were set at the last revision of the Regulation initiated in 2013:

1. Increase the detectability, prevention and prosecution of breaches of customs and agricultural legislation by enhanced collaboration both between the Member States and between the Member States and the Commission:
  - Improve the process related to customs mutual assistance;
  - Create conditions for improved fighting of customs fraud especially related to **mis-declaration of goods' origin**, to **mis-description of goods** to **misuse of the transit system**, and to **undervaluation**;
  - Improve the availability and management of customs data.
2. **Improve the process related to administrative enquiries** in the area of customs mutual assistance.

The provisions of the Regulation are meant to contribute to the achievement of these objectives. For better understanding of these provisions, **a brief description of its main sections is provided below:**

## Agricultural matters

The Regulation sets the provisions for mutual administrative assistance in agricultural matters in particular, where specific provisions are not established under the related legislation.

'Agricultural legislation' is defined by the Regulation as the body of provisions adopted under the common agricultural policy and the special rules adopted with regard to goods resulting from the processing of agricultural products.

In order to ensure that the competent authorities are able to respond quickly to health emergencies, tracking and tracing of movements of products subject to agricultural legislation is of utmost importance. To ensure that such goods are tracked and traced at all stages of movement, information should be provided concerning importation, exportation, transit, temporary storage and intra-EU movements of such goods. This information is exchanged using the Customs Information System (CIS). The operations in connection with the application of agricultural regulations which require the introduction of information into the CIS are determined under Commission Delegated Regulation (EU) 2016/757. These are relating to:

- (a) imports from third countries of products subject to provisions adopted under the common agricultural policy and the special rules adopted with regard to goods resulting from the processing of agricultural products;
- (b) exports to third countries of products subject to provisions adopted under the common agricultural policy and the special rules adopted with regard to goods resulting from the processing of agricultural products;
- (c) movements of products, subject to provisions adopted under the common agricultural policy and the special rules adopted with regard to goods resulting from the processing of agricultural products, under cover of a common or external transit procedure and operations involving temporary storage in the Union of such products when re-exported from the Union to a third country;
- (d) intra-EU movements of products which are the subject of restrictions or prohibitions based on provisions adopted under the common agricultural policy and the special rules adopted with regard to goods resulting from the processing of agricultural products or which benefit from EU assistance.

## Customs matters: scope and definitions

The Regulation starts by stating its scope and providing key definitions (Articles 1-3) to ensure a consistent understanding and application by the parties involved.

## Assistance on request

The rules for assistance on request of another Member State's authority are defined by Articles 4-12 of the Regulation.

At request of an authority of another Member State, Members States' authorities shall transmit any information that enable to ensure compliance with the provisions of customs or agricultural legislation. In order to obtain this information, the requested authority shall proceed as though acting on its own account or at the request of another authority in its own country. This information shall include any related attestation, document or certified true copy of a document in its possession.

At request of the applicant authority, the requested Member State shall notify the addressee of all instruments or decisions, which emanate from the administrative authorities and concern the application of customs or agricultural legislation. The requests for notification shall mention the subject of the decision and be accompanied by a translation in the official language of the requested Member State.

Member States shall carry out administrative enquiries on request of another authority related to operations that are or appear to constitute breaches of customs or agricultural legislation. The results of the administrative enquiries shall be communicated to the requesting authority.

Information or documents obtained by recourse to mutual assistance may constitute admissible evidence in administrative and judicial proceedings of the requesting Member State, unless explicitly stated when the information is provided.

#### Special watch on persons, goods and means of transport – Joint Customs Operations

Where there are reasonable grounds of suspicion of breaches in the customs or agricultural legislation, Member States authorities shall keep or arrange for a special watch on persons and their movements, on places where goods are stored, on the movements of goods and on means of transport. This special watch is done on their own initiative or at request of another Member State or the Commission and take often the format of a joint customs operation (JCO). A JCO is an operational action of a limited duration of time and with targeted measures, coordinated and jointly implemented by the Member States or by these and the Commission, for combating cross-border illicit trafficking of goods.

Special watch actions, including JCOs are organised with multiple objectives:

- To improve practical cooperation between the participant customs administrations, between customs and the European Commission and with other law enforcement services and any other relevant organisations involved in the action (such as with Europol or the World Customs Organization (WCO));
- Enhance enforcement capabilities of customs administrations, in the EU Member States and the third countries participating in the operation, notably by developing their operational capacities;
- Establish a workable mechanism for information exchange between all involved partners;
- Collect additional information that cannot be obtained during daily work;
- Prevent the traffic of illicit goods destined to the European Union territory;

- Deliver tangible results in terms of seizures/detentions of goods;
- Identify new threats and/or new *modi operandi*;
- Develop more accurate risk profiles for effective targeting and update the existing threat assessment based on the information collected;
- Assure appropriate follow-up action in conjunction with the law enforcement authorities;
- Develop or extend the investigative activities on basis of the positive results identified during the operational action.

The Virtual Operation Coordination Unit (VOCU) is the communication system of the AFIS platform, used for the secure exchange of information during these operational actions. This system is established on the bases of the Regulation, as part of the permanent technical infrastructure provided by the Commission for the coordination of JCOs and special watch actions.

The Permanent Operational Co-ordination Unit (P-OCU) is the other part of the infrastructure made available to Member States for operational support. This secure room, located in the premises of the Commission's European Anti-Fraud Office (OLAF) in Brussels, can accommodate liaison officers from the Member States and participant third countries and organisations for the entire duration of the actions, with the purpose of jointly coordinate the operational activities.

All costs of installing and maintaining the permanent technical infrastructure are financed by the Commission on the basis of the Regulation.

#### Spontaneous assistance

Member States' authorities can spontaneously provide assistance to other Member States (without prior request), when this is considered useful to assure compliance with customs or agricultural legislation (Articles 13-16). This includes keeping the above mentioned special watch activities and communicating all information in their possession including documents.

Member States may also communicate other information to the competent authority of another Member State, with the purpose of preventing or detecting operations which constitute, or appear to constitute, breaches of customs or agricultural legislation. This can be done by regular automatic exchange or occasional automatic exchange. Such information may concern the entry, exit, transit, storage and end-use of goods, including postal traffic, moved between the customs territory of the EU and other territories, and the presence and movement within the customs territory of the Union of non-EU and end-use goods, where necessary.

Information or documents obtained by recourse to mutual assistance may constitute admissible evidence in administrative and judicial proceedings of the requesting Member State, unless explicitly stated when the information is provided.

## Relations with the Commission

The terms of the relations established between the Commission and Member States on mutual administrative assistance are defined by the Regulation (Articles 17-18e). On these terms, the competent authorities of each Member State shall communicate to the Commission any relevant information concerning goods, methods or practices related to breaches of customs or agriculture legislation, as well as requests for assistance, actions taken and information exchanged that are capable to reveal fraudulent tendencies in the field of customs or agriculture.

This information is of importance when these operations are of particular relevance at Union level or when they might have ramifications in other Member States or third countries, or where it appears likely that similar operations have also been carried out in other Member States. Member States shall communicate to the Commission as soon as possible, either on their own initiative or in response to a reasoned request from the Commission, any relevant information (be it in the form of documents or copies or extracts thereof) needed to determine the facts, so that the Commission may coordinate the steps taken by the Member States. The Commission shall convey this information to the competent authorities of the other Member States.

On the other hand, the Commission shall communicate to Member States any helpful information to enforce customs and agriculture legislation. This is usually done in the format of mutual assistance (MA) communications, an information or a request for assistance made in a structured way, whose format has been agreed with Member States at the former Mutual Assistance Committee (Article 43), today replaced by the Commission Expert Group on Mutual Assistance in Customs matters (EMAC).

Where necessary, supplementary information to the original MA communication can be issued. The MA communications are classified in 'MA P', for communications related to drug precursors and 'MA' for communications related to all other areas.

Within 6 months of the receipt of the information conveyed by the Commission, the competent authorities of the Member States shall forward to the Commission a summary of the anti-fraud measures taken by them on the basis of that information. The Commission shall, on the basis of those summaries, regularly prepare and convey to the Member States reports on the results of measures taken by the Member States.

Where the Commission considers that irregularities have taken place in one or more Member States, it shall inform the Member State or States concerned thereof and that State or those States shall, at the earliest opportunity, carry out an administrative enquiry. Where these enquiries do not have an impact on the Union's financial interests, the Commission acting on the basis of the Regulation, can take a coordination role by ensuring work synergies among the services involved, by facilitating the collection and exchange of information from the national and Commission databases, by organising joint operational meetings and by providing analytical support. Commission officials may be present at the administrative enquiries carried out by Member States, subject to

the conditions laid down in the Regulation. The findings of the enquiries shall be communicated to the Commission as soon as possible.

For cases where the financial interests of the Union are involved, the Commission acting on the basis of Regulation 883/2013<sup>13</sup> (Articles 1.2 and 3), may exercise its powers for the coordination of the administrative enquiries lead by the Member States, to provide these with assistance in the coordination of their investigations and other related activities for the protection of the EU financial interests, or for conducting its own administrative investigations.

Where the Commission has opened a coordination case under Article 1.2 of Regulation 883/2013, it shall provide all necessary assistance to the competent administrative authorities of the Member States and to coordinate and contribute to the investigations carried out by these authorities. The assistance provided by the Commission facilitates the collection and exchange of evidence and ensures investigation synergy among the relevant competent authorities.

Where the Commission has opened an investigation case under Article 3 of Regulation 883/2013, it may carry out on the spot checks and inspections in the EU and third countries, in accordance with the cooperation and mutual assistance agreements and/or any other legal instrument in force (e.g. Regulation 2185/96<sup>14</sup>).

#### Transport directory

The Commission is entitled to establish and manage a transport directory (Article 18a) of data reported by carriers for movements of goods, persons and companies, for movements by air, by train, by road and by post. This Transport Directory is expected to provide the full picture of the movements of goods transported into and out of the Union territory. Access is restricted to designated competent authorities of Member States and Commission.

#### Container Status Messages (CSM)

The Commission establishes and manages a Container Status Messages (CSMs) directory (Articles 2, 18a, 53, 43b). The Container Status Messages (CSM) directory collects data related to movements of containers destined to be brought by maritime vessel into the customs territory of the Union from a third country, as well as export-movements goods subject to excise duties in the following categories: alcohol, cigarettes/tobacco or energy products. The CSM directory has been operational since September 2016. Carriers are obliged by the Regulation to transmit defined CSM data directly to the CSM directory. The frequency of reporting of container status messages, the format of the data

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<sup>13</sup> Regulation (EU, EURATOM) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999

<sup>14</sup> Council Regulation (EURATOM, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities.

and the method of transmission are defined under Commission Implementing Regulation (EU) 2016/345.

The access to this sensitive data is restricted to designated competent authorities of Member States and the Commission and are named in a list of national authorities communicated to Member States and the Commission (Article 29 of the Regulation; Notice from Member States 2013/C 366/06).

#### Import, Export and Transit (IET)

The Commission establishes and manages a directory containing data on imports of all type of goods, transit of all type of goods and export of restricted goods relating to alcohol, cigarettes/tobacco or energy products (Article 18d). This directory is named Import, Export and Transit (IET). IET does not include data on direct exports neither national transit messages.

To leverage existing resources, the Commission systematically replicates data from other sources operated by the Commission. Thus, the IET directory receives and stores import and export declarations from the Surveillance system, export declarations from the AES system and transit declarations from the NCTS system. For the moment, transit declarations are also stored in Anti-fraud transit information system (ATIS).

The access to this directory is restricted to designated competent authorities of Member States and the Commission (Article 29 of the Regulation).

#### Relations with third countries

The section on the relations with third countries (Article 19-22 of the Regulation) provides the legal basis for mutual assistance with third countries with which there is no mutual administrative assistance (MAA) agreement.

The Regulation allows pursuant information to be communicated/exchanged between the Commission and the Member States with third countries in cases of particular interest for the European Union. Furthermore, it contemplates the possibility of the Commission, in coordination with Member States, to conduct administrative and investigative cooperation missions in third countries.

In the absence of an agreement on cooperation and mutual administrative assistance in customs matters between the European Union and a third country, the assistance may take place with the third country concerned under the conditions laid down in Article 19 of the Regulation. It can also complement the MAA provisions under existing agreements.

These MAA agreements are not mentioned under Articles 19-22.



## Customs Information System (CIS)

The Customs Information System (CIS) (Articles 23-41) was built to secure the rapid and systematic exchange of information on infringements in the customs and agriculture domain at Union level.

The Commission, in close cooperation with Member States, is tasked to facilitate the installation and management of such a system in the Member States. The items to be included in the CIS are determined by the Commission Implementing Regulation (EU) 2016/346 of 10 March 2016.

The aim of the CIS is to assist in preventing, investigating and prosecuting operations which are in breach of customs or agriculture legislation, by making relevant information available more rapidly and thereby increasing the effectiveness and suitability of the cooperation and control procedures applied by the competent authorities. The CIS consists of a central database, assessable to all Member States and the Commission comprising data, including personal data, on suspicious or established customs infringements in the following categories: commodities, means of transport, businesses, persons, goods and cash. Personal data can solely be included in the CIS for the purpose of actions of sighting and reporting, discreet surveillance, specific checks and operational analysis. The access to the data is restricted to designated customs competent authorities from Member States and the Commission (Articles 29 and 30). For cases of a more sensitive nature, the Member State responsible for supplying the data may restrict its access to specific countries. This provision was introduced by the last amendment of the Regulation (Article 29) with the aim to increase the level of trust in the CIS information exchange and ultimately contribute to enhance the levels of customs cooperation and the protection of the Union's financial interests. As per the Regulation (Article 30) a set of non-personal CIS data on tobacco seizure data can be transferred by the Member States to an international organisation which contributes to the correct application of the customs legislation. This is based on an administrative arrangement signed in 2003 by the Commission and this international organisation.

The amendment also included a more flexible way of publishing the updates of the lists of the relevant authorities mentioned in Articles 29 and 30 of the Regulation.

Due to the mentioned amendments made to the Regulation through the years, the CIS was developed in successive IT applications since its creation in 1997. It was initially developed as a stand-alone AFIS application. In 2010, it was integrated in the Mutual Assistance Broker, a system consisting of several modules for the exchange of intelligence and operational information in the customs domain: CIS, CigInfo (containing information on cigarettes seizures), MarInfo (for exchange of intelligence on sensitive goods transported by maritime cargo), YachtInfo (for exchanges of intelligence on sensitive goods transported by non-commercial vessels). The system was last updated in 2018, to introduce the new provisions following the recast of the regulation. The CIS was then technically updated as a single application integrating the information contained in the CIS, CigInfo, MarInfo and YachtInfo applications.

## Customs Files Identification Database (FIDE)

The Customs Files Identification Database (FIDE) (Articles 41a-d) is a database managed and set up by the Commission with the objective to help prevent operations which are in breach of customs and agriculture legislation and to facilitate and accelerate their detection and prosecution. The data of the centralised database covers persons and businesses subject to an administrative enquiry or a criminal investigation, as well as the field concerned and the details of the Member States competent authority in charge of the file. Access is restricted to designated customs competent authorities from Member States and the Commission (Articles 29 and 30).

The purpose of the FIDE is to allow the Commission, when it opens a coordination file or prepares a Community mission in a third country within the meaning of the Regulation, and the competent authorities of a Member State, when they open an investigation file, to identify the competent authorities in other Member States or the Commission departments which are or have been investigating the same persons or businesses concerned. The system does not contain the details of the case.

### Data analysis

The data exchanged between the Member States and the Commission may be stored and used for the purpose of operational and strategic analysis and the results of this analysis may be interchanged between them (Article 2).

### Personal data protection

Personal data protection is established under Chapter 5 of the Regulation (Articles 34-36). The personal data protection supervision is established under Chapter 6 of the Regulation (Article 37). These rules apply for all the databases and directories under the Regulation:

- The 'CSM directory' - Articles 18(c), 18(d) and 18(e);
- The 'Import, Export and Transit directory' - Article 18(g);
- The CIS database - Articles 23 to 41;
- The FIDE database - Articles 41(a) to 41(d).

The European Data Protection Supervisor (EDPS) is responsible for supervising the implementation of the Regulation in this respect.

Given the dual legal basis supporting the CIS and FIDE the Joint Supervisory Authority (JSA) is responsible for the supervision of the processing of the personal data in these databases under the Council Decision 2009/917/JHA.

The last amendment aimed to simplify and harmonise the data protection supervision rules applicable to the databases set up on the basis of the Regulation. For reasons of consistency of the data protection supervision and with a view to achieving coordination of the audits of the CIS and FIDE, the need for close cooperation between the EDPS and the JSA established under Council Decision 2009/917/JHA was then introduced.

Nevertheless, the amendment did not modify the supervision model based on the parallel existence of the two supervision bodies.

Additionally, it modified the maximum retention period for data stored in the CIS and clarified the data retention periods of FIDE.

### Financing

The Regulation also provides for the financing of all mutual administrative assistance EU actions (Article 42a). These include:

(a) all costs of installing and maintaining the permanent technical infrastructure making available to the Member States the logistical, office automation and IT resources to coordinate joint customs operations;

(b) the reimbursement of transport, accommodation and daily allowance costs of representatives of the Member States taking part in the EU missions, joint customs operations organised by or jointly with the Commission and training courses, ad hoc meetings and preparatory meetings for administrative investigations or operational actions conducted by the Member States, where they are organised by or jointly with the Commission;

(c) expenditure relating to the acquisition, study, development and maintenance of computer infrastructure (hardware), software and dedicated network connections, and to related production, support and training services for the purpose of carrying out the actions provided for in the Regulation, in particular preventing and combating fraud;

(d) expenditure relating to the provision of information and expenditure on related actions allowing access to information, data and data sources for the purpose of carrying out the actions provided for in the Regulation, in particular preventing and combating fraud

(e) expenditure relating to use of the CIS provided for in instruments adopted under Articles 29 and 30 of the Treaty on European Union and in particular in the Convention on the use of information technology in customs matters drawn up by the Council Act of 26 July 1995 (replaced by Council Decision 2009/917/JHA), in so far as those instruments provide that that expenditure shall be borne by the general budget of the European Union.

The financing mechanism under the Regulation are mainly in the format of procurement contracts (implemented under direct management) and reimbursement of costs of Member States representatives taking part in the activities foreseen thereof.

### Monitoring

The Regulation foresees that the Commission in cooperation with the Member States shall report each year to the European Parliament and to the Council on the

implementation measures taken. This is done via the Annual Report on the protection of the European Union's financial interests - Fight against fraud (PIF report).

#### Expected outcome of the intervention

The provisions of the Regulation described above, are designed with the aim to ensure that all the necessary conditions for the carrying out of the mutual assistance procedures are in place. This supports Member States and the Commission on their roles of enforcing the customs and agriculture laws and contribute to the protection of the financial interests of the Union, the environment and the safety and health of citizens. The mutual assistance activities are varied and include the exchange of information, the collection, storage and analysis of data or the making of administrative enquiries.

The Regulation evolved with the goal to improve the cooperation between Member States and Commission authorities, by providing them the appropriate legal bases and tools for optimizing their work in the anti-fraud domain. In this sense, two new legal bases were introduced in the latest recast, namely the Container Status Messages (CSM) and the Import, Export and Transit (IET) directories. The purpose is to gather a larger, more complete and qualitative set of information in a timely manner, and improve the detectability and prevention of breaches of customs and agricultural legislations.

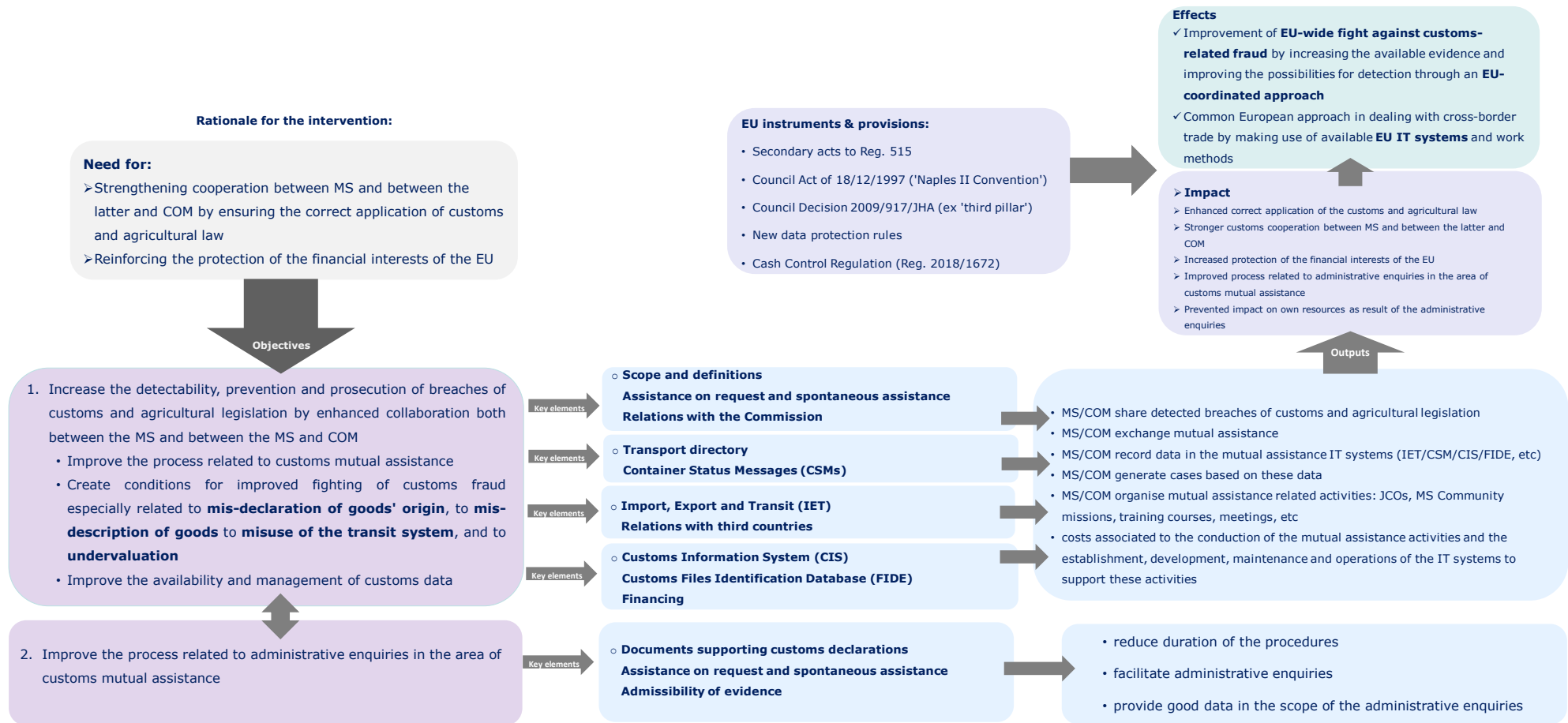
At the same time, the conditions are created to facilitate the gathering of evidence, both electronically and by the collection of supporting documentation. Improvements are expected in the carrying out of administrative enquiries, the possibility to extract, analyse and share findings, the quality of the findings and the (reduced) duration of the process.

By making available the data and the tools that allow exploring that data, including the possibility of complementing it with information from the related documentation, a positive impact is expected at operational and investigative levels.

Member States are supported and encouraged to enhance operational and investigative work, in close cooperation with the Commission. An EU coordinated approach based in the early detection of illicit patterns and fraud trends, should help prevent and deter more effectively illicit traffic from affecting the Union.

The new measures are intended to fulfil the objectives initially proposed in the last amendment, of *“increasing the detectability, prevention and prosecution of breaches of customs and agricultural legislations, by enhanced collaboration both between the Member States and between the latter and Commission”* and *“improving the process related to administrative enquiries in the area of customs mutual assistance”*.

The logic of the intervention can be visualised as follows:



## 2.2. Point(s) of comparison

The changes introduced by the last amendment of the Regulation (by Regulation (EU) 2015/1525, which entered into force on 1 September 2016) aimed at:

- improving the detection, investigation and analysis tasks in the anti-fraud area;
- enhance the cooperation by optimising systems and processes leading to better use of the existing tools;
- facilitate cooperation between individual Member States and between Member States and the Commission.

In the long term, the revised Regulation should present an opportunity to increase significantly the number of detected fraud cases and other irregularities in the agricultural and customs domains and thereby help to protect the financial interests of the European Union.

To this end, the CSM and IET directories were introduced in the Regulation and a number of provisions were changed.

### Agricultural matters

The section of agricultural matters remained unchanged in the last amendment of 2015. At that point in time, it was considered as working well and remained therefore untouched.

The number of agriculture cases was in the past mainly related to export refunds. These export refunds do not apply since 2015, so the number of fraud cases related to agriculture has reduced considerably since then. It can be estimated that there were not more than a maximum of 10 cases per year related to agricultural matters throughout the last 5 years. The MA communications based on the agricultural cases are not of a different kind.

### Customs matters scope and definitions

In the 2015 amendment to the Regulation, Article 2 was updated to align eligible terminologies with the ones used under the Union Customs Code (UCC<sup>15</sup>).

The definition of ‘customs scope’ was referred to the concept of customs legislation in the UCC. The definition of ‘service providers active in the international supply chain’, was created to clarify the subject of the obligation laid down in Article 18c(1). These

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<sup>15</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code

changes were expected to improve the understanding and legal certainty in the use of the Regulation.

#### Assistance on request

Before the last review of the Regulation, national prosecutors were reluctant to use documents obtained via mutual assistance channels as evidence in criminal proceedings, as several Member States felt that the provisions of the Regulation were not sufficiently clear. This inevitably caused delays in national criminal proceedings or even resulted in the dismissal of a case due to time barring. Importantly, it also undermined the principle of legal certainty, given that relevant provisions of the Regulation were subject to differing interpretations. The last revision of the Regulation concerning Article 12 aimed at improving the situation, removing any legal uncertainty in relation to the possible use of information collected through mutual assistance as admissible evidence in national criminal proceedings. However, the amendment did not oblige national courts to accept such evidence automatically, as it still had to satisfy national procedural rules. Hence, whilst legal certainty was expected to improve compared to the pre-2015 situation, no significant reduction in the time taken to open/undertake national criminal proceedings was anticipated. No figures for the time being are available as it varies from case to case, depending on the circumstances. There was no expectation that the volume of requests would alter significantly due to the changes.

#### Special watch on persons, goods and means of transport - JCO

The section of special watch remained unchanged in the last amendment of 2015. At that point in time, it was considered as working well and remained therefore untouched. In the year 2015 6 JCOs were conducted by the Commission and the Member States.

#### Relations with the Commission

The section on the relations with the Commission remained unchanged in the last amendment of 2015. At that point in time, it was considered as working well and remained therefore untouched. There was no expectation that the volume of requests would alter significantly due to the changes.

The last amendment was also intended to improve the duration of related Commission (OLAF) investigations, so that an increased number of investigations could be completed in a shorter timescale and result in higher amounts recovered.

#### Transport directory

The transport directory remained unchanged in the last amendment of 2015. In 2015, the transport directory was limited to data related to sea container movements recorded in the CSM directory. A transport directory containing data for land, rail and air transport has not been implemented by the Commission until now.

## Container Status Messages (CSM) Import, Export and Transit (IET)

The last amendment of the Regulation in 2015 was intended to create the conditions to improve the fight against customs fraud, and three particular types of customs fraud: misdeclaration of origin; misdescription of goods; and misuse of the transit system.

Before the 2015 amendment, the baseline situation was as follows: national customs authorities alone could not share information and conduct a largescale fight against breach of customs legislation at reasonable cost. Relevant data on movements of goods entering or leaving the EU was not systematically made available to Member States and the Commission, hampering national and EU wide analysis of customs risks, which pose a threat to the EU and its Member States.

The last revision made it mandatory for sea-container carriers to electronically report EU-related CSMs to a centralised repository, facilitating the trace, and eventual analysis of maritime container trips. This information, coupled with developments of the ConTraffic tool, was expected to increase analysis of container movements, with subsequent improvements to the identification and investigation of related fraud. In return, companies would benefit from providing data and potentially avoid time-consuming customs controls.

The establishment of the IET directory relied on the existing AFIS infrastructure and the experience built up by the Commission by setting up the ATIS database. The data is replicated from the Commission's existing systems and therefore Member States are not required additional reporting efforts. Member States and the Commission are expected to being able to identify fraud in a more effectively and efficient manner.

An expected result of the last amendment for both CSM and IET directories is an increase in the number of detected breaches of legislation, as well as in the number of investigations opened based on these data. The number of requests for use of data by investigators and the amounts recovered on the basis of such information was expected to increase as well.

## Relations with third countries

The section on the relations with third countries remained unchanged in the last amendment of 2015. At that point in time, it was considered as working well and remained therefore untouched.

Most of the current exchanges take place under the legal basis of MAA provisions in international agreements. This figure remained relatively stable over the past recent years.

## Customs Information System (CIS)

The provision enabling data owners to restrict visibility to specific users, introduced in the Regulation by the last amendment, was expected to improve the level of confidence



in the system and therefore considerably increase the exchange of information, improving further the possibility to prevent, detect and investigate customs-related fraud.

#### Customs Files Identification Database (FIDE)

The section of FIDE remained unchanged in the last amendment of 2015. At that point in time, it was considered as working well and remained therefore untouched.

#### Personal data protection

The last amendment aimed to simplify and harmonise the data protection supervision rules applicable to the databases set up on the basis of the Regulation. For reasons of consistency of the data protection supervision and with a view to achieving coordination of the audits of the CIS and FIDE, the need for close cooperation between the EDPS and the JSA established under Council Decision 2009/917 JHA was then introduced. Nevertheless, the amendment did not modify the supervision model based on the parallel existence of the two supervision bodies.

Additionally, it modified the maximum retention period for data stored in the CIS and clarified the data retention periods of FIDE.

Finally, a specific provision was introduced in Article 38 on the security of processing.

#### Data analysis

The provisions on use of the data processed under the Regulation for analysis purposes were considered as working well and remained unchanged in the last amendment of 2015.

### **3. HOW HAS THE SITUATION EVOLVED OVER THE EVALUATION PERIOD?**

With a view to ensuring the correct application of customs and agricultural legislations, prior to the 2015 revision the Commission was assisted by the Mutual Assistance Committee (MAC), as provided by the Regulation. In 2015 and following the last revision of the Regulation in light of the Lisbon Treaty, this Committee was replaced by a new Comitology Committee with exclusive focus on the adoption of implementing acts envisaged in the amended Regulation 515/97. The non-regulatory tasks so far carried out by the MAC were reassigned to a new informal Expert Group on Mutual Assistance in Customs Matters (EMAC). This new group is composed of representatives of the Member States' authorities, primarily customs authorities. The group provides a forum for discussion on major policy and operational issues relevant to the work of the Commission in relation to mutual assistance in the area of customs and in particular fighting customs fraud. It meets twice a year, to exchange expertise and good practices and supporting the Commission in implementing the provisions of the Regulation.

### 3.1. Current state of play

For the purpose of this evaluation, relevant stakeholders dealing with the implementation of customs and agricultural legislation in Member States, Commission departments, European and international bodies, data protection authorities and maritime shipping carriers were consulted via a targeted questionnaire. Twenty-seven Member States answered the questionnaire. One Member State provided two separate answers, in accordance to separate competences defined at national level. In total, 28 answers were received. Bilateral interviews were conducted with selected Member States and Commission departments. The analysis provided in the following sections of this evaluation report is based on the answers collected during the stakeholder consultation.

#### Agricultural matters

All respondents who have used the Regulation mechanisms in agricultural matters confirm that the scope of the Regulation has appropriately met their needs on mutual administrative assistance.

Nine Member States indicated that they use the Regulation for agricultural purposes. However, this usage varies from several times a week (two Member States) to less than once every 6 months (two Member States). One Member State uses the Regulation several times a month, two Member States less than once a month and two Member States several times a week. No Member State made daily use of the Regulation.

Not all parts of the Regulation are used at the same extent for agricultural purposes by the Member States. Three Member States have not used the provisions on relations with the Commission, whereas two Member States report very frequent use. One Member State mentions little use and two other Member States moderate use. Five Member States do not recourse to the provisions on the relations with third countries. Two other Member States report little use or moderate use of these.

The databases established by the Regulation are not frequently used for agricultural purposes. In fact, several Member States expressed no opinion on these. CSM is very little used by five Member States and moderately used by one Member State. Four Member States have no opinion. The situation is very similar for IET. Three Member States have no opinion, six Member States use it very rarely and one moderately. The CIS is rarely used by four Member States and moderately used by two Member States. Four Member States expressed no opinion. Similar situation for FIDE, which is used by five Member States. Five Member States expressed no opinion.

As to the frequency in sending requests for assistance for agricultural purposes, five Member States mentions a use less than once within 6 months. Two Member States send requests several times a month, and another two Member States less than once a month. One Member State has never send requests.

The situation is similar on the frequency in receiving requests for assistance, five Member States mention a use less than once within 6 months. Three Member States

receive requests several times a month and one Member State less than once a month. One Member State has never send requests.

On spontaneous assistance, only two Member States replied and indicated use several times a month. Seven of respondents mention use less than once within 6 months and one Member State has never used this form of assistance.

Regarding to extent to which the mutual assistance mechanism has contributed to detecting breaches in agricultural legislation, six Member States indicated a moderate to high contribution, whereas one Member State indicated it was low.

As to whether Member States faced difficulties when requesting mutual assistance, four Member States did not report any difficulties. Most respondents reporting difficulties mention 'incomplete answers' and 'too late answers' as moderately happening.

A similar situation occurs when it comes to difficulties when requested for mutual assistance. Six Member States did not report any difficulties. Four Member States reporting difficulties mention 'unclear requests' as little or moderately happening. 'Difficulties in answering within the established deadline' is mentioned as little or moderate by three Member States whereas it is mentioned by one Member States as happening frequently. The 'non-availability of the requested information or documentation' is mentioned as less frequent for four Member States.

On the usefulness of communication channels for the mutual administrative assistance exchanges, ordinary email is considered useful or very useful for nine Member States. Responses on post are equally (three Member States each) divided among respondents from very useful to moderately useful and not useful at all. Phone is considered moderately useful to five Member States, of little use for two Member States and not useful at all to one Member State.

AFIS is considered useful or very useful to five Member States, whereas one Member State finds it moderately useful. As to other communication channels, one Member State observes that the email may be a perfect and quick complement to a mutual assistance request received by AFIS-mail for non-sensitive questions regarding the request.

