



CIS Supervision Coordination Group

ACTIVITY REPORT 2020-2021

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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 2020 and 2021.

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

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.

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 (EU) 2018/1725. 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.

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 meetings 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.

Due to the changes in the working of the JSA Secretariat, the CIS SCG has not held any meeting with the JSA during the reporting period.

3.2. Overview of meetings in 2020-2021

This is the fifth activity report of the CIS SCG and covers its activities during the years 2020 and 2021.

In 2020, the CIS SCG held one meeting in June (15 June 2020).

In the meeting, the Group finalised the work on the update of the CIS Guide of Access following the entry into force of the General Data Protection Regulation (EU) 2016/679 and the expiry of the deadline to transpose the Data Protection Police Directive (EU) 2016/680. 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. This Guide aims to help data subjects identify the competent authority and the modalities to exercise these rights in relation to the CIS. The Group also adopted its Work Programme for the years 2020 and 2021. Lastly, the Group started its work on the training on data protection for staff of authorities accessing the CIS. In fact, a number of national competent authorities may access the CIS; they may use the system in different capacity and for specific purposes. There are always risks of misuse of the system, which can have negative consequences for data subjects. The Group agreed to explore whether and how staff of national authorities accessing the CIS data receive specific training on data protection.

In 2021, the CIS supervision coordination Group held one meeting in June (14 June 2021).

In the meeting, the Group adopted the final version of the questionnaire on the training on data protection for staff of authorities having access to the CIS in order to be circulated to the respective national authorities. Moreover, the Group also adopted its Activity Report of 2018-2019. Lastly, the Group elected Mr Pierre Minuti (MT DPA) as the new Vice-Chair of the CIS SCG.

4. Activities of the CIS SCG during the year 2020

In 2020, the Group finalised the work on the update of the CIS Guide of Access following the entry into force of the General Data Protection Regulation (EU) 2016/679 and the expiry of the deadline to transpose the Data Protection Police Directive (EU) 2016/680.

Moreover, the Group started its work on the training on data protection for staff of authorities accessing the CIS. In fact, a number of national competent authorities may access the CIS; they may use the system in different capacity and for specific purposes. There are always risks of misuse of the system, which can

have negative consequences for data subjects. The Group agreed to explore whether and how staff of national authorities accessing the CIS data receive specific training on data protection.

5. Activities of the CIS SCG during the year 2021

In 2021, the Group continued its work on the training on data protection for staff of authorities having access to the CIS. Moreover, the Group also adopted its Activity Report of 2018-2019.

6. What to expect in 2022-2023

In 2022-2023, the Group will:

- Finalise its work on a questionnaire and report on the training on data protection for staff of authorities accessing the CIS;
- Continue to develop working methods and assess the supervision model appropriate to this database Registered Exporters System - REX;
- Remain in touch with OLAF and DG TAXUD on relevant common points of interest;
- Follow the developments of the review of the CIS Regulation 515/97.