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Annex to the

Communication on the Community programmes

CUSTOMS 2013 AND FISCALIS 2013

Impact Assessment

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TABLE OF CONTENTS

1.	Introduction	3
2.	Which problems are the successor programmes expected to tackle?	3
2.1.	Problems identified for customs.....	3
2.2.	Problems identified for taxation.....	4
3.	What are the main objectives the successor programmes are expected to achieve?....	4
3.1.	Customs Programme	4
3.2.	Fiscalis Programme	5
4.	What are the main policy options available to reach the objective?	5
5.	What positive and negative impacts are expected from the options selected?	5
5.1.	Option 1: Discontinuation of the Customs and Fiscalis programmes.....	5
5.1.1.	Positive impacts	5
5.1.2.	General negative impacts	5
5.1.3.	Specific negative impact on customs	6
5.1.4.	Specific negative impact in taxation	9
5.1.5.	Conclusion.....	10
5.2.	Option 2: A single successor programme	11
5.3.	Option 3: Two successor programmes: Customs 2013 and Fiscalis 2013.....	11
6.	Which stakeholders are to be consulted?	12
7.	How to monitor and evaluate the proposal after implementation	12
8.	Conclusion.....	12

1. INTRODUCTION

The Commission gave a commitment towards the Presidency of the Council, to submit all legislative proposals - which have a budgetary impact during the period of the next Financial Perspectives (2007-2013) before 6 April 2005, hence the Communication from the Commission to the Council and the European Parliament on the Community Programmes Customs 2013 and Fiscalis 2013¹.

Bearing in mind that the current programmes Customs 2007, Fiscalis 2007 and the EMCS² project are not yet halfway through implementation and that the interim evaluation of the two programmes is currently ongoing, this impact assessment accompanying the Commission Communication provides only a preliminary analysis of the situation, the main objectives, the policy options available, the impacts and the stakeholders. An in-depth impact assessment will accompany the proposal for the new Customs 2013 and Fiscalis 2013 programmes and take into account the outcome of the interim evaluations.

2. WHICH PROBLEMS ARE THE SUCCESSOR PROGRAMMES EXPECTED TO TACKLE?

The major challenge facing the Commission over the next few years is meeting the Lisbon objectives³. Customs and tax matters could play a key part in achieving these objectives. The programmes proposed in support of the policies of DG Taxation and Customs Union are an essential part of completing the single market and make it work correctly.

The programmes will significantly contribute to easing and eliminating a number of problems that have been identified as potentially hampering the smooth functioning of the internal market.

2.1. Problems identified for customs

- Inefficiencies in the management of the external frontier⁴;
- Need to maintain equivalent controls at different points of the external frontier
- Limitations in the control of the international supply chain
- Need for more adequate responses to future challenges in consolidating the Customs Union and the Internal Market
- Need to improve cooperation between customs administrations
- Need to combat the increase in illegitimate trade, fraud and counterfeiting

¹ It has been found appropriate to align the duration of the Programmes to the duration of the financial perspectives.

² Excise Movement Control System.

³ COM(2005) 24 final of 2 February 2005.

⁴ COM(2003) 452 – Paperless environment for Customs and Trade at the external frontier.

- Need for a paperless electronic customs environment
- Need to reduce the administrative burden for economic operators involved in international trade

2.2. Problems identified for taxation

- Need for more efficient cooperation between tax administrations at national and regional level
- Need to increase adequate and timely exchange of information between tax administrations
- Need to monitor the movement of excise products between Member States
- Need to reduce and prevent serious tax fraud and stamp out illegitimate trade
- Need to avoid inefficient and inconsistent implementation of Community tax legislation
- Need to avoid inappropriate accounting of VAT and direct taxes for taxable persons
- Need to reduce the administrative burden on tax payers

3. WHAT ARE THE MAIN OBJECTIVES THE SUCCESSOR PROGRAMMES ARE EXPECTED TO ACHIEVE?

To address the problems identified, the Commission intends to implement two successor programmes, each corresponding to a set of specific policy objectives.