Concerning possible alternative mechanisms to be used if the Regulation had not existed, six Member States mention bilateral mutual assistance agreements, four Member States the Naples II Convention, two Member States replied 'none', whereas one Member State mentioned that a legal basis is necessary, but observes that the one provided for in Commission Implementing Regulation 2016/1239 on the system of import and export licences for agricultural products is not detailed enough.

One Member State suggested that the competent authorities responsible for agriculture should be considered as requesting authorities according to the Regulation. They also proposed to include some deadlines or a provision on the possibility to set deadlines or a reference to deadlines in other regulations.

Only one Commission department uses the Regulation for mutual administrative assistance in agricultural matters. This Commission department uses the Regulation several times a month and considers the scope as appropriate.

There are no more than a maximum of 10 cases per year related to agricultural matters recorded under the Commission IT systems throughout the last 5 years. The provisions related to agricultural matters were not contemplated in the last review of the Regulation. The number of cases remained the same.

#### Customs matters scope and definition

Twenty-five Member States consider that the scope of the Regulation largely meets their needs in terms of mutual administrative assistance. In general, it is considered that the Regulation provides extensive coverage for mutual assistance in administrative matters, even when complemented by other legal instruments such as in the areas of administrative cooperation in the field of excise duties (Regulation 389/2012), VAT (Regulation 904/2010) and cooperation between EU customs administrations (Naples II Convention).

Five Commission departments responded that they use the Regulation on mutual administrative assistance in customs matters. None of the Commission departments replied that the scope of the Regulation would not at all correspond to their needs. They even point out the compelling need for this instrument.

#### Assistance on request

Sixteen Member States send requests for assistance or spontaneous assistance very frequently (of those: 1 Member State on a daily basis, 3 Member States several times a week, 12 Member States several times a month). Six Member States send requests on a less frequent basis, fewer than once a month or less than once every six months.

When requesting assistance, 11 Member States faced no difficulties with the mutual administrative assistance process. Sixteen Member States however, reported difficulties. The most occurring problem is that the answers are frequently received too late, but also that the information requested is not received or incomplete. Other problems reported by Member States are related to restrictions due to the jurisdiction of their respective customs administrations, the lack of an established deadline in the Regulation for responding to the mutual assistance requests, the use of alternative communication channels to the one used in the request, or national data protection restrictions. One Member State suggested including information on the status of the request (received, in handling, processed, etc.).

Ten Member States receive requests for assistance or spontaneous assistance several times a month, with some Member States receiving requests more frequently (of those, three Member States – several times a week, one Member State daily, seven Member States less than once a month).

When requested for assistance, 11 Member States faced no difficulties with the mutual administrative assistance process. Seventeen Member States reported difficulties. The most occurring problem faced seems to be that the information/documentation requested was not available. Other problems reported were that some Member States do not include copies of related documents, that the request does not fall under the competence of the customs of the requested Member State, the absence of a deadline for the answer, delays from awaiting information from third parties, or the fact that the request does not fall under the remit of the Regulation.

Member States provided some suggestions to address some of the problems reported such as the introduction of a reasonable deadline to reply to assistance requests, the possibility of allowing the use of information and documentation received via mutual assistance by other state authorities or to standardise the forms and content of the request (as in Naples II Convention).

AFIS mail, an application part of the AFIS for the secure exchange of electronic messages, is considered the most useful tool for the mutual assistance communications by all Member States.

According to the Customs Union Performance (CUP) Report for 2018, from 2013 to 2018, 16 284 requests for assistance were received and the vast majority of those (99.71%) were answered.

### Special watch on persons, goods and means of transport - JCO

The special watch actions defined by the Regulation (Article 7) including Joint Customs Operations (JCOs), aim at placing sensitive, prohibited or high-taxed goods under surveillance for a limited period and taking appropriate operational measures to prevent fraud. A common set of criteria is generally used for the threat assessment and the definition of risk profiles, such as the nature of goods or the selected means of transport. Due to the various nature of the special watch activities, it is not possible to quantify them in their entirety. Nevertheless, as these are often carried out in the format of JCOs with the support of the Commission, it is possible to analyse these and assess its value in the context of mutual assistance.

In the period of 2015-2019, 47 Joint Customs Operations were organised by Member States and by the Commission in cooperation with Members States. Third countries (such as Bangladesh, China, India, Indonesia, Japan, Malaysia, Moldova, Mongolia, Norway, Pakistan, Philippines, Singapore, Thailand, Ukraine or Vietnam), and other organisations such as Europol, Frontex, EUBAM, the World Customs Organization (WCO) or Interpol, are frequently participating in these operations. A number of investigations, at national and EU level, were opened following some of these operations.

Twenty Member States view the Regulation as useful in conducting JCOs. Twelve of these Member States consider it very useful, namely as the Regulation is considered as the main instrument for the exchange of operational information between Member States and these actions are very useful to confirm previous suspicions of fraud. Two Member States have mentioned the need to clarify the scope of article 7 of the Regulation.

The Virtual Operations Coordination Unit (VOCU), the communication tool part of the AFIS used for the secure exchange of information during JCOs is considered very useful by the Member States. At the latest AFIS survey launched in 2019, over 90% of Member States were satisfied with the functionalities and performance of the VOCU.

On the period of 2015-2019, 47 JCOs were conducted with the use of VOCU.

### Relations with the Commission

The number of mutual assistance communications and supplementary information sent to Member States by the Commission for the period 2015-2019 remained initially stable, with an increase in the last two years. The evolution is visualised in the following table:

MA number / Year	2015	2016	2017	2018	2019
MA	26	26	26	32	39
MA Precursors	1	2	2	5	2
MA Supplements	13	6	15	15	25
MA Precursors Supplements	3	7	2	4	3
<b>Total</b>	<b>43</b>	<b>41</b>	<b>45</b>	<b>56</b>	<b>69</b>

Figure 1: Number of mutual assistance communications by type of MA and year (2015-2019) (OLAF figures)

The number of mutual assistance communications issued by type of fraud, for the same period, is shown in the table below:

Type of fraud / Year	2015	2016	2017	2018	2019
Misclassification	5	4	4	10	4
Origin	16	20	20	16	21
Undervaluation	2	-	1	2	5
Drug Precursors	1	2	2	5	2
Other/Combined	-	-	-	2	3
Special regime	-	2	-	-	-
Counterfeit products	3	0	1	2	6
<b>Total</b>	<b>27</b>	<b>28</b>	<b>28</b>	<b>37</b>	<b>41</b>

Figure 2: Number of mutual assistance communications by type of fraud and year (2015-2019) (OLAF figures)

The consulted stakeholders are satisfied with the mechanisms for mutual administrative assistance in place, be it in the form of information systems or other forms of cooperation.

All Member States indicated that they have reported relevant information to the Commission according to Articles 17 to 18e of the Regulation, however, the frequency of

reports varies from one Member State to another. One Member State reports on a daily basis to the Commission, while at least one third of the Member States report to the Commission several times a month.

Twenty-four Member States indicated that the information included in mutual assistance communications led to specific measures being taken at national level. Member States mostly indicated the measures to include risk analysis processing, documentary and physical examinations, guarantees, post-clearance controls, administrative and operative measures as well as criminal investigations. In some cases, they recovered duties and other payments.

Three Commission departments have been involved in the mutual administrative assistance mechanisms based on Articles 17 – 18e of the Regulation.

### Anti-Fraud Information System (AFIS)

To assure cooperation and control procedures, all relevant information should be systematically made available both to Member States and the Commission in a secure and rapid manner. As mentioned in section 2.1, the Anti-Fraud Information System (AFIS) was set up by the Commission as the single technical infrastructure hosting the various IT applications for the storage and exchange of the information for the purposes of the Regulation.

The AFIS users in Member States and in the Commission are invited to evaluate the system and its applications every two years.

The figures below show the degree of satisfaction of the users over the period 2014-2019:

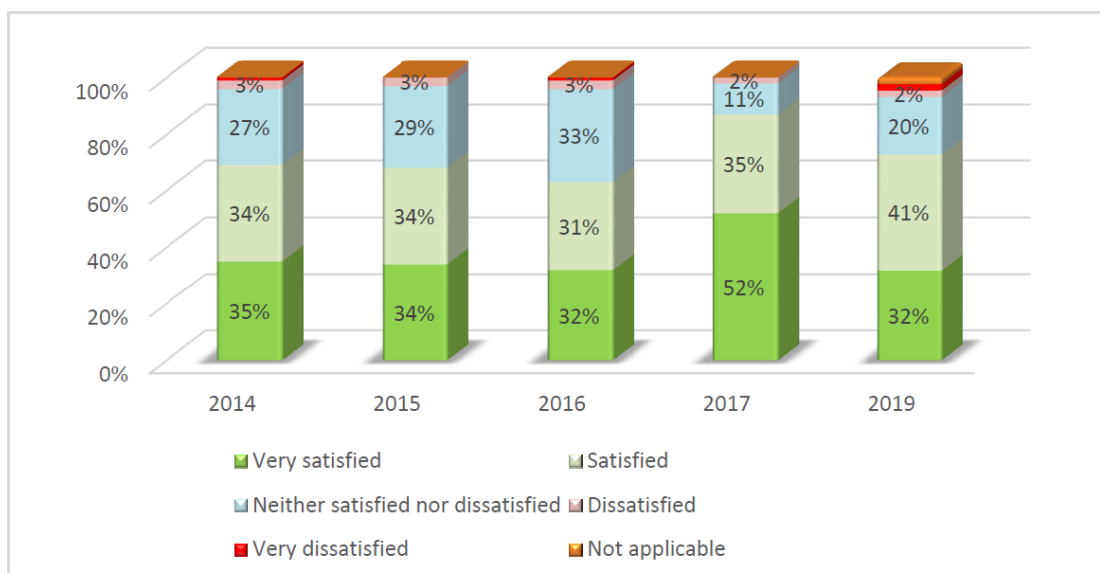


Figure 3: Evolution of the level of satisfaction of the AFIS users in the period 2014-2019 (OLAF IT Satisfaction Survey)

## Transport directory

For the time being, the transport directory is limited to data related to sea container movements recorded in the Container Status Message (CSM) directory. A transport directory containing data for land, rail and air transport has not yet been implemented by the Commission.

As required by Article 43b of Regulation 2015/1525 the Commission carried out an assessment of the feasibility of extending the data contained in the transport directory, by including data on import, export and transit of goods by land and air ('feasibility assessment'). This assessment was annexed to the Commission annual report on the protection of the EU's financial interests (PIF Report) for 2017<sup>16</sup>. Member States were regularly associated with this exercise in the context of the Expert Group on mutual assistance in customs matters.

In its assessment the Commission has taken into account the concerns expressed by Member State Customs Authorities at various occasions about the issue of complexity of reporting requirements to various Commission services. The Commission has ensured to avoid multiple reporting and duplication of efforts, and has looked for where data for land, including rail, and air transport was or would be available in the future.

The feasibility assessment therefore focused on the identification of potential sources of additional data for land, including rail, and air transport. In this context, the Commission indicated that it would explore the possibility of re-using data from other Commission IT systems such as the Entry Summary Declaration (ENS) data<sup>17</sup> provided to the Import Control System (ICS) 2 system as well as other options if there are indications that shortcomings in the legal framework as well as ineffective implementation of customs controls on imports, as identified by the European Court of Auditors<sup>18</sup>, persist.

## Container Status Messages (CSM)

The CSM directory was launched in September 2016 following the entering into force of the latest amendment of the Regulation. Thirteen Member States indicated that they use CSM on a weekly basis at least, mainly for commercial customs fraud (misdescription of goods, origin, value, anti-dumping duties, etc.) and non-commercial customs fraud. Twenty-six Member States use CSM for investigative activities, twenty-three Member States for risk assessment, twenty Member States for post-clearance auditing or controls.

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<sup>16</sup> COM(2018) 553 final of 03.09.2018, see section 3.1.1.1 on Implementation of Article 43b of Regulation 515/97.

<sup>17</sup> The data contained in the Entry Summary Declaration (ENS) are defined in Article 127 of Regulation 952/2013, OJ L 269 of 10.10.2013, p. 1, and Article 183 of Commission Implementing Regulation 2015/2447, OJ L 343 of 29.12.2015, p. 558.

<sup>18</sup> Special Report No 19/2017: "Import procedures: shortcomings in the legal framework and an ineffective implementation impact the financial interests of the EU".



According to the Regulation each Member State shall implement provisions on penalties at national level for failure to comply with the obligation to provide data or for providing incomplete or false data. Fourteen Member States have implemented such a provision, fourteen others have not done so. The Regulation did not set a deadline for this.

One Member State had introduced an implementing provision in its national legislation. The implementation in the Member States is done either in the national fiscal acts or in the national customs law. One Member State has foreseen a penalty for infringements of general regulations or decisions of the Council or the Commission with a fine of 125 to 1,250 €. Member States not having implemented a penalty at national level, nonetheless provide information on the ongoing implementation in national legislation. Two Member States question whether it is possible to implement such a provision as it is not clear which Member State should impose a sanction: the Member State of the declared destination of goods or the Member State of the real destination of goods.

The scope of export data in the CSM directory is currently limited to products subject to excise duties (tobacco, alcohol, energy products).

Commission departments have used CSM on a weekly basis at least. They consider it useful for commercial customs fraud and non-commercial customs fraud, pre-clearance import controls, post-clearance auditing or controls, investigative activities, export controls, other customs law enforcement activities and risk assessment.

Carriers are obliged to report CSMs when it is established that the container is destined to be brought into/or leave the customs territory of the EU. They have implemented this requirement in their systems. One carrier faces difficulties implementing the ‘leave the customs territory of the EU’ requirement. For that reason, all exports from the EU are reported. Carriers have raised concerns relating to the requirement to report from the moment the container is empty before entry into the customs territory of the EU until it is empty again (‘empty-to-empty’ reporting), they indicate that they do not have information how their clients handle containers before loading them on board or after discharging them. The Regulation stipulates that export shipments from the EU require the provisions of CSMs only for excisable products. Some carriers have not yet implemented this requirement, as it would require a significant amount of analysis, specification and implementation efforts.

### Import Export and Transit (IET)

The IET directory was launched in September 2016 following the entry into force of the latest amendment of the Regulation.

Twenty Member States use the mechanisms concerning IET with a view to ensuring compliance with the customs legislation. The frequency of usage varies, eight Member States use it regularly (daily, weekly or monthly), whereas the remaining Member States use it less than once a month or once every 6 months.

The customs activities for which Member States have used more often IET were investigative and risk assessment. Other activities for which IET was used include pre-clearance import controls, clearance check, post-clearance auditing or controls, support joint customs operations, export controls and other customs law enforcement activities.

At least two Commission departments make use of IET. They use the database at least on a monthly basis. All three parts of IET (Import/Surveillance, Export/ECS and Transit/ATIS) are used for commercial customs fraud (i.e. undervaluation, misclassification, misuse of origin and preferential duties) by Commission departments. Transit/ATIS is used by Commission departments only for risk assessment. Export/ECS is also used for export controls and other customs law enforcement activities and Import/Surveillance as well for pre-clearance import controls, clearance checks, post-clearance auditing or controls, investigative activities and support to JCOs.

As required by Article 43b of Regulation 2015/1525 the Commission carried out an assessment on the necessity of extending the export data contained in the CSM and IET directories, by including data on goods other than excisable goods ('necessity assessment'). This assessment was annexed to the Commission's annual report on the protection of the EU's financial interests (PIF Report) for 2017<sup>19</sup>.

The Commission engaged in consultations with Member States to determine the necessity of an extension of the existing directories to encompass other categories of goods apart from those subject to excise duties. Nineteen Member States as well as the Commission have supported such an expansion, stressing that additional information may assist the identification and prevention of infringements committed in violation of export restrictions, curb customs fraud, expose fraudulent networks and protect public health, safety and security. One Member State noted that the gathering of additional data may facilitate the recognition of connections between companies, goods and supply chains. Similarly, one Member State acknowledged that the additional availability of data could provide for a deeper level of analysis to tackle customs related fraud from a variety of different perspectives, whilst another expressed its appreciation over the centralisation of additional data and its potential positive effect on data availability.

Eight Member States, however, expressed reservation about the widening of the scope of the directories to include export data on non-excisable goods for a variety of reasons. One Member State felt that it had firstly to ensure that the CSM directory was functioning properly and smoothly before it could consider the necessity of extending the scope to other non-excisable goods. Similarly, one Member State felt that the CSM and IET directories were too new, to conclusively determine whether the expansion of such would be in its interests. Another felt that the type of information to be included in the foreseen expansion had to be defined before it could endorse such an initiative. One Member State expressed its scepticism over the need or added value of an expansion of

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<sup>19</sup> COM(2018) 553 final of 03.09.2018, see section 3.1.1.1 on Implementation of Article 43b of Regulation 515/97.

the data available at central level in CSM and IET directories, arguing that the current databases should be perfected before notions to expand them can be entertained.

One Member State was not in a position to provide a definite reply to the question pertaining to the need for an extension of the existing directories beyond excisable goods.

### Relations with third countries

As described in section 2.2, the Regulation complements the mutual administrative assistance provisions under international agreements on customs, cooperation or trade, providing for the assistance through the communication of information from the EU or Member States customs authorities to third countries and the missions to third countries for investigative purposes. Articles 19 and 20, respectively, define this kind of assistance.

Based on the answers provided by Member States, 24 Member States declare not having had recourse to these articles, or very rarely. They clarified that they make mostly use of mutual administrative assistance agreements.

Member States indicated that most of the current EU MAA exchanges take place under the legal basis of our MAA provisions in international agreements. The EU has already more than 50 international agreements in force covering more than 80 third countries, among them the major EU trading partners and neighbouring countries. The number of international agreements containing MAA provisions has remained relatively stable over recent years, most recent negotiations are updating existing agreements with important partners.

Sixteen Member States never used at all the mechanism provided by Article 19 of the Regulation. That means they never used the possibility to communicate information to a third country in the absence of an agreement on cooperation and mutual administrative assistance in customs matters. Three Member States made use of Article 19 of the Regulation at least once a month. A majority of Member States have not indicated their level of satisfaction with the implementation of Article 19, due to a lack of experience. Four Member States are very satisfied with the implementation of this article.

Relating to the conduct of an administrative and investigative cooperation mission in a third country, 11 Member States never made use of this possibility provided by Article 20 of the Regulation. Half of the Member States makes use of these missions not more often than once every 6 months. Eleven Member States have not indicated their level of satisfaction with the implementation of Article 20, due to a lack of experience. Fourteen Member States are satisfied with the implementation of this article.

When investigators from Member States participate in missions in third countries organised by the Commission (OLAF), after its completion, the Commission provides the mission report to those Member States concerned, as there may be financial or judicial follow up required in the Member States. Their expenses are paid by the Commission according to Articles 20 and 42a (1)(b) of the Regulation. There have been

altogether 53 missions in this regard within the last 5 years (2015: 10 missions, 2016: 14 missions, 2017: 12 missions, 2018: 9 missions, and 2019: 8 missions).

There were no grounds for the Commission to inform the European Parliament on the results of any particular missions. However, this would be a requirement if the mission is carried out on the basis of information provided by this institution.

### Customs Information System (CIS)

All Member States have access to the CIS. Some third countries have access to parts of the information shared in CIS by the MarInfo<sup>20</sup> group.

The CIS is used on a regular basis by 25 Member States. Eight Member States use CIS on a daily basis, nine on a weekly basis and four less than once a month or once every six months.

The CIS was used by Member States mainly to support risk assessment, prevention and detection of customs infringements and JCOs. The CIS is considered most useful by Member States for the fight against tobacco smuggling (26 Member States) and illicit drugs traffic (21 Member States), followed by illicit trade of drug precursors (19 Member States), cash controls (19 Member States) and counterfeit (18 Member States).

One Commission department has used the CIS for daily work and indicated that it fulfils its aim. This Commission department used the CIS on a monthly basis for customs risk assessment and it was able to retrieve the information needed in the customs domains of commercial fraud – misdescription of goods, origin and value, anti-dumping duties, counterfeit, cash control, drug precursors, CITES, cultural goods, waste, dual-use goods and human health and safety.

Based on the Regulation and under the conditions set in a dedicated administrative arrangement, Member States can transfer non-personal data on CIS tobacco seizure cases to the World Customs Organization (WCO). The WCO indicated that the CIS data has been very useful to the organisation and its Members' activities. This is reflected in its annual publication on illicit trade. Nevertheless, it is highlighted that the scope of the arrangement no longer meets the current needs of the customs community. It is proposed to update the arrangement to broaden the scope to cover data transfer to other types of fraud and targeted commodities with the aim of enhancing the organisation's analytical capabilities.

### Customs Files Identification Database (FIDE)

FIDE was launched in 2009 with the amendment provided by Regulation 766/2008.

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<sup>20</sup> The MarInfo group is composed by customs administrations of all Member States and invited third countries to prevent and fight against smuggling of sensitive goods (high tax goods, drugs and drugs precursors, counterfeit goods, goods related to terrorism, and organised crime) transported by maritime way.

FIDE is rarely or never used by a large number of Member States. Ten Member States have never used the system. Nine Member States have used it less than once every 6 months. Only three Member States use it on a weekly basis. FIDE is most commonly used to support the detection of customs infringements (nine Member States), investigative activities (eight Member States), risk assessment (seven Member States) and for customs law enforcement activities (seven Member States). The fight against tobacco smuggling (15 Member States), excise fraud (11 Member States) and illicit drugs traffic (10 Member States) are the customs domains most commonly used in FIDE by Member States. International organisations and Commission departments do not use FIDE.

### Data analysis

Twenty-six Member States have used data from the above-mentioned databases for the purpose of strategic and/or operational analysis.

Four out of five participating Commission departments have made use of data for analysis purposes based on the Regulation and have used it for the purpose of strategic and/or operational analyses.

Stakeholders have indicated that e-commerce should be the subject of enhanced analytical work by Member States and the Commission in context of safety, security and anti-fraud. The cross-border dimension of e-commerce makes prevention, detection, and investigation of fraud extremely complex, and national risk-assessment strategies difficult. Current EU legislative and IT structures seem inadequate to effectively tackle this problem whereas other important trading partners have already moved towards upgrading their regulations and structures to live up to these challenges.

### Personal data protection

The last amendment of the Regulation aimed to simplify and harmonise the data protection supervision rules applicable to the different databases set up on the basis of the Regulation. This is confirmed by the results of the consultation addressed to the European Data Protection Supervisor (EDPS) and the European Data Protection Board (EDPB). Nevertheless, the current supervision is complex, particular to the parallel existence of the two supervision models.

The EDPS and two Member States expressed concerns about the existing supervision models. EDPS answered that the current mechanisms for cooperation have proven effective, but they should be streamlined by aligning them with Article 62 of Regulation 2018/1725. This would be in line with the wish of the EU legislator to provide for a harmonised supervision mechanism for large-scale IT systems in the context of the EDPB. Member States confirmed that better coordination between the two supervisory entities would be appropriate. Article 62 of Regulation 2018/1725 provides for a harmonized model of coordinated supervision, applicable where the relevant act of Union law refers to this Article. Pursuant to Article 62, the EDPS and the national data protection authorities, each acting within their respective competences, shall cooperate

actively within the framework of their responsibilities to ensure effective supervision of large-scale IT systems and of Union bodies, offices and agencies.

With respect to the identification of issues affecting the rights of the data subjects, the EDPS has not encountered issues affecting the rights of the data subjects under its supervisory competence. EDPS is of the opinion that the rights of data subjects are sufficiently guaranteed by the Regulation at Member States and Commission levels.

All Member States data protection authorities except one considered the rights of data subjects as sufficiently guaranteed by the current mechanisms of supervision established by the Regulation at Member States (national data protection authorities) and Commission (EDPS) levels.

## **4. EVALUATION FINDINGS (ANALYTICAL PART)**

### **4.1. To what extent was the intervention successful and why?**

#### **4.1.1. Effectiveness**

Overall, all sections of the Regulation work together to achieve both aims: increase the detectability, prevention and prosecution of breaches of customs and agricultural legislation by enhanced collaboration, and improve the process related to administrative enquiries in the area of customs mutual assistance.

In particular, the availability of a larger set of customs related data introduced with the new CSM and IET directories allowed for a better detection of fraud cases and the opening of related administrative enquiries at national and EU level.

Even if the scope of the Regulation was considered to be fit for purpose, some areas for improvement were identified and some issues arising from the different status of customs in each Member State were noted.

#### **Agricultural matters**

All nine Member States using the Regulation in agricultural matters faced difficulties in the mutual assistance process, among these were: ‘answer received too late’, ‘no answer received at all’ and ‘incomplete information received’. If a request was received for mutual administrative assistance, the difficulty most frequently faced was ‘not to be able to answer within the requested deadline’. A less common problem was an ‘unclear information requested’ and ‘the information/documentation requested was not available’. Member States mostly made use of the mechanisms of assistance on request/spontaneous assistance and relations with the Commission.

Member States provided some examples of their usage of the Regulation concerning agricultural matters. One Member State considered the Regulation as an important tool to find information for cases of a certain financial interest. This Member State considered that more exchange of information on the basis of the Regulation would be preferable. Another Member State uses the Regulation concerning agricultural matters only for

sending and receiving requests regarding the notice on import and export licences for agricultural products<sup>21</sup>. Another Member State made use of the Regulation concerning agricultural legislation for requesting other Member States to reverse a given tariff quota and for investigations on AGRIM-certificates. Requests regarding verification of documents concerning sugar quotas<sup>22</sup> were also common. Reliable statistics on the usage of the Regulation in agricultural matters were not available.

Only one Commission department uses the Regulation for mutual administrative assistance in agricultural matters. This Commission department uses the Regulation several times a month and considers the scope to be appropriate.

One Member State used the Regulation for requests to other Member States on controls of an agricultural product imported from a third country and later exported to other Member States. The sections of the Regulation related to the relations with third countries and databases were indicated to be of lesser use in the agricultural domain. This can be explained by the fact that the agricultural authorities have not requested access to the databases established under the Regulation. Even though Member States face difficulties in using the Regulation for agricultural matters (such as ‘answers received too late’ and ‘incomplete information received’), nine of the responding Member States are satisfied that being able to use the Regulation in agricultural matters helps them increase the detectability, prevention and prosecution of breaches of agricultural legislation. When receiving a request for mutual administrative assistance, the difficulty that Member States mainly faced was the impossibility to answer within the requested deadline. Nevertheless, all nine responding Member States made use of these provisions and considered all available communication channels (AFIS mail, phone, post and e-mail) as useful.

One Commission department uses the Regulation several times a month and considers it as useful.

There are no more than 10 cases per year related to agricultural matters in the last 5 years and the level of cases remained stable throughout the evaluation period. The agricultural sector has neither been influenced by the last review of the Regulation (where there have been no changes on agriculture).

#### Customs matters scope and definitions

The majority of Member States consider that the scope of the Regulation largely meets their needs in terms of mutual administrative assistance. In general, it is considered that the Regulation provides extensive coverage for mutual assistance in administrative matters.

One Member State expressed the need for legal clarification regarding the link between the scope of the Regulation and other regulations that can apply it *mutatis mutandis*, in

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<sup>21</sup> Referring to Article 13(6) of Implementing Regulation (EU) 2016/1239.

<sup>22</sup> Application of Article 32 of Commission Regulation (EEC) 376/2008.

particular where these other regulations are not customs legislation within the meaning of the Union Customs Code. The implementation of Regulation 1889/2005 on cash controls (currently Regulation 1672/2018) is given as an example. The need to extend the scope of the Regulation to cover tax related issues and clarification on how to apply the Regulation for environmental issues or the protection of intellectual property rights, were also raised.

On the application of the Regulation in the customs domain, 19 Member States did not detect major difficulties. Nevertheless, several examples of problems encountered were raised by Member States. The need for a clear definition of the operations which constitute breaches of customs or agricultural legislation in line with the Regulation was mentioned. The lack of uniformity in the application of the Regulation by Member States and the need to combine it with other mutual assistance legal instruments, are some of the major difficulties encountered. The difficulty of the application of the Regulation for environmental issues or the protection of intellectual property rights is mentioned. The need for tighter deadlines for answering mutual assistance requests and the need for all Member States to use the dedicated communication channels are also reported issues.

The majority of Member States considers that no further areas should be covered by the Regulation to adequately meet their needs. Four countries consider that waste, ozone depleting substances, drug precursors, tax matters, cash controls and cybercrime are not sufficiently covered by the Regulation.

When asked on which further areas should be covered by the Regulation, Member States indicated the need for clear communication channels, information on new regulations falling under the Regulation, alignment with the Naples II Convention and less restricted data protection rules to facilitate data sharing and analysis.

As referred to in section 2.1, 19 specific legal instruments contain a reference to the Regulation. Member States consider their needs are addressed by those instruments on the enforcement of intellectual property rights<sup>23</sup>, drug precursors<sup>24</sup> and cash controls<sup>25</sup>.

Member States provided mixed ratings for the legal instruments related to export of cultural goods<sup>26</sup>, the control of certain movements of dual-use items<sup>27</sup>, the implementation of the UN Protocol related to measures for firearms, their parts and components and ammunition<sup>28</sup>.

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<sup>23</sup> Regulation 608/2013 - Customs enforcement of intellectual property rights and repealing Regulation 1383/2003.

<sup>24</sup> Regulation 273/2004 as amended by Regulation 1258/2013 - Drug precursors.

Regulation 111/2005 as amended by Regulation 1259/2013 - Rules for the monitoring of trade between the Community and third countries in drug precursors.

<sup>25</sup> Regulation 1889/2005 - Regulation on controls on cash entering or leaving the Community.

<sup>26</sup> Regulation 116/2009 - Export of cultural goods (Codified version).

<sup>27</sup> Regulation 428/2009 - Setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items.

<sup>28</sup> Regulation 258/2012 - Implementing Article 10 of the UN Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the UN Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition.



More than 13 Member States had no opinion concerning the 12 other legal instruments<sup>29</sup>. A majority of Member States considered that references to the Regulation in four other legal instruments to be useful for achieving the aims of the Regulation. These include Regulation 608/2013 (Customs enforcement of intellectual property rights), Regulation 273/2004 as amended by Regulation 1258/2013 (Drug precursors), Regulation 111/2005 as amended by Regulation 1259/2013 (Rules for the monitoring of trade between the Community and third countries in drug precursors) and Regulation 1889/2005 (Regulation on controls on cash entering or leaving the Community).

During the bilateral interviews Member States pointed out that the implementation of the Regulation is different across the Member States due to differences in the status, competence and powers of customs authorities. This refers for example to trafficking drugs, weapons and intracommunity excise fraud. Additionally, one Member State's customs authority defines the need for a legal clarification of Article 2 of the Regulation.

During the 2<sup>nd</sup> AFIS conference organised by the Commission (OLAF) with Austrian Customs in October 2018, Member States expressed satisfaction with the legal instruments put at their disposal by the Commission in support of their anti-fraud activities. While expressing overall satisfaction with the legal tools at their disposal, in the field of mutual administrative assistance in customs matters, a number of potential improvements to be made were identified. For example, Member States consider that the scope of the Regulation should be clarified for specific areas in which customs play an active role but which do not directly fall within the scope of customs legislation within the meaning of the Union Customs Code. The use of the Regulation in view of the legal provisions of the new Cash Controls Regulation was addressed. The new rules on data protection were mentioned as an issue of particular importance. A better delineation between the Regulation and other customs instruments such as the Naples II Convention is needed. Based on these arguments, Member States confirmed their strong support for the evaluation of the Regulation, stressed their interest in being fully involved in this process and wanted to be consulted early in the procedure.

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<sup>29</sup> Regulation 21/2004 - Establishing a system for the identification and registration of ovine and caprine animals and amending Regulation 1782/2003 and Directives 92/102/EEC and 64/432/EEC.

Directive 2008/71/EC - Identification and registration of pigs.

Regulation 267/2012 - Concerning restrictive measures against Iran as amended by Regulation 2015/1861.

Directive 2014/28/EU - Harmonisation of the laws of the Member States relating to the making available on the market and supervision of explosives for civil uses.

Regulation 332/2014 - Procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part.

Regulation 833/2014 - Restrictive measures in view of Russia's actions destabilising the situation in Ukraine.

Regulation 2015/752 - Procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part.

Regulation 2015/939 - Procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part.

Regulation 2015/940 - Procedures for applying the Stabilisation and Association Agreement between the EC and their MS, of the one part, and Bosnia and Herzegovina, of the other part, and for applying the Interim Agreement on trade and trade-related matters between the EC, of the one part, and Bosnia and Herzegovina, of the other part.

Commission Implementing Regulation 2016/1239 - Application of Regulation 1308/2013 of the EP and of the Council with regard to the system of import and export licences.

Regulation 2016/1076 - Applying the arrangements for products originating in certain states which are part of the ACP Group of States provided for in agreements establishing, or leading to the establishment of, EPAs.

Regulation 2017/355 - Procedures for applying the Stabilisation and Association Agreement between the EU and the Euratom, of the one part, and Kosovo of the other part.

All Member States used the Regulation on mutual administrative assistance in customs matters and all of them are satisfied that these provisions promote their ability to increase the detectability, prevention and prosecution of breaches of customs legislation as well as to improve the process related to administrative enquiries in the area of customs mutual assistance. Twenty-five Member States indicated that they were very satisfied.

Nonetheless, Member States point out that the different status, competence and power of customs in the different Member States and the lack of a specific time frame for the reply to a request still caused difficulties. These factors complicate the cooperation to detect, prevent and prosecute breaches of customs legislation.

Five Commission departments have used the Regulation on mutual administrative assistance in customs matters and consider the scope corresponds to their needs. They confirmed the need for this instrument. They identify the availability of data for research projects as the only area where they encountered difficulties.

Four Member States indicate that the scope of the Regulation should be extended to further areas. They mention waste, ozone depleting substances, drug precursors, tax matters, cash seizures and cybercrime. However, 19 Member States indicate that no further areas should be covered by the Regulation, they are satisfied that it is working well and achieves the aims of the Regulation.

#### Assistance on request

The number of requests for assistance or spontaneous assistance to other Member States has been described in section 3 'Description of the current situation'.

Member States are satisfied with the mutual assistance mechanisms and consider that these have contributed to detect breaches in customs legislation.

