



CIS Supervision Coordination Group

ACTIVITY REPORT 2014-2015

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1. Introduction

The aim of the Customs Information System (CIS) is to create an alert system within the fight against fraud framework so as to enable any Member State entering data in the system to request another Member State to carry out sighting and reporting, discreet surveillance, a specific check or operational and strategic analysis.

For these purposes, the CIS stores information on commodities, means of transport, persons and companies and on goods and cash detained, seized or confiscated in order to assist in preventing, investigating and prosecuting actions which are in breach of customs and agricultural legislation (the former EU ‘first pillar’) or serious contraventions of national laws (the former EU ‘third pillar’). The former ‘first pillar’ part is supervised by the CIS Supervision Coordination Group (SCG), while the latter ‘third pillar’ part is supervised by a Joint Supervisory Authority (JSA) composed of representatives of the national data protection authorities (DPAs).

The CIS SCG is set up as a platform in which the DPAs responsible for the supervision of the CIS in accordance with Regulation (EC) No 766/2008 - i.e. the EDPS and national DPAs - cooperate in line with their responsibilities in order to ensure coordinated supervision of the CIS.

The Coordination Group shall:

- examine implementation problems in connection with the CIS operations;
- examine difficulties experienced during checks by the supervisory authorities;
- examine difficulties of interpretation or application of the CIS Regulation;
- draw up recommendations for common solutions to existing problems;
- endeavour to enhance cooperation between the supervisory authorities.

This document reports on the activities of the CIS SCG during the years 2014 and 2015.

2. General Framework

2.1. Legal Framework

The CIS¹ was created to store information on commodities, means of transport, persons and companies, and in addition on goods and cash detained, seized or confiscated in order to assist in preventing, investigating and prosecuting actions which are in breach of customs and agricultural legislation or serious contraventions of national laws. The Customs Files Identification Database (FIDE) is a related database

¹ The CIS is based on Regulation No 515/1997, OJ L 82, 22.3.1997, p. 1, as amended by Regulation No 766/2008, OJ L 218, 13.8.2008, p. 48 as well as on Council Decision No 2009/917/JHA, OJ L 323, 10.12.2009, p. 20.

storing information on legal and natural persons under investigation for breaches of customs legislation established under the same legal bases.

One special characteristic of CIS and FIDE is that they are based on a double legal basis. In addition to Council Regulation (EC) No 515/1997 governing CIS as it relates to customs and agricultural legislation ("CIS former 1st pillar"), Council Decision No 2009/917/JHA ("CIS former 3rd pillar") provides a separate legal basis in the former third pillar for the use of CIS in relation to serious contraventions of national laws, replacing the CIS Convention.

The aim of the CIS is to create an alert system in the framework of the fight against customs fraud and breaches of certain other laws by enabling the Member State which enters data into the system to request another Member State to carry out one of the following actions:

- sighting and reporting,
- discreet surveillance,
- a specific check,
- operational and strategic analysis.

The CIS can contain a range of data on suspects, such as names, addresses, numbers of identity documents, description of physical characteristics, warnings (armed, violent, escaping) and the reasons for inclusion in the database.

Since 2008, Regulation 515/1997 also includes a legal framework for the FIDE, which enables the national authorities responsible for carrying out customs investigations on persons or businesses to identify competent authorities of other Member States which are investigating or have investigated the same persons or businesses in order to coordinate their investigations. This database stores only basic information on investigations (such as reference, start date and the status of the investigation), investigating authorities (names and contacts) and persons or companies under investigation.

The functionalities of CIS and FIDE under the two legal bases are identical; the difference is to which kind of (suspected) breaches entries relate: CIS former 1st pillar contains entries on (suspected) breaches of Union customs and agricultural legislation², while CIS former 3rd pillar contains entries on (suspected) certain other serious breaches of national laws.³

As regards supervision, Article 37 of Regulation 515/1997, as amended by Regulation 766/2008, sets out the legal framework for CIS former 1st pillar. National DPAs are responsible for supervising that the processing of personal data in CIS by national authorities does not violate data subjects' rights in accordance with the respective national legislation. The European Data Protection Supervisor (EDPS) in turn shall supervise compliance of the Commission's processing operations with Regulation (EC) 45/2001. Article 37(4) establishes that the EDPS shall –at least once a year– convene a meeting with the national DPAs competent for the supervision of the CIS. This provision is the basis for the work of the CIS SCG.

² See Article 2 of Regulation No 515/1997.

³ See the list in Article 2(1) of Council Decision 2009/917/JHA. Examples include drug trafficking and arms sales.

As the provisions on FIDE do not contain specific rules on supervision and data protection, the general rules for CIS apply, in accordance with Article 41a (1).

The supervision regime for CIS former 3rd pillar is different. Under this legal basis, Article 26(1) of the Council Decision states that the EDPS shall supervise the activities of the Commission regarding the CIS. Article 25 sets up a Joint Supervisory Authority ("Customs JSA"), consisting of two representatives of each national DPA, with a secretariat provided by Council staff.