3.1. Customs Programme

The Customs 2013 programme will continue to iron out problems in the implementation of Community customs law to avoid distortions of the market. In terms of the globalisation of trade, customs activities must be consistent with the aim of facilitating trade and ensuring that the European Union remains competitive. Customs plays an increasing role in ensuring the smooth flow of trade whilst applying the necessary controls on the risks that external trade might present for security, health, safety and the economic interests of the Union. The Customs programme will continue to develop and modernise the trans-European computerised systems that underpin the implementation of customs policy.

The Customs 2013 programme will tackle a number of new challenges, such as securing the supply chain and support for the use of a common risk management system, while promoting the incorporation of risk management into all aspects of customs work. Continued effort still needs to be put into ensuring that controls are implemented with the same effectiveness at every point of the Community's customs territory. To these ends the programme will initiate operational actions specifically targeted at setting and monitoring control standards and ensuring that national customs administrations have adequate means to achieve these objectives. Customs

2013 will continue to support activities to protect traders from piracy and counterfeiting.

The Customs programme will also support the further development of initiatives to set up a paperless electronic customs environment while underpinning indispensable initiatives such as modernisation and simplification of the customs legislation.

3.2. Fiscalis Programme

The Fiscalis 2013 programme will continue to support initiatives that focus on improving the proper functioning of taxation systems in the internal market by increasing cooperation between participating countries, their administrations and officials. It will raise awareness of relevant Community law and encourage Member States to share experience of implementing Directives.

The programme will also encompass tools to help combat harmful tax competition and tax fraud, both within the EU and in relation to third countries.

To support administrative cooperation and mutual assistance between tax administrations, the programme will develop and modernise the trans-European computerised networks required for the exchange of information for control purposes, such as the VAT Information Exchange System (VIES) and the Excise Movement Control System (EMCS).

4. WHAT ARE THE MAIN POLICY OPTIONS AVAILABLE TO REACH THE OBJECTIVE?

On the basis of the problem analysis and the objectives set out above, three policy options have been identified:

- Option 1: Discontinuation of the Customs and Fiscalis programmes
- Option 2: A single successor programme
- Option 3: Two successor programmes: Customs 2013 and Fiscalis 2013

5. WHAT POSITIVE AND NEGATIVE IMPACTS ARE EXPECTED FROM THE OPTIONS SELECTED?

5.1. Option 1: Discontinuation of the Customs and Fiscalis programmes

5.1.1. Positive impacts

Presently, no positive impact has been identified with the discontinuation of the Customs and Fiscalis programmes.

5.1.2. General negative impacts

If the Customs and Fiscalis programmes are not prolonged the impact on business will be major, to the point where this might ultimately put the functioning of the internal market in jeopardy. Discontinuing the programmes will abruptly halt the

trans-European computerised network leaving the customs and tax administrations, economic operators and citizens with no acceptable alternative for exchanging and providing information. Not having the joint actions currently financed by the programme would also be a retrograde step in terms of cooperation between Member States.

5.1.3. *Specific negative impact on customs*

If the Customs programme would come to a halt, there would be a direct negative impact on the daily functioning of the customs administrations and, more importantly, on the legitimate flow of trade, which would very likely be disrupted. Traders would face losses on the investments made in adapting to the new systems and as a result of costs relating to operating in a "non-system" environment. The negative consequences are described below in more detail.

(1) From a procedural point of view:

- (a) The New Computerised Transit System (NCTS) contributes to uniform application of customs legislation in the Community since it ensures equal treatment of all operators. NCTS enables economic operators to reduce their costs considerably by minimising the administrative burden and delays in the flow of goods. The electronic transmission of the customs transit declaration of goods simultaneously with and prior to the physical transport of the goods allows the customs administration to execute control tasks in a much more efficient way. If we compare for instance the average time taken to discharge a transit declaration, the discharge of paper based transit declarations takes more than a month in 80% of the cases, while the average discharge time in 2004 for fully electronic NCTS movements was only 4 days and 16 hours.

If NCTS is no longer available, customs offices will, in many cases, not be able to control and prevent fraud as efficiently, given the cumbersome and time consuming process for paper-based transit declarations.

The non-renewal of the Customs 2007 programme would definitely imply a down-grading or a complete stop to NCTS. The impact of this, for instance in the transit area, would be a step backwards to the old paper procedure which caused all the fraud cases leading to the Parliament Enquiry procedure of 1997. Furthermore, the economic operators would lose all the advantages of faster discharges, lower administrative costs and access to the information on the status of their declarations. In an "e-Europe" context this situation can hardly be explained or justified.