At least half of the Member States faced difficulties in the mutual assistance process both when receiving a request or when requesting assistance. The difficulties include the unavailability of the requested information, the impossibility to reply within the set deadline, requests made out of the scope of the Regulation or of the competences of the customs authority defined at national level or delays from awaiting information from third parties. Member States provided a number of suggestions to address some of the problems reported, such as the mention of a reasonable deadline to reply to assistance requests, the possibility of allowing the use of information and documentation received via mutual assistance by other state authorities or to standardise the forms and content of the request (as in Naples II Convention).

Before the last revision of the Regulation, there was legal uncertainty about the use of information collected through mutual assistance as evidence in national criminal proceedings. The revision of Article 12 of the Regulation was intended to provide legal certainty that evidence obtained via mutual assistance may be used by prosecutors in the national criminal proceedings. Nevertheless, the Regulation cannot provide an obligation for national courts to accept the use of the evidence obtained via mutual assistance. The new

wording of Article 12 brought certainty that this evidence should at least be considered usable at national level. The fact that 25 Member States consider the mechanisms of the Regulation as contributing to detect breaches in customs legislation supports that approach. More than eight Member States report 'incomplete or late replies' and do not refer to difficulties with the use of the documents received. That supports the aim of the Regulation to improve the process related to administrative enquiries in the area of customs mutual assistance.

Twenty-six Member States have used the data shared by the Commission or other Member States for the purpose of strategic and operational analysis.

In the bilateral interviews, Member States customs authorities ask for a definition of a time-period (minimum and maximum) for replying to the mutual assistance requests. Knowledge about the status of the request sent (received/being treated/finalised) was indicated as useful. A need for precise and clear questions is also indicated.

### Special watch – Joint Customs Operations

Special watch activities and in particular, JCOs are carried out on a voluntary basis of the participants and based on the legal provisions for mutual assistance in the terms of the Regulation. These operational activities contribute to improve the practical cooperation between the participating customs administrations of the Member States and the participating third countries, enhance the enforcement and operational capabilities of these administrations, prevent the traffic of illicit goods destined to the Union territory, assess or confirm new fraud trends, develop more effective targeting and develop investigative activities.

The JCOs organised have contributed to increase the collection of unpaid customs duties and prevented losses to the Union budget. A number of administrative enquiries were initiated following these operations. According to the feedback provided, 24 Member States consider the Regulation useful in conducting special watch activities.

More specifically, the permanent physical (Permanent Operational Coordination Unit - POCU) and IT infrastructure (Virtual Operation Coordination Unit - VOCU) for the support of JCOs has been regularly used by Commission and Member States, as well as third countries and other organisations on numerous occasions.

The JCO evaluation reports submitted after the completion of JCOs show that this physical structure and the VOCU application strongly facilitate the coordination tasks associated to JCOs with a large number of participants. Their use is frequently recommended during the evaluation of these operations. The fact that these facilities are also frequently used for operational activities in the area of law enforcement cooperation (free of charge for the participants) is an additional indication of Member States' satisfaction. This positive feedback is further reflected in the answers provided during Member States' consultations. JCOs organised by Member States or by them and the Commission are considered very useful to support the aims of the Regulation by the vast majority of the Member States. The technical and financial support provided in the scope

of the Regulation, for the carrying out of special watch activities and JCOs in particular helps to pursue the aims of the Regulation.

Member States consider that VOCU is a very important tool for conducting these operational activities and achieving the aim of the Regulation.

Also importantly, the reimbursement of transport, accommodation and daily allowance costs of representatives of the Member States' operational actions, including JCOs, have proven to be critical to secure the participation of a large number of Member States in these initiatives.

The number of JCOs supported by the Regulation has grown steadily on an average of 12 JCO per year until 2019.

### Relations with the Commission

All Member States communicated relevant information to the Commission and more than half at least several times a month. Twenty-Seven Member States consider the information sent by the Commission in the format of mutual assistance communications is useful for their work. Additionally, 24 Member States indicated that these communications led to the adoption of specific national measures. Despite the challenges Member States faced, they consider the mutual assistance communications as useful for their work by increasing the detectability, prevention and prosecution of breaches of customs legislation.

The evolution of the quantity of mutual assistance communications sent by the Commission shows a clear rise from 2014 to 2019. These mutual assistance communications include supplementary communications, related to previously issued mutual assistance communications. The numbers do not take into account other types of information exchanged between the Commission and Member States (e.g. requests for assistance, replies, mutual assistance related transmissions, etc.).

Normally one mutual assistance communication relates to one case. That means that the number of cases for misclassification, misdescription of origin, undervaluation and drug precursors was on the rise, as well, from 2014 to 2019. The increase of the number of cases means also an increasing support of the detectability, prevention and prosecution of breaches of customs legislation by enhanced collaboration between the Member States and the Commission.

The increase in the number of mutual assistance communications refers to an increase of initial information by Member States. Member States have been more active in the last years to provide information. This shows that Member States are more willing to share information, have trust in the Commission role and are willing to comply with the mechanisms defined in Article 17 to 18e of the Regulation.

In the ECA Special Report 19/2017<sup>30</sup> on ‘Import procedures: shortcomings in the legal framework and an ineffective implementation impact the financial interests of the EU’, it is observed that: ‘The EU has set up promising information channels between Member States and between the Commission and Member States but there are weaknesses in their content and use. Tools for exchanging information under the mutual assistance regulation are not fully exploited by Member States’. In particular, it is found that Member States do not implement in a uniform way the requests made by the Commission in mutual assistance communications. This occurs especially to fraud concerning undervaluation, misdescription of origin or misclassification. This behaviour could be exploited by dishonest traders to evade payment of customs duties and the objectives of the Regulation be at risk. A reason for that might be that Member States enrich the requests of mutual assistance communications with their own intelligence work. There may be justification for non-uniformity in the actions as long as the results are equivalent.

In some cases the audited Member States did not meet the Commission requests.

It is acknowledged by the stakeholders that the mechanisms for mutual administrative assistance, be it in the form of information systems or other forms of cooperation, are in place, although not all of these are exploited at their full potential.

In the process of receiving information almost half of the Member States have not faced any specific challenges, whilst the remaining Member States faced either that the information was not specific enough or the information was too specific. Member States pointed out in their comments as typical problems the difficulty of applying national risk criteria if the information received is not specific enough; that the communications should include more specific instructions; that the information transmitted to Member States should be as precise as possible to avoid misinterpretation and that when communications cover several types of irregularities there was the problem of complexity.

Three Commission departments have been involved in the mutual administrative assistance mechanisms based on Articles 17 – 18e of the Regulation. Two of them consider this mechanism to be very useful for their work while one indicated that it was not useful. All faced the challenge that the information was not specific enough and one Commission department points out that the details of the mutual assistance communications were at times transmitted with great delay and without all relevant data and/or accompanying documentation. This made the mutual assistance communications difficult to analyse and to use effectively in the context of Traditional Own Resources (TOR) inspections led by the Commission in Member States.

One Commission department states that there is a need to provide explicitly in the Regulation that when information concerning irregularities is transmitted to Member States, there is an obligation to act and to take measures to avoid the loss of traditional own resources and that a specific time frame to proceed with these measures must also be

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<sup>30</sup> European Court of Auditors Special Report n.19/2017 on ‘Import procedures: shortcomings in the legal framework and an ineffective implementation impact the financial interests of the EU’, pursuant to Article 287(4), second subparagraph, TFEU.

included in the Regulation. One Commission department replied that it would be helpful not only to receive the conclusions on the Commissions' investigations but also the data extractions that support those conclusions.

The opinions collected in the bilateral interviews with Member States and Commission departments, were diverse. While some Member States are very satisfied with the mutual assistance communications from the Commission, in terms of format and content, others have manifested serious difficulties in understanding the exact purpose, content, applicable legal basis and liability incurred.

On the purpose, some Member States have expressed the need for the Commission to clarify, at the issue of each mutual assistance communication, if the information is transmitted for intelligence or recovery purposes. It is also recommended to include a reference to the underlying legal basis (Regulation 515/97 or Regulation 883/2013) of the mutual assistance communication.

On the content, some Member States have expressed difficulties in the interpretation of the conclusions of certain mutual assistance communications, namely in view of its use in court cases. It is considered fundamental that the evidence provided is sufficiently strong for court cases, as often this is the only source of evidence for the Member States authorities.

Member States and Commission departments have stressed that a more accurate description of the fraud scope, target and methods is needed for risk analysis purposes.

According to the ECA Special Report 19/2017, Member States have different approaches to tackle origin and classification fraud. This was assessed from the analysis to the replies to selected mutual assistance communications and the results of eligible joint operational actions organised by the Commission and in cooperation with Member States. In relation to the mutual assistance communications, the ECA found that the audited Member States can adopt different approaches concerning the follow-up of mutual assistance communications on similar subjects.

However, this can be justified by the fact that Member States enrich the requests of mutual assistance communications with their own intelligence work. In some cases, there may be justification for non-uniformity in the actions as long as the results are equivalent. The Commission's TOR inspections regularly examine Member States' follow-up of mutual assistance communications. When failure by Member States to follow them up appropriately results in TOR losses, the Commission holds Member States financially responsible for the losses.

#### [Anti-Fraud Information System \(AFIS\)](#)

As intended, by providing the infrastructure, the AFIS facilitates the timely and secure information exchange of a range of fraud-related information as set out under the Regulation, as well as its storage. The AFIS environment also contains tools developed by the Commission to facilitate the analysis of relevant data. In this way, the AFIS

creates an IT environment which provides assistance to the Commission and the Member States as they act to prevent, investigate and ultimately prosecute operations which are in breach of customs or agricultural legislation. Thereby the co-operation and control procedures, and the fight against fraud are improved.

The tools for exchange of information provided under the AFIS platform are actively used by Member States and Commission departments, which rate them as being useful for their work. Thus, these information channels promote both aims of the Regulation: increase the detectability, prevention and prosecution of breaches of customs and agricultural legislations by enhanced collaboration; and improve the process related to administrative enquiries in the area of customs mutual assistance.

According to the AFIS survey 2019, 57% of Member States' users agree and 27% slightly agree that the AFIS applications responds to their professional needs:

In 2004, OLAF's Internal Audit Capability performed an audit to assess the performance of AFIS. The audit confirmed the efficiency and effectiveness of the AFIS and the adequacy of the management and coordination mechanisms. It concluded that the stakeholders consider the quality of the AFIS services as satisfactory, or even highly satisfactory. Overall, it appears that the operational activities under the AFIS constitute a valuable support to Member States' and Commission's operational and investigative work aiming at: detecting customs infringements, recovering customs duties, and enhancing customs cooperation in the anti-fraud area. The efforts made in recent years in addressing identified shortcomings have contributed to increase the level of trust, participation and satisfaction of Member States' competent authorities.

The VOCU had proved to be very useful during their participation in former JCOs.

The ECA Special Report 19/2017 observes however, that *'the EU has set up promising information channels between Member States and between the Commission and Member States but there are weaknesses in their content and use. Tools for exchanging information under the mutual assistance regulation are not fully exploited by Member States'*.

One of the main goals of the 2<sup>nd</sup> AFIS Conference was to assess if the IT tools developed by the Commission are effective and meet the needs of Member States in combating customs fraud and fulfilling the goals of the Regulation.

Member States conveyed their agreement with the legal instruments at their disposal, as well as with the IT tools and databases developed by the Commission in support of their antifraud activities. Moreover, Member States expressed satisfaction with the AFIS system and its IT applications, and underlined the unique position of the AFIS as an effective and secure channel of communication for customs antifraud purposes at EU level. The establishment of the CSM and IET directories was mentioned as a good example of added value that can be brought at the EU level. The new version of the CIS

was mentioned as a good example of IT development involving Member States and responding to user needs.

A number of possible improvements were indicated, such as the creation of working groups and the organisation of workshops dedicated to the sharing of experiences and best practices, the need for additional on-line AFIS training materials and training packages for specific purposes, as well as the organisation of AFIS trainings on a more regular basis, including training dedicated to specific areas such as analysis.

The importance of ensuring, as much as possible, interoperability between the AFIS applications and with other systems of customs relevance, in particular the support of searches across different AFIS databases and systems, was particularly underlined by Member States. In the specific field of analysis, the creation of an AFIS data lake to enhance the exploration of the information stored in the various AFIS customs applications was recommended.

### Transport directory

The transport directory of Article 18a, paragraphs 1 to 3, of the Regulation has not been fully implemented. The transport directory is limited to data related to sea container movements recorded in the Container Status Messages (CSM) directory. Therefore, the role of the transport directory towards achieving the objectives of the Regulation cannot be fully assessed and is restricted to the CSM. For further details, see CSM.

### Container Status Messages (CSM)

One of the main goals of Member States customs authorities is fraud prevention, but to tackle specific threats, such as the misdeclaration of origin, new types of information aside of the existing CIS and FIDE were sought. Container trips were intended to be traceable more easily through the new CSM directory. Knowledge of container origin was expected to promote the detection of potential fraud. Tampered certifications of goods origin were intended to be detected more easily.

As elaborated in section 3 'Description of the current situation', 13 Member States use the CSM directory on a weekly basis at least. They use it mainly for commercial and non-commercial customs fraud and for investigative activities, risk assessment and post-clearance auditing or controls as well.

The functions of CSM considered more beneficial by Member States to increase the detectability, prevention and prosecution of breaches of customs legislation by enhanced collaboration are 'the possibility of tracing back the movements of any specific container' (for 26 Member States), 'the possibility of querying by Bill of Lading/Booking Number' (for 22 Member States) and 'the possibility of creating a personalised watch list for particular containers' (for 20 Member States).

In terms of tracking and tracing container movements: the extent to which container movements are up-to-date was considered very important by 18 Member States; the



extent to which the container movements cover global sea traffic was considered important or very important by 25 Member States; the extent to which container movements have no time gaps was considered very important by 16 Member States; the extent to which container movements are combined with other data elements related to the commercial transaction associated with the transportation was considered very important by 16 Member States.

The scope of the export data in the CSM directory is currently limited to products subject to excise duties (tobacco, alcohol, energy products). This meets the needs of 16 Member States, but does not meet the needs of the rest and should be enlarged to any other products by 11 Member States. To 24 Member States the enrichment of CSM with additional data elements, such as shipper, consignee, notified party and goods description (including the 6-digit HS code), would make the CSM directory more useful to a large extent.

The current range of access to CSM by the competent authorities is considered to sufficiently cover the needs for information sharing by 28 Member States.

Fourteen Member State provide for penalties for failure to comply with the obligation to provide CSM data or for providing incomplete or false data. Sixteen Member States have not implemented these measures.

If CSM had not existed, Member States would use as alternative methods for the collection of container movements the information provided by carriers on request or their web sites or the ConTraffic system managed by the JRC.

The positive feedback that Member States give to the system today shows how useful they consider it to be in pursuing the objectives of the Regulation. Despite some limitations, such as the limited scope, a lack of additional data elements and the fully empty-to-empty reporting, Member States consider the CSM directory as very beneficial for their activities.

Commission departments have used CSM on a weekly basis at least. They consider the CSM directory to be very useful for their work despite of the challenges they face (as elaborated in section 3 'Description of the current situation').

Carriers have implemented the requirements of the Regulation and of the CSM directory in their systems as elaborated in section 3 'Description of the current situation'. They consider these legal and technical requirements as acceptable and are satisfied with the reduction of implementation efforts and time by reporting to a single EU-central service.

The impact assessment showed that the accrued development costs of the ATIS for the period 2008-2012 were around 400.000 EUR and the average operational costs per year around 100.000 EUR. The total costs for achieving import and export data plus additional transit data was estimated to be similar to the cost of ATIS. The breakdown of estimated costs is 80% for import/export and 20% for transit.

The CSM database implementation was intended to use the existing infrastructure. In the case of the CSM database, the data source would be the Logistical Information Systems of the carriers who will push the data over an existing infrastructure, encrypted transfer over the internet. Both the carriers and the Commission were expected to use an existing and proven solution (public internet with standard data encryption) at no additional cost for the Commission and minimal set-up cost for the carriers. After received by the Commission, the CSM was to be processed and loaded into the CSM database, a repository of known containers identified by their unique container number.

The ATIS project had demonstrated that the data processing and storage volumes are not the main cost drivers for the implementation of such a database. Instead, the main cost driver is the complexity of the incoming data, which need to be decoded, parsed and validated prior to uploading into the database.

Based on the above-mentioned commonalities between the ATIS and CSM implementation projects, the Commission concluded that the retrospective cost analysis of ATIS is a solid basis for the estimation of the CSM database implementation costs. However, the CSM database had an additional degree of complexity as the data would come from economic operators (carriers) rather than from IT systems operated by other Commission departments. This results in the potential risk of having to process the incoming data in multiple formats. For this reason, the development cost estimation for the CSM database was set at EUR 450.000 (ATIS implementation costs plus 20% to account for additional complexity and potential risk), while the yearly operational costs were estimated at the same level (100.000 EUR/year) as the ATIS or the import/export database. The CSMs, import/export and transit data will increase the amount of data to be stored in comparison to the data currently stored in ATIS by factor 10. The cost of the necessary upgrade of the AFIS storage infrastructure is foreseen as part of the development costs of the new databases, therefore in reality, these costs would not cause any increase in the AFIS budget.

The table summarises the cost estimates for the new databases:

<b>Foreseen costs</b>	<b>Misdeclaration of goods origin / CSMs</b>	<b>Misdescription of goods / import and export data</b>	<b>Misuse of the transit system / transit data</b>
Member States	0	0	0
Commission	450.000 EUR - development of the database 100.000 EUR – maintenance cost (yearly)	320.000 EUR – establishment of the databases 80.000 EUR– maintenance cost (yearly)	80.000 EUR– establishment of the database 20.000 EUR– maintenance cost (yearly)
Economic operators / carriers	If global dump: no costs If selective reporting: 3.000 to 200.000 EUR	-	-

At the 2019 AFIS survey, over 90% Member States were satisfied with the functionalities and performance of CSM.

The scope of export data in the CSM directory is currently limited to products subject to excise duties (tobacco, alcohol, energy products). Twelve Member States reported that this scope does not meet their needs. Eleven Member States would prefer to have the scope extended to any other products. Nineteen Member States would consider an enrichment of CSM with additional data elements (shipper, consignee, notified party and goods description) to be helpful in their daily work. One Member State mentions the lack of the bill of lading number, another the lack of a mandatory inclusion of the correct weights declared. Two other Member States criticize the lack of a reporting until the container is empty again. Other constraints mentioned by Member States is the fact that most CSMs contained only data until the status ‘unloading from vessel’. There were only few reports that had information about the final destination of containers. This information could help to avoid abuse of customs procedure 42 (CP 42) which provides for non-EU goods to be released into free circulation in an EU Member State exempted from import VAT on the condition that these goods will be transported to another Member State due to an intra-community transaction.

Commission departments have used CSM on a weekly basis at least. They consider it useful for commercial and non-commercial customs fraud, pre-clearance import controls, post-clearance auditing or controls, investigative activities, export controls, other customs law enforcement activities and risk assessment. Commission departments consider CSM as very useful for their work.

The Commission departments using CSM face several challenges. They consider the scope of export data which is currently limited to products subject to excise duties as too narrow. The lack of additional data elements (container weight, shipper and consignee) is another challenge. One Commission department points out the need for information on containers remaining on board in EU territory while being shipped from one third country to another and information on the movements of empty containers entering or leaving EU customs territory (common risk criteria).

In the bilateral interviews, Member States customs authorities and Commission departments point out a need for training and a possibility of combining CSM with other databases. They again mention the problem of incomplete data and a gap on reporting empty containers as they are out of range of the Regulation.

Carriers are satisfied with their reporting obligations.

The ECA Special Report 19/2019 concludes that the exchange of information to tackle misdescription of origin has recently improved, mentioning the development of ConTraffic and the Container Status Messages (CSM) directory by the Commission to tackle this type of fraud.

### Import Export and Transit (IET)

At least five Member States use IET on a weekly basis or more often (as elaborated in section 3 ‘Description of the current situation’). Despite the challenges they face in using

IET, eight Member States consider IET to be very useful for their daily work. Another eight Member States consider it to be of average utility and ten Member States indicate that IET is not useful for their daily work. Two Member States did not give an opinion.

At least two Commission departments make use of IET at least on a monthly basis. They use the different parts of IET for commercial customs fraud, for risk assessment, for export controls and other customs law enforcement activities, for pre-clearance import controls, clearance checks, post-clearance auditing or controls, for investigative activities and support joint customs operations. Thus, IET helps them achieve the objectives of the Regulation.

There is however some room for improvement. It would help Commission departments if products other than subject to excise duties were covered and if it included data concerning national transit and direct export from other Member States. Additionally, the access and sharing of information was not provided in a fully satisfactory way.

The 2019 AFIS survey indicates that 59% of the users are satisfied with the functionalities of IET and 72% are satisfied with its performance.

Seventeen Member States declared that the scope of IET data that does not appropriately meet their needs and that an extension to ‘any other product’ would help on their work. Member States provide as examples the coverage of prohibited goods, hazardous waste, weapons, embargo, dual use goods and products with high customs rates. The lack of access to declarations of all Member States was also mentioned as a difficulty. One Member State indicates that an enrichment of IET with data concerning national transit and direct export from other Member States would help them in their work.

Commission departments face the challenge that the scope of IET is restricted to products subject to excise duties. The enrichment of IET with data on national transit and direct export from other Member States would be considered very useful. For one Commission department the access and sharing of information is not provided in a sufficient way. The need to extract data from IET is also a challenge for the respondent Commission departments.

In the bilateral interviews, Member States customs authorities and Commission departments reiterated that an extension to national transit data and national export data as well as an extension of IET’s scope to other risk commodities was considered useful. Special trainings could help to make use of the full range of data.

### Relations with third countries

According to Member States, Articles 19-22 of the Regulation have achieved their objectives satisfactorily. They are intended to provide an alternative legal basis to that of the mutual administrative assistance agreements, in order to perform mutual administrative assistance with third countries. They complement mutual administrative assistance provisions under international agreements, to allow mutual assistance with those third countries with which the EU does not have an international agreement.

The Commission (OLAF) informs Member States after completion of third country missions for financial or judicial follow up in order to achieve the objectives of the Regulation.

Most Member States declare not having had recourse to these articles, or very rarely, as elaborated under section 3 'Description of the current situation'. Sixteen Member States indicate that they have never used at all the mechanism provided by Article 19 of the Regulation. Eleven Member States never make use of the conduct of an administrative and investigative cooperation mission in a third country provided by Article 20 of the Regulation.

It is noted that these articles are to be used in the absence of international mutual administrative assistance agreements or provisions. Given that the EU has concluded agreements with more than 80 non-EU countries including most of the EU's major trading partners, it is to be expected that the need to have recourse to these articles is minimal.

Ten Member States are satisfied with the implementation of Article 19-22, however some Member States indicated that the concept of 'legal commitment' in Article 19 and the reference in Article 21(2) to Article 12 *mutatis mutandis* required clarification.

Despite the need for clarification of the legal meaning of Articles 19-22, three Member States make use of Article 19 at least once a month. These articles serve as an alternative legal basis in absence of an international mutual administrative assistance, facilitating the process related to customs mutual assistance and improving the availability and the management of customs data for these Member States.

Articles 19-22 were not affected by the last amendment of the Regulation of 2015. The number of international agreements in force covering more than 80 non-EU countries remained relatively stable over the recent years. As a subsidiary instrument in respect of mutual administrative assistance provisions, the Regulation is highly dependent on the evolution of the countries covered by international agreements. The Member States' use of relevant mutual administrative assistance provisions has remained stable during the recent years as they relied either on international agreements or the alternative legal base of the Regulation for the communication with third countries.

The ECA Special Report 19/2019 concluded that cooperation and exchange of information with non-EU countries is improving. According to the results of this audit, the mutual administrative assistance Agreements or mutual administrative assistance Protocols to international agreements provide a legal basis to request information from non-EU countries and serve their purpose well. ECA found incidents of insufficient cooperation namely from a particular third country, however this has not affected the overall effectiveness of these instruments.

## Customs Information System (CIS)

As described in sections 2.1 and 3, the Customs Information System (CIS) is a key element in the intelligence cycle in the anti-fraud domain, in particular by collecting and storing information provided by Member States and the Commission in the context of the mutual assistance activities. The sharing of this information between competent authorities contributes to identify fraud patterns and new trends and the opening of administrative enquiries.

The system is used on a regular basis by most Member States to support risk assessment, prevention and detection of customs infringements and operational actions. The CIS is considered most useful for the fight against tobacco smuggling, illicit drugs traffic, illicit trade of drug precursors, cash controls and counterfeit.

The main difficulties reported by the users are missing data, missing cases and an incomplete or insufficient case dataset. This was mentioned by more than 16 Member States. Nine Member States indicated that the lack of reporting in CIS by other Member States was a significant problem. Other problems such as the multiplication of similar systems and the need for reporting guidelines was also mentioned. The importance of aligning the retention period of the CIS data under the Regulation and the one under Council Decision 2009/917/JHA was also stated. A bulk upload functionality to facilitate the insertion of cases was suggested by Member States to help in their work.

At least one Commission department has used the CIS on a monthly basis for risk assessment. This Commission department considers the CIS as very helpful to achieve the objective of the Regulation. As there are the shortcomings relating to missing data and cases, there is still room for improvement of the database.

A set of non-personal data relating to cases of seizures of tobacco stored in the CIS is transmitted to the WCO. The WCO reported the difficulty of not having access to all other seizure data, such as counterfeiting, alcohol, etc. This prevented it from enhancing its analytical capabilities for these other commodities and the global picture of illicit trade trends was therefore not complete. Nevertheless, the WCO considers the CIS as very useful for its members' activities.

The answers provided in the interviews conducted with Member States confirm their satisfaction with the system. However, the need for increasing the number of cases reported, as well as for the completeness and quality of the provided information, remains a concern.

The ECA Special Report 19/2017 observed that the majority of Member States rarely use the CIS to exchange information on customs irregularities with competent authorities in other Member States. In fact, the information contained in the CIS overlaps with other systems, such as the Customs Risk Management System (CRMS) and the issuing of Risk Information Forms (RIF). It is noted that these systems have been created for a different purposes and under different legal basis. Duplication can lead to the risk of missing links between the information and even sometimes to the loss of valuable control results and

risk related information. Multiple reporting even leads to less success in prevention, investigation and prosecution of customs infringements by making information available to other users. The problem of the multiple reporting of customs information in the CIS and in other related systems is also a matter of major concern for Member States.

At the AFIS survey 2019 over 80% of the Member States were satisfied with the functionalities and performance of the CIS.

#### Customs Files Identification Database (FIDE)

The Customs Files Identification Database (FIDE) is intended to complement the information flow collected in the CIS or by other forms of exchange, for the cases under enquiry or investigation. As described in section 3, the usage of the application is far below of expected. FIDE is never or rarely used by a large number of Member States. Ten Member States have never used the system. Restrictions related to national provisions on data protection or to the use of the relevant data by Member States judicial authorities are given as justification for not using the system. Commission departments do not use FIDE. Considering these arguments, it is not clear that the lack of usage of the system is due to the need for changes to its legal provisions.

At the AFIS survey 2019, over 60% of Member States were satisfied with the functionalities and performance of FIDE. The number of users and the usage of the application decreased significantly for the period 2015-2019 from approximately 18% in 2015 to only 5% in 2019.

The shortcomings mostly identified in FIDE are missing data, missing cases and an incomplete or insufficient case dataset. Data protection constraints were also reported by Member States. Member States criticize the lack of engagement in using FIDE by some Member States.

Member States' customs authorities confirmed that FIDE was not sufficiently used, although the Member States that actually use it, consider it to be useful and providing clear benefits for their anti-fraud work. Member States suggested that the Commission should further contribute to the exchange of cases and that the organisation of dedicated workshops could improve Member States' usage of FIDE.

#### Data analysis

Twenty-six Member States have used the data provided by the Regulation for strategic and operational analysis. Overall, Member States consider that the analytical support provided at EU level, for the purpose of strategic analysis, met their expectations. Nevertheless, a considerable number of Member States have no opinion (six Member States) or are not completely satisfied (five Member States) with this support. Incomplete data is considered the main challenge by 17 Member States, followed by personal data protection constraints, which is a challenge for 10 Member States. Seven Member States consider the scope of the data to be too narrow.

The ratings for the analytical support provided at EU level for the purpose of operational analysis are similar. Eighteen Member States rate it moderately satisfactory or better, whereas four Member States are not satisfied. Another five Member States do not have an opinion.

Two Commission departments consider the EU level support at to strategic analysis moderately satisfactory, whereas the support to operational analysis it is below expectations. The challenges that Commission departments mostly mention are incomplete data and personal data protection constraints.

### Personal data protection

A complex legal structure rules personal data protection stored under the databases established by the Regulation. The supervision is shared between the EDPS and JSA in the case of the CIS and FIDE.

All but one Member State data protection authorities confirmed that they consider the rights to protection of personal data sufficiently guaranteed by the current mechanisms of supervision. In addition, 15 out of 18 data protection authorities confirm not to have identified any issues in the implementation in relation to personal data protection requirements of the Regulation. Three authorities that identified issues through former inspections indicated that these could be solved.

In order to improve consistency of data protection supervision, the last amendment introduced the need for the close cooperation between EDPS and the JSA established under Council Decision 2009/917 JHA. The EDPS and two Member States expressed concerns about the existing supervision models. The EDPS identified issues in the coordination with the JSA secretariat due to a lack of business continuity on their side and the complexity of current supervision model. In order to streamline the mechanisms for coordinated supervision of large-scale IT systems expressed in Regulation (EU) 2018/1725, the supervision model should follow the one established by Article 62 of that Regulation.

None of the data protection authorities identified issues affecting the safeguards of the rights of the data subjects when enforcing the Regulation. Fifteen out of 18 authorities consider the current range of access to personal data for competent authorities of Member States and other organisations appropriate. It means that the satisfaction level with the Regulation concerning personal data protection is very high.

Despite the comments made, the data protection authorities appreciate the Regulation in its current version. One data protection authority mentioned the limited range of access to personal data for competent authorities from Member States could indicate there was not much demand from the user base.

Of the seven Member States' data protection authorities that have carried out audits on the range of access to personal data in the scope of the Regulation within the last five years, four identified no issues. One Member States' data protection authority indicated



that the practical application of the CIS differed considerably between Member States. Another Member State authority identified issues on verification methods for entry into the system, data retention and secured passwords. One Member State data protection authority found infringements of their own Data Protection Act related to the usage of the CIS. As a follow-up, they prepared new documentation complying with such provisions.

The EDPS saw difficulties in the cross-references to the applicable EU data protection legislation that has been updated in the meantime. The cross-references to the applicable EU data protection legislation under the Regulation and CIS Decision should be updated to refer to Regulation 679/2016 (GDPR), Directive 680/2016 (law enforcement directive/LED) on data protection in the area of police and justice and Regulation 2018/1725 (EUDPR), as appropriate.

The EDPS conducted an inspection of the CIS and FIDE in relation to personal data protection requirements of the Regulation in 2013. In the report of 9 July 2014, seven recommendations were identified on technical implications of the databases. After follow-up, all recommendations were closed on 1 February 2017. The EDPS did not consider the current range of access to personal data for competent authorities as appropriate, stating that the limited usage of the system would seem to indicate that there is not much demand from the database, which might cast doubts on its necessity.

In summary, Member States and Commission consider that the scope of the Regulation largely meets their needs in terms of mutual administrative assistance, are satisfied with the mutual assistance mechanisms and consider that these have contributed to detect breaches in customs legislation.

#### **4.1.2. Efficiency**

In assessing the Regulation's efficiency, the evaluation process was hindered by the limited data collection on the costs entailed by the different parts of the Regulation. Hence, it was not possible to apply a standard quantitative methodology for a cost-benefit analysis. Therefore, the evaluation of this criterion was mostly based on a qualitative evaluation of the costs and the beneficial outcomes as reported in the answers of the questionnaires and on an evaluation of the available cost data.

[Agricultural matters](#)

[Customs matters scope and definitions](#)

[Assistance on request](#)

[Relations with the Commission](#)

Member States clearly pointed out the benefits of using the Regulation in agricultural matters. Nine Member States use the Regulation for agricultural matters and consider it useful to contribute to detect breaches in agricultural legislation. The respondent Commission departments expressed the need for the Regulation for agricultural matters.

Twenty-three Member States use the Regulation and consider that it meets their needs in the customs domain. Moreover, nineteen Member States believe that the mutual

administrative mechanisms of the Regulation have contributed very positively to the detection of breaches in customs legislation.

Mutual assistance communications sent by the Commission are regarded as useful or useful to a large extent for the work of 27 of the Member States.

All Member States reported using existing channels of communication such as ordinary e-mail, post, and phone for mutual assistance purposes, however, but the privileged channels of communication were AFIS mail and VOCU. These are specific communication tools created by the Commission to support the exchange of information for mutual assistance purposes in a secure way. These are made available free of charge to Member States, Commission departments, other EU services and even non-EU countries. Member States and the Commission have clearly expressed the benefits of using these secure and cost free channels over other available means of communication.

It is noticeable that there is a rising share of satisfactory replies to requests for assistance between 2013 and 2019, indicating that over these years the number of replies provided on time and with sufficient content increased and helped to achieve the objectives of the Regulation.

No disproportionate costs are incurred for the implementation and use of the mutual assistance mechanisms.

#### Relations with third countries

In general, the costs of implementing Articles 19-22 of the Regulation are justified and proportionate to their effects. They are similar to those undertaken based on other international instruments. These articles provide for a legal basis for international mutual assistance, and the Commission or the Member States will evaluate on a case-by-case basis whether to use this instrument or not. In principle, the importance of the suspected fraud will determine whether a use of these articles is justified. At least three Member States declare having used the Regulation once or several times a month and those Member States using it are in general satisfied or very satisfied with the implementation.

Expenses of Member States' investigators participating in missions organised by the Commission (OLAF) are covered under the Regulation. In this regard, Member States' investigators took part in 53 missions carried out through the last five years. The fact that Member States expenses are covered by the Commission is considered fundamental to ensure their participation in these missions. There are no indications that these expenses are disproportionate given the high financial impact of the cases in which the missions are undertaken.