This means that there are two forums for the coordinated supervision of the CIS and FIDE, the CIS SCG and the Customs JSA. The relationship and working arrangements between the two will be described in the next section.

2.2. Relationship with Customs JSA

As outlined above, the CIS is based on a double legal basis. While the EDPS, national DPAs and the CIS SCG are competent for the system under Council Regulation (EC) 515/1997, under Council Decision 2009/917/JHA, the EDPS is competent for supervising the Commission's activities regarding CIS, but he is not a member of the Customs JSA, which supervises the system.

Article 26 (2) establishes that the JSA and the EDPS shall cooperate, each acting within their own competences. To this end, both groups shall meet at least once a year (Article 26(3)). Because the members of both groups are largely identical – with the exception of the EDPS and the respective secretariats–, the meetings of the CIS SCG – to which the secretariat of the Customs JSA is always invited – are at the same time considered to also be the meeting of the EDPS with the Customs JSA. The other way around, the EDPS is invited to parts of the Customs JSA meetings as observer.

Close cooperation between the Customs JSA and the CIS SCG is essential. While CIS former 1st pillar and CIS former 3rd pillar are legally and technically separated, their functionalities are identical, meaning that any issues needing supervisory attention are likely to occur in both databases. Additionally, from the users' perspective, there is no visible difference between CIS former 1st pillar and CIS former 3rd pillar.

2.3. Revision of the legal basis

On 25 November 2013, the Commission published a 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. The EDPS had provided informal comments on this proposal and issued an opinion in 2014.⁴

Aims of the published proposal include simplifying the legal instrument, integrating the various parts of the IT system and streamlining data protection rules. In terms of additional functions, it introduces the

⁴ https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2014/14-03-11_agriculatural_matters_ex_sum_EN.pdf

possibility to restrict the visibility of a case to certain Member States. The proposal also addresses financing aspects of customs operations.

3. Organisation of coordinated supervision

3.1. Main principles

According to the legal basis, meetings must take place at least once a year. It is standing practice to organise two meetings per year.

In the meetings, the DPAs of all EU Member States are represented, as well as the EDPS, who also provides the secretariat for the Group, and the Data Protection Secretariat of the Council, which provides the secretariat for the Customs JSA. As the members of the Group and the Customs JSA are largely identical, these meeting also serve as meetings between the EDPS and the Customs JSA, as foreseen in Article 26 (3) of Council Decision 2009/917/JHA.

Documents to be discussed are usually prepared by a rapporteur from the Group or the secretariat; where appropriate, the secretariat of the Customs JSA can also be involved. Setting priorities for the work of the Group is the prerogative of the Members.

3.2. Overview of meetings in 2014-2015

This is the third activity report of the CIS SCG. It covers the fifth and sixth years of existence of the Group and outlines its activities during the years 2014 and 2015.

In 2014, the CIS SCG held two meetings in Brussels, the first one in June (17/06/2014) and the second one in December (10/12/2014).

In the June meeting, it was announced that the group, in cooperation with the Customs JSA, adopted the activity report for the preceding two years (2012-2013) under written procedure. As the vice-chair Gregor König left the Austrian DPA, a new vice-chair from the Polish DPA, Piotr Drobek was elected. Information was given about two inspections: the first one is an inspection of the CIS (and FIDE) carried out by EDPS at the European Anti-Fraud Office (OLAF) premises, and the second one is a national investigation carried out by the Irish DPA on CIS. Following the discussion on the draft Guide of Access on data subjects' rights, the members gave an update on their latest national experiences. The members discussed the Work Programme 2014-2015 with a view to adoption.

In the December meeting, the EDPS informed the group that his inspection report containing specific recommendations following the on-the-spot inspection of the CIS and FIDE carried out at OLAF premises was adopted. Then, an OLAF representative presented the 2013 AFIS Business Report and the latest developments. Following the discussion about the draft Guide of Access, the Vice-Chair suggested to work

on a draft common inspection plan of the AFIS security policy. The Group agreed to invite all Members to provide their suggestions on the approach to take on a Common Format for Inspections based on their national experiences.

In 2015, the CIS supervision coordination Group held also two meetings in Brussels: in June (04/06/2015) and in December (11/12/2015).

In the June meeting, the EDPS gave a follow-up of his on-the-spot inspection at OLAF. Then EDPS also provided information on the future Registered Exporters System (REX), a modernized system of certification of origin based on a principle of self-certification by exporters. The Group agreed that the Guide of Access to CIS should be adopted by the end of June under written procedure. Following the discussion about the common inspection plan of the AFIS security policy, the Czech DPA volunteered to be the rapporteur of the Common Format for Inspection. The Group agreed that all members should provide input based on their national experience. The Group agreed to postpone the election of the Chair and Vice-Chair to the December meeting.