- (b) The non availability of electronic data would make the exchange of product information between customs officials and right-holders' associations and the development of a common risk framework more complicated and would have a negative impact on the capacity of customs administrations to fight fraud. Statistics show a significant increase in the number of counterfeit and pirated articles intercepted at the EU's external borders in 2003. Customs officials seized almost 100 million of such articles in 2003 compared with 85 million in 2002, of an estimated value of EUR 1 billion. Seminars at which customs

officials and right-holders' associations exchange information on counterfeited products, made an important contribution to the fight against counterfeiting.

- (c) Without the establishment of project groups where customs experts share experience and expertise, cooperation between the 25 administrations would be much more difficult and the achievement of common control standards and best practice would be seriously hindered and the objective of continuing to prevent any divergence in the application of customs controls at the external frontiers, in particular in vital areas of security and safety would be hindered.
- (d) The Electronic Export and Import Control Systems (ECS/ICS) are currently under development and represent the first implementation steps within the framework of the European electronic customs initiative. In line with the revised Lisbon Strategy, more IT applications are planned to be introduced shortly, including a Common Customs **Information Portal** and a **Single Access Point for customs transactions**. The discontinuation of the electronic customs initiative would result in **difficulties in relation to** common standards, **the retention of** no longer technically and economically justifiable paper-based processes and a lack of a common base for security and safety checks at the external borders of the Community. An electronic customs environment will also offer economic operators faster discharges, lower administrative costs and access to information on the status of their declarations.

(2) From a tariff application point of view:

- (a) The Integrated Community Tariff (TARIC) builds on the Combined Nomenclature and lists duty rates, supplementary Community charges and relevant Community rules for each type of goods (including anti-dumping measures, restrictions, etc). The database is centrally managed by the Commission (TAXUD) and daily updates provide the national customs administrations and traders with the most up-to-date information on commercial policy measures without delay. About 27 million queries were made in 2004.

If TARIC is discontinued after 2007, the Commission would fail to meet its legal obligation to maintain and disseminate the TARIC (Articles 2 and 6 of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff).

Since the TARIC is the source of the tariff and commercial information for the automated customs clearance systems of the Member States, failure to provide this data any more would force all the Member States to create an equivalent at national level. In other terms, each national administration would have to manage its own TARIC sector and database creating 25 redundant sources of information. This would have an obvious budgetary impact on the national administrations. Since there would no longer be one single source of information, and given the unavoidable risk of errors by the national administrations, there would be a risk of discrepancies. This would be a major blow to the consistent application of the community tariff by the national customs. Since the electronic declaration is a reality and since one of the objectives of Electronic Customs is to increase the number of e-declarations,

the TARIC is the cornerstone of consistent application of the tariff in the national administrations.

Economic operators would be deprived of a precious source of online up-to-date information (27 million queries made on the TARIC web site in 2004). Other bodies would be deprived of that information: DG AGRI, Eurostat, DG TRADE for their web site for helpdesks for the developing countries.

More generally, giving up this responsibility at Community level would go against the integrating/unifying approach propounded by Electronic Customs.

- (b) The Tariff Quota and Surveillance System (TQS) ensures, like TARIC, that customs legislation is consistently applied and more specifically tariff quota management. The Customs Code implementing provisions⁵ state that the TQS should be maintained at Community level. Not providing this system any longer would jeopardise tariff quota management but also bring to an end the statistical surveillance, which became increasingly important after non-tariff measures on trade of textiles and footwear were ended, while these data will also be used by the future Generalised System of Preferences (GSP) regulation. As TQS concerns highly confidential information that needs to be available to all partners, the Commission is clearly the most appropriate body to manage the information.
- (c) The European Binding Tariff information database (EBTI) is a database in which all legally binding decisions on the classification of goods (Binding Tariff Information- BTIs) issued by Member States are stored. This is a legal obligation under the Customs Code Implementing Provisions. The database allows the Commission to verify the tariff classification made by individual Member States and at the same time it allows Member States to see how a given product is classified by another Member State. The database is therefore of paramount importance for the uniform classification of products throughout the Community. The discontinuation of the database after 2007 would lead to a complete loss of information for Commission staff and Member States as regards classification practices and concrete classification cases. Furthermore, the Commission could no longer fulfil its control and monitoring function with regard to classification. This would undermine the objective of ensuring the uniform application of the Customs Tariff via a uniform classification of goods-. This would be fatal, in particular in the broader context of the current WCO panel on selected customs matters, as requested by the United States, which claims *inter alia* that there is no uniform classification throughout the EC.
- (d) The European Customs Inventory of Chemical Substances (ECICS) is a database of currently approximately 30,000 chemical substances, providing information of a scientific and regulatory nature and product identification for the use of national customs administrations, trade and other stakeholders. Among other things, it provides scientific support in monitoring the application of Community law and trade agreements, due to the basic link of each product