The ECA Special Report 19/2017 found that cooperation and exchange of information with non-EU countries is improving. According to the results of this audit, the mutual administrative assistance agreements or mutual administrative assistance Protocols to international agreements provide a legal basis to request information from non-EU countries and serve their purpose well. However, the ECA found incidents of insufficient

cooperation from a particular third country. This issue would be partially remedied by the appointment of an OLAF overseas liaison officer as the ECA recommended. Though some specific issues with cooperation and exchange of information with non-EU countries were identified, the ECA acknowledges that mutual administrative assistance is working well and there are no indications that the related expenses are disproportionate.

### Transport directory

The transport directory of Article 18a, paragraphs 1 to 3, of the Regulation has not been fully implemented and it is limited to data related to sea container movements recorded in the CSM directory. Therefore, its implementing costs cannot be fully assessed. For further details, see CSM.

### Anti-Fraud Information System (AFIS)

The costs related to the management and maintenance of the Anti-fraud Information System (AFIS) are financed under Article 42a of the Regulation.

The annual budget allocated for conducting all the activities under the Regulation, known as the AFIS budget, has fluctuated between EUR 6.9 – 7.2 million for the period 2015-2019 (see figure below).

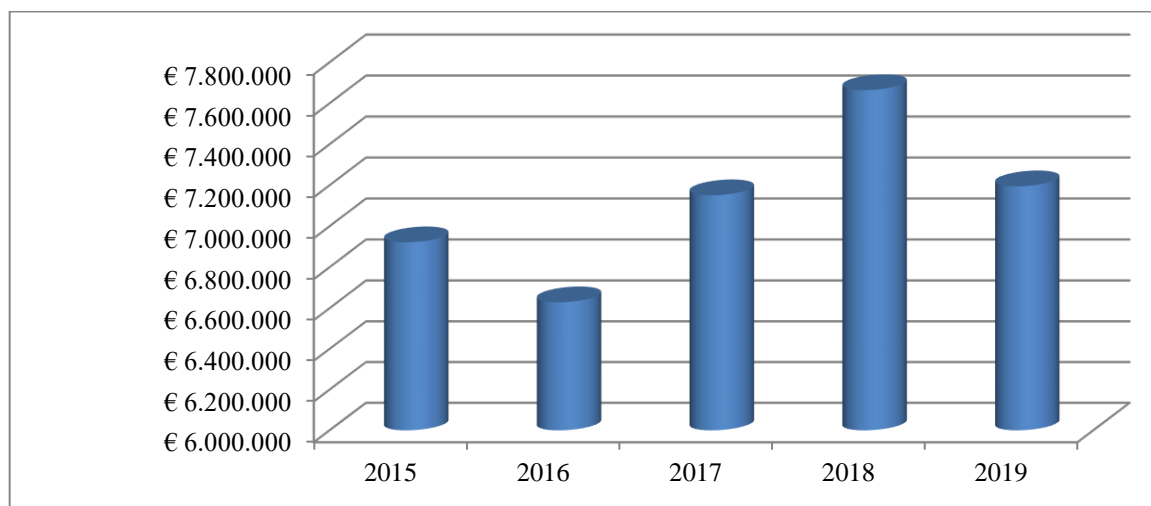


Figure 4: AFIS budget 2015-2019

The largest amounts of the budget expenditure are attributed to the development and implementation of the AFIS IT systems. The breakdown of the figures is illustrated below:

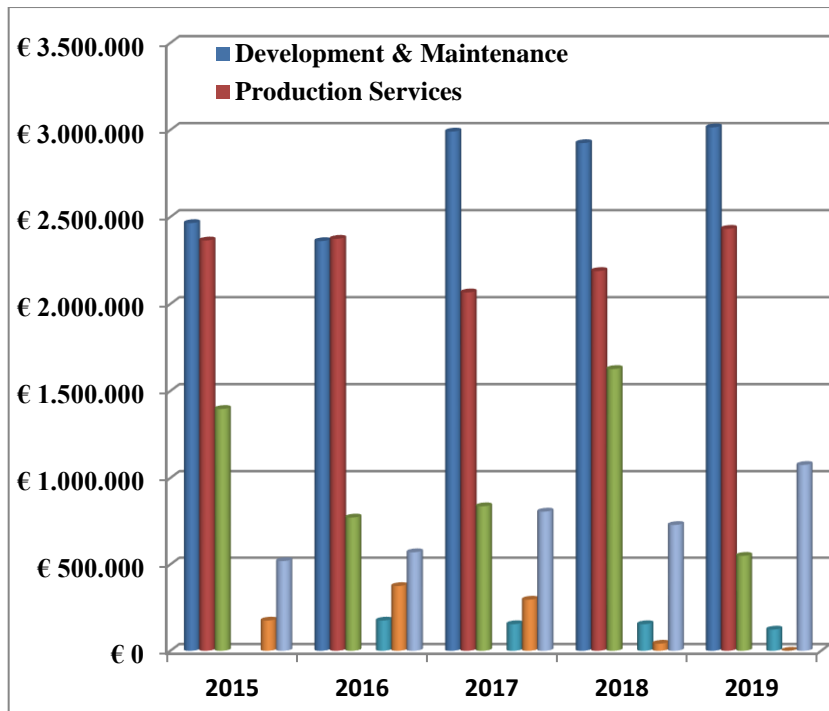


Figure 5: Breakdown of the AFIS budget 2015-2019

As explained in section 4.1.1, the activities developed in the scope of the Regulation constitute a valuable support to Member States' and Commission's operational and investigative work, aiming at detecting customs infringements, the recovery of customs duties and the enhancement of customs cooperation in the anti-fraud domain. These activities are very positively evaluated by Member State competent authorities. The results of the JCOs alone organised by the Commission have contributed to initiate various investigations at EU level and prevented the loss of millions of euros in customs duties and taxes.

The AFIS information systems and databases are centrally developed and provided by the Commission as an EU-wide system, unlike many other customs IT systems which have national components. The development and provision of central IT systems has many advantages over decentralised systems. Central systems have less interfaces and dependencies and are less complex. The development is less costly and faster. Delays and budget overruns are less likely. The operation and support is quick and economic. Resource utilisation can be optimised, higher economies of scale can be achieved, less hardware is required and administration costs are lower. They are more secure as all data is stored centrally and they encompass fewer components, which are potentially vulnerable. The expenditure related to the development and maintenance of the AFIS IT platform is borne by the Commission according to the Regulation. The databases and AFIS systems promote the benefit of exchanging information between Member States and with the Commission for ensuring the correct application of the EU customs legislation. For that reason, the costs are not disproportionate especially as these costs were as planned.

The largest amounts of the budget expenditure are attributed to the development and implementation of the AFIS IT systems. This level of funding is sufficient to achieve the objectives of IT implementation established by the Regulation and Council Decision 2009/917/JHA. The IT infrastructure costs of AFIS are borne by the AFIS budget and are designed to have minimal or no impact on the IT infrastructure cost for the Member States combined with a significant reduction in the operational costs of both the Commission and Member States.

### Container Status Messages (CSM)

The Regulation sets the obligation for maritime carriers to provide specific information to the CSM directory on movements of containers when enter into or leave the customs territory of the EU. The model of implementation of the CSM directory does not impose any costs to the carriers when using global dump. When opting for selecting reporting, estimated implementing costs range from 3.000 to 200.000 EUR. The collection of this data in a standardised manner under an EU level directory facilitates the reporting efforts of the carriers, as opposed to the reporting to individual systems in Member States.

Carriers do not consider the burden of this obligation to be too high in terms of the implementing efforts and /or financial costs while benefiting of simplified customs procedures. The costs of CSM borne by the carriers are not considered disproportionate to the benefits incurred.

The system is used on a regular basis by Member States and Commission services. The information contained in CSM has proven useful for the detection of cases related to misdescription of goods origin and other types of customs fraud. The CSM data is deemed essential for anti-fraud work at Commission and Member States level. The costs of implementation, development and maintenance of CSM are borne by the Commission. There are no costs associated to the use of CSM by the Member States. The costs of CSM are therefore considered justified by the benefits provided.

### Import, Export and Transit (IET)

The import, transit and export data in IET is used by the vast majority of Member States and Commission, on a frequent basis, with a view to ensuring compliance with the customs legislation, in the conduction of investigative and other operational activities and risk assessment. This data is of great importance for the anti-fraud work at Commission and Member States level. The costs of implementation, development and maintenance of IET are borne by the Commission. There are no costs associated to the use of IET by the Member States. The costs of IET are therefore considered justified by the benefits provided.

### Customs Information System (CIS)

The benefits of the CIS have been pointed out in earlier sections and indicate that the CIS is used on a regular basis by most Member States. Eight Member States use the CIS on a daily basis to support risk assessment, prevention and detection of customs infringements

and at least 17 Member States use the CIS to support JCOs. The CIS is considered most useful to Member States for the fight against tobacco smuggling (26 Member States), illicit drugs traffic (21 Member States), followed by illicit trade of drug precursors (19 Member States), cash controls (19 Member States) and counterfeit (18 Member States) allowing Member States to achieve the objectives of the Regulation. At least one Commission department has used the CIS on a monthly basis. FIDE is not used by any Commission department.

The CIS is hosted under the umbrella of the AFIS system. The development and maintenance costs are included in the AFIS funding. The system has been running for more than 20 years now and Member States use it on a regular basis as elaborated in section 3. 'Description of the current situation'. The running costs can therefore be considered justified.

The CIS was last updated in 2018 to introduce new provisions following the recast of the Regulation, such as the possibility to restrict the visibility of cases to a limited number of Member States or to update the data retention periods. The additional costs incurred were necessary to implement the Regulation and are therefore justified.

#### Customs Files Identification Database (FIDE)

FIDE is hosted under the AFIS umbrella and financed by the AFIS budget. The Member States that use the system judge it useful and necessary to support the detection of customs infringements, investigative activities, risk assessment and for customs-law enforcement activities. The costs of development and maintenance can be considered justified.

In summary, the benefits of using the Regulation in customs and agricultural matters largely compensate for the costs for the implementation and use of the mutual assistance mechanisms.

#### **4.1.3. Coherence**

The various components of the Regulation are well framed within and operate together to achieve its objectives.

The Regulation establishes a number of legal provisions to support the mutual assistance activities. These should be used in a complementary way, ensuring consistent application.

A sound collection, storage and analysis of relevant data are the basic source for the identification of fraud trends and the definition of fraud preventive measures. The meetings between the Commission and Member States and the trainings organised, make possible the planning, execution and evaluation of the related investigative or operational actions. The permanent technical infrastructure and the AFIS resources made available to the Member States by the Commission allow for the secure and rapid exchange of anti-fraud related information, essential in the achievement of the investigative and

operational goals. No conflicts were identified between the different provisions of the Regulation.

As explained in section 2.2, the Regulation is supplemented by Council Decision 2009/917/JHA (CIS Decision) and the Naples II Convention governing the prevention, investigation and prosecution of serious breaches of national law, i.e. the part of customs activity not covered by the Regulation. These instruments complement each other to cover the full spectrum of customs mutual assistance at EU level. The success of the implementation of a well-defined EU customs cooperation and anti-fraud policy is closely connected to police cooperation activities in the fight against criminal offenses.

EU legislation adopted in recent years has also an impact in the performance of the Regulation. The Union Customs Code (UCC) was adopted on the basis of Regulation 952/2013 and entered into force in 2016. Evidence shows that there are discrepancies between certain provisions of the Regulation and the UCC. This is the case of some references made to the UCC in the Regulation, which no longer correspond to the current legal basis or the terminology used in the definition of some technical terms.

Based on the analysis of the two legal instruments, the following discrepancies have been identified:

- Replacing the word “Community” with the word “Union” wherever used;
- Adapting the names of different types of situations, in which both non-Union and Union goods may be found, and types of declarations covering these goods (e.g. in Articles 2a and 15 of the Regulation);
- Updating the references to specific parts of the customs legislation (e.g. in Article 18d(1) and (2) of the Regulation, namely the references to Regulation 2454/93);
- Deleting the terms not existing in the customs legislation (e.g. in Article 18d(2) of the Regulation, namely declarations “established”).

The Regulation 2018/1672 of 23 October 2018 on controls on cash entering or leaving the EU (Cash Regulation) makes reference to the use of the Regulation and in particular of the CIS, for the exchange of information in the scope of the Cash Regulation. Some Member States stated the need to clarify the relation between the two instruments for the new provisions that entered into force on 3 June 2021, namely as Regulation 2018/1672 is not considered customs legislation in the sense of Article 5 of the UCC.

A new personal data protection regime (Regulation 2016/679) applies since 25 May 2018. The Regulation does not currently reflect the changes introduced by this regime. The references to Regulation 45/2001 need to be replaced with references to Regulation 2018/1725, together with compliance checks to align the current wording with the provisions of the latter.

As mentioned in section 3 as a result of the consultation of the data protection authorities concerned (EDPS and EDPB), the EDPS considers that the rights of data subjects are sufficiently guaranteed by the Regulation at Member State and Commission level. Nevertheless, the current cooperation mechanisms have to be streamlined with Article 62

of Regulation 2018/1725 (EUDPR). This article provides for a harmonised model of coordinated supervision, applicable where the relevant act of Union law refers to this Article. Pursuant to this Article, the EDPS and the national data protection authorities, each acting within their respective competences, shall cooperate actively within the framework of their responsibilities to ensure effective supervision of large-scale IT systems and of Union bodies, offices and agencies.

In general, Member States consider that the Regulation provides extensive coverage for mutual assistance in administrative matters, even when complemented by other legal instruments such as in the areas of administrative cooperation in the field of excise duties (Regulation 389/2012), VAT (Regulation 904/2010) and cooperation between EU customs administrations (Naples II Convention).

Member States draw the attention to the need for harmonisation between the Regulation and the Naples II Convention, as this remains valid in administrative investigations and both instruments can be used in parallel.

As mentioned in section 3, the Regulation is linked with various other regulations that can apply it *mutatis mutandis*. According to Member States, the legislation related to the enforcement of intellectual property rights (Regulation 608/2013), drug precursors (Regulation 273/2004) and cash controls (Regulation 1889/2005) are considered to address Member States' working needs the most. Moreover, there is a need for clarification of the link of the scope of the Regulation with some of the regulations that can apply it *mutatis mutandis*, and which are not considered as customs legislation within the meaning of the UCC.

It is also acknowledged by Member States that the use of the Regulation is clear with respect to transboundary movement of goods, however the Regulation is less used in cases involving intra-EU transactions. The difficulties in distinguishing the applicable legal basis for the mutual assistance exchanges is also affected by the competences of customs authorities in the various Member States; this is particularly relevant in the case of tax and excise related matters, where VAT and excise regulations are applicable.

In addition, the Regulation complements the MAA provisions under international agreements, providing the basis for exchanging information and mutual assistance with third countries that do not have an international agreement with the EU.

Some Member States consider the use of UCC articles as a legal basis for data analysis to be simpler than the provisions of the Regulation. The Regulation's current provisions do not therefore provide sufficient legal certainty to facilitate data sharing and analysis at EU level.

The ECA Special Report 19/2017 observed that the MAA Agreements or MAA Protocols to international agreements provide a legal basis to request information from non-EU countries and serve their purpose well. However, the ECA found incidents of insufficient cooperation from a particular third country. The ECA recommended that the Commission should appoint an OLAF overseas liaison officer in non-EU countries where most fraudulent transshipments in free zones occur. At present, the Commission (OLAF)



has liaison officers in China, the United Arab Emirates and Ukraine. The Commission (OLAF) liaison officers serve to address these issues and facilitate the cooperation.

It is also acknowledged that the Administrative Cooperation Arrangements (ACAs) between the Commission (OLAF) and non-EU countries' investigative authorities represent an important additional tool for the protection of the financial interests of the European Union, which complement the existing legal framework.

Concerning the CIS, the problem of multiple reporting of customs information creates a risk of missing links and even the loss of valuable control results and fraud related information. In the work of the Customs 2020 Project Group 'Reporting customs seizures in CRMS and AFIS-CIS', also known as the 'One Seizure One Report' project, Member States indicated that a more coherent and streamlined approach to customs related information would be helpful to solve this issue.

### Data analysis

The vast majority of Member States (26) have used data shared by the Commission or other Member States for the purpose of strategic and/or operational analysis.

### Personal data protection

As elaborated before under section 4.1.1 'Effectiveness', the need to clarify EDPS's role as supervisor of technical assistance led to the amendments in Articles 33, 37 and 38 in the Regulation and a closer collaboration between the two supervisory bodies was envisaged, especially the possibility to conduct common audits.

Following the amendment of the Regulation, the same authorities (EDPS and JSA) had responsibility for the supervision of personal data protection as they had had before the amendment. For that reason no additional costs establishing new authorities occurred and the costs remained at the same level as they were before the amendment. In contrast, as the role of EDPS as supervisor of the technical systems established by the Commission was more clearly defined the benefits increased. In fact all data protection authorities replying to the questionnaire except one confirmed that they consider the rights of data subjects sufficiently guaranteed by the current mechanisms of supervision and therefore the level of satisfaction is considered high. The coordination between the EDPS and the JSA is considered by 8 of the replying authorities as being good and by more than 4 as satisfactory.

In order to safeguard the rules governing personal data protection, a specific provision was introduced in the last recast in Article 38 on the security of processing. However, even if this safeguard and monitoring measure introduced in the systems resulted in additional costs, the benefit of a personal data protection which is required by law would justify these costs.

Member States' data protection authorities communicate with the supervisory authorities through existing communication channels that do not produce additional costs.

Nevertheless, there is a noted increase in the benefits afforded to the Member States from the supervision of EDPS and JSA concerning personal data protection.

In summary, the various components of the Regulation are well framed and operate together to achieve its objectives. The Regulation complements other legal instruments in the areas of customs enforcement and cooperation at EU level.

## **4.2. How did the EU intervention make a difference and to whom?**

### **4.2.1. European added value**

Agricultural matters

Customs matters scope and definition

Assistance on request

Relations with the Commission

These sections of the Regulation are considered being effective, efficient and coherent (please see sections 4.1.1, 4.1.2, 4.1.3). Member States and Commission departments consider the mechanisms useful for their work.

If the Regulation had not existed, Member States would use bilateral mutual assistance agreements and the Naples II Convention as an alternative source of information, although the latter does not offer the same tools and mechanisms as the Regulation. For agricultural matters, Member States would also use special legislation bases (as elaborated under Relevance 5.3). The situation is similar for customs matters; without the Regulation, 24 Member States indicated that they would use bilateral mutual assistance agreements and the Naples II Convention. Three Member States pointed out they would not have any alternative mechanism for mutual administrative assistance. The added value of the EU Regulation is therefore clearly demonstrated.

The Regulation allows for the storage and exchange of information at European level, which provides an added-value hardly achievable through bilateral exchanges at Member States level. It is time-saving and easy for Member States and Commission departments to use it. As the legal basis is settled at EU level, all Member States can use it on equal footing. If Member States tried to communicate among themselves without the EU legal base, many resources would be lost by finding the exact information as every Member State would work on its own speed and accuracy of information. Only by defining a uniform information exchange standard at EU level are the resources well used and the same level of information can be guaranteed for all Member States.

There is a rising share of satisfactory replies to request to Member States from 2013 to 2019. A satisfactory reply in this regard is defined by Member States as a reply provided in time and with sufficient content for increasing the detectability, prevention and prosecution of breaches of customs and agricultural legislations. Over time from 2013 to 2019, the tool of assistance on request improved in quality and became a valuable pillar for mutual assistance between Member States.

The ECA Special Report 19/2017 observed that promising information channels have been set up by the EU. These tools for exchanging information under the mutual assistance regime were not fully exploited by Member States. Still, they were used and rated as useful. At least to that extent the information channels brought a uniform standard at EU level.

Another finding of the ECA Special Report 19/2017 was that Member States do not implement in a uniform way the requests made by the Commission in MA communications. This occurs especially in cases of fraud concerning undervaluation, misdescription of origin or misclassification. As there is no uniform standard of implementation at EU level in this regard, the situation could be exploited by dishonest traders to evade payment of customs duties and the objectives of the Regulation be at risk. However, there may be justification for non-uniformity in the actions taken by the Member States in particular that they enrich the MA communications with their own intelligence work. The unequal implementation can be accepted as long as the results in terms of anti-fraud protection are equivalent.

#### Transport directory

The transport directory of Article 18a, paragraphs 1 to 3, of the Regulation has not been fully implemented and it is limited to data related to sea container movements recorded in the CSM directory. For further details, see CSM.

#### Container Status Messages (CSM)

#### Import, Export and Transit (IET)

#### Customs Information System (CIS)

#### Customs Files Identification Database (FIDE)

These sections of the Regulation are considered being effective, efficient and coherent (please see sections 4.1.1, 4.1.2 and 4.1.3).

The AFIS information systems and databases are centrally developed and provided by the Commission as an EU-wide system, unlike many other customs IT systems which have national components. The development and provision of such a central IT system has many advantages over the possibility for various decentralised systems at Member States level. Central systems have less interfaces and dependencies and are less complex. The development is more efficient and faster. Delays and budget overruns are less likely. The operation and support is more efficient and economic. Resource utilisation can be optimised, higher economies of scale can be achieved, less hardware is required and administration costs are lower. An EU-wide solution, such as the AFIS platform, is more secure as all data is stored centrally and it encompasses fewer components, which are potentially vulnerable. The expenditure related to the development and maintenance of the AFIS IT platform containing the four databases is borne by the Commission according to the Regulation. There are no costs entailed by the Member States.

The non-existence of a centralised database with container movements would entail the implementation of national systems for the same purpose. Apart from the implementation

effort and costs for Member States and different national systems, this national approach would be much more costly to implement from the point of view of the maritime industry. More than 80% of the carriers considered the reporting of CSMs to a single EU central service extremely useful. Reporting to multiple national servers would be very costly and time consuming for them to set up and maintain afterwards. Additionally, Member States and Commission departments would gain the information directly from carriers' websites and by using ConTraffic.

If the IET directory had not existed, Member States and Commission departments would have used information from national customs authorities, other Commission services (DG TAXUD's RECAPP system / Surveillance), mutual assistance requests, information from regional offices and the WCO.

If the CIS and FIDE had not existed, Member States would use data sources from European agencies or organisations, other Commission related data sources, Member States' data sources and data sources from international organisations, to find the information requested. Commission departments do not see alternatives for the data information contained in FIDE.

The CIS is not so frequently used as it is intended and faces challenges due to multiple reporting and overlaps with other systems. The exchanges of information are therefore not as successful as they could be. Nevertheless, Member States and Commission departments use it and take advantage of the synergies it creates on European level.

#### Relations with third countries

Articles 19-22 of the Regulation are considered effective and efficient (compare sections 4.1.1 and 4.1.2). They provide an alternative legal basis for international MA requests in the absence of an international MAA agreement, they also provide legal certainty.

Should the Regulation be withdrawn, exchange of information with certain third countries would not be possible.

There are six Member States that use the provisions at least once every six months for achieving the objectives of the Regulation. For them there would be no alternative to Articles 19-22 of the Regulation.

The ECA Special Report 19/2017 concluded that cooperation and exchange of information with non-EU countries is improving. According to the results of this audit, the MAA Agreements or MAA Protocols to international agreements provide a legal basis to request information from non-EU countries and serve their purpose well. There might be insufficient cooperation from a particular third country. However, even if the cooperation and exchange of information with non-EU countries is not exploited in the best way, the existing framework provides a stable basis that would remain in case of withdrawing the Regulation.

## Data analysis

The data analysis part of the Regulation is considered effective, efficient and coherent (please see sections 4.1.1, 4.1.2, 4.1.3). The Regulation provides for a satisfactory legal ground for the use of the data collected under the Regulation for the purposes of operational and strategic analysis at EU level.

## Personal data protection

The data protection provisions in the Regulation are considered effective, efficient and coherent (please see sections 4.1.1, 4.1.2 and 4.1.3). The Regulation contributes to the creation of synergies at EU and Member States level for the security and protection of data exchanged on the basis of the Regulation.

In summary, the use of the Regulation at European level provides an added-value that could not be achieved through bilateral exchanges at Member States level.

### 4.3. Is the intervention still relevant?

#### 4.3.1. Relevance

##### Agricultural matters

##### Customs matters scope and definitions

##### Assistance on request

##### Relations with the Commission

These sections of the Regulation are considered as being needed by Member States to increase the detectability, prevention and prosecution of breaches of customs and agricultural legislation, through an enhanced collaboration both among Member States themselves and between Member States and the Commission. Furthermore, the Regulation improves the process of administrative enquiries in the area of customs mutual assistance, as elaborated in section 3. 'Description of the current situation'. Commission departments consider the mutual administrative assistance mechanism as very helpful for their work.

The Regulation makes available a comprehensive and structured dataset, without which it would be difficult to achieve the aim of the Regulation. The increased use of data also indicates how positively the value of the information is viewed and needed.

The ECA Special Report 19/2017 identified some weaknesses in the content and use of the existing information channels, however, sees their value for the pursuit of the objectives of the Regulation. Member States and Commission departments have defined a clear need for these information channels.

There is a rising share of satisfactory replies to requests to Member States from 2013 to 2019. That means that over the years the number of replies provided in this regard from one Member State to another increased. A satisfactory reply in this regard is defined by Member States as a reply provided in time and with sufficient content for increasing the

detectability, prevention and prosecution of breaches of customs and agricultural legislations.

When asked what they would do if the Regulation had not existed for mutual assistance on agricultural matters, six Member States refer to bilateral mutual assistance agreements. The Naples II Convention was mentioned by four Member States as an alternative source of information. Special legislation bases are mentioned by one Member State, such as the one provided for in Commission Implementing Regulation 2016/1239 on import and export licences for agricultural products. Member States have also pointed out they would not have many other opportunities to gain the information. For the Member States there is a clear need for the Regulation. Consolidation of information and distributing from a central base is always a faster and simpler way of providing information.

One Commission department mentioned complementary mechanisms to the Regulation, in relation to agricultural matters<sup>31</sup>. In addition, it encourages Member States to participate within the EU Food Fraud Network to use the system of Administrative Assistance and Cooperation (AAC, AAC FF (Food Fraud)). This system allows Member States to work together on matters where the national authorities are confronted with possible violations of the EU agri-food chain legislation with a cross-border impact including geographical indications. The EU Food Fraud Network links the liaison bodies designated by each Member State in accordance with the rules laid down in the official controls in the food sector. Nevertheless, there is a clear need for the mechanisms of the Regulation.

In customs matters, without the Regulation, 24 Member States indicated they would use bilateral mutual assistance agreements and the Naples II Convention. Three Member States point out that they would not have any alternative. One Member State clarifies that the Naples II Convention is rarely an alternative to the Regulation. Consequently, Member States would find ways to find parts of the information, but would not be able to have the same quality of information or data as provided for by the Regulation. An easy and time-saving way is by the Regulation. Member States and Commission departments have expressed a clear need for the Regulation.

Another finding of the ECA Special Report 19/2017 was that Member States do not implement the requests made by the Commission in mutual assistance communications in a uniform way. Fraud on origin or classification is tackled in a different way throughout Member States. This situation could be exploited by dishonest traders to evade the payment of customs duties. The objectives of the Regulation might be at risk, however, this does not mean that there is no need for the mutual assistance communications. If the mutual assistance communications did not exist at all, there

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<sup>31</sup> Commission Delegated Regulation (EU) 880/2012 in the milk and milk products sector; Delegated Regulation (EU) 891/2017 for the fruit and vegetable sector; Commission Implementing Regulation (EU) 2019/34 for wine geographical indications; Regulation (EU) 2017/625 on official controls in the food sector (OCR); Regulation (EC) No 1306/2013 to avoid fraud.

would be no implementation of requests and the objectives of the Regulation would not be pursued at all. The current situation might not be optimal, but Member States do a lot to implement the requests made by the Commission in mutual assistance communications.

### Transport directory

The transport directory of Article 18a, paragraphs 1 to 3, of the Regulation has not been fully implemented and it is limited to data related to sea container movements recorded in the CSM directory. For further details, see CSM.

### Container Status Messages (CSM)

### Import, Export and Transit (IET)

### Customs Information System (CIS)

### Customs Files Identification Database (FIDE)

The databases under the AFIS umbrella constitute a valuable support to Member States' and Commission's operational and investigative work, as elaborated before, aiming at detecting customs infringements, the recovery of customs duties and the enhancement of customs cooperation in the anti-fraud domain. These activities are positively evaluated by Member State competent authorities and, except for FIDE, the systems are used on a regular basis. Commission departments have used these databases at least on a monthly basis, except for FIDE, which is not used by Commission departments.

If the CSM directory had not been established in the last recast, Member States and Commission departments would have gathered part of its information directly from carriers' websites and by using ConTraffic. If the IET directory had not existed, Member States and Commission departments would have used information from national customs authorities, other Commission services (DG TAXUD's RECAPP system / Surveillance), mutual assistance requests, information from regional offices and the WCO.

The CIS and FIDE had existed before the last recast. If they had not existed, Member States would use data sources from European agencies or organisations, other Commission related data sources, Member States' data sources and data sources from international organisations to find the information requested. Commission departments do not see alternatives for the data information contained in FIDE.

Nevertheless, the AFIS databases focus on specific anti-fraud information that users can easily access from the central EU database rather than searching multiple different sources.

The usage of the CIS is not optimal mainly due to partially overlapping information in other systems. This reduces the success of the system due to multiple reporting and increases the risk of information loss. Yet there is consensus in the need for the information contained in the CIS, as expressed by Member States and Commission departments.

## Relations with third countries

As elaborated before, Articles 19-22 of the Regulation have been scarcely used by Member States. The reason is that nearly all of the international mutual administrative assistance exchanges take place under the legal basis of a mutual administrative assistance agreement. These mutual administrative assistance agreements are the main instrument for Member States to exchange information with third countries. However where no mutual administrative assistance agreements are in place with a non-EU country, these articles will be needed by the Member States.

As regards the need for Articles 19-22 of the Regulation, three Member States use the provisions at least once a month and three other Member States use them at least once every 6 months for achieving the objectives of the Regulation.

The objectives of Articles 19-22 are relatively modest, i.e. to complement mutual administrative assistance provisions in international agreements. Thus, they correspond to the current needs.

The Commission informs Member States of the results of third country missions after their completion so that when applicable, Member States can pursue financial or judicial follow up.

The ECA Special Report 19/2017 concluded that cooperation and exchange of information with non-EU countries is improving. According to the results of this audit, the mutual administrative assistance Agreements or mutual administrative assistance Protocols to international agreements provide a legal basis to request information from non-EU countries and serve their purpose well. However, the ECA found incidents of insufficient cooperation from a particular non-EU country. This does not change the need for the articles to achieve the objectives of the Regulation.

## Data analysis

Both Member States and Commission departments have expressed the need to share data and join datasets. Data exchanged between the Commission and the Member States pursuant to the Regulation may be stored and used for the purpose of strategic and operational analysis. The Member States and the Commission may exchange the results of operational and strategic analyses carried out under the Regulation.

Without the Regulation this opportunity would not exist. The majority of Member States and Commission departments have used data retrieved from the databases established by the Regulation for analysis. The infrastructure of AFIS provides the necessary secure and trusted environment to do such data sharing. Whilst there is some debate about the opportunities offered and the legal issues around analysis, there is a need for an improved legal base.

Concerning e-commerce, joint actions have been undertaken to show the scale of abuse that is happening. There is a clear need to complement these punctual actions with a



more structured analytical response. A structured response on the EU level to tackle fraud concerning e-commerce is considered to be necessary by Member States and the Commission.

### Personal data protection

The personal data protection provisions updates in the last revision of the Regulation in Articles 33, 37 and 38 were intended to provide legal certainty concerning the data storage, to establish a defined supervision for the technical systems established by the Commission and to secure the processing of data. With the amendments, the Regulation was intended to ensure the personal data protection and the overall objectives of the Regulation.

The need for a closer collaboration between the two supervisory bodies led to a provision on common audits leading to joint reports of EDPS and JSA (Article 37).

Despite the coordination between the EDPS and the JSA as defined by Article 37(5) of the Regulation, there is feedback from several Member States' data protection authorities that the coordination between EDPS and JSA could be improved. One Member State data protection authority points out that the model of two different supervisory bodies should be abolished. Nevertheless, the supervisory system guarantees the supervision of both the administrative and the judicial part of the CIS and FIDE. Thus, the functionality of the Regulation is guaranteed.

In summary, the sections of the Regulation are considered as being needed by Member States and Commission to increase the detectability, prevention and prosecution of breaches of customs and agricultural legislation, through an enhanced collaboration both among Member States themselves and between Member States and the Commission.

## **5. WHAT ARE THE CONCLUSIONS AND LESSONS LEARNED?**

### **5.1. Conclusions**

Regulation 515/97 is the cornerstone of mutual assistance in customs and agricultural matters at European level. It allows Member State national authorities to exchange information between themselves and with the Commission for the purpose of ensuring the correct application of the EU customs and agricultural legislation. To do this, the Regulation establishes and ensures the operation of a number of specific IT systems and databases.

The consultation of targeted stakeholders (Member States, other Commission departments, data protection authorities, carriers' organisations, WCO, Europol and EUROJUST) through questionnaires, dedicated meetings and bilateral interviews showed that the Regulation is considered to be effective, efficient, relevant, coherent and has an EU added value.

Since the Regulation had never been evaluated, this evaluation covers the full scope of the Regulation and its performance since 1997, which greatly increases the data gathering effort. Specific focus has been given to the period 2015-2019 following the Regulation's last recast. The questionnaire addressed to Member States encompassed nearly a hundred questions, requiring a substantial amount of time for them to answer, in particular when different authorities needed to be consulted at national level. Nevertheless, all Member States, with the exception of the United Kingdom, have answered the questionnaires and provided their feedback. All of them use the Regulation to a high degree and consider the Regulation as being useful for their work.

Since the last revision of the Regulation in 2015, several developments with a potential impact on the functioning of the Regulation have been recorded, such as a new data protection regime that has been put in place at EU level, new fraud risks in the customs sector such as a surge of low-value consignments imported into the EU through e-commerce, and massive undervaluation fraud. This situation has prompted the evaluation of the Regulation and its robustness.

This evaluation does not derive from an obligation in the Regulation but it complies with the 'evaluate first' principle. The evaluation should be the starting point for any future policy development. Before possible changes can take place, the results of the evaluation will serve as evidence in a potential future impact assessment.

