

CIS Supervision Coordination Group



ACTIVITY REPORT 2016-2017

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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 dealt with 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 European Data Protection Supervisor (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 2016 and 2017.

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, most recently by Regulation No 2015/1525, OJ L 243, 18.9.2015, p. 1 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 laws³.

As regards supervision, Article 37 of Regulation 515/1997 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 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 issued an opinion on the proposal in 2014⁴.

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

As a result, Regulation (EU) 2015/1525⁵ was adopted on 9 September 2015 and became applicable on 1 September 2016. Some of the main changes that Regulation (EU) 2015/1525 bring to Regulation (EC) No 515/97 are the following:

- a) creation of a Container Status Messages directory – containing messages recording physical movements of containers by maritime vessel; the scope of data on containers leaving the EU customs territory is limited to excisable products (i.e. tobacco, alcohol and energy products);
- b) creation of an Import, export and transit directory – containing data on goods entering, leaving and transiting the EU; the scope of data on exports is limited to excisable products (i.e. tobacco, alcohol and energy products);
- c) improvement of the framework for using information obtained on the basis of mutual assistance as evidence in judicial proceedings – subject to non-opposition of the Member State providing information;
- d) speeding-up OLAF investigations by setting out deadlines for the Member States to provide investigation-related documents (i.e. supporting documents);
- e) simplifying the procedure governing the storage of data in the CIS by removing the obligation to review data annually and by setting a maximum storage period of five years which can be increased, subject to justification, by an additional period of two years.

3. Organisation of coordinated supervision

3.1. Main principles

According to the legal basis, meetings must take place at least once a 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.

⁵ 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, OJ L 243, 18.9.2015, p. 1.

3.2. Overview of meetings in 2016-2017

This is the fourth activity report of the CIS SCG. It covers the seventh and eighth years of existence of the Group and outlines its activities during the years 2016 and 2017.

In 2016, the CIS SCG held one meeting in Brussels in December (09/12/2016). At this meeting, it was announced that the Group adopted its activity report for the preceding two years (2014-2015) by written procedure and that the report would be distributed to the European Commission, the European Parliament and the Council of the European Union. The Group discussed its next work programme for the following two years, for 2017-2018, and identified several planned activities and follow-up activities. The Group decided to adopt a common format for national inspections as developed in other large-scale IT systems supervision coordination groups. As a follow-up activity, the Group decided to verify how data subjects' rights are respected at national and at EU level and how the Guide of Access to CIS adopted in December 2015 is implemented. Persons, whose personal data are collected, held or otherwise processed in the CIS, are entitled to rights of access subject to strict limitations, correction of inaccurate data and deletion of unlawfully stored data. The Members of the Group also shared their experience with regard to the inspections of the CIS at national and at EU level.

In 2017, the CIS supervision coordination Group held one meetings in Brussels in April (20/04/2017). At this meeting, the Group adopted its next work programme for the following two years, for 2017-2018, in which several planned activities and follow-up activities of the Group are identified. Representatives of the European Anti-Fraud Office (European Commission) were invited for a discussion on the Anti-Fraud Information System (AFIS) Security Policy. They presented the latest version of the AFIS Security Policy to the Group, highlighted the novelties, provided some information about their future plans regarding this policy, and gave some advice for national authorities on how to best implement the policy in an efficient way. The Group continued its work on the common format for national inspections as developed in other large-scale IT systems supervision coordination groups. The Members of the Group also shared their experience with regard to the inspections of the CIS at national and at EU level. Finally the Group elected their new vice-chair for a term of two years.

4. Main activities of the CIS SCG during in 2016-2017

4.1. Common format for inspecting the CIS

The CIS SCG is working on a draft Common Format for Inspecting the CIS. The Czech DPA was rapporteur and presented a Draft Discussion Paper on a Common Format for Inspecting the CIS in December 2015. A small Subgroup was then set up to collectively continue the work on this important topic and based on the work already done by the Czech DPA. The Subgroup is composed of the Italian DPA, Maltese DPA, Greek DPA, Polish DPA and the Czech DPA. As regards security-related questions, the Group decided to use existing security modules developed in the context of the SIS, VIS and Eurodac SCGs and complete it with additional questions focusing on the specificities of the CIS.

4.2. Follow-up to 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. As a follow-up activity, the Group decided to raise awareness and ensure that the required information is made available by national competent authorities and that Guide of Access to CIS is used. For this purpose, Members of the Group started to check if the Guide of Access is available on the website of their DPA, has been circulated with the national competent authorities, and has been published on the websites of those authorities. Members of the Group also started to check the number of requests from data subjects to exercise their data protection rights in their Member States.

5. What to expect in 2018-2019

The CIS SCG Work Programme 2017-2018 aims to ensure the follow-up to the activities started by the Group before 2018, but also envisages other new issues to be explored. Therefore, given the work already performed in 2016 and 2017, the planned activities include the following:

- follow up the implementation of the adopted Guide of Access to CIS;
- continue its work on the Common Format for Inspections and the AFIS security Policy;
- develop working methods and assess the supervision model appropriate to the new Registered Exporters System;
- remain in touch with OLAF and DG TAXUD on relevant common points of interest.

Besides the activities foreseen, the CIS SCG will work on a permanent basis on the follow-up of policy and legislative developments, any ongoing issues, exchange of experiences and mutual assistance.