⁵ Regulation 2454/93 Article 308a, b, c and d.

with the Combined Nomenclature. ECICS consolidates the national customs clearance and saves traders time. The discontinuation of the database after 2007 would reduce the safety of EU citizens, due to a lack of common understanding and differing interpretations of health and safety standards for chemical substances and precursors.

- (e) A network of European Customs Laboratories is currently under construction. The aim of this initiative is to rationalise and share scientific resources and expertise available in a number of customs laboratories in the Member States. This is especially important in the field of product authentication and the fight against counterfeiting, control of harmful chemical substances and toxic materials in the environment, and detection of terrorist activities. The discontinuation of this initiative would result in weakening the protection of the European citizen and industrial competitiveness and would give a negative signal at international level regarding the EU's commitment to fighting terrorism.

5.1.4. *Specific negative impact in taxation*

Discontinuing the Fiscalis programme would have a direct negative impact on the daily functioning of the internal market. It would also have an impact on taxpayers who have invested in adapting their working methods. These negative consequences are described below in more detail.

- (a) VIES currently provides the great bulk of information on intra-Community supplies between Member States, making it possible for Member States to undertake necessary controls of intra-Community trade in an EU without borders and at the same time making it easier for business to trade in the internal market. VIES also has a great preventive effect on fraud as discrepancies in declared tax figures will be detected through the system. VIES replaced border controls undertaken by customs services in 1993. In the current VAT regime, based on the principle of taxation in the country of destination, confirmation of traders' identification is the main tool of verification of VAT exemptions on cross-border trade. Therefore the VIES system is used on a daily basis by national tax administrations as well as by traders through its web-based interface. If VIES, which is the central IT tool used in the exchange of information on VAT intra-Community trade set out in Chapter V of Regulation 1798/2003, ceased to be financed, Member States would not be able to meet their obligations as set out in the Regulation.
- (b) Without this electronic exchange of information, one option would be to return to physical border controls, which for practical and political reasons is not an option. Another option would be for Member States to find another system for VAT controls; however, it would not be realistic to control tax-exempt goods worth €1500 billion without any type of electronic system. Therefore, Member States would have to build up a new electronic system, finance it, and implement it without the central connection facility offered today by the Commission. Even if it were possible to do it within 10 years, it would probably be more expensive for Member States and for traders, and lose out in efficiency.

- (c) A large proportion of intra-Community tax fraud schemes involve goods moving between two or more Member States. Fighting such fraud, requires a high level of coordination and cooperation between tax administrations in different Member States. The Fiscalis programme currently sets out a framework for activities to exchange information and best practice, define common strategies and set up multilateral controls with the necessary flexibility. If the programme ceased, these activities would have to be organised on a voluntary basis by Member States, with the risk that Member States would give a lower priority to such activities and that some Member States would not be involved at all. In such a context cooperation would take place mostly bilaterally and when a need was clearly identified by a Member State: this would leave more scope for fraud, and would be less cost-efficient overall.
- (d) The computerised excise systems allow the movement of excise goods between Member States to be physically monitored and are a key tool in the fight against fraud in excise goods.
- (e) The fight against fraud needs to look beyond the EU borders and will require the promotion of sound practices outside the European Union. The programme is the right tool in support of reform in the so-called cooperative tax havens.
- (f) If the Fiscalis programme were discontinued, the VIES on the web system would also come to a standstill – a system which has 25,000 to 30,000 requests daily. This tool enables traders to immediately check the validity of their trading counterparts' VAT numbers, by giving online access to national VAT registers. This is a key element helping traders to comply with intra-Community VAT rules and dismantling it would be a setback for the policy of reducing the burden on business.
- (g) During the lifetime of the Fiscalis programme so far, it has been evident that Community legal instruments for fostering smooth administrative cooperation on tax need a support programme to disseminate good administrative practice. In general, bilateral contacts between officials in joint actions⁶ are very valuable in fostering cooperation and confidence-building between national tax administrations. These events also contribute to the common implementation of Community tax legislation. If the joint actions are not continued, an important driving force for improved cooperation and smooth implementation of Community tax legislation will be lost.