A number of setbacks had an influence in the conduct of the evaluation. In terms of evidence collection, the dataset of replies was reduced as the United Kingdom did not reply to the questionnaire. The situation created by the COVID-19 virus affected the holding of bilateral interviews with Member States and these interviews had to be conducted in a virtual manner rather than in person. The added value of personal interaction cannot be overlooked in this case and may have prejudiced the outcome of the interviews. For the same reason, the EMAC meetings scheduled for 2020 had to be cancelled and were replaced by a written exchange with Member States, which prevented the timely discussion with Member States representatives on the evaluation process and on the replies to the questionnaires.

According to the Regulation, the Commission, in cooperation with the Member States, shall report each year to the European Parliament and to the Council on the measures taken in the implementation of the Regulation. This yearly report is in the Reports on the protection of the European Union's financial interests — Fight against fraud.

The replies to the dedicated questionnaire by Commission departments fell short in respect of some sections of the Regulation, namely in relation to the use of the databases. Yet, the lack of detailed statistics for some sections of the Regulation or the lack of feedback on its use from some of the consulted Commission departments, does not affect the analysis of the performance of the Regulation as a whole. Overall, the evaluation shows that the Regulation has helped to support the mutual assistance in customs and agricultural matters. It allows Member State national authorities to exchange information

between themselves and with the Commission for ensuring the correct application of the EU customs and agricultural legislations.

At the same time, even if the overall assessment is positive, the evaluation has also brought to light a number of gaps and shortcomings relating both to agricultural and customs matters. In all sections of the Regulation including scope, assistance on request and spontaneous assistance, relations with the Commission, the CSM and IET directories, relations with third countries, the CIS, FIDE, data analysis and data protection provisions, stakeholders faced difficulties in the application of the Regulation. However, most of the issues identified in relation to mutual assistance can be addressed by different, non-legislative actions at the Commission's initiative other than an amendment of the current legal basis. The other issues identified that would require an amendment of the Regulation, such as aligning terminology with other customs legislation, are not considered serious enough to justify such amendment.

It should be highlighted that the transport directory containing data for land, rail and air transport has not yet been implemented by the Commission and for this reason, could not be assessed in the light of the criteria of effectiveness, efficiency, relevance, coherence and EU added value.

The Regulation, set up as a tool to strengthen the cooperation among Member States and with the Commission by ensuring the correct application of customs and agricultural laws, is generally considered to be effective. Despite some shortcomings, it succeeds in achieving or progressing towards its objectives. All sections of the Regulation work together to achieve both aims, that means increase the detection, prevention and prosecution of breaches of customs and agricultural legislations by enhanced collaboration, and improve the process related to administrative enquiries in the area of customs mutual assistance.

Information exchange and cooperation in customs matters works smoothly. However, there are still weaknesses in the information exchange tools, both in terms of content and use.

The Commission aims at being more precise in the actions asked to Member States in mutual assistance communications. The actions proposed to Member States are a set of recommendations, which do not necessarily fit for all Member States in every case. There is room for improvement in the way the Commission communicates with Member States using mutual assistance communications. This would be in line with the reply given by the Commission in response to a recommendation of the ECA. This process is already ongoing.

When it comes to the new CSM and IET directories, their larger set of data made it possible to have a better detection of fraud cases and a related level of administrative enquiries at national and EU levels. Despite the achievements of the Regulation, there remains room for improvement in terms of the range of the data collected and its use for fraud prevention.

Extending the scope of data contained in the transport directory by including data on import, export and transit of goods by land, rail and air would promote the objectives of the Regulation even more.

An extension of the scope of export data in the CSM and IET directories to other goods than excisable goods, as well as the supply by Member States of data on national transit and direct export in the IET directory could promote the effectiveness of the Regulation. In this regard, relevant transport companies or organisations could give access, on a voluntary basis, to relevant data from their databases for antifraud purposes. The possibility of extending the scope of data of the IET directory by including data on national transit and direct export exists already in the Regulation. It is optional for Member States but the Commission could explore with Member States whether or not they are ready to provide these data.

The problem of the multiple reporting of customs information in the CIS and in other related systems is also a matter of major concern for Member States. The suboptimal usage of the CIS and its overlap with other systems reduce the effectiveness of these exchanges of information.

Another major issue identified by Member States is the lack of cases reported in FIDE as well as the lack of engagement by all Member States in using FIDE consistently.

An extended scope and the completeness of data stored in the above-mentioned databases would be considered of great use for the purpose of strategic and operational analysis for anti-fraud purposes.

The Regulation can be regarded as being efficient. Member States do not have any implementation costs using its provisions. The communication channels used are permanently made available by the Commission. Carriers incur implementation costs due to their reporting obligation on container movements but they are satisfied with the likelihood of benefiting from faster customs procedures. For the databases under the AFIS umbrella there is an annual budget allocated for the conduct of activities under the Regulation. The AFIS budget has fluctuated between EUR 6.4 – 7.4 million. The largest amounts of the budget expenditure are attributed to the development and implementation of the AFIS IT systems. Data is stored centrally and the systems are developed and maintained in an optimised way. The costs are not considered disproportionate as the databases are essential for achieving the objectives of the Regulation.

The Regulation is in general relevant as its objectives correspond to the needs within the EU. For the sections on agricultural matters, customs scope and definitions, assistance on request and spontaneous assistance and relations with the Commission, Member States and Commission departments established a clear need for the Regulation and for achieving its objectives. Stakeholders do not see alternatives with an equivalent outcome. However, there are some difficulties faced by stakeholders especially concerning the scope of the Regulation and regarding the replies received through mutual assistance and

relations with the Commission. In this regard, the Regulation does not entirely correspond to the current needs of stakeholders.

Despite some problems reported related to their use, there is a need for keeping the existing databases centrally at EU level as there are no better alternatives on site.

On the data protection provisions, the coordination between the EDPS and the JSA as defined by Article 37(5) of the Regulation is considered satisfactory by stakeholders. Although there is feedback that the coordination between EDPS and JSA could be improved and the model of two different supervisory bodies should be abolished, the need for a closer collaboration between the two supervisory bodies was underlined to improve personal data protection and the overall objectives of the Regulation.

The Regulation is at least partially coherent.

It is internally coherent. The different parts of the Regulation work together very well to achieve its objective.

Concerning the external coherence, several legislative instruments complement the Regulation. Several adjustments are necessary to align the Regulation with these legislative instruments, such as streamlining and updating the wording according to the UCC, or including references to the new data protection regime. There is a need for legal clarification of the link of the scope of the Regulation with some regulations that can apply it *mutatis mutandis*, without being customs legislation within the meaning of the UCC, as Member States and Commission departments pointed out the legal uncertainty of the *mutatis mutandis* concept.

The Member States' request to be able to easily identify the regulations that can apply the Regulation *mutatis mutandis* can be solved by publishing a list of these regulations on the OLAF website, which can be updated in time, as needed.

In the case of tax and excise related matters where VAT and excise regulations are applicable, there are difficulties in distinguishing the applicable legal basis for the mutual assistance exchanges, which results mainly from the different competences of customs authorities in the various Member States.

The Regulation has proven to bring a clear EU added value. All sections of the Regulation except the transport directory (which could not be evaluated) are considered effective, efficient, relevant and coherent. The Regulation promotes synergies in its implementation at EU level, by defining a uniform standard in the use of the resources and assuring a uniform level of access and quality of the information to all Member States.

The databases under the AFIS umbrella are all considered being effective, efficient, relevant and coherent. Synergies on EU level are created by an efficient and economic operation and support. Resource utilisation can be optimised and less hardware is

required on a central level. Administration costs are lower. As data is stored centrally, fewer components are needed and the data storage is done in a coordinated way.

Articles 19-22 of the Regulation are considered effective and efficient. They provide a legal basis in the absence of an international mutual administrative assistance agreement. Without these provisions, the exchange of information with third countries would have been much more difficult.

EU level synergies are promoted in terms of security and protection of the personal data stored and exchange under the Regulation.

The existing services offered by AFIS as an intelligence platform to facilitate the sharing of the results of analysis carried out at EU level could be further enhanced. Several Member States expressed that they are facing limitations in exchanging data for analysis purposes.

The views of Member States and other stakeholders expressed in the targeted consultation (see Annex V) and bilateral interviews confirm the above conclusions.

## **5.2. Lessons learned**

Generally, stakeholders are satisfied with the Regulation as it currently stands and consider that it remains a good instrument to tackle the new challenges arising in the fight against fraud. If proposals for improvement are made here and there, there is no demand for significant change of approach.

It may be concluded that the Regulation's objectives have been achieved to a great extent, but that more could be done in practical terms to optimize different sections in order to enable Member States national authorities to cooperate and exchange information among themselves and with the Commission in a time-saving and more effective manner. This can be done without necessarily amending the Regulation.

In this respect, the Commission could consider specific initiatives to improve and facilitate the practical implementation of the Regulation by Member States and the Commission.

**LEAD DG, DECIDE PLANNING/CWP REFERENCES**

Lead DG: OLAF

Agenda planning reference: PLAN/2018/4758

**EXCEPTIONS TO THE BETTER REGULATION GUIDELINES**

As the Regulation has no direct impact on citizens it was not envisaged organising an open public consultation. It was decided to carry out a targeted consultation. Member States, other Commission departments, data protection authorities, carriers' organisations, WCO, Europol and EUROJUST were consulted through questionnaires, interviews and dedicated meetings.

Secretariat-General and the ISSG agreed to this approach.

**ORGANISATION AND TIMING**

The evaluation process was steered by an Inter-Service Steering Group (ISSG) chaired by OLAF and involving representatives of the Directorates-General for Agriculture and Rural Development, Budget, Migration and Home Affairs, Justice and Consumers, Mobility and Transport, Taxation and Customs Union, Trade, Health and Food Safety, Secretariat-General and Legal Service.

Before meeting with the ISSG the next steps of the evaluation process were agreed with a cross-unit task force (CUTF) set up within OLAF. This group was considered to meet on a regular basis to deliver input to the evaluation process. All important steps were discussed and agreed with the CUTF.

The lead DG carried out the evaluation without recourse to external contractor services.

<b>MILESTONE</b>	<b>DATE</b>	<b>DESCRIPTION</b>
1.	01/02/2019	First meeting of CUTF
2.	16/05/2019	Publication of the Roadmap
3.	24/06/2019	Second meeting of CUTF
4.	28/06/2019	First meeting of ISSG
5.	22/08/2019	Closure of feedback period of roadmap (2 replies)
6.	28/10/2019	Third meeting of CUTF
7.	12/11/2019	Second meeting of ISSG
8.	Week 51 of 2019	Questionnaires sent to

		stakeholders
9.	14/02/2020	End deadline replies from stakeholders
10.	03/2020 – 05/2020	Analysis of replies and questions for clarification to Member States
11.	06/2020 – 07/2020	Bilateral interviews
12.	28/10/2020	4 <sup>th</sup> meeting of CUTF
13.	23/11/2020	3 <sup>rd</sup> meeting of ISSG

## **EVIDENCE, SOURCES AND QUALITY**

The evidence used for the drafting of this evaluation was based on the feedback of the stakeholder’s consultation in Member States customs authorities, Commission departments, data protection authorities, international organisations in the customs area and concerned members of the private sector, and other information sources gathered from meetings with Member States, published reports in the customs domain or data contained in the AFIS databases.

No issues were identified with the quality of the evidence used.

### **List desk research – literature:**

- Impact assessment on the proposal for a Regulation of the European Parliament and of the Council, amending Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (COM(2013) 796 final)
- Annual Reports on the Customs Union Performance 2016 - 2018 (CUP reports)
- Annual Reports on the protection of the European Union’s financial interests, 2014 - 2019 (PIF Reports)
- Annual Activity Reports of OLAF, 2017 – 2019
- OLAF Reports, 2014 – 2019
- Evaluation report from the 2<sup>nd</sup> Anti-Fraud Information System (AFIS) Conference 2018
- Anti-Fraud Information System (AFIS) Survey 2019
- Report from the Customs 2020 Project Group
- AFIS Business Reports



- European Court of Auditors Special Report 19/2017 on “Import procedures: shortcomings in the legal framework and an ineffective implementation impact the financial interests of the EU”

## Process

This evaluation has been conducted in compliance with the process set out in the Better Regulation guidelines. The evaluation roadmap was published in spring 2019. Shortly after the preparation of the roadmap, an Inter-Service Steering Group (ISSG) chaired by OLAF was set up to steer the evaluation process. It involved representatives of the Directorates-General for Agriculture and Rural Development, Budget, Migration and Home Affairs, Justice and Consumers, Mobility and Transport, Taxation and Customs Union, Trade, Health and Food Safety, Secretariat General and Legal Service. The participants are all involved with different tasks related to the Regulation, and hence the steering group contained the necessary expertise and experience. The ISSG observed and commented along the evaluation process, to ensure that the evaluation was impartial, useful and of the necessary quality.

The ISSG met 3 times during the evaluation on 28 June and 12 November 2019 and 23 November 2020.

All participants were informed about the scope of the evaluation, the evaluation roadmap, the stakeholders, the intervention logic, the evaluation questions, the stakeholder consultation strategy and the indicative timetable. Their feedback was collected on a wide range of issues, leading for example to improvements in the structure of the questionnaires and the range of questions.

On 22 August 2019, the feedback period for the roadmap was closed with receipt of two replies, both from the Global Legal Entity Identifier Foundation (GLEIF). The Commission took note of their statements.

Before publishing the roadmap it was agreed with the Secretariat General that it was sufficient to carry out a targeted consultation of stakeholders. An open public consultation was not considered necessary as the Regulation has no direct impact on citizens – the Regulation has a very specific nature, acting mainly as a tool for the exchange of information between Member States and with the Commission.

The Commission (OLAF) identified the following stakeholders to be targeted: Member States, other Commission departments, data protection authorities, carrier organisations, the World Customs Organization (WCO), Europol and EUROJUST. These stakeholders were consulted through a combination of questionnaires, interviews and dedicated meetings.

Further procedural information is included in Annex V.

## Short description of methodology

All work to support this evaluation was conducted by the Commission (OLAF) staff; no external study nor external consultant was involved. After internal reflection, an evaluation matrix (in Annex III to the SWD) was prepared, and served as a basis to draft the initial evaluation questions, before consulting the ISSG.

The targeted questionnaires were developed in cooperation with the ISSG (see the final questionnaires in Annex to the SWD). These questionnaires also served as a basis for the other consultation activities conducted (e.g. Member States' bilateral interviews).

Targeted questionnaires were sent (electronically) to the five different stakeholder categories identified; each category received a set of questions tailored to their role in using/applying the Regulation. Member States customs authorities received a questionnaire on all key elements and sections of the Regulation. Relevant Commission departments were asked about provisions on IT systems and databases to which they have access, as well as cooperation mechanisms under the Regulation used by Commission departments, including OLAF investigators. Carriers were asked for their input on the provisions on the CSM directory, whilst data protection authorities were asked to provide input on the data protection provisions contained in the Regulation. The Commission was mainly interested to get information from international organisations on their access to AFIS data.

The Commission (OLAF) prepared and conducted a six-week targeted consultation of stakeholders from end of December 2019 to mid-February 2020 on the EU Survey website. This consultation helped to collect views from relevant stakeholders on the performance of the Regulation, which could then be mapped according to the five evaluation criteria (effectiveness, efficiency, relevance, coherence and EU added value). Opinions were sought on the performance of the Regulation over the period 1 September 2016 until 1 September 2019.

The summary of the results of the targeted consultation is presented in the synopsis report in Annex V of this SWD.

Extensive desk research was carried out using data and literature available at EU and national level. Key documents that were taken into account include the annual reports on the Customs Union Performance (CUP reports), the annual OLAF reports, the annual PIF reports and the impact assessment on the Regulation, carried out in 2013. An exhaustive list of all reports is presented in Annex I of this SWD.

Further information on issues of common interest and clarification of replies was obtained through virtual interviews and dedicated meetings with selected stakeholders. In total, seven stakeholders were interviewed.

In order to cover a broad range of different Member States, meetings with five Member States were carried out, including Member States with different size, from different geographic areas of the EU or that have recently joined the Union. This approach ensured to cover a wide spectrum of views and interests. The bilateral interviews focused on the most relevant comments provided by the Member States at the questionnaires.

One Commission department was chosen for a bilateral interview as it uses nearly all the databases mentioned in the Regulation and is therefore one of the most important stakeholder. The World Shipping Council provided further insight in the positions of its members on CSM.

All information obtained from the different consultation activities has been treated confidentially. As announced in the questionnaires, the information contained in the evaluation report is disclosed anonymously, without mentioning individual positions of stakeholders.

In October 2018, the Commission (OLAF) together with the Austrian Customs organised the 2<sup>nd</sup> Anti-Fraud Information System (AFIS) Conference in Vienna, Austria. The purpose of the Conference was to take stock of the support provided within the scope of the Regulation by the Commission to Member States, and to reflect collectively with Member States on the best way to tackle the manifold challenges ahead including the new customs fraud patterns. The Conference also sought to ensure that the mutual assistance mechanisms made available by the Commission meet the needs of Member States in combating customs fraud. About 80 representatives in charge of mutual assistance policy, the business and IT implementation of AFIS at national level, in particular the national AFIS liaison officers, from all Member States participated in the Conference.

On 14-15 November 2019, the Finnish Customs and OLAF organised a High-level Conference in Helsinki to discuss current trends and appropriate responses to customs fraud. The Conference gathered around 100 senior officials from Member States as well as the Commission (OLAF, DG TAXUD, DG BUDG, and the JRC), Europol, Frontex and the EUIPO. The WCO and the US Customs were also represented.

The conclusions and recommendations from these conferences are taken into account in the evaluation.

The EMAC was involved from the beginning of the planning process of this evaluation. In each meeting, the group was provided with the latest information and an update on the current state of the evaluation and especially on the sending of the questionnaires.

The Council Customs Union Working Party (CUWP) was informed on 20/09/2019 and the Working Party on Combating Fraud (GAF) on 31/01/2020 about the evaluation of the Regulation.

## **Limitations and robustness of findings**

The United Kingdom was a Member State during the main evaluation period, and still part of the EU at the time when questionnaires were sent out but did not reply.

Since the Regulation has never been evaluated, this evaluation takes into account its performance since 1997 (even if focussed on period 2015-2019).

As the scope of the evaluation encompasses all articles of the Regulation, the questionnaire for Member States has nearly a hundred questions. This was a huge task for Member States to provide answers.

Due to the COVID-19 situation, it was not possible to have meetings in person with stakeholders to clarify the findings of the questionnaires. The bilateral interviews with stakeholders had to be done virtually.

The EMAC for June 2020 had to be cancelled due to the COVID-19 situation. Consequently, the results of the Member States' consultation could not be presented to them and there has not been any in person discussion with the Member States' customs authorities on the evaluation process. Such discussion would normally have provided valuable input and explanation to the evaluation report.

Very few answers were received on certain sections of the questionnaires. Altogether six Commission departments replied, however, not all of them use all the databases.

The transport directory is limited to data related to sea container movements recorded in the CSM directory. A transport directory containing data for land, rail and air transport has not yet been implemented by the Commission.

**ANNEX III. EVALUATION MATRIX AND, WHERE RELEVANT, DETAILS ON ANSWERS TO THE EVALUATION QUESTIONS (BY CRITERION)**

**Objective<sub>1</sub>:** Increase the detectability, prevention and prosecution of breaches of customs and agricultural legislation by enhanced collaboration both between the MS and between the MS and COM

**Objective<sub>2</sub>:** Improve the process related to administrative enquiries in the area of customs mutual assistance

**CRITERIA: EFFECTIVENESS**

QUESTION	OBJECTIVES	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
1. To what extent has the Regulation 515/97 increased the detectability of breaches of customs and agricultural legislation by enhanced cooperation?	Objective <sub>1</sub>	<b>Scope and definitions</b>	Coverage of the scope of the Regulation for mutual administrative assistance (MAA) needs  Clarity of the scope and definitions.	Usefulness of the regulation for MAA purposes Requests for extension of the scope to other areas.	The scope was established with the Regulation.  The last amendment of the Regulation updated some terminologies in accordance with the ones used under the Union Customs Code (UCC).	The scope and definitions of the Regulation are clear and cover all areas considered needed for MAA work.	The majority of Member States considers that no further areas should be covered by the Regulation to adequately meet their needs. The scope and the definitions are clear enough.  Five Commission departments have used the Regulation and consider the scope corresponds to their needs.	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services  Carriers' organisations  EDPS  Relevant European and international partners
		<b>Assistance on request and spontaneous assistance</b>	Use of the assistance on request and spontaneous assistance mechanisms for the detection, prevention and prosecution of breaches of customs and agricultural legislation.	Number of detected breaches of customs and agricultural legislation as result of assistance on request and spontaneous assistance  Number of mutual assistance exchanges  Number of mutual assistance related activities: Joint Customs Operations (JCOs), MAA related meetings	The mechanisms for administrative assistance on request and spontaneous assistance were established with the Regulation.	The mechanisms for administrative assistance on request and spontaneous assistance cover Member States and Commission needs for MAA work.	Member States are satisfied with the mutual assistance mechanisms and consider that these have contributed to detect breaches in customs legislation.	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services
		<b>Relations with the Commission</b>	Use of the MAA mechanisms between Member States and the Commission for the detection, prevention and prosecution of breaches of customs and agricultural legislation.	Number of detected breaches of customs and agricultural legislation as result of the relations with the Commission  Number of mutual assistance exchanges between Commission and Member States  Number of data recorded in the	The MAA mechanisms between Member States and the Commission were established with the Regulation.	The provisions on relations with the Commission cover Member States and Commission needs for MAA work.	Member States consider the mutual assistance communications issued by the Commission very useful for their work by increasing the detectability, prevention and	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services

QUESTION	OBJECTIVES	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
				<p>mutual assistance IT systems: CIS /FIDE</p> <p>Number of cases generated based on CIS and FIDE data</p> <p>Number of mutual assistance related activities: JCOs, MAA related meetings.</p>			<p>prosecution of breaches of customs legislation. These communications often led to the adoption of specific national measures.</p>	
		<b>Transport directory</b>	The transport directory is limited to data related to sea container movements recorded in the CSM directory. For further details, see CSM.	-	-	-	-	-
		<b>Container Status Messages (CSMs)</b>	Use of the Container Status Messages directory for the detection, prevention and prosecution of breaches of customs and agricultural legislation	<p>Number of detected breaches of customs and agricultural legislation with the use of CSM data</p> <p>Number of mutual assistance exchanges using CSM data</p> <p>Number of records in the CSM</p> <p>Number of cases generated based on CSM data</p> <p>Number of mutual assistance related activities using CSM: JCOs, CSM training courses and workshops.</p>	The CSM directory was established following the last amendment of the Regulation.	The CSM directory covers Member States and Commission needs for anti-fraud work.	<p>Member States use the CSM directory on a regular basis to tackle, commercial and non-commercial customs fraud and for investigative activities.</p> <p>Commission departments consider the CSM directory to be very useful for their work.</p> <p>Carriers have implemented the requirements of the Regulation and consider these legal and technical requirements as acceptable and are satisfied with the reduction of implementation efforts and time by reporting to a single EU-central service.</p>	<p>Administrative authorities responsible for the implementation of customs legislation in the Member State</p> <p>Relevant Commission Services</p> <p>Carriers' organisations</p> <p>EDPS</p>
		<b>Import, Export and Transit</b>	Use of the Import, Export and Transit directory for the detection, prevention	Number of detected breaches of customs and agricultural legislation with the use of IET data	The IET directory was established following the last amendment of	The IET directory covers Member States and Commission needs	Member States use the IET directory on a regular basis to tackle,	Administrative authorities responsible for the implementation

QUESTION	OBJECTIVES	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
			and prosecution of breaches of customs and agricultural legislation	<p>Number of mutual assistance exchanges using IET data</p> <p>Number of records in the IET directory</p> <p>Number of cases generated based on IET data</p> <p>Number of mutual assistance related activities using IET: JCOs, IET training courses and workshops.</p>	the Regulation.	for anti-fraud work.	<p>fraud and for investigative activities.</p> <p>Commission departments consider the IET directory to be useful for their work.</p>	<p>of customs legislation in the Member State</p> <p>Relevant Commission Services</p> <p>EDPS</p>
		<b>Relations with third countries</b>	Use of the MAA mechanisms between Member States, the Commission and third countries for the detection, prevention and prosecution of breaches of customs and agricultural legislation	<p>Number of mutual assistance exchanges between Member States or the Commission and third countries</p> <p>Number of detected breaches of customs and agricultural legislation thanks to the mutual assistance exchanges between Member States or the Commission and third-countries</p> <p>Number of mutual assistance related activities with the participation of third countries: JCOs, Member States' Community missions, training courses, meetings.</p>	The MAA mechanisms between Member States and the Commission were established with the Regulation.	The provisions on relations with the third countries cover Member States, Commission and third countries needs for MAA work.	Member States are satisfied with the provisions on MAA with third countries, even if these are rarely used as these are deemed to complement mutual administrative assistance provisions under international agreements and to allow mutual assistance with third countries which do not have an international mutual assistance agreement with the EU.	<p>Administrative authorities responsible for the implementation of customs legislation in the Member State</p> <p>Relevant Commission Services</p>
		<b>Customs Information System (CIS)</b>	Use of the CIS for the detection, prevention and prosecution of breaches of customs and agricultural legislation	<p>Number of detected breaches of customs and agricultural legislation with the use of CIS data</p> <p>Number of mutual assistance exchanges using CIS data</p> <p>Number records in the CIS</p> <p>Number of cases generated based on CIS data</p> <p>Number of mutual assistance related activities using CIS: JCOs, CIS training courses and workshops.</p>	The CIS was established with the Regulation. Some changes related to the restriction of access to CIS data and data retention periods were introduced with the last amendment.	The CIS directory covers Member States and Commission needs for anti-fraud work.	<p>The CIS is used on a regular basis by most Member States to support risk assessment, prevention and detection of customs infringements and operational actions. The CIS is considered most useful for the fight against tobacco smuggling, illicit drugs traffic, illicit trade of drug precursors, cash controls and counterfeit.</p> <p>The Commission considers the CIS as</p>	<p>Administrative authorities responsible for the implementation of customs legislation in the Member State</p> <p>Relevant Commission Services</p> <p>EDPS</p> <p>Relevant European and international partners</p>



QUESTION	OBJECTIVES	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
							very helpful to achieve the objective of the Regulation.	
		<b>Customs Files Identification Database (FIDE)</b>	Use of the FIDE for the detection, prevention and prosecution of breaches of customs and agricultural legislation	<p>Number of detected breaches of customs and agricultural legislation with the use of FIDE data</p> <p>Number of mutual assistance exchanges using FIDE data</p> <p>Number of FIDE records</p> <p>Number of cases generated based on FIDE data</p> <p>Number of mutual assistance related activities using FIDE: JCOs, FIDE training courses and workshops.</p>	The last amendment of the Regulation introduced changes to clarify the data retention periods of the FIDE cases.	The FIDE directory covers Member States and Commission needs for anti-fraud work.	<p>FIDE is never or rarely used by a large number of Member States. Restrictions related to national provisions on data protection or to the use of the relevant data by Member States judicial authorities are given as justification for not using the system. Commission departments do not use FIDE.</p> <p>It is not clear that the lack of usage of the system is due to the need for changes to its legal provisions.</p>	<p>Administrative authorities responsible for the implementation of customs legislation in the Member State</p> <p>Relevant Commission Services</p> <p>Relevant European partners</p> <p>EDPS</p>
		<b>Financing</b>	Use of the financing mechanism established by the Regulation for the detection, prevention and prosecution of breaches of customs and agricultural legislation	<p>Costs associated to the conduction of the mutual assistance activities and the establishment, development, maintenance and operations of the IT systems to support these activities</p> <p>Number of detected breaches of customs and agricultural legislation due to MAA activities financed by the Regulation</p> <p>Number of mutual assistance related activities financed by the Regulation: JCOs, Member States' Community missions, training courses, meetings</p>	The financing mechanism was established by the Regulation.	The financing mechanism covers Member States and Commission needs for MAA work for anti-fraud purposes.	The Regulation financial mechanism is considered fundamental for the conduction of the related MAA activities.	<p>Administrative authorities responsible for the implementation of customs legislation in the Member State</p> <p>Relevant Commission Services</p>

QUESTION	OBJECTIVES	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
	<b>Objective<sub>2</sub></b>	<b>Documents supporting customs declarations</b>	Availability of the supporting documentation in the conduction administrative enquiries.	Completeness and quality of documentation provided in the scope of the administrative enquiries  Prevented impact on own resources as result of the administrative enquiries	The changes introduced by the last review aimed at facilitating the conduction of the administrative enquiries.	The collection of customs documentation in support of administrative enquiries is facilitated.	Member States consider the changes introduced in the Regulation improved the conduction of administrative enquiries in the area of customs mutual assistance.	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services
		<b>Assistance on request and spontaneous assistance</b>	Usefulness of the mechanisms for assistance on request and spontaneous assistance to improve the process of the related administrative enquiries.	Duration of the administrative enquiries procedure  Prevented impact on own resources as result of the administrative enquiries  Completeness and quality of data provided in the scope of the administrative enquiries.	The changes introduced by the last review aimed at reducing the duration of the administrative enquiries.	The administrative enquiries are completed in a shorter period of time.	Member States consider the changes introduced in the Regulation improved the conduction of administrative enquiries in the area of customs mutual assistance.	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services
		<b>Admissibility of evidence</b>	Admissibility of evidence in the conduction of administrative enquiries in the area of customs mutual assistance.	Completeness and quality of data provided in the scope of the administrative enquiries  Prevented impact on own resources as result of the administrative enquiries.	The changes introduced by the last review aimed at providing legal certainty on the use of evidence collected in criminal proceedings.	The provisions on the use of evidence collected in criminal proceedings are clear.	Member States consider the changes introduced in the Regulation improved the conduction of administrative enquiries in the area of customs mutual assistance.	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services

**CRITERIA: EFFICIENCY**

QUESTION	OBJECTIVES	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
<b>2. To what extent are the costs of implementing Regulation 515/97 justified, given the effects observed?</b>	<b>Objective<sub>1</sub></b>	<b>Scope and definitions</b>	There are no costs associated with this key element.	-	The scope was established with the Regulation.  The last amendment of the Regulation updated some terminologies in accordance with the ones used under the Union Customs Code (UCC).	The scope and definitions of the Regulation are clear and cover all areas considered needed for MAA work.	The majority of Member States considers that no further areas should be covered by the Regulation to adequately meet their needs. The scope and the definitions are clear enough.	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services  Carriers' organisations  EDPS  Relevant European and

QUESTION	OBJECTIVES	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
							Five Commission departments have used the Regulation and consider the scope corresponds to their needs.	international partners
		<b>Assistance on request and spontaneous assistance</b>	Costs associated to the implementation of the mechanisms for assistance on request and spontaneous assistance. Results obtained with the procedures of assistance on request and spontaneous assistance.	Costs associated to the implementation of the mechanisms for assistance on request and spontaneous assistance: JCO related meetings, MAA related meetings Costs associated to the establishment, development, maintenance and operations of the IT systems to support these activities  Number of detected breaches of customs and agricultural legislation as result of assistance on request and spontaneous assistance  Number of mutual assistance exchanges  Number of data recorded in the mutual assistance IT systems: CIS/FIDE  Number of cases generated based on CIS and FIDE data  Number of mutual assistance related activities: Joint Customs Operations (JCOs), meetings.	Costs associated to the implementation of the mechanisms for administrative assistance on request and spontaneous assistance when the Regulation was established.	The costs associated to the mechanisms for assistance on request and spontaneous assistance are justified given the results obtained.	Member States are satisfied with the mutual assistance mechanisms and consider that these have contributed to detect breaches in customs legislation.	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services
		<b>Relations with the Commission</b>	Costs associated to the implementation of the mechanisms for MAA between the Commission and the Member States. Results obtained with the MAA procedures between the Commission and the Member States.	Costs associated to the conduction of the mutual assistance activities between the Commission and the Member States: JCOs, Member States' Community missions, training courses, meetings  Costs associated to the establishment, development, maintenance and operations of the IT systems to support these activities (IET/CSM/CIS/FIDE)  Number of detected breaches of customs and agricultural legislation	The costs associated to the implementation of the mechanisms for MAA between the Commission and the Member States when the Regulation was established. This information is not available.	The costs associated to the implementation of the mechanisms for MAA between the Commission and the Member States are justified given the results obtained.	Member States consider the mutual assistance communications issued by the Commission very useful for their work by increasing the detectability, prevention and prosecution of breaches of customs legislation. These communications often led to the adoption of specific	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services

QUESTION	OBJECTIVES	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
				<p>as result of assistance on request and spontaneous assistance between the Commission and the Member States</p> <p>Number of mutual assistance exchanges between the Commission and the Member States</p> <p>Number of data recorded in the mutual assistance IT systems (IET/CSM/CIS/FIDE)</p> <p>Number of cases generated based on these data</p> <p>Number of mutual assistance related activities: JCOs, Member States' Community missions, training courses, meetings.</p>			<p>national measures.</p> <p>The assessment of the usefulness of the IT systems provided by the Commission for MAA purposes is detailed for each system below.</p>	
		<b>Transport directory</b>	The transport directory is limited to data related to sea container movements recorded in the CSM directory. For further details, see CSM.	-	-	-	-	-
		<b>Container Status Messages (CSMs)</b>	<p>Costs associated to the implementation, development and maintenance of the CSM directory.</p> <p>Results obtained with the use of the CSM data.</p>	<p>Costs associated to the establishment, development, maintenance and operations of the CSM directory</p> <p>Number of detected breaches of customs and agricultural legislation based on CSM data</p> <p>Number of mutual assistance exchanges using CSM data</p> <p>Number of data recorded in the CSM</p> <p>Number of cases generated based on CSM data.</p>	<p>Costs associated to collection of data on container movements prior to the last amendment of the Regulation.</p> <p>This information is not available.</p>	The costs associated to the implementation of the CSM directory are justified given the results obtained.	The costs associated to the implementation of the CSM directory are justified given the results obtained. The costs of CSM borne by the carriers are not considered disproportionate to the benefits incurred.	<p>Administrative authorities responsible for the implementation of customs legislation in the Member State</p> <p>Relevant Commission Services</p> <p>Carriers' organisations</p> <p>EDPS</p>
		<b>Import, Export and Transit</b>	Costs associated to the implementation, development and maintenance of the IET directory.	Costs associated to the establishment, development, maintenance and operations of the IET directory. Number of detected breaches of customs and agricultural	Costs associated to collection of data on import, transit and export in one single repository prior to the last amendment of the Regulation.	The costs associated to the implementation of the IET directory are justified given the results obtained.	The costs associated to the implementation of the IET directory are justified given the results obtained.	Administrative authorities responsible for the implementation of customs legislation in the Member State