In the December meeting, an election was held by means of a secret ballot and the representative of the Polish DPA, Piotr Drobek was unanimously elected as Chair. The election of a new Vice-Chair was postponed. OLAF gave a presentation on the recent developments regarding the CIS, namely the changes brought to Regulation (EC) 515/1997⁵ by Regulation (EU) 1525/2015. As follow-up to the inspection held at OLAF premises, the EDPS informed about a recent letter addressed to OLAF with the last remaining recommendations left to be implemented. DG TAXUD gave a presentation on the future REX. The Group decided to extend the period of the Work Programme 2014-2015 until the end of 2016. Following the adoption of the Guide of Access to CIS, the Group agreed to continue investigating common inspection plan of the AFIS security policy. The draft of the Common Format for Inspecting the CIS was presented by the rapporteur and opened for comments.

4. Activities of the CIS SCG during the year 2014

Two inspections were carried out, one by the EDPS at OLAF and one by the Irish DPA. The inspection of the EDPS at OLAF premises ended up with recommendations. The Irish DPA presented the results of their national inspection on CIS. The scope of the inspection was to examine the types of personal data held in the CIS, how the system receives the data, how the data is processed, any complaints about the system in relation to data protection and physical and technical security.

OLAF representative presented the 2013 AFIS Business Report and the latest developments. He gave detailed statistics on the use of CIS and updated the Group on the recent changes made to the AFIS framework. OLAF representative informed the Group that the Information Security Policy was adopted in October 2014 and that several Information Security Activities, such as workshops, have been and will be

⁵ 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, OJ L 82, 22.3.1997, p. 1.

organised to improve awareness of AFIS liaison officers on the Security Policy and to give them further guidance on their role.

The Group had a first discussion on the Guide of Access to CIS. It was agreed that the work already done in other systems such as SIS II or FRA Reports on fundamental rights has to be taken into account, the focus should be on the data subject's rights, how to ensure a better communication and to pay attention to those countries that did not implement Decision 2009/917/JHA in the drafting process. This is to be done in a document easy to be understood by staff applying the Regulation and the data subject's rights.

The Work Programme 2014-2015 focusing on the existing rules and questioning the CIS level of use and way forward was adopted.

The Group agreed to carry out a Common Format for Inspections. All Members were invited to provide their suggestions on the approach to take on a Common Format for Inspections based on their national experiences.

5. Activities of the CIS SCG during the year 2015

5.1. Guide of Access to CIS

The CIS SCG adopted a Guide of Access to CIS at the December meeting 2015. The Guide describes the modalities for exercising the data subjects' rights in relation with the CIS. Persons whose personal data are collected, held or otherwise processed in the CIS -data subjects- are entitled to rights of access subject to strict limitations, correction of inaccurate data and deletion of unlawfully stored data.

The Guide falls into three sections: a description of the CIS, a summary of the rights granted to the individuals whose data is processed in the CIS and a description of the procedure for exercising the right of access in each of the countries concerned.

5.2. Common Format for Inspections

The CIS SCG started the preparatory work to draft Common Format for Inspecting the CIS. The Group agreed that this document should take into account the work done in parallel by other SCGs, in particular in the SCG for the Schengen Information System II. The Czech DPA was appointed as rapporteur and presented a Draft Discussion Paper on a Common Format for Inspecting the CIS in December 2015. All Members were then invited to comment on the draft and to send further input based on their own national experience. The Draft Discussion Paper will also be shared with the CIS JSA for their input.

5.3. Registered Exporters System - REX

The EDPS informed the Group on the future Registered Exporters System ('REX'). The REX is a separate database from the CIS related to customs procedures. The EDPS informed that Customs rules were recently amended by the Commission Implementing Regulation (EU) 2015/428⁶, which establishes a database of registered exporters in third countries whose goods qualify for preferential customs treatment and which is called REX. This database will be run by the Commission and is scheduled to become operational in January 2017. With regard to controllership, the Commission is the controller of the central database, while national authorities are responsible for all the information they insert into the database. With regard to supervision, the EDPS will supervise the central database, while national DPAs will supervise the use by national competent authorities.

DG TAXUD was invited to attend part of the meeting of the CIS SCG in order to give a presentation on the future REX and answer possible questions from the Members. The Group will remain in contact with them.

6. What to expect in 2016-2017

The Group agreed to extend the scope of the Work Programme 2014-2015 in order to have more time to pursue and finalise its work on the items already listed therein until the end of 2016. In particular, the Group will:

- follow up the implementation of the adopted Guide of Access to CIS;
- continue its work on the Common Format for Inspections;
- remain in touch with OLAF and DG TAXUD on relevant common points of interest.

In addition, a new election for the position of Vice-Chair will be held.

Finally, the Group will further reflect on a work programme for 2017 and/or 2018 to be formalised and adopted.

⁶ Commission Implementing Regulation (EU) 2015/428 of 10 March 2015 amending Regulation (EEC) No 2454/93 and Regulation (EU) No 1063/2010 as regards the rules of origin relating to the scheme of generalised tariff preferences and preferential tariff measures for certain countries or territories, OJ L 70, 14.03.2015, p. 12.