5.1.5. Conclusion

In the light of all the above-mentioned negative impacts of discontinuing the programmes, discontinuation is not considered an option.

⁶ Joint Actions in the Fiscalis programme include mainly the organisation of Multilateral Tax Controls, the organisation of seminars and the exchange of officials between administrations.

5.2. Option 2: A single successor programme

A single successor programme will not fit the reality of cultural specificities of the customs and taxation area and will not meet stakeholders' expectations.

Two major factors have to be taken in account:

- Each programme is related to a distinct policy area. Each programme has a different legal basis. A single programme would need to strike a difficult balance between the different political drivers and objectives of customs and tax.
- Each programme covers distinct business areas, has specific objectives and addresses different stakeholders, even if the instruments used to achieve the objectives might look similar.

Moreover, other elements reinforce these facts:

- A single programme will not generate any economies of scale. The fact that the programmes are managed by a single Commission Directorate-General is the reason why they have a common approach and achieve economies of scale.
- A single programme could have a negative impact on visibility. After 10 years of operation, the Customs and Fiscalis programmes have attained high visibility in Member States, which contributes to their success. Replacing Customs and Fiscalis with a single newly-named programme would put this gain in jeopardy.

5.3. Option 3: Two successor programmes: Customs 2013 and Fiscalis 2013

Two successor programmes Customs 2013 and Fiscalis 2013 are the policy option best suited to address the problems identified above and to achieve the policy objectives for customs and tax.

The table below summarises the major differences between the two options:

	Two Programmes	Single Programme
Financial Impact	=	=
Has different political drivers and objectives	++	--
Addresses needs of different policy areas	++	-
Addresses different stakeholders	+	-
Visibility	+	-

++ much better suited

+ better suited

- = no difference
- less suited
- much less suited

6. WHICH STAKEHOLDERS ARE TO BE CONSULTED?

The direct beneficiaries of the programmes are the tax and customs administrations of the Member States. Both programmes have formally been opened for participation by candidate countries and all Western Balkan countries. The current candidate countries Bulgaria, Romania and Turkey are actively participating in the programme activities and a number of activities targeting their needs are planned.

The Customs and Fiscalis 2007 programmes are managed in close cooperation with the Member States and Member States are contributing intensively to the interim evaluation.

It is planned to consult stakeholders in the Member States' customs and tax administrations to prepare the impact assessment of the proposals for the new programmes. This consultation will be carried out in the course of 2005 by means of special seminars, focus groups and a project group.

7. HOW TO MONITOR AND EVALUATE THE PROPOSAL AFTER IMPLEMENTATION

Each year the Commission will submit to the Management Committee for each programme a follow-up report setting out the progress of all the programme's activities in terms of implementation and results in relation to the annual action plan. The administrations will send the Commission all the information necessary for follow-up reports to be drawn up as efficiently as possible.

A mid-term and final evaluation will be carried out for each programme using the follow-up reports and the reports drawn up by the participating countries. The mid-term evaluation will review the initial results and impacts of the programme's activities, and the relevance of its initial objectives; the final evaluation will assess the effectiveness and efficiency of the programme's activities. The Commission will present the reports to the European Parliament and the Council.

8. CONCLUSION

Considering the Impact Analysis made above, the Commission proposes to insert in the Financial Perspectives 2007–2013 two separate successor programmes, Fiscalis 2013 and Customs 2013, to meet the challenges described above and in the Communication.