QUESTION	OBJECTIVES	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
			Results obtained with the use of the IET data	<p>legislation based on IET data</p> <p>Number of mutual assistance exchanges using IET data</p> <p>Number of data recorded in the IET directory</p> <p>Number of cases generated based on IET data.</p>	As this system did not exist, cost information is not available.			<p>Relevant Commission Services</p> <p>EDPS</p>
		<b>Relations with third countries</b>	<p>Costs associated to the implementation of the mechanisms for MAA between the Commission and the Member States with third countries.</p> <p>Results obtained with the MAA procedures between the Commission and the Member States with third countries.</p>	<p>Costs associated to the conduction of the mutual assistance activities between the Commission and the Member States and third countries: JCOs, Member States' Community missions, training courses, meetings</p> <p>Number of detected breaches of customs and agricultural legislation as result of MAA with third countries</p> <p>Number of mutual assistance exchanges between the Commission and the Member States with third countries</p> <p>Number of mutual assistance related activities with the participation of third countries: JCOs, Member States' Community missions, training courses, meetings.</p>	The costs associated to the implementation of the mechanisms for MAA between the Commission and the Member States with third countries when the Regulation was established. This information is not available.	The costs associated to the implementation of the mechanisms for MAA between the Commission and the Member States with third countries are justified given the results obtained.	The costs of implementing de provision related to relations with third countries are justified and proportionate to their effects.	<p>Administrative authorities responsible for the implementation of customs legislation in the Member State</p> <p>Relevant Commission Services</p>
		<b>Customs Information System (CIS)</b>	<p>Costs associated to the implementation, development and maintenance of the CIS</p> <p>Results obtained with the use of the CIS data.</p>	<p>Costs associated to the establishment, development, maintenance and operations of the CIS</p> <p>Number of detected breaches of customs and agricultural legislation based on CIS data</p> <p>Number of mutual assistance exchanges using CIS data</p> <p>Number of cases in the CIS</p> <p>Number of cases generated based on CIS data.</p>	Costs associated to the establishment, development, maintenance and operations of the CIS prior to the last amendment of the Regulation. This information is not available.	The costs associated to the implementation of the CIS are justified given the results obtained.	Member States use CIS on a regular basis for more than 20 years for anti-fraud work. The running costs can therefore be considered justified.	<p>Administrative authorities responsible for the implementation of customs legislation in the Member State</p> <p>Relevant Commission Services</p> <p>EDPS</p> <p>Relevant European and international partners</p>
		<b>Customs Files Identification Database</b>	Costs associated to the implementation, development and	Costs associated to the establishment, development, maintenance and operations of the	Costs associated to the establishment, development,	The costs associated to the implementation of the FIDE are justified	FIDE is judged it useful and necessary to support the detection of	Administrative authorities responsible for the implementation

QUESTION	OBJECTIVES	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
		<b>(FIDE)</b>	maintenance of the FIDE Results obtained with the use of the FIDE data.	FIDE Number of detected breaches of customs and agricultural legislation based on FIDE data Number of mutual assistance exchanges using FIDE data Number of data recorded in the FIDE Number of cases generated based on FIDE data.	maintenance and operations of the FIDE prior to the last amendment of the Regulation. This information is not available.	given the results obtained.	customs infringements, by the Member States that use it. The costs of development and maintenance are considered justified.	of customs legislation in the Member State Relevant Commission Services Relevant European partners EDPS
		<b>Financing</b>	Costs associated to the financing mechanism established by the Regulation to support the related MAA activities Results obtained with the use of this financing mechanism.	Costs associated to the conduction of the mutual assistance activities and the establishment, development, maintenance and operations of the IT systems to support these activities Number of detected breaches of customs and agricultural legislation in result of activities financed under the Regulation Number of cases generated in result of activities financed under the Regulation Number of mutual assistance related activities financed under the Regulation: JCOs, Member States' Community missions, training courses, meetings.	Costs associated to the conduction of MAA activities by Commission and Member States prior to the Regulation. This information is not available.	The financing mechanism covers Member States and Commission needs for MAA work for anti-fraud purposes.	The Regulation financial mechanism is considered fundamental for the conduction of the related MAA activities.	Administrative authorities responsible for the implementation of customs legislation in the Member State Relevant Commission Services
	<b>Objective<sub>2</sub></b>	<b>Documents supporting customs declarations</b>	Costs associated to the availability of the supporting documentation in the conduction of administrative enquiries Results obtained with the use of this financing mechanism.	Costs related to assure the completeness and quality of the data provided in the scope of the administrative enquiries Prevented impact on own resources as result of the administrative enquiries.	Costs associated to the unavailability of the supporting documentation in the conduction administrative enquiries prior to the last amendment of the Regulation. This information is not available.	The costs associated to the availability of the supporting documentation in the conduction of administrative enquiries are considered justified.	Member States consider the changes introduced in the Regulation improved the conduction of administrative enquiries in the area of customs mutual assistance. There is no information on any associated costs.	Administrative authorities responsible for the implementation of customs legislation in the Member State Relevant Commission Services
		<b>Assistance on request and spontaneous assistance</b>	Costs associated to improve the process of the administrative enquiries using the mechanisms for	Costs related to the duration of the procedures Costs related to assure the completeness and quality of the data	Costs associated to the process of the administrative enquiries using the mechanisms for	The administrative enquiries are completed in a shorter period of time and incurring in	Member States consider the changes introduced in the Regulation improved	Administrative authorities responsible for the implementation of customs legislation

QUESTION	OBJECTIVES	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
			assistance on request and spontaneous assistance.	provided in the scope of the administrative enquiries Prevented impact on own resources as result of the administrative enquiries.	assistance on request and spontaneous assistance prior to the last amendment of the Regulation. This information is not available.	lesser costs.	the conduction of administrative enquiries in the area of customs mutual assistance. There is no information on any associated costs.	in the Member State Relevant Commission Services
		<b>Admissibility of evidence</b>	Costs associated to clarify the admissibility of evidence in the conduction of administrative enquiries in the area of customs mutual assistance.	Prevented impact on own resources as result of the administrative enquiries.	Costs associated to clarify the admissibility of evidence in the conduction of administrative enquiries in the area of customs mutual assistance. This information is not available.	The provisions on the use of evidence collected in criminal proceedings are clear.	Member States consider the changes introduced in the Regulation improved the conduction of administrative enquiries in the area of customs mutual assistance.  There is no information on any associated costs.	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services
<b>3. Which components of Regulation 515/97, if any, are generating disproportionate costs/benefits?</b>	<b>Objective<sub>1</sub></b>	<b>Scope and definitions</b>	There are no costs associated with this key element.	-	The scope was established with the Regulation.  The last amendment of the Regulation updated some terminologies in accordance with the ones used under the Union Customs Code (UCC).	The scope and definitions of the Regulation are clear and cover all areas considered needed for MAA work.	There are no costs associated with this key element.	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services  Carriers' organisations  EDPS  Relevant European and international partners
		<b>Assistance on request and spontaneous assistance</b>	Costs associated to the implementation of the mechanisms for assistance on request and spontaneous assistance. Results obtained with the procedures of assistance on request and spontaneous assistance.	Costs associated to the implementation of the mechanisms for assistance on request and spontaneous assistance: JCO related meetings, MAA related meetings Costs associated to the establishment, development, maintenance and operations of the IT systems to support these activities  Number of detected breaches of customs and agricultural legislation as result of assistance on request and spontaneous assistance	Costs associated to the implementation of the mechanisms for administrative assistance on request and spontaneous assistance when the Regulation was established.	The costs associated to the mechanisms for assistance on request and spontaneous assistance are justified given the results obtained.	Member States are satisfied with the mutual assistance mechanisms and consider that these have contributed to detect breaches in customs legislation.	

QUESTION	OBJECTIVES	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
				<p>Number of mutual assistance exchanges</p> <p>Number of data recorded in the mutual assistance IT systems: CIS/FIDE</p> <p>Number of cases generated based on CIS and FIDE data</p> <p>Number of mutual assistance related activities: Joint Customs Operations (JCOs), meetings.</p>				
		<b>Relations with the Commission</b>	<p>Costs associated to the implementation of the mechanisms for MAA between the Commission and the Member States. Results obtained with the MAA procedures between the Commission and the Member States.</p>	<p>Costs associated to the conduction of the mutual assistance activities between the Commission and the Member States: JCOs, Member States' Community missions, training courses, meetings</p> <p>Costs associated to the establishment, development, maintenance and operations of the IT systems to support these activities (IET/CSM/CIS/FIDE)</p> <p>Number of detected breaches of customs and agricultural legislation as result of assistance on request and spontaneous assistance between the Commission and the Member States</p> <p>Number of mutual assistance exchanges between the Commission and the Member States</p> <p>Number of data recorded in the mutual assistance IT systems (IET/CSM/CIS/FIDE)</p> <p>Number of cases generated based on these data</p> <p>Number of mutual assistance related activities: JCOs, Member States' Community missions, training courses, meetings.</p>	<p>The costs associated to the implementation of the mechanisms for MAA between the Commission and the Member States when the Regulation was established. This information is not available.</p>	<p>The costs associated to the implementation of the mechanisms for MAA between the Commission and the Member States are justified given the results obtained.</p>	<p>Member States consider the mutual assistance communications issued by the Commission very useful for their work by increasing the detectability, prevention and prosecution of breaches of customs legislation. These communications often led to the adoption of specific national measures.</p> <p>The assessment of the usefulness of the IT systems provided by the Commission for MAA purposes is detailed for each system below.</p>	



QUESTION	OBJECTIVES	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
		<b>Transport directory</b>	The transport directory is limited to data related to sea container movements recorded in the CSM directory. For further details, see CSM.	-	-	-	-	-
		<b>Container Status Messages (CSMs)</b>	Costs associated to the implementation, development and maintenance of the CSM directory. Results obtained with the use of the CSM data.	Costs associated to the establishment, development, maintenance and operations of the CSM directory Number of detected breaches of customs and agricultural legislation based on CSM data Number of mutual assistance exchanges using CSM data Number of data recorded in the CSM Number of cases generated based on CSM data.	Costs associated to collection of data on container movements prior to the last amendment of the Regulation. This information is not available.	The costs associated to the implementation of the CSM directory are justified given the results obtained.	The costs associated to the implementation of the CSM directory are justified given the results obtained. The costs of CSM borne by the carriers are not considered disproportionate to the benefits incurred.	
		<b>Import, Export and Transit</b>	Costs associated to the implementation, development and maintenance of the IET directory. Results obtained with the use of the IET data	Costs associated to the establishment, development, maintenance and operations of the IET directory. Number of detected breaches of customs and agricultural legislation based on IET data Number of mutual assistance exchanges using IET data Number of data recorded in the IET directory Number of cases generated based on IET data	Costs associated to collection of data on import, transit and export in one single repository prior to the last amendment of the Regulation. As this system did not exist, cost information is not available.	The costs associated to the implementation of the IET directory are justified given the results obtained.	The costs associated to the implementation of the IET directory are justified given the results obtained.	
		<b>Relations with third countries</b>	Costs associated to the implementation of the mechanisms for MAA between the Commission and the Member States with third countries. Results obtained with the MAA procedures between the Commission and the	Costs associated to the conduction of the mutual assistance activities between the Commission and the Member States and third countries: JCOs, Member States' Community missions, training courses, meetings Number of detected breaches of customs and agricultural legislation as result of MAA with third	The costs associated to the implementation of the mechanisms for MAA between the Commission and the Member States with third countries when the Regulation was established. This information is not available.	The costs associated to the implementation of the mechanisms for MAA between the Commission and the Member States with third countries are justified given the results obtained.	The costs of implementing de provision related to relations with third countries are justified and proportionate to their effects.	

QUESTION	OBJECTIVES	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
			Member States with third countries	<p>countries</p> <p>Number of mutual assistance exchanges between the Commission and the Member States with third countries</p> <p>Number of mutual assistance related activities with the participation of third countries: JCOs, Member States' Community missions, training courses, meetings.</p>				
		<b>Customs Information System (CIS)</b>	<p>Costs associated to the implementation, development and maintenance of the CIS</p> <p>Results obtained with the use of the CIS data</p>	<p>Costs associated to the establishment, development, maintenance and operations of the CIS</p> <p>Number of detected breaches of customs and agricultural legislation based on CIS data</p> <p>Number of mutual assistance exchanges using CIS data</p> <p>Number of cases in the CIS</p> <p>Number of cases generated based on CIS data.</p>	<p>Costs associated to the establishment, development, maintenance and operations of the CIS prior to the last amendment of the Regulation. This information is not available.</p>	<p>The costs associated to the implementation of the CIS are justified given the results obtained.</p>	<p>Member States use CIS on a regular basis for more than 20 years for anti-fraud work. The running costs are considered justified.</p>	
		<b>Customs Files Identification Database (FIDE)</b>	<p>Costs associated to the implementation, development and maintenance of the FIDE</p> <p>Results obtained with the use of the FIDE data.</p>	<p>Costs associated to the establishment, development, maintenance and operations of the FIDE</p> <p>Number of detected breaches of customs and agricultural legislation based on FIDE data</p> <p>Number of mutual assistance exchanges using FIDE data</p> <p>Number of data recorded in the FIDE</p> <p>Number of cases generated based on FIDE data.</p>	<p>Costs associated to the establishment, development, maintenance and operations of the FIDE prior to the last amendment of the Regulation. This information is not available.</p>	<p>The costs associated to the implementation of the FIDE are justified given the results obtained.</p>	<p>FIDE is judged it useful and necessary to support the detection of customs infringements, by the Member States that use it. The costs of development and maintenance are considered justified.</p>	
		<b>Financing</b>	<p>Costs associated to the financing mechanism established by the Regulation to support the related MAA activities</p>	<p>Costs associated to the conduction of the mutual assistance activities and the establishment, development, maintenance and operations of the IT systems to support these activities</p> <p>Number of detected breaches of</p>	<p>Costs associated to the conduction of MAA activities by Commission and Member States prior to the Regulation. This information is not available.</p>	<p>The financing mechanism covers Member States and Commission needs for MAA work for anti-fraud purposes.</p>	<p>The Regulation financial mechanism is considered fundamental for the conduction of the related MAA activities.</p>	

QUESTION	OBJECTIVES	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
			Results obtained with the use of this financing mechanism	customs and agricultural legislation in result of activities financed under the Regulation  Number of cases generated in result of activities financed under the Regulation Number of mutual assistance related activities financed under the Regulation: JCOs, Member States' Community missions, training courses, meetings.				
	<b>Objective<sub>2</sub></b>	<b>Documents supporting customs declarations</b>	Costs associated to the availability of the supporting documentation in the conduction of administrative enquiries  Results obtained with the use of this financing mechanism.	Costs related to assure the completeness and quality of the data provided in the scope of the administrative enquiries  Prevented impact on own resources as result of the administrative enquiries.	Costs associated to the unavailability of the supporting documentation in the conduction administrative enquiries prior to the last amendment of the Regulation. This information is not available.	The costs associated to the availability of the supporting documentation in the conduction of administrative enquiries are considered justified.	Member States consider the changes introduced in the Regulation improved the conduction of administrative enquiries in the area of customs mutual assistance. There is no information on any associated costs.	
		<b>Assistance on request and spontaneous assistance</b>	Costs associated to improve the process of the administrative enquiries using the mechanisms for assistance on request and spontaneous assistance.	Costs related to the duration of the procedures  Costs related to assure the completeness and quality of the data provided in the scope of the administrative enquiries  Prevented impact on own resources as result of the administrative enquiries.	Costs associated to the process of the administrative enquiries using the mechanisms for assistance on request and spontaneous assistance prior to the last amendment of the Regulation. This information is not available.	The administrative enquiries are completed in a shorter period of time and incurring in lesser costs.	Member States consider the changes introduced in the Regulation improved the conduction of administrative enquiries in the area of customs mutual assistance. There is no information on any associated costs.	
		<b>Admissibility of evidence</b>	Costs associated to clarify the admissibility of evidence in the conduction of administrative enquiries in the area of customs mutual assistance.	Prevented impact on own resources as result of the administrative enquiries.	Costs associated to clarify the admissibility of evidence in the conduction of administrative enquiries in the area of customs mutual assistance.  This information is not available.	The provisions on the use of evidence collected in criminal proceedings are clear.	Member States consider the changes introduced in the Regulation improved the conduction of administrative enquiries in the area of customs mutual assistance.  There is no information	

QUESTION	OBJECTIVES	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
							on any associated costs.	

CRITERIA: COHERENCE

QUESTION	SUB-QUESTION	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
4. To what extent is Regulation 515/97 internally coherent? E.g. do all the articles work together? Are there any conflicts/ issues of consistency?	Objective <sub>1</sub>	<b>Scope and definitions</b>	The scope and definitions are consistent with the framework of the Regulation and contribute to the achievement of its objectives.	Coherence of the scope and definition within the framework of the Regulation.	The scope was established with the Regulation.  The last amendment of the Regulation updated some terminologies in accordance with the ones used under the Union Customs Code (UCC).	The scope and definitions of the Regulation are consistent with the framework of the Regulation and contribute to the achievement of its objectives.	The scope and definitions are well framed within the Regulation and operates together with the other components to achieve its objectives.	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services  Carriers' organisations  EDPS  Relevant European and international partners
		<b>Assistance on request and spontaneous assistance</b>	The provisions on assistance on request and spontaneous assistance are well within the framework of the Regulation and contribute to the achievement of its objectives.	Number of detected breaches of customs and agricultural legislation as result of assistance on request and spontaneous assistance  Number of mutual assistance exchanges  Number of mutual assistance related activities: Joint Customs Operations (JCOs), MAA related meetings.	The mechanisms for administrative assistance on request and spontaneous assistance were established with the Regulation.	The mechanisms for administrative assistance on request and spontaneous assistance are consistent with the framework of the Regulation and contribute to the achievement of its objectives.	The mechanisms for administrative assistance on request and spontaneous assistance is well framed within the Regulation and operates together with the other components to achieve its objectives.	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services
		<b>Relations with the Commission</b>	The provisions on relations with the Commission are well within the framework of the Regulation and contribute to the achievement of its objectives	Number of detected breaches of customs and agricultural legislation as result of the relations with the Commission  Number of mutual assistance exchanges between Commission and Member States  Number of data recorded in the mutual assistance IT systems: CIS/FIDE  Number of cases generated based on CIS and FIDE data	The MAA mechanisms between Member States and the Commission were established with the Regulation.	The provisions on relations with the Commission are consistent with the framework of the Regulation and contribute to the achievement of its objectives	The provisions on relations with the Commission are well framed within the Regulation and operates together with the other components to achieve its objectives.	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services

QUESTION	SUB-QUESTION	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
				Number of mutual assistance related activities with Commission and Member States: JCOs, MAA related meetings.				
		<b>Transport directory</b>	The transport directory is limited to data related to sea container movements recorded in the CSM directory. For further details, see CSM.	-	-	-	-	-
		<b>Container Status Messages (CSMs)</b>	The provisions on the Container Status Messages directory are well within the framework of the Regulation and contribute to the achievement of its objectives.	Number of detected breaches of customs and agricultural legislation with the use of CSM data Number of mutual assistance exchanges using CSM data Number of cases generated based on CSM data Number of mutual assistance related activities using CSM: JCOs, CSM training courses and workshops.	The CSM directory was established following the last amendment of the Regulation.	The CSM directory is consistent with the framework of the Regulation and contributes to the achievement of its objectives.	The CSM is well framed within the Regulation and operates together with the other components to achieve its objectives.	Administrative authorities responsible for the implementation of customs legislation in the Member State Relevant Commission Services Carriers' organisations EDPS
		<b>Import, Export and Transit</b>	The provisions on the Container Status Messages directory are well within the framework of the Regulation and contribute to the achievement of its objectives.	Number of detected breaches of customs and agricultural legislation with the use of IET data Number of mutual assistance exchanges using IET data Number of cases generated based on IET data Number of mutual assistance related activities using IET: JCOs, IET training courses and workshops.	The IET directory was established following the last amendment of the Regulation.	The IET directory is consistent with the framework of the Regulation and contributes to the achievement of its objectives.	The IET is well framed within the Regulation and operates together with the other components to achieve its objectives.	Administrative authorities responsible for the implementation of customs legislation in the Member State Relevant Commission Services EDPS Administrative authorities responsible for the implementation of customs legislation in the Member State Relevant Commission Services EDPS
		<b>Relations with third countries</b>	The provisions on relations with third countries are well within the framework of the Regulation and	Number of mutual assistance exchanges between Member States or the Commission and third countries	The MAA mechanisms between Member States and the Commission were	The provisions on relations with the third countries are consistent with the framework of	The provisions on relations with the Commission are well framed within the Regulation and	Administrative authorities responsible for the implementation of customs legislation

QUESTION	SUB-QUESTION	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
			contribute to the achievement of its objectives.	Number of detected breaches of customs and agricultural legislation thanks to the mutual assistance exchanges between Member States or the Commission and third-countries  Number of mutual assistance related activities with the participation of third countries: JCOs, Member States' Community missions, training courses, meetings.	established with the Regulation.	the Regulation and contribute to the achievement of its objectives.	operates together with the other components to achieve its objectives.	in the Member State  Relevant Commission Services
		<b>Customs Information System (CIS)</b>	The provisions on the CIS are well within the framework of the Regulation and contribute to the achievement of its objectives.	Number of detected breaches of customs and agricultural legislation with the use of CIS data  Number of mutual assistance exchanges using CIS data  Number of cases generated based on CIS data  Number of mutual assistance related activities using CIS: JCOs, CIS training courses and workshops.	The CIS was established with the Regulation. Some changes related to the restriction of access to CIS data and data retention periods were introduced with the last amendment.	The CIS is consistent with the framework of the Regulation and contributes to the achievement of its objectives.	The CIS is well framed within the Regulation and operates together with the other components to achieve its objectives.	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services  EDPS  Relevant European and international partners
		<b>Customs Files Identification Database (FIDE)</b>	The provisions on FIDE are well within the framework of the Regulation and contribute to the achievement of its objectives.	Number of detected breaches of customs and agricultural legislation with the use of FIDE data  Number of mutual assistance exchanges using FIDE data  Number of cases generated based on FIDE data  Number of mutual assistance related activities using FIDE: JCOs, FIDE training courses and workshops.	The last amendment of the Regulation introduced changes to clarify the data retention periods of the FIDE cases.	The FIDE is consistent with the framework of the Regulation and contributes to the achievement of its objectives.	The FIDE is well framed within the Regulation and operates together with the other components to achieve its objectives.	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services  Relevant European partners  EDPS
		<b>Financing</b>	The provisions on financing are well within the framework of the Regulation and contribute to the achievement of its objectives.	Costs associated to the conduction of the mutual assistance activities and the establishment, development, maintenance and operations of the IT systems to support these activities  Number of detected breaches of customs and agricultural legislation due to MAA activities financed by	The financing mechanism was established by the Regulation.	The financing mechanism is consistent with the framework of the Regulation and contributes to the achievement of its objectives.	The Regulation financial mechanism is well framed within the Regulation and operates together with the other components to achieve its objectives.	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services

QUESTION	SUB-QUESTION	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
				the Regulation Number of mutual assistance related activities financed by the Regulation: JCOs, Member States' Community missions, training courses, meetings.				
	<b>Objective<sub>2</sub></b>	<b>Documents supporting customs declarations</b>	The provisions on the availability of the supporting documentation in the conduction of administrative enquiries are well within the framework of the Regulation and contribute to the achievement of its objectives.	Completeness and quality of documentation provided in the scope of the administrative enquiries Prevented impact on own resources as result of the administrative enquiries.	The changes introduced by the last review aimed at facilitating the conduction of the administrative enquiries.	The collection of customs documentation in support of administrative enquiries is consistent with the framework of the Regulation and contributes to the achievement of its objectives.	The provisions on the availability of the supporting documentation in the conduction of administrative enquiries are well framed within the Regulation and operates together with the other components to achieve its objectives.	Administrative authorities responsible for the implementation of customs legislation in the Member State Relevant Commission Services
		<b>Assistance on request and spontaneous assistance</b>	The provisions on assistance on request and spontaneous assistance are well within the framework of the Regulation and contribute to the achievement of its objectives.	Duration of the administrative enquiries procedure Prevented impact on own resources as result of the administrative enquiries Completeness and quality of data provided in the scope of the administrative enquiries.	The changes introduced by the last review aimed at reducing the duration of the administrative enquiries.	The provisions on assistance on request and spontaneous assistance are consistent with the framework of the Regulation and contribute to the achievement of its objectives.	The provisions on assistance on request and spontaneous assistance are well framed within the Regulation and operates together with the other components to achieve its objectives.	Administrative authorities responsible for the implementation of customs legislation in the Member State Relevant Commission Services
		<b>Admissibility of evidence</b>	The provisions on admissibility of evidence are well within the framework of the Regulation and contribute to the achievement of its objectives.	Completeness and quality of data provided in the scope of the administrative enquiries Prevented impact on own resources as result of the administrative enquiries.	The changes introduced by the last review aimed at providing legal certainty on the use of evidence collected in criminal proceedings.	The provisions on the use of evidence collected in criminal proceedings are consistent with the framework of the Regulation and contribute to the achievement of its objectives.	The provisions on the use of evidence collected in criminal proceedings are well framed within the Regulation and operates together with the other components to achieve its objectives.	Administrative authorities responsible for the implementation of customs legislation in the Member State Relevant Commission Services
<b>5. How well does Regulation 515/97 contribute to/complement other key related</b>	<b>Objective<sub>1</sub></b>	<b>Scope and definitions</b>	The scope and definitions are complementary to other related legislation.	Complementarity of the scope and definition with other related legislation.	The scope was established with the Regulation. The last amendment of the Regulation updated some terminologies in	The scope and definitions of the Regulation are complementary to other related legislation ensuring a consistent	The legal provisions to support the mutual assistance activities established by the Regulation are complementary to other related legal	Administrative authorities responsible for the implementation of customs legislation in the Member State Relevant Commission

QUESTION	SUB-QUESTION	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
policy instruments?					accordance with the ones used under the Union Customs Code (UCC).	use of the various existing MAA instruments.	instruments for mutual assistance to combat fraud.	Services Carriers' organisations EDPS Relevant European and international partners
		<b>Assistance on request and spontaneous assistance</b>	The provisions on assistance on request and spontaneous assistance are complementary to other related legislation.	Complementarity of the provisions on assistance on request and spontaneous assistance with other related legislation.	The mechanisms for administrative assistance on request and spontaneous assistance were established with the Regulation.	The mechanisms for administrative assistance on request and spontaneous assistance are complementary to other related legislation ensuring a consistent use of the various existing MAA instruments for combating fraud.	The legal provisions to support the mutual assistance activities established by the Regulation are complementary to other related legal instruments for mutual assistance to combat fraud.	Administrative authorities responsible for the implementation of customs legislation in the Member State Relevant Commission Services
		<b>Relations with the Commission</b>	The provisions on relations with the Commission are complementary to other related legislation.	Complementarity of the provisions on relations with the Commission with other related legislation.	The MAA mechanisms between Member States and the Commission were established with the Regulation.	The provisions on relations with the Commission are complementary to other related legislation ensuring a consistent use of the various existing MAA instruments for combating fraud.	The provisions on relations with the Commission are complementary to other related legal instruments for mutual assistance to combat fraud.	Administrative authorities responsible for the implementation of customs legislation in the Member State Relevant Commission Services
		<b>Transport directory</b>	The transport directory is limited to data related to sea container movements recorded in the CSM directory. For further details, see CSM.	-	-	-	-	-
		<b>Container Status Messages (CSMs)</b>	The provisions on the CSM are complementary to other related legislation.	Complementarity of the provisions on CSM with other related IT systems or legal instruments. Number of detected breaches of customs and agricultural legislation with the joint use of data from CSM and from other related IT systems. Number of mutual assistance exchanges with the joint use of data	The CSM directory was established following the last amendment of the Regulation.	The provisions on CSM are complementary to other related legislation ensuring a consistent use of the various existing MAA instruments for combating fraud.	The provisions CSM are complementary to other related legal instruments for mutual assistance to combat fraud.	Administrative authorities responsible for the implementation of customs legislation in the Member State Relevant Commission Services Carriers' organisations



QUESTION	SUB-QUESTION	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
				from CSM and from other related IT systems. Number of cases generated based on the joint use of data from CSM and from other related IT systems.				EDPS
		<b>Import, Export and Transit</b>	The provisions on the IET are complementary to other related legislation.	Complementarity of IET with the Commission with other related IT systems or legal instruments. Number of detected breaches of customs and agricultural legislation with the joint use of data from IET and from other related IT systems. Number of mutual assistance exchanges with the joint use of data from IET and from other related IT systems. Number of cases generated based on the joint use of data from IET and from other related IT systems.	The IET directory was established following the last amendment of the Regulation.	The provisions on IET are complementary to other related legislation ensuring a consistent use of the various existing MAA instruments for combating fraud.	The provisions IET are complementary to other related legal instruments for mutual assistance to combat fraud.	Administrative authorities responsible for the implementation of customs legislation in the Member State Relevant Commission Services EDPS Administrative authorities responsible for the implementation of customs legislation in the Member State Relevant Commission Services EDPS
		<b>Relations with third countries</b>	The provisions on relations with third countries are complementary to other related legislation.	Complementarity of the provisions on relations with third countries with other related legislation.	The MAA mechanisms between Member States and the Commission were established with the Regulation.	The provisions on relations with the third countries are complementary to other related legislation ensuring a consistent use of the various existing MAA instruments for combating fraud.	The provisions on relations with the Commission are complementary to other related legal instruments for mutual assistance to combat fraud.	Administrative authorities responsible for the implementation of customs legislation in the Member State Relevant Commission Services
		<b>Customs Information System (CIS)</b>	The provisions on the CIS are complementary to other related legislation.	Complementarity of the data in CIS with data of other related IT systems or legal instruments. Number of detected breaches of customs and agricultural legislation with the joint use of data from CIS and from other related IT systems. Number of mutual assistance exchanges with the joint use of data from CIS and from other related IT systems.	The CIS was established with the Regulation. Some changes related to the restriction of access to CIS data and data retention periods were introduced with the last amendment.	The provisions on CIS are complementary to other related legislation ensuring a consistent use of the various existing MAA instruments for combating fraud.	The provisions CIS are complementary to other related legal instruments for mutual assistance to combat fraud.	Administrative authorities responsible for the implementation of customs legislation in the Member State Relevant Commission Services EDPS Relevant European and international partners

QUESTION	SUB-QUESTION	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
				Number of cases generated based on the joint use of data from CIS and from other related IT systems.				
		<b>Customs Files Identification Database (FIDE)</b>	The provisions on the FIDE are complementary to other related legislation.	Complementarity of the data in FIDE with data of other related IT systems. Number of detected breaches of customs and agricultural legislation with the joint use of data from FIDE and from other related IT systems.  Number of mutual assistance exchanges with the joint use of data from FIDE and from other related IT systems.  Number of cases generated based on the joint use of data from FIDE and from other related IT systems.	The last amendment of the Regulation introduced changes to clarify the data retention periods of the FIDE cases.	The provisions on FIDE are complementary to other related legislation ensuring a consistent use of the various existing MAA instruments for combating fraud.	The provisions FIDE are complementary to other related legal instruments for mutual assistance to combat fraud.	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services  Relevant European partners  EDPS
		<b>Financing</b>	The provisions on financing are complementary to other related financing mechanisms.	Costs associated to the conduction of the mutual assistance activities and the establishment, development, maintenance and operations of the IT systems to support these activities financed by the Regulation and complemented by other financing mechanisms.	The financing mechanism was established by the Regulation.	The financing mechanism is complementary to other financing instruments for combating fraud such as the former Hercule financing program.	The financing mechanism is complementary to other financing instruments to combat fraud such as the former Hercule financing program.	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services
	<b>Objective<sub>2</sub></b>	<b>Documents supporting customs declarations</b>	The provisions on the availability of the supporting documentation in the conduction of administrative enquiries are complementary to other related legislation.	Completeness and quality of documentation provided in the scope of the administrative enquiries  Prevented impact on own resources as result of the administrative enquiries.	The changes introduced by the last review aimed at facilitating the conduction of the administrative enquiries.	The collection of customs documentation in support of administrative enquiries is complementary to other related legislation ensuring a consistent use of the various existing MAA instruments for combating fraud.	The provisions on the availability of the supporting documentation in the conduction of administrative enquiries are complementary to other related legal instruments for mutual assistance to combat fraud.	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services
		<b>Assistance on request and spontaneous assistance</b>	The provisions on assistance on request and spontaneous assistance are complementary to other related legislation.	Duration of the administrative enquiries procedure  Prevented impact on own resources as result of the administrative enquiries  Completeness and quality of data	The changes introduced by the last review aimed at reducing the duration of the administrative enquiries.	The provisions on assistance on request and spontaneous assistance are complementary to other related legislation ensuring a consistent	The provisions on assistance on request and spontaneous assistance are complementary to other related legal instruments for mutual	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission

QUESTION	SUB-QUESTION	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
				provided in the scope of the administrative enquiries.		use of the various existing MAA instruments for combating fraud.	assistance to combat fraud.	Services
		<b>Admissibility of evidence</b>	The provisions on admissibility of evidence are complementary to other related legislation.	Completeness and quality of data provided in the scope of the administrative enquiries  Prevented impact on own resources as result of the administrative enquiries.	The changes introduced by the last review aimed at providing legal certainty on the use of evidence collected in criminal proceedings.	The provisions on the use of evidence collected in criminal proceedings are complementary to other related legislation ensuring a consistent use of the various existing MAA instruments for combating fraud.	The provisions on the use of evidence collected in criminal proceedings are complementary to other related legal instruments for mutual assistance to combat fraud.	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services

**CRITERIA: EU-ADDED VALUE**

QUESTION	SUB-QUESTION	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
<b>6. What would be the most likely consequences of withdrawing Regulation 515/97?</b>	<b>Objective<sub>1</sub></b>	<b>Scope and definitions</b>	Clear scope and definitions are needed for a uniform implementation of the Regulation at EU level.	Usefulness of the regulation for MAA purposes at EU level.	The scope was established with the Regulation. The last amendment of the Regulation updated some terminologies in accordance with the ones used under the Union Customs Code (UCC).	The scope and definitions of the Regulation are necessary to ensure the uniform implementation at EU level.	The scope and definitions ensure the uniform application of the Regulation at EU level.	Administrative authorities responsible for the implementation of customs legislation in the Member State Relevant Commission Services Carriers' organisations EDPS Relevant European and international partners
		<b>Assistance on request and spontaneous assistance</b>	Need for a uniform implementation of the assistance on request and spontaneous assistance provisions for MAA purposes.	Number of detected breaches of customs and agricultural legislation as result of assistance on request and spontaneous assistance  Number of mutual assistance exchanges  Number of mutual assistance related activities: Joint Customs Operations (JCOs), MAA related meetings.	The mechanisms for administrative assistance on request and spontaneous assistance were established with the Regulation.	The mechanisms for administrative assistance on request and spontaneous assistance cover Member States and Commission needs for MAA work.	The mechanisms for administrative assistance on request and spontaneous assistance are fundamental for a uniform implementation at EU level.	Administrative authorities responsible for the implementation of customs legislation in the Member State Relevant Commission Services
		<b>Relations with the Commission</b>	Harmonised approach at EU level in the relations with the	Number of detected breaches of customs and agricultural legislation as result of the relations with the	The MAA mechanisms between Member States and the	The provisions on relations with the Commission cover	The harmonisation at EU level of the relations with the	Administrative authorities responsible for the implementation

QUESTION	SUB-QUESTION	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
			Commission for MAA purposes.	Commission  Number of mutual assistance exchanges between Commission and Member States  Number of data recorded in the mutual assistance IT systems: CIS/FIDE  Number of cases generated based on CIS and FIDE data Number of mutual assistance related activities: JCOs, MAA related meetings.	Commission were established with the Regulation.	Member States and Commission needs for MAA work.	Commission for MAA purposes is fundamental for the achieving the objectives of the Regulation.	of customs legislation in the Member State  Relevant Commission Services
		<b>Transport directory</b>	The transport directory is limited to data related to sea container movements recorded in the CSM directory. For further details, see CSM.	-	-	-	-	-
		<b>Container Status Messages (CSMs)</b>	Need for an EU level common repository for data on container movements entering or leaving the EU.	Number of detected breaches of customs and agricultural legislation with the use of CSM data  Number of mutual assistance exchanges using CSM data  Number of records in the CSM  Number of cases generated based on CSM data  Number of mutual assistance related activities using CSM: JCOs, CSM training courses and workshops.	The CSM directory was established following the last amendment of the Regulation.	The CSM covers Member States and Commission needs for MAA work.	The management of the CSM at EU level constitutes a valuable support to Member States' and Commission's operational and investigative work.	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services  Carriers' organisations EDPS
		<b>Import, Export and Transit</b>	Need for an EU level common repository for data on import, transit and export declarations.	Number of detected breaches of customs and agricultural legislation with the use of IET data  Number of mutual assistance exchanges using IET data  Number of records in the IET directory	The IET directory was established following the last amendment of the Regulation.	The IET directory covers Member States and Commission needs for anti-fraud work.	The management of the IET at EU level constitutes a valuable support to Member States' and Commission's operational and investigative work.	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services  EDPS

QUESTION	SUB-QUESTION	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
				<p>Number of cases generated based on IET data</p> <p>Number of mutual assistance related activities using IET: JCOs, IET training courses and workshops.</p>				
		<b>Relations with third countries</b>	Harmonised approach at EU level in the relations with third countries for MAA purposes.	<p>Number of mutual assistance exchanges between Member States or the Commission and third countries</p> <p>Number of detected breaches of customs and agricultural legislation thanks to the mutual assistance exchanges between Member States or the Commission and third-countries</p> <p>Number of mutual assistance related activities with the participation of third countries: JCOs, Member States' Community missions, training courses, meetings.</p>	The MAA mechanisms between Member States and the Commission were established with the Regulation.	The provisions on relations with the third countries cover Member States, Commission and third countries needs for MAA work.	The harmonisation at EU level of the relations with third countries for MAA purposes is fundamental for the achieving the objectives of the Regulation.	Administrative authorities responsible for the implementation of customs legislation in the Member State Relevant Commission Services
		<b>Customs Information System (CIS)</b>	<p>Need for an EU level common repository for data on breaches to customs or agricultural law.</p> <p>EU-added value of the Customs Information System</p>	<p>Number of detected breaches of customs and agricultural legislation with the use of CIS data</p> <p>Number of mutual assistance exchanges using CIS data</p> <p>Number records in the CIS</p> <p>Number of cases generated based on CIS data</p> <p>Number of mutual assistance related activities using CIS: JCOs, CIS training courses and workshops.</p>	The CIS was established with the Regulation. Some changes related to the restriction of access to CIS data and data retention periods were introduced with the last amendment.	The CIS directory covers Member States and Commission needs for anti-fraud work.	The management of the CIS at EU level constitutes a valuable support to Member States' and Commission's operational and investigative work.	Administrative authorities responsible for the implementation of customs legislation in the Member State Relevant Commission Services EDPS Relevant European and international partners
		<b>Customs Files Identification Database (FIDE)</b>	Need for an EU level common repository for data on investigation files on cases of breaches to customs or agricultural law.	<p>Number of detected breaches of customs and agricultural legislation with the use of FIDE data</p> <p>Number of mutual assistance exchanges using FIDE data</p> <p>Number records in the FIDE</p>	The last amendment of the Regulation introduced changes to clarify the data retention periods of the FIDE cases.	The FIDE directory covers Member States and Commission needs for anti-fraud work.	The management of the FIDE at EU level constitutes a valuable support to Member States' and Commission's operational and investigative work.	Administrative authorities responsible for the implementation of customs legislation in the Member State Relevant Commission Services Relevant European

QUESTION	SUB-QUESTION	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
				Number of cases generated based on FIDE data  Number of mutual assistance related activities using FIDE: JCOs, CIS training courses and workshops.				partners EDPS
		<b>Financing</b>	Need for a financing mechanism at EU level	Costs associated to the conduction of the mutual assistance activities and the establishment, development, maintenance and operations of the IT systems to support these activities  Number of detected breaches of customs and agricultural legislation due to MAA activities financed by the Regulation  Number of mutual assistance related activities financed by the Regulation: JCOs, Member States' Community missions, training courses, meetings	The financing mechanism was established by the Regulation.	The financing mechanism covers Member States and Commission needs for MAA work for anti-fraud purposes.	The Regulation's financial mechanism is fundamental to assure the implementation of the Regulation in a harmonised manner by all Member States.	Administrative authorities responsible for the implementation of customs legislation in the Member State Relevant Commission Services
	<b>Objective2</b>	<b>Documents supporting customs declarations</b>	Availability of the supporting documentation in the conduction administrative enquiries.	Completeness and quality of documentation provided in the scope of the administrative enquiries Prevented impact on own resources as result of the administrative enquiries	The changes introduced by the last review aimed at facilitating the conduction of the administrative enquiries.	The collection of customs documentation in support of administrative enquiries is facilitated.	Member States consider the changes introduced in the Regulation improved the conduction of administrative enquiries in the area of customs mutual assistance.	Administrative authorities responsible for the implementation of customs legislation in the Member State Relevant Commission Services
		<b>Assistance on request and spontaneous assistance</b>	Need for the EU level mechanisms for assistance on request and spontaneous assistance to improve the process of the related administrative enquiries.	Duration of the administrative enquiries procedure  Prevented impact on own resources as result of the administrative enquiries  Completeness and quality of data provided in the scope of the administrative enquiries.	The changes introduced by the last review aimed at reducing the duration of the administrative enquiries.	The administrative enquiries are completed in a shorter period of time.	Member States consider the changes introduced in the Regulation improved the conduction of administrative enquiries in the area of customs mutual assistance.	Administrative authorities responsible for the implementation of customs legislation in the Member State Relevant Commission Services
		<b>Admissibility of evidence</b>	Admissibility of evidence in the conduction of	Completeness and quality of data provided in the scope of the administrative enquiries	The changes introduced by the last review aimed at providing	The provisions on the use of evidence collected in criminal	Member States consider the changes introduced in the	Administrative authorities responsible for the implementation

QUESTION	SUB-QUESTION	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
			administrative enquiries in the area of customs mutual assistance.	Prevented impact on own resources as result of the administrative enquiries.	legal certainty on the use of evidence collected in criminal proceedings.	proceedings are clear.	Regulation improved the conduction of administrative enquiries in the area of customs mutual assistance.	of customs legislation in the Member State Relevant Commission Services

CRITERIA: RELEVANCE

QUESTION	SUB-QUESTION	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
7. How well do the (current) objectives of Regulation 515/97 correspond to the (current) needs within the EU?	Objective <sub>1</sub>	<b>Scope and definitions</b>	Coverage of the scope of the Regulation for mutual administrative assistance (MAA) current needs.  Clarity of the scope and definitions.	Usefulness of the regulation for MAA purposes in today's EU context Requests for extension of the scope to other areas.	The scope was established with the Regulation.  The last amendment of the Regulation updated some terminologies in accordance with the ones used under the Union Customs Code (UCC).	The scope and definitions of the Regulation are clear and cover all areas considered needed for MAA work in the current EU context.	The majority of stakeholders considers that no further areas should be covered by the Regulation to adequately meet their needs. The scope and the definitions are adequate to the current EU context.	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services  Carriers' organisations  EDPS  Relevant European and international partners
		<b>Assistance on request and spontaneous assistance</b>	Use of the assistance on request and spontaneous assistance mechanisms for the detection, prevention and prosecution of breaches of customs and agricultural legislation in the current EU context.	Number of detected breaches of customs and agricultural legislation as result of assistance on request and spontaneous assistance  Number of mutual assistance exchanges  Number of mutual assistance related activities: Joint Customs Operations (JCOs), MAA related meetings.	The mechanisms for administrative assistance on request and spontaneous assistance were established with the Regulation.	The mechanisms for administrative assistance on request and spontaneous assistance cover Member States and Commission needs for MAA work in the current EU context.	Member States are satisfied with the mutual assistance mechanisms and consider these adequate to the current EU context.	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services
		<b>Relations with the Commission</b>	Use of the MAA mechanisms between Member States and the Commission for the detection, prevention and prosecution of breaches of customs and agricultural	Number of detected breaches of customs and agricultural legislation as result of the relations with the Commission  Number of mutual assistance exchanges between Commission and Member States  Number of data recorded in the	The MAA mechanisms between Member States and the Commission were established with the Regulation.	The provisions on relations with the Commission cover Member States and Commission needs for MAA work in the current EU context.	Member States and Commission are satisfied with the mutual assistance mechanisms and consider these adequate to the current EU context.	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services

QUESTION	SUB-QUESTION	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
			legislation in the current EU context.	mutual assistance IT systems: CIS/FIDE Number of cases generated based on CIS and FIDE data Number of mutual assistance related activities: JCOs, MAA related meetings.				
		<b>Transport directory</b>	The transport directory is limited to data related to sea container movements recorded in the CSM directory. For further details, see CSM.	-	-	-	-	-
		<b>Container Status Messages (CSMs)</b>	Use of the Container Status Messages directory for the detection, prevention and prosecution of breaches of customs and agricultural legislation in the current EU context.	Number of detected breaches of customs and agricultural legislation with the use of CSM data Number of mutual assistance exchanges using CSM data Number of records in the CSM Number of cases generated based on CSM data Number of mutual assistance related activities using CSM: JCOs, CSM training courses and workshops.	The CSM directory was established following the last amendment of the Regulation.	The CSM directory covers Member States and Commission needs for anti-fraud work in the current EU context.	Member States and Commission are satisfied with the use of CSM in the current EU context.	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services
		<b>Import, Export and Transit</b>	Use of the Import, Export and Transit directory for the detection, prevention and prosecution of breaches of customs and agricultural legislation in the current EU context.	Number of detected breaches of customs and agricultural legislation with the use of IET data Number of mutual assistance exchanges using IET data Number of records in the IET directory Number of cases generated based on IET data Number of mutual assistance related activities using IET: JCOs, IET training courses and workshops.	The IET directory was established following the last amendment of the Regulation.	The IET directory covers Member States and Commission needs for anti-fraud work in the current EU context.	Member States and Commission are satisfied with the use of IET in the current EU context.	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services
		<b>Relations with</b>	Use of the MAA	Number of mutual assistance	The MAA mechanisms	The provisions on	Member States,	Administrative



QUESTION	SUB-QUESTION	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
		<b>third countries</b>	mechanisms between Member States, the Commission and third countries for the detection, prevention and prosecution of breaches of customs and agricultural legislation in the current EU context.	exchanges between Member States or the Commission and third countries  Number of detected breaches of customs and agricultural legislation thanks to the mutual assistance exchanges between Member States or the Commission and third-countries  Number of mutual assistance related activities with the participation of third countries: JCOs, Member States' Community missions, training courses, meetings.	between Member States and the Commission were established with the Regulation.	relations with third countries cover Member States and Commission needs for MAA work in the current EU context.	Commission and third countries are satisfied with the mutual assistance mechanisms and consider these adequate to the current EU context.	authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services
		<b>Customs Information System (CIS)</b>	Use of the CIS for the detection, prevention and prosecution of breaches of customs and agricultural legislation in the current EU context.	Number of detected breaches of customs and agricultural legislation with the use of CIS data  Number of mutual assistance exchanges using CIS data  Number records in the CIS  Number of cases generated based on CIS data  Number of mutual assistance related activities using CIS: JCOs, CIS training courses and workshops.	The CIS was established with the Regulation. Some changes related to the restriction of access to CIS data and data retention periods were introduced with the last amendment.	The CIS covers Member States and Commission needs for anti-fraud work in the current EU context.	The stakeholders are satisfied with the use of CIS in the current EU context.	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services  Carriers' organisations  EDPS
		<b>Customs Files Identification Database (FIDE)</b>	Use of the FIDE for the detection, prevention and prosecution of breaches of customs and agricultural legislation in the current EU context.	Number of detected breaches of customs and agricultural legislation with the use of FIDE data  Number of mutual assistance exchanges using FIDE data  Number of FIDE records  Number of cases generated based on FIDE data  Number of mutual assistance related activities using FIDE: JCOs, FIDE training courses and workshops.	The last amendment of the Regulation introduced changes to clarify the data retention periods of the FIDE cases.	The FIDE directory covers Member States and Commission needs for anti-fraud work in the current EU context.	Member States and Commission are satisfied with the use of FIDE in the current EU context.	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services  EDPS
		<b>Financing</b>	Use of the financing mechanism established by the Regulation for the detection, prevention	Costs associated to the conduction of the mutual assistance activities and the establishment, development, maintenance and operations of the IT systems to support these	The financing mechanism was established by the Regulation.	The financing mechanism covers Member States and Commission needs for MAA work for anti-	The Regulation financial mechanism is considered fundamental for the conduction of the	Administrative authorities responsible for the implementation of customs legislation

QUESTION	SUB-QUESTION	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
			and prosecution of breaches of customs and agricultural legislation in the current EU context.	activities Number of detected breaches of customs and agricultural legislation due to MAA activities financed by the Regulation Number of mutual assistance related activities financed by the Regulation: JCOs, Member States' Community missions, training courses, meetings.		fraud purposes in the current EU context.	related MAA activities in the current EU context.	in the Member State Relevant Commission Services
	<b>Objective<sub>2</sub></b>	<b>Documents supporting customs declarations</b>	Availability of the supporting documentation in the conduction administrative enquiries.	Completeness and quality of documentation provided in the scope of the administrative enquiries Prevented impact on own resources as result of the administrative enquiries.	The changes introduced by the last review aimed at facilitating the conduction of the administrative enquiries.	The collection of customs documentation in support of administrative enquiries is facilitated.	Member States consider the changes introduced in the Regulation improved the conduction of administrative enquiries in the area of customs mutual assistance in the current EU context.	Administrative authorities responsible for the implementation of customs legislation in the Member State Relevant Commission Services EDPS Relevant European and international partners
		<b>Assistance on request and spontaneous assistance</b>	Usefulness of the mechanisms for assistance on request and spontaneous assistance to improve the process of the related administrative enquiries.	Duration of the administrative enquiries procedure Prevented impact on own resources as result of the administrative enquiries Completeness and quality of data provided in the scope of the administrative enquiries.	The changes introduced by the last review aimed at reducing the duration of the administrative enquiries.	The administrative enquiries are completed in a shorter period of time.	Member States consider the changes introduced in the Regulation improved the conduction of administrative enquiries in the area of customs mutual assistance in the current EU context.	Administrative authorities responsible for the implementation of customs legislation in the Member State Relevant Commission Services Relevant European partners EDPS
		<b>Admissibility of evidence</b>	Admissibility of evidence in the conduction of administrative enquiries in the area of customs mutual assistance.	Completeness and quality of data provided in the scope of the administrative enquiries Prevented impact on own resources as result of the administrative enquiries	The changes introduced by the last review aimed at providing legal certainty on the use of evidence collected in criminal proceedings.	The provisions on the use of evidence collected in criminal proceedings are clear.	Member States consider the changes introduced in the Regulation improved the conduction of administrative enquiries in the area of customs mutual assistance in the current EU context.	Administrative authorities responsible for the implementation of customs legislation in the Member State Relevant Commission Services
<b>8. How well</b>	<b>Objective<sub>1</sub></b>	<b>Scope and</b>	Coverage of the	Usefulness of the regulation for	The scope was	The scope and	The majority of	Administrative

QUESTION	SUB-QUESTION	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
<b>adapted are the components of Regulation 515/97 to changes in the commercial and technological "environment"?</b>		<b>definitions</b>	scope of the Regulation for mutual administrative assistance (MAA) to changes in the commercial and technological "environment".	MAA purposes to changes in the commercial and technological "environment"  Requests for extension of the scope to other areas.	established with the Regulation.  The last amendment of the Regulation updated some terminologies in accordance with the ones used under the Union Customs Code (UCC).	definitions of the Regulation are adapted to the changes in the commercial and technological "environment".	stakeholders considers that no further areas should be covered by the Regulation to adequately meet their needs. The scope and adapted to the changes in the commercial and technological "environment".	authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services  Carriers' organisations  EDPS  Relevant European and international partners
		<b>Assistance on request and spontaneous assistance</b>	Use of the assistance on request and spontaneous assistance mechanisms for the detection, prevention and prosecution of breaches of customs and agricultural legislation in a changing commercial and technological "environment".	Number of detected breaches of customs and agricultural legislation as result of assistance on request and spontaneous assistance  Number of mutual assistance exchanges  Number of mutual assistance related activities: Joint Customs Operations (JCOs), MAA related meetings.	The mechanisms for administrative assistance on request and spontaneous assistance were established with the Regulation.	The mechanisms for administrative assistance on request and spontaneous assistance are adapted to the changes in the commercial and technological "environment".	Member States are satisfied with the mutual assistance mechanisms and consider these adequate to the changes in the commercial and technological "environment".	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services
		<b>Relations with the Commission</b>	Use of the MAA mechanisms between Member States and the Commission for the detection, prevention and prosecution of breaches of customs and agricultural legislation in a changing commercial and technological "environment".	Number of detected breaches of customs and agricultural legislation as result of the relations with the Commission  Number of mutual assistance exchanges between Commission and Member States  Number of data recorded in the mutual assistance IT systems: CIS/FIDE  Number of cases generated based on CIS and FIDE data  Number of mutual assistance related activities: JCOs, MAA related meetings.	The MAA mechanisms between Member States and the Commission were established with the Regulation.	The provisions on relations with the Commission are adapted to the changes in the commercial and technological "environment".	Member States and Commission are satisfied with the mutual assistance mechanisms and consider these adequate to the changes in the commercial and technological "environment".	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services
		<b>Transport directory</b>	The transport directory is limited to data related to sea	-	-	-	-	-

QUESTION	SUB-QUESTION	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
			container movements recorded in the CSM directory. For further details, see CSM.					
		<b>Container Status Messages (CSMs)</b>	Use of the Container Status Messages directory for the detection, prevention and prosecution of breaches of customs and agricultural legislation in a changing commercial and technological "environment".	Number of detected breaches of customs and agricultural legislation with the use of CSM data Number of mutual assistance exchanges using CSM data Number of records in the CSM Number of cases generated based on CSM data Number of mutual assistance related activities using CSM: JCOs, CSM training courses and workshops.	The CSM directory was established following the last amendment of the Regulation.	The CSM directory covers Member States and Commission needs for anti-fraud work in a changing commercial and technological "environment".	Member States and Commission are satisfied with the use of CSM for anti-fraud work in a changing commercial and technological "environment".	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services
		<b>Import, Export and Transit</b>	Use of the Import, Export and Transit directory for the detection, prevention and prosecution of breaches of customs and agricultural legislation in a changing commercial and technological "environment".	Number of detected breaches of customs and agricultural legislation with the use of IET data Number of mutual assistance exchanges using IET data Number of records in the IET directory Number of cases generated based on IET data Number of mutual assistance related activities using IET: JCOs, IET training courses and workshops.	The IET directory was established following the last amendment of the Regulation.	The IET directory covers Member States and Commission needs for anti-fraud work in a changing commercial and technological "environment".	Member States and Commission are satisfied with the use of IET for anti-fraud work in a changing commercial and technological "environment".	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services
		<b>Relations with third countries</b>	Use of the MAA mechanisms between Member States, the Commission and third countries for the detection, prevention and prosecution of breaches of customs and agricultural legislation in a changing commercial and technological "environment".	Number of mutual assistance exchanges between Member States or the Commission and third countries Number of detected breaches of customs and agricultural legislation thanks to the mutual assistance exchanges between Member States or the Commission and third-countries Number of mutual assistance related activities with the participation of third countries: JCOs, Member	The MAA mechanisms between Member States and the Commission were established with the Regulation.	The provisions on relations with third countries cover Member States and Commission needs for anti-fraud work in a changing commercial and technological "environment".	Member States and Commission are satisfied with the mutual assistance mechanisms with third countries and consider these adequate to the changes in the commercial and technological "environment".	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services

QUESTION	SUB-QUESTION	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
				States' Community missions, training courses, meetings.				
		<b>Customs Information System (CIS)</b>	Use of the CIS for the detection, prevention and prosecution of breaches of customs and agricultural legislation in a changing commercial and technological "environment".	<p>Number of detected breaches of customs and agricultural legislation with the use of CIS data</p> <p>Number of mutual assistance exchanges using CIS data</p> <p>Number records in the CIS</p> <p>Number of cases generated based on CIS data</p> <p>Number of mutual assistance related activities using CIS: JCOs, CIS training courses and workshops.</p>	The CIS was established with the Regulation. Some changes related to the restriction of access to CIS data and data retention periods were introduced with the last amendment.	The IET directory covers Member States and Commission needs for anti-fraud work in a changing commercial and technological "environment".	Member States and Commission are satisfied with the use of IET for anti-fraud work in a changing commercial and technological "environment".	<p>Administrative authorities responsible for the implementation of customs legislation in the Member State</p> <p>Relevant Commission Services</p> <p>Carriers' organisations</p> <p>EDPS</p>
		<b>Customs Files Identification Database (FIDE)</b>	Use of the FIDE for the detection, prevention and prosecution of breaches of customs and agricultural legislation in a changing commercial and technological "environment".	<p>Number of detected breaches of customs and agricultural legislation with the use of FIDE data</p> <p>Number of mutual assistance exchanges using FIDE data</p> <p>Number of FIDE records</p> <p>Number of cases generated based on FIDE data</p> <p>Number of mutual assistance related activities using FIDE: JCOs, FIDE training courses and workshops.</p>	The last amendment of the Regulation introduced changes to clarify the data retention periods of the FIDE cases.	The IET directory covers Member States and Commission needs for anti-fraud work in a changing commercial and technological "environment".	Member States and Commission are satisfied with the use of FIDE for anti-fraud work in a changing commercial and technological "environment".	<p>Administrative authorities responsible for the implementation of customs legislation in the Member State</p> <p>Relevant Commission Services</p> <p>EDPS</p>
		<b>Financing</b>	Use of the financing mechanism established by the Regulation for the detection, prevention and prosecution of breaches of customs and agricultural legislation in a changing commercial and technological "environment".	<p>Costs associated to the conduction of the mutual assistance activities and the establishment, development, maintenance and operations of the IT systems to support these activities in a changing commercial and technological "environment".</p> <p>Number of detected breaches of customs and agricultural legislation due to MAA activities financed by the Regulation</p> <p>Number of mutual assistance related activities financed by the Regulation: JCOs, Member States' Community missions, training</p>	The financing mechanism was established by the Regulation.	The financing mechanism covers Member States and Commission needs in a changing commercial and technological "environment".	The Regulation financial mechanism is considered fundamental for the conduction of the related MAA activities in a changing commercial and technological "environment".	<p>Administrative authorities responsible for the implementation of customs legislation in the Member State</p> <p>Relevant Commission Services</p>

QUESTION	SUB-QUESTION	KEY ELEMENTS	JUDGEMENT CRITERIA	INDICATOR	BASELINE	TARGET	ASSESSMENT OF THE OUTCOME	DATA SOURCES
				courses, meetings.				
	<b>Objective<sub>2</sub></b>	<b>Documents supporting customs declarations</b>	Availability of the supporting documentation in the conduction administrative enquiries.	Completeness and quality of documentation provided in the scope of the administrative enquiries  Prevented impact on own resources as result of the administrative enquiries.	The changes introduced by the last review aimed at facilitating the conduction of the administrative enquiries.	The collection of customs documentation in support of administrative enquiries is facilitated.	Member States consider the changes introduced in the Regulation improved the conduction of administrative enquiries in the area of customs mutual assistance in a changing commercial and technological "environment".	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services  EDPS  Relevant European and international partners
		<b>Assistance on request and spontaneous assistance</b>	Usefulness of the mechanisms for assistance on request and spontaneous assistance to improve the process of the related administrative enquiries.	Duration of the administrative enquiries procedure  Prevented impact on own resources as result of the administrative enquiries  Completeness and quality of data provided in the scope of the administrative enquiries.	The changes introduced by the last review aimed at reducing the duration of the administrative enquiries.	The administrative enquiries are completed in a shorter period of time.	Member States consider the changes introduced in the Regulation improved the conduction of administrative enquiries in the area of customs mutual assistance in a changing commercial and technological "environment".	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services  Relevant European partners  EDPS
		<b>Admissibility of evidence</b>	Admissibility of evidence in the conduction of administrative enquiries in the area of customs mutual assistance.	Completeness and quality of data provided in the scope of the administrative enquiries  Prevented impact on own resources as result of the administrative enquiries.	The changes introduced by the last review aimed at providing legal certainty on the use of evidence collected in criminal proceedings.	The provisions on the use of evidence collected in criminal proceedings are clear.	Member States consider the changes introduced in the Regulation improved the conduction of administrative enquiries in the area of customs mutual assistance in a changing commercial and technological "environment".	Administrative authorities responsible for the implementation of customs legislation in the Member State  Relevant Commission Services

#### ANNEX IV. OVERVIEW OF BENEFITS AND COSTS

This section records the resources used for the implementation of the Regulation and provided and overview of its costs and benefits.

The Regulation provides for the financing of all mutual administrative assistance EU actions (Article 42a). These include:

- (a) all costs of installing and maintaining the permanent technical infrastructure making available to the Member States the logistical, office automation and IT resources to coordinate joint customs operations;
- (b) the reimbursement of transport, accommodation and daily allowance costs of representatives of the Member States taking part in the EU missions, joint customs operations organised by or jointly with the Commission and training courses, ad hoc meetings and preparatory meetings for administrative investigations or operational actions conducted by the Member States, where they are organised by or jointly with the Commission;
- (c) expenditure relating to the acquisition, study, development and maintenance of computer infrastructure (hardware), software and dedicated network connections, and to related production, support and training services for the purpose of carrying out the actions provided for in the Regulation, in particular preventing and combating fraud;
- (d) expenditure relating to the provision of information and expenditure on related actions allowing access to information, data and data sources for the purpose of carrying out the actions provided for in the Regulation, in particular preventing and combating fraud
- (e) expenditure relating to use of the CIS provided for in instruments adopted under Articles 29 and 30 of the Treaty on European Union and in particular in the Convention on the use of information technology in customs matters drawn up by the Council Act of 26 July 1995 (replaced by Council Decision 2009/917/JHA), in so far as those instruments provide that that expenditure shall be borne by the general budget of the European Union.

The financing mechanism under the Regulation are mainly in the format of procurement contracts (implemented under direct management) and reimbursement of costs of Member States representatives taking part in the activities foreseen thereof.

The annual budget allocated for conducting all the activities under the Regulation, is known as the AFIS budget, this has fluctuated between EUR 6.4 – 7.4 million for the MFF 2014-2020.

The annual budget for the 2016-2019, with the correspondent break down of the various activities under each line of budget, is detailed in the table below:

<b>AFIS BUDGET (Financing Decision)</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>Total</b>
<b>Development &amp; Maintenance</b>	€ 2,361,400.00	€ 2,991,000.00	€ 2,924,500.00	€ 3,015,000.00	€ 11,291,900.00
<b>Production Services</b>	€ 2,374,700.00	€ 2,066,500.00	€ 2,189,500.00	€ 2,432,034.09	€ 9,062,734.09
<b>Technical Assistance, Training, Coordination</b>	€ 772,000.00	€ 837,200.00	€ 1,626,200.00	€ 550,000.00	€ 3,785,400.00
<b>IT Services (TAXUD)</b>	€ 175,000.00	€ 154,000.00	€ 154,000.00	€ 122,865.91	€ 605,865.91
<b>CCN/CSI (TAXUD)</b>	€ 375,000.00	€ 296,000.00	€ 41,000.00	€ 0.00	€ 712,000.00
<b>HW/SW</b>	€ 570,900.00	€ 806,500.00	€ 729,000.00	€ 1,075,000.00	€ 3,181,400.00
<b>Total</b>	<b>€ 6,629,000.00</b>	<b>€ 7,151,200.00</b>	<b>€ 7,664,200.00</b>	<b>€ 7,194,900.00</b>	<b>€ 28,639,300.00</b>

The groups affected by the Regulation are:

- Citizens and consumers
- Businesses and trade
- Public administrations – EU services
- Public administrations - Member States customs authorities



- **Citizens and consumers**

Individual citizens and consumers are not directly affected by the Regulation and therefore do not incur in any direct costs. However, like in other expenditure programs, the contribution of citizens to their national budgets contribute to the overall EU financial envelope.

On the other side, the individual citizens and consumers benefit indirectly from the better enforcement of the customs and agricultural laws facilitated by the Regulation, which contributes to the protection of the European citizen and consumers' health and the security of the environment.

- **Businesses and trade**

The Regulation sets the obligation for maritime carriers to provide specific information on movements of containers under certain conditions. This information is stored under the Container Status Messages (CSM) directory, developed and maintained by the Commission. The model of implementation of the CSM directory does not impose any costs to the carriers when using global dump. When opting for selecting reporting, estimated implementing costs range from 3.000 to 200.000 €.

The collection of this data in a standardised manner under a EU level directory facilitates the reporting efforts of the carriers, as opposed to the reporting to individual systems in Member States.

- **Public administrations - EU services**

The Regulation is implemented by the Commission, and customs and agricultural administrations in the Member States. The direct costs of implementation of the Regulation are fully borne by the Commission. The costs presented in table 1 represent the total amount allocated by the Commission for the implementation of the Regulation for the period covered by the evaluation (2016-2019).

The Regulation provides a number of tools and mechanisms to support the mutual assistance between Member States and between the latter and the Commission. The evaluation has proved the added value of this harmonised approach at EU level, that would hardly be achieved by a bilateral approach by individual Member States.

A number of databases are set and maintained by the Commission and made available to Member States, as established by the Regulation. These databases allow for the secure exchange, storage and analysis of data at European level for anti-fraud purposes. On the basis of this data, the Commission can perform analysis at European level to support its investigative work and to coordinate the administrative enquiries carried out individually by the Members States. The activities carried out under the Regulation contribute to the protection of the EU financial interests by preventing fraud in the customs and agriculture domain and the recovery of any evaded customs duties and other levies.

• **Public administrations - Member States customs authorities**

The Regulation applies directly to the customs and agricultural administrations in the Member States.

Member States public administrations do not incur in any direct costs in the implementation of the Regulation.

Member States anti-fraud work benefits from the access to the data reported by other Member States and collected at EU level and the use of the mutual administrative assistance tools made available by the Regulation. The mutual administrative assistance framework provided by the Regulation facilitates the anti-fraud work carried by the customs and agriculture services in Member States contributing for the protection of the budgets at national and European level.

<b>Table 1. Overview of costs and benefits identified in the evaluation<sup>32</sup></b>									
		Citizens/Consumers		Businesses Maritime carriers		Administrations European Commission		Administration Member States	
		Quantitative	Comment	Quantitative	Comment	Quantitative	Comment	Quantitative	Comment
<b>Eligible actions for funding under Regulation 515/97</b>									
<b>Costs:</b> <b>Direct compliance costs</b> (adjustment costs, administrative costs, regulatory charges)	<b>Recurrent</b>	0€	-	0€ to 200.000€ per carrier	No costs associated when using global dump. When opting for selecting reporting, estimated implementing costs range from 3.000 to 200.000€ per carrier.	0€	-	0€	-
<b>Enforcement costs:</b> (costs associated with activities linked to the implementation of an initiative such as monitoring, inspections and adjudication/litigation)	<b>Recurrent</b>	0€	-	0€	-	€ 28,639,300	-	0€	-
<b>Indirect costs</b> (indirect compliance costs or other indirect costs such as transaction costs)	<b>Not applicable</b>	-	-	-	-	-	-	-	-

<sup>32</sup> Where there is a prior impact assessment, the table should contain as a minimum the costs/benefits identified in the IA with the information gathered on the actual cost/benefit. As available, the table should include the monetisation (€) of the costs/benefits based on any quantitative translation of the data (time taken, person days, number of records/equipment/staff etc. affected or involved represented in monetary value – see Standard cost model, for example). For all information presented, it should be included in the comments section whether it relates to all Member States or is drawn from a subset. An indication of the robustness of the data should be provided in Annex II on Methodology and analytical models used.

<p><b>Benefits:</b> <b>Direct benefits</b> (such as improved well being: changes in pollution levels, safety, health, employment; market efficiency)</p>	<p><b>Recurrent</b></p>	<p>Not quantifiable.</p>	<p>Protection of the European citizen and consumers' health and the security of the environment.</p>	<p>Not quantifiable.</p>	<p>Data reporting in a standardised manner under a EU level directory facilitates the reporting efforts of the carriers, as opposed to the reporting to individual systems in Member States.</p>	<p>Not available.</p>	<p>Protection of the EU financial interests by preventing fraud and the recovery of any evaded customs duties and other levies.</p>	<p>Not available.</p>	<p>Access to fraud data at EU level and to mutual administrative assistance tools for anti-fraud work. Protection of the national budgets.</p>
<p><b>Indirect benefits</b> (such as wider economic benefits, macroeconomic benefits, social impacts, environmental impacts)</p>	<p><b>Not applicable</b></p>	<p>-</p>	<p>-</p>	<p>-</p>	<p>-</p>	<p>-</p>	<p>-</p>	<p>-</p>	<p>-</p>

**ANNEX V. STAKEHOLDERS CONSULTATION - SYNOPSIS REPORT**

<b>Stakeholder type</b>	<b>Method of consultation</b>	<b>Consultation period</b>	<b>Content</b>
<b>Administrative authorities responsible for the implementation of customs legislation in the Member State</b>  <b>* contact points</b>	- Targeted questionnaire to all Member States	Q4 2019 / Q1 2020	Questions cover key elements of the Regulation such as: scope and definitions; mutual assistance between Member States; cooperation between them and the Commission; relations with third countries; IT systems and databases; etc.)
	- If need be, face-to-face interviews to get clarification on replies		
	- Dedicated meetings to discuss issues of common interest		
<b>Relevant Commission Services</b>  <b>* DG ENV, JRC, DG BUDG, DG AGRI, DG TAXUD, DG HOME, DG TRADE, DG SANTE</b>	- Targeted questionnaire to relevant Commission Services	Q4 2019 / Q1 2020	Questions cover provisions on the IT systems and databases to which the Commission Services have access, as well as cooperation mechanisms under the Regulation used by the Commission Services, including OLAF investigators
	- If need be, face-to-face interviews to get clarification on replies		
	- Dedicated meetings to discuss issues of common interest		
<b>Carriers' organisations</b>  <b>* World Shipping Council (WSC)</b>	- Targeted questionnaire to WSC	Q4 2019 / Q1 2020	Questions cover provisions on the Container Status Messages (CSM) directory
	- If need be, face-to-face interviews to get clarification on replies		
	- Dedicated meetings to discuss issues of common		

	interest		
<b>EDPS</b>	Interview on questionnaire	Q4 2019 / Q1 2020	Questions cover data protection provisions contained in the Regulation
<b>Relevant European and international partners</b> <b>* WCO, Europol</b>	- Targeted questionnaire - If need be, face-to-face interviews to get clarification on replies	Q4 2019 / Q1 2020	Questions cover provisions on relations with third countries and on access to data by third countries and international or regional organisations

The stakeholder consultation was intended to provide information particularly in terms of their effectiveness and efficiency through accessing the experience of stakeholders most closely engaged in implementing Regulation 515/97. The major part of the evaluation was built on the responses from stake holders.

The stakeholder consultation strategy was built in accordance with the Better Regulation Guidelines of the European Commission. It reflects the key principle of providing 'a simple consultation strategy identifying and targeting relevant stakeholders'.

The aim of the consultation was to collect views from stakeholders on their experience and practice in using the provisions and tools provided for in the Regulation. In particular, views were sought on:

- the effectiveness of mutual assistance measures,
- obstacles to implementing assistance measures,
- gaps and shortcomings identified in current assistance measures and
- suggestions for improvements.

Given the specific nature of the Regulation, which is mainly a tool for the exchange of information between Member States and with the Commission and the fact that the Regulation has no direct impact on citizens, it was not envisaged to organise a public consultation for the general public.

The targeted stakeholder consultation included:

- A targeted stakeholder consultation using seven different evidence gathering questionnaires
- Virtual interviews with EU stakeholder groups
- The views expressed by the delegates of the Expert group on mutual assistance in customs matters (EMAC)

## Targeted Stakeholder Consultation (December 2019 – July 2020)

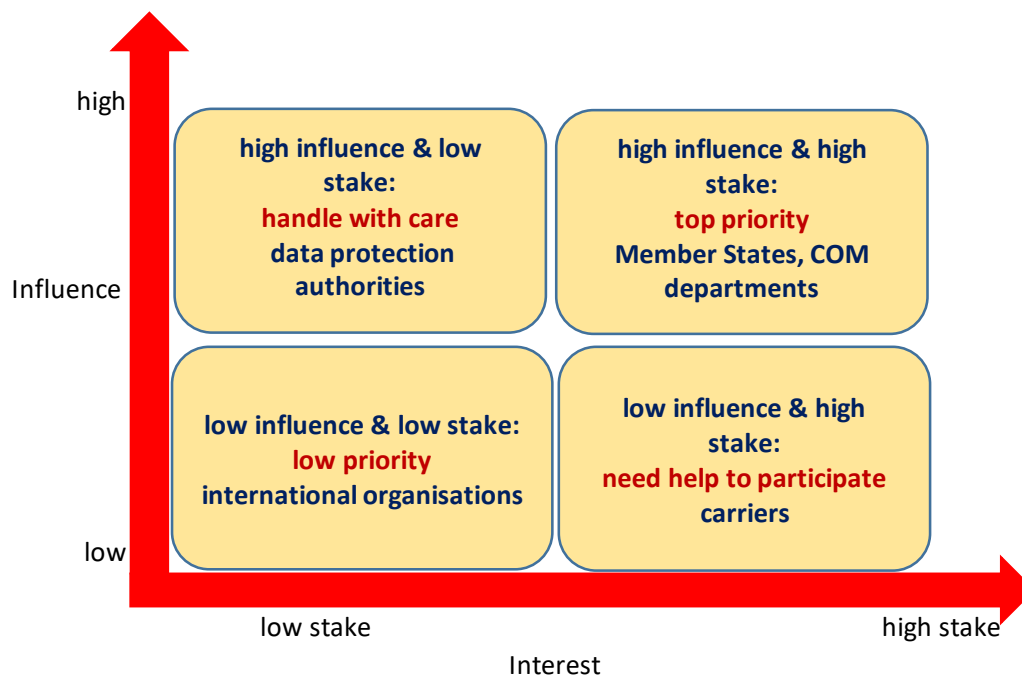
### 1) Questionnaires (December 2019 – April 2020)

Questionnaires were drafted around the five evaluation criteria: effectiveness, efficiency, relevance, coherence and EU added value.

Five stakeholder categories were identified:

- Member States customs authorities
- Commission departments
- Maritime shipping carriers
- Data protection authorities
- International organisations

Figure 1: Stakeholder Mapping Matrix



After identifying the level of influence and interest of each stakeholder category, seven different questionnaires were drafted according to the respective connection to the Regulation.

The questionnaires were designed to bring forward specific aspects relevant to the evaluation and were approved by the Inter-service steering group set up of members from other Commission departments.

The questionnaires did not limit the length of response from consultees and were thus designed to allow scope for as much information and evidence to be provided from

consultees. After each section of the questionnaire an option on providing further comments was inserted. Consultees were encouraged to provide practical examples and their experience in the different topics.

Questionnaires were sent to the contact point list of Regulation 515/97, containing Commission contacts within all Member States. This list contains the competent authorities appointed by Member States for the purposes of applying the Regulation (Art 2(2), 29(2) of the Regulation). Member States had the possibility to distribute parts of the questionnaire to other competent authorities at national level.

Questionnaires were distributed to all Commission departments that could have a potential interest in the Regulation.

The World Shipping Council (WSC) distributed the questionnaire developed for carriers to its members.

A questionnaire on data protection topics was sent to the European Data Protection Supervisor (EDPS) and the European Data Protection Board (EDPB). The EDPB consulted Member States data protection authorities on the questionnaires and provided replies to the Commission.

Three international organisations were asked for their opinion by a special questionnaire: World Customs Organization (WCO), Europol and Eurojust.

Member States contact points of the Regulation, Commission departments and carriers received a link to EU survey for providing their input. All other stakeholders received the questionnaire directly by e-mail. 14 February 2020 was set as a deadline for replies.

Most stakeholders provided their input by end of February while some asked for prolongation of the deadline. By end of April all stakeholder input was gathered.

#### a) Analysis

Table 1 : Stakeholder replies :

<b>stakeholder category</b>	<b>number of replies</b>	<b>questions asked</b>
EU Member States customs authorities	28	97
COM departments	6	74
carriers	7	13
Data protection authorities	18	8
international organisation	1	4
international organisation	1	21
international organisation	1	23



Twenty-seven Member States provided their input (there are 28 replies as one Member State sent two replies due to organisational reasons of the customs competent authorities at national level) by EU Survey. Altogether six Commission departments provided their input by EU Survey as well. Seven carriers sent their replies, six by EU Survey and one by e-mail. The European data protection supervisor (EDPS) sent its reply by e-mail. The European Data Protection Board (EDPB) collected the replies from its members to the questionnaire and sent the summary by e-mail. Altogether 17 Member States data protection authorities (Austria, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Ireland, Latvia, Lithuania, Luxemburg, the Netherlands, Poland, Slovakia, Slovenia, Spain and Sweden) gave their input to the questionnaire. Eurojust, Europol and WCO sent their input by e-mail.

For analysis and overview of the stakeholder replies an analysis model was developed by OLAF policy staff. This analysis model arranges stakeholder replies according to stakeholder and section of the Regulation. Altogether an analysis was done for each question and an overview in the beginning of each section.

The answers collected in the consultation process were treated confidentially. As announced in the questionnaires sent out, the information contained in the evaluation report would be disclosed anonymously, without mention of individual positions of stakeholders.

## b) Results questionnaires

### Agricultural matters

Nine Member States indicate that they have used the Regulation in agricultural matters. All of them confirm that the scope of the Regulation has appropriately met their needs on mutual administrative assistance.

In terms of frequency no Member State mentions a daily use and the situation varies considerably from one Member State to another.

With regard to the different parts of the Regulation used by Member States for agricultural purposes, three Member States have not used this mechanism at all, whereas two Member States report very frequent use, mostly assistance on request or spontaneous assistance and relations with the Commission.

Concerning relations with third countries, most respondents have not had recourse to these provisions.

Databases have been rarely used by Member States for this purpose.

As to the frequency in sending requests for assistance for agricultural purposes, a daily or weekly use does not exist. Five Member States mentions a use less than once within 6 months. Two Member States send requests several times a month, and two Member States less than once a month. One Member State has never sent requests.

The situation is similar on the frequency in receiving requests for assistance. No Member State mentions daily or weekly use. Five Member States mention a use less than once within 6 months. Three Member State receive requests several times a month, and one Member State less than once a month. One Member State has never send requests.

Regarding to what extent the mutual assistance mechanism has contributed to detect breaches in agricultural legislation, four Member States indicated a high contribution, whereas two Member State mention moderate contribution and one Member State little contribution.

Only one Commission department has used the Regulation for agricultural matters. Only this Commission department answered the questions under this section and considers that the scope of the Regulation with regard to agricultural matters appropriately met its needs. The Commission department has used the mechanisms set up by the Regulation with a view to ensuring compliance with agricultural legislation several times a month. It rated to have used the part relations with the Commission (Art. 17 to 18e) frequently. CIS (Art. 23 to 41) was used rarely and on the frequency of the use of CSM, IET and FIDE there is no opinion provided.

#### Customs matters scope and definitions

Twenty-seven Member States that answered the questions under this section have used the Regulation for mutual administrative assistance in customs matters. Some Member States reported a technical problem to answer some of the questions. These Member States were given the opportunity to send the reply later via AFIS mail. Their answers were inserted into the table to provide a full picture.

Twenty-five Member States consider that the scope of the Regulation largely meets their needs in terms of mutual administrative assistance (Member States' rating '4' and '5'). In general, it is considered that the Regulation provides extensive coverage for mutual assistance in administrative matters, even when complemented by other legal instruments such as in the areas of administrative cooperation in the field of excise duties (Regulation 389/2012), VAT (value added tax) (Regulation 904/2010) and cooperation between EU customs administrations (Naples II Convention). One Member State expressed the need for legal clarification of the link of the scope of Regulation 515/97, with the regulations that can apply it *mutatis mutandis*, without being customs legislation in the meaning of the Union Customs Code. The implementation of Regulation 1889/2005 on cash controls (currently Regulation 1672/2018) were given as an example. The need for coverage of tax related areas and clarification on how to apply the Regulation for environmental issues or the protection of intellectual property rights were also mentioned.

Nineteen Member States did not find difficulties in the application of the Regulation in the customs domain. They consider that no further areas should be covered by the Regulation to adequately meet their needs.

Four Member States consider that other areas are needed, namely in relation to waste, ozone depleting substances, drug precursors, tax matters, cash controls and cybercrime. The need for clear communication channels, information on new regulations falling under the Regulation, alignment with the Naples II Convention and less restricted data protection rules to facilitate data sharing and exploitation are also mentioned.

Five Commission departments answered this section. They confirm that they use the Regulation on mutual administrative assistance in customs matters and that the scope of the Regulation somehow corresponds to their needs. None of them replied that the scope of the Regulation would not at all correspond to their needs. Commission departments point out that there was a compelling need for instruments like the Regulation for the enforcement of agricultural law. They suggest that the Regulation should regulate data exchange concerning research projects.

Only one Commission department has found areas in the customs domain where it encountered difficulties in the application of the Regulation. One Commission department is of the opinion that there are further areas that should be covered by the Regulation. An extension to all product categories (and no limitation of export data to excisable goods) would help this Commission department in its daily work.

#### Assistance on request

Sixteen Member States send requests for assistance or spontaneous assistance at least several times a month. The same number of Member States receive requests for assistance or spontaneous assistance several times a month.

The first questions of the section assistance on request (Q23 and Q24) show that there is no direct correlation between the number of requests sent (Q23) and received (Q24). Nineteen Member States believe that the Regulation has contributed very positively to a detection of breaches in customs legislation.

When requesting mutual administrative assistance, eleven Member States faced no difficulties with the mutual administrative assistance process. Sixteen Member States faced difficulties, such as ‘requested actions not in the jurisdiction of Customs Administration’ and ‘no time limits, so late answers’. One Member State suggested making the status of a request visible to the sender (for example ‘received’, ‘in handling’, ‘processed’, etc.).

When requested for mutual administrative assistance from other Member States, 10 Member States received the information in the right time. Seventeen Member States faced difficulties. The most frequently occurring problem was ‘information / documentation requested not available’.

Twenty Member States rated the Regulation with regard to the conduct of joint customs operations (special watch on persons, goods and means of transport) as useful.

#### Relations with COM

All Member States have communicated relevant information to the Commission but the frequency varies from a Member State to another. Apart from one Member State, which

reports on a daily basis, a majority of Member States have communicated several times a week or a month, whereas others mention a communication less than once a month or even less than once within 6 months.

No Member State considers the information sent by the Commission as not useful at all for its work. On the contrary, 22 Member States mention that the information sent by the Commission has been useful or useful to a large extent for their work. Five Member States are neutral and only one is mentioning limited usefulness.

Member States are divided between those who have not faced any specific challenges with mutual assistance communications (13 Member States) and those who have faced challenges (15 Member States). Among those who have faced challenges, many indicate that information received was not specific enough. However, 10 Member States have reported more specific issues, such as the quality of the information received and evidence provided by the Commission.

Twenty-four Member States indicate that the information included in the mutual assistance communications led to specific national measures.

Three Commission departments have been involved in the mutual administrative assistance mechanisms based on Articles 17 to 18e. These Commission departments consider the information in the mutual assistance communications as useful. As an example of challenges faced, a great delay of the information received from mutual assistance communications is mentioned. One Commission department pointed out that it would be helpful, not only to receive the mutual assistance communications conclusions, but also the data extractions. For Commission departments it would be important to make it mandatory for Member States to take measures on transmitted irregularities in a specific time in order to avoid the loss of traditional own resources.

### Transport directory

By type of data, 18 Member States answered, that they consider goods and companies very useful for their work.

By means of transport, 23 Member States believe that data regarding all means of transport are useful for their work, recognising that transport by train and post are equally important with road and air. One Commission department answered the questions concerning the transport directory. This Commission department considers the data on goods, persons and companies as very useful. Data regarding transport by air, train or road, as well as postal transport is considered to be very useful for this Commission department.

### CSM

Thirteen Member States have used the CSM directory on a daily basis, mainly in the domains of commercial customs-fraud (misdescription of goods, origin, value, anti-dumping duties, etc.), non-commercial customs-fraud, intra-EU mutual assistance requests and third-country mutual-assistance requests. CSM is mainly needed for the following customs activities: investigative activities, risk assessment, post-clearance auditing or controls, support to Joint Customs Operations, pre-clearance import controls and export controls.

Fourteen Member States rate CSM as extremely useful for their work. The possibility of tracing back the movements of any specific container is rated as beneficial for the daily work by 26 Member States. In terms of tracking and tracing container movements, 18 Member States rate timeliness (the extent to which container-movements are up-to-date), 15 Member States coverage (the extent to which the container-movements cover global sea-traffic), 16 Member States completeness (the extent to which container-movements have no time gaps) and 16 Member States complementary information (the extent to which container-movements are combined with other data-elements related to the commercial transaction associated with the transportation, such as: commodity transported, quantities, consignor and consignee, customs regime, etc) as very important for their work. The CSM performance is rated twenty-six Member States as at least on a medium level.

The current scope of the CSM directory meets the needs of 16 Member States. For 12 Member States it would be helpful for their work to extend the scope of CSM to any other product.

Only two Commission departments have used the CSM directory. Both of them have used CSM at least on a weekly basis. Commercial customs-fraud and non-commercial customs fraud were the main customs-domains they used CSM for. Both Commission departments used CSM for risk assessment but as well for pre-clearance import controls, post-clearance auditing or controls, investigative activities, other customs law enforcement activities and export controls. They rate CSM as very useful for their daily work.

In terms of tracking and tracing container movements timeliness, coverage of global sea-traffic, completeness of container-movements and complementary information are rated as very important. The performance of CSM regarding timeliness and coverage of global sea-traffic is rated on a medium level. Both Commission departments rate the complementary information provided by CSM on a poor level. The views differ regarding the completeness of current CSM data. While one Commission department rates it as poor, the other one rates it on a good level.

The current scope of export data in CSM does not meet the needs of the Commission departments. They point out that the scope of export data should be extended to any other product. They provide the information that CSM containing additional information linked to the transportation of goods (container weight) would be useful. Expansion of the scope of the Regulation to containers remaining on board and to empty containers entering or leaving EU customs territory would promote them in their daily work as well.

The Regulation obliges carriers to report CSM when it is established that the container is destined to be brought into (or leave) the customs territory of the EU. Carriers are satisfied with this obligation and have integrated this obligation in their computer systems. CSMS have to be transmitted no later than 24 hours after the information is entered into the ocean carrier's electronic equipment tracking system. Five of the respondent carriers rate this obligation on a medium level. Export shipments from the EU require the provision of CSMS

only for certain categories of products (subject to excise duties in particular tobacco, alcohol and energy products). Nearly half of the carriers reply that they report all export events due to the implementation effort. To minimise the financial burden for carriers the Regulation introduces the possibility to transfer all CSMs without selecting them individually. Nearly half of carriers have made use of this possibility. For them this opportunity is extremely useful. Nearly all carriers rate the possibility to report CSMs to a single EU-central service, rather than reporting CSMs to multiple national-servers as extremely useful. For them it would save implementation effort.

The Regulation does not require carriers to report any details regarding the bill of lading associated with the transportation. All carriers providing feedback are convinced this would have an impact on their effort (including costs) of reporting if this type of data was required. Six carriers rate this additional requirement even as a significant impact for them.

## IET

Twenty Member States use the mechanisms concerning IET with a view to ensuring compliance with customs legislation. The frequency of usage varies from never to less than once a month or less than once within 6 months, whereas for eight of them the use is more regular (daily, weekly or monthly).

Member States make mostly use of the IET database in the customs domain of commercial customs-fraud. The customs activities for which Member States have used IET more often were investigative activities and risk assessment.

Sixteen Member States rated IET as useful or even extremely useful. However, 10 Member States rated the usefulness of IET for their daily work on a low level.

The scope of export data in the IET directory is currently limited to products subject to excise duties (tobacco, alcohol, energy products). Eleven Member States express that this situation covers their needs, whereas 17 Member States declare that the scope of export data in IET directory does not meet their needs in terms of data availability.

The enrichment of IET with data concerning national transit and direct export is considered as useful or even extremely useful by 18 Member States. At least 18 Member States rate the access to the data obtained sufficient for the purpose of their query.

Two Commission departments used the IET directory and answered the questions of this section. They have used Import / Surveillance at least on a monthly basis while they made use of Export / ECS not more often than once a month. Transit / ATIS was used by one Commission department on a daily basis, the other one never used it. Import / Surveillance was mainly used in the customs domain of commercial customs-fraud (i.e. undervaluation, misclassification, misuse of origin and preferential duties), same as Export / ECS and Transit / ATIS.

Import / Surveillance was mainly used for the customs activity ‘risk assessment’, same as Export / ECS and Transit / ATIS. For both Commission departments IET has been at least useful for their work on a medium level. The current scope of products does not meet the needs of neither of them in terms of data availability. For both of them it would be helpful to have ‘any other product’ within the scope of export data. While one Commission department considers the current range of access as sufficient, the other Commission department promotes full access and complete data sharing for Commission departments.

In their comments Commission departments point out they would appreciate the capability to extract data from IET.

### Relations with third countries

In terms of frequency in communication of information to third countries in the absence of an agreement on cooperation and mutual administrative assistance in customs matters concluded by the EU (Art 19 of the Regulation), 24 Member States have never or rarely used this possibility and only three Member States declare having used it once or several times a month.

Eleven Member States have never used the possibility of conducting administrative and investigative cooperation missions in third countries (Art 20 of the Regulation) and 14 Member States less than once within 6 months.

With regard to the level of satisfaction of the implementation of the provision on communication of information to third countries in the absence of an agreement concluded by the EU (Art 19 of the Regulation), 15 Member States express no opinion. However, those who express an opinion are generally satisfied or very satisfied with the implementation, only two Member States express they are not satisfied.

Concerning the level of satisfaction with regard to the implementation of the provision on the conduct of administrative and investigative cooperation missions in third countries (Art 20 of the Regulation), views are more divided among respondents even though there are more Member States satisfied or very satisfied with the implementation than unsatisfied. Nine Member States have expressed no opinion.

Two Member States that have expressed no opinion explain that it is due to the lack of experience with this provision. Another one very satisfied with the implementation confirms the need for this provision.

### CIS

Twenty-three Member States consider that CIS is likely to fulfil its aim. Several Member States reported the need for data completion and timely reporting of the cases. OLAF is encouraged to add cases to the system, as well as Member States. Some comments lead to believe that Member States are not familiar with all the features of CIS.

CIS is used on a regular basis (monthly, weekly or daily) by 25 Member States. CIS is most commonly used to support risk assessment (22 Member States), prevention and detection of customs infringements (for more than 18 Member States) and Joint Customs Operations (17 Member States).

The system is considered most useful for the fight against tobacco smuggling (26 Member States) and illicit drugs traffic (21 Member States), followed by illicit trade of drug precursors (19 Member States), cash controls (19 Member States) and counterfeit (18 Member States). Twenty-two Member States considers CIS useful for intra-EU mutual assistance requests. Ten Member States used it also for mutual assistance with third countries.

Twenty-three Member States were able to retrieve or gather from CIS the information needed for their daily work. Twenty-four Member States are satisfied or very satisfied with the information provided by the system.

The shortcomings mostly identified in CIS are missing data/ missing cases (17 Member States) and an incomplete or insufficient case dataset (16 Member States). The lack of feedback by other concerned Member States was also mentioned in nine replies.

Other problems such as the multiplication of similar systems, the need for reporting guidelines and the lack of engagement by some Member States in using CIS is also mentioned. The importance of aligning the retention period of CIS data under Council Regulation 515/97 and the one under Council Decision 2009/917/JHA is also stated. It is suggested to add a bulk upload functionality to CIS to facilitate the insertion of cases.

Fifteen Member States have no opinion on the question whether the aim of the newly introduced provision allowing restricting visibility of CIS data to national competent authorities was achieved. Seven Member States state that it has been very much achieved.

Twenty-two Member States consider that the periods for data storage defined for CIS are sufficient to meet their needs in the performance of their work.

Member States stress the need to align the provisions on CIS under the Regulation with Regulation (EU) 2018/1672 on controls on cash entering or leaving the Union and Council Decision 2009/917/JHA of 30 November 2009 on the use of information technology for customs purposes. The need to extend the interoperability between CIS and WCO CEN is also highlighted.

Only one of the replying Commission departments used CIS. This Commission department expresses that CIS fulfils its aim very likely. It has used CIS on a monthly basis for risk assessment. The Commission department considers CIS useful in the domains of commercial fraud - misdescription of goods, origin and value, commercial fraud - anti-dumping duties, counterfeit, cash control, drug precursors, CITES, cultural goods, waste, dual-use goods and human health and safety. The Commission department was able to retrieve/gather the information needed for the daily work from the CIS. It was very satisfied with the



information provided by the system. As shortcomings missing data / cases are identified. The current range of access is considered as sufficient to cover the needs for information sharing with all relevant authorities. No opinion is provided on the periods for data storage.

The World Customs Organisation considers CIS data as very useful, even for its members' activities.

## FIDE

Fourteen Member States have no opinion if FIDE fulfils its objective as they don't use it. Seven Member States consider FIDE is not likely to fulfil its objective. The fact that the system is not fed by all Member States nor the Commission, is named as the weakest point of the system. FIDE is never or rarely used by a large number of Member States.

Nine Member States have no opinion on which customs activities to use FIDE. Other Member States answered that FIDE is most commonly used to support the detection of customs infringements (nine Member States), investigative activities (eight Member States), risk assessment (seven Member States) and for customs-law enforcement activities (seven Member States).

FIDE is considered most useful for the fight against tobacco smuggling (15 Member States), excise fraud (11 Member States) and illicit drugs traffic (10 Member States).

Twenty-one Member States were not able to retrieve or gather from FIDE the information needed for their daily work. Fifteen Member States have no opinion how to rate the information provided as they don't use the system. Twelve Member States rate FIDE on a medium level and below.

The shortcomings mostly identified in FIDE are missing data/missing cases (seven Member States) and an incomplete or insufficient case dataset (seven Member States). Data protection constraints were also reported by four Member States. The lack of engagement in using FIDE by most Member States is also mentioned. It is suggested to improve the search engine. Twenty Member States consider that the current range of access of FIDE data is sufficient to cover the needs for information sharing with all relevant authorities. Sixteen Member States have no opinion on the periods for data storage, as they don't use the system. The remaining Member States show a divided picture on their rating.

None of the participating Commission departments have used FIDE. Therefore they have not answered the questions of this section.

## Data analysis

Twenty-six Member States have used data from the above mentioned databases for the purpose of strategic and / or operational analysis.

Four out of five participating Commission departments have made use of data for analysis purposes based on the Regulation and have used it for the purpose of strategic and/or operational analyses.

### Personal data protection

The European Data Protection Supervisor (EDPS) has not encountered issues affecting the rights of the data subjects under its supervisory competence. EDPS is of the opinion that the rights of data subjects are sufficiently guaranteed by the Regulation at Member States and Commission level. Nevertheless the cooperation mechanisms have to be streamlined with Article 62 of Regulation (EU) 2018/1725.

The coordination between EDPS and the Joint Supervisory Authority (JSA, established by Decision 2009/917/JHA) could be improved. EDPS identified issues in the implementation in relation to personal data protection requirements of the CIS. Coordinated supervision of IT systems according to Article 62 of Regulation (EU) 2018/1725 has to be implemented.

The European Data Protection Board (EDPB) collected the replies from its members to the questionnaire. Altogether, data protection authorities from 17 Member States (Austria, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Ireland, Latvia, Lithuania, Luxemburg, the Netherlands, Poland, Slovakia, Slovenia, Spain and Sweden) replied to the questionnaire.

No Member States data protection authorities have identified issues affecting the safeguards of the rights of the data subjects. All participating Member States data protection authorities except one consider that the rights of data subjects are sufficiently guaranteed by the current mechanisms of independent supervision.

Concerning the coordination between the EDPS and the JSA six of the respondent Member States data protection authorities are convinced that it is very good, while two Member States data protection authorities are of the opinion that the coordination is not good. Four Member States data protection authorities do not have an opinion on this topic. One data protection authority pointed out that since April 2017 the coordination and cooperation between the CIS SCG, the JSA CIS and the EDPS has been very bad.

Two Member States data protection authorities have identified issues in the implementation in relation to personal data protection requirements of the Regulation.

One data protection authority doesn't consider the current range of access to personal data for competent authorities of Member States and Commission departments in accordance with EU data protection legislation and that the regulations concerning the transmission to third countries require further consideration.

Only seven Member States data protection authorities have made any audits/inspections on the range of access to personal data in the scope of the Regulation within the last five years. Ten Member States data protection authorities have not done so.

One Member State data protection authority mentions that the CIS established by the decision 2009/917/JHA is still rarely used by Member States competent authorities.

**Analyses of the stakeholder replies (by section of questionnaire) are included in Annex to this report.**

## 2) Bilateral virtual interviews with selected stakeholders (June / July 2020)

After analysing the stakeholder replies and especially their comments in writing some questions remained.

Therefore bilateral meetings Member States were envisaged in order to cover a broad variety of their views and interests. Six Member States were chosen based on the quality of the feedback provided at the questionnaires, geographical and population representation, as well as the Council presidencies in the current and following mandates: Belgium (BE), Croatia (HR), Czechia (CZ), Germany (DE), France (FR), Portugal (PT).

The bilateral interviews focused on the sections of the Regulation where Member States provided most relevant comments. Germany declined the invitation due to lack of availability.

From Commission departments DG TAXUD was considered to be the most important stakeholder as DG TAXUD uses, except for FIDE, all the databases mentioned in the Regulation.

The World Shipping Council (WSC) was able to provide further insight in the positions of its members on CSM.

Table 2: Bilateral interviews with selected stakeholders / Overview:

Section of questionnaire	BE	CZ	FR	HR	PT	DG TAXUD	WSC
Agricultural matters		x		x			
Scope and definitions (Articles 1 to 3)	x	x	x	x			
Assistance on request and spontaneous assistance (Articles 4 to 16)	x	x	x	x	x		
Relations with the Commission (Articles 17 to 18e)	x			x		x	
Transport directory (Article 18a, paragraphs 1 to 3)				x	x		
Container Status Messages (CSM) directory (Article 18a, paragraphs 4 to 9)	x	x		x	x	x	x
Import, Export and Transit (IET) directory (Article 18d)				x	x	x	
Relations with third countries (Articles 19 to 22)	x			x			
Customs Information System (CIS) (Articles 23 to 41)			x	x	x	x	

Customs File Identification Database (FIDE) (Articles 41a to 41d)				x			
Use of data for analysis purposes				x		x	

In total, seven bilateral interviews with selected stakeholders took place.

Concerning the use of the Regulation, all Member States customs authorities asked the Ministry of Agriculture on the usage.

Regarding the scope of the Regulation, Member States customs authorities mention that the way of applying the Regulation is different between Member States due to the status, competence and powers of their respective customs authorities. This refers for example to trafficking drugs, weapons and intracommunity excise fraud. A need for extension of the scope to cybercrime, IPR, substances that deplete the ozone layer and shipment of waste is pointed out. Additionally, one Member States customs authority defines the need for a legal clarification of Art 2 of the Regulation.

In the field of assistance on request and spontaneous assistance, Member States customs authorities ask mainly for a definition of a time period (minimum and maximum) for communications. Knowledge about the status of the request sent (received/being treated/finalised) would be appreciated. A need for well described questions is pointed out.

The opinions on relations with the Commission are more diverse between Member States customs authorities and Commission departments. While some are totally satisfied with clear mutual assistance communications, others face the problem that the information sent via mutual assistance communications is not clear enough and there are difficulties to understand if the mutual assistance is for intelligence or recovery purposes. Mutual assistance communications not being specific enough for the creation of risk profiles is also mentioned.

Concerning the transport directory the opinions differ between no need for a further implementation and the consideration of a full implementation of the transport directory as useful for having a complete picture.

On CSMs, Member States customs authorities and Commission departments have several comments. They point out the need for an extension of the scope of data, a need for training and a possibility of combining CSM with other databases. But they also mention a problem of incomplete data and a gap on reporting empty containers as they are out of range of the Regulation.

Carriers are satisfied with their reporting obligations and the current situation.

Member States customs authorities and Commission departments are satisfied with using the IET database. They use it for risk profiles, set alerts and track containers. An extension to national transit data and national export data as well as an extension of the scope to other risk commodities is considered useful. Special trainings could help to make use of the full range of data.

On relations with third countries Member States customs authorities make more use of mutual administrative assistance agreements. One Member State customs authority points out that ‘legal commitment’ in Art 19 and the reference in Art 21(2) to Art 12 mutatis mutandis are legally unclear.

Member States customs authorities and Commission departments are satisfied with the CIS database but it should contain more cases to make better use of it. Member States that want to access should first share their own data. It was asked for the possibility of a bulk import.

Commission departments do not have access to FIDE. Member States customs authorities confirm that the database is not sufficiently used. OLAF should contribute to the exchange of cases. More workshops could motivate Member States to be more active.

Member States customs authorities and Commission departments use the data for data analysis purposes. One Member State customs authority mentions difficulties concerning INTEL4CUSTAF on the relationship between the Regulation and the GDPR.

### **Expert group on mutual assistance in customs matters (EMAC)<sup>33</sup>**

The EMAC meets twice a year (normally in June and November) to exchange and discuss on their views and experiences with a view to ensuring the correct application of customs and agricultural legislation.

Due to the Covid-19 situation the meeting planned for June 2020 had to be postponed. Nevertheless in earlier meetings Member States have been updated on the evaluation process and on the sending of the questionnaires. They had the opportunity to provide input or express concerns.

### **Overall messages from the consultation / conclusion:**

The overall impression is that stakeholders are satisfied with the Regulation as it stands. There is no evidence in the evaluation that demonstrates a strong need for an amendment.

The replies to the stakeholders’ consultations have shown a number of issues in the implementation of the Regulation. These issues can be addressed by other means than an amendment of the current legal basis.

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<sup>33</sup> <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3380>