

**Exchange of customs related information with third countries
Summary of the result of the Open Public Consultation**

The Open Public Consultation aimed at gathering views from all stakeholders – citizens, companies, organisations, institutions, public authorities, academic researchers – on the possible need for EU action to introduce a more effective tool to exchange customs-related information with third countries and, in case there is, on how this tool could be designed and what its scope should be.

In particular respondents were invited to provide their opinion on the following topics:

- whether the current situation regarding exchange of customs-related information with third countries is sufficient, and to assess whether the EU should act;
- objectives to be met through exchanging customs-related information with third countries;
- potential benefits and risk for the customs authorities, economic operators and the EU of systematic exchange of customs-related information with third countries;
- scope, format and conditions of the possible information exchange; possible options for the exchange of customs-related information with third countries and their impacts.

Although the Open Public Consultation was announced in several fora, publicly announced on Commission websites including ‘VIES on the web’ and made available in three Commission working languages, in total only 31 replies were received through the on-line survey tool. It is important to note that these responses are not statistically representative of the target population. Answer ratios must therefore be interpreted with care; it is not possible to draw any general conclusions from these replies.

Respondents were mainly professionals responding on behalf of their organisation (93.6% - 29 replies). These professionals generally work for a private enterprise (87.1%) or public authorities or institutions (6.5%). The other respondents were citizens, replying in their personal capacity (2 replies).

Status of Respondent	
Status	Total
Private citizen	2
Trade/business/professional association	5
Company	21
Public authority, public institution, including national or regional parliament	2
Other	1
Total of answers	31

In case respondents replied on behalf of companies, these companies were mainly micro (16.1%), small (16.1%) or large (61.3%) companies

Size of company	
Type	Total

Private micro enterprise: self-employed or less than 10 employees	5
Private small enterprise: between 10 and 49 employees	5
Private medium-sized enterprise: between 50 and 249 employees	2
Private large enterprise: more than 250 employees	19
Total of replies	31

93.6% of the respondents confirmed that they or the company they are representing are involved in customs matters. 61.3% of the respondents confirmed to have experience in the exchange of customs-related information with third countries.

Current situation in the area of exchange of customs-related information with third countries and possible need for EU action

Respondents have been asked to evaluate the current set-up in the area of exchange of customs-related information with third countries and to express their view if there is a need for further EU action in this area.

48.4% of the respondents expressed the view that the current set-up of exchange of customs-related information between the EU and third countries' customs authorities is rather insufficient or not sufficient at all, while 19.4% were neutral regarding this question and 32.3% considered the current situation as rather or completely sufficient. Individual explanations provided in this context however showed that there seemed to be a misunderstanding on who are the actors in the information exchange referred to. A number of company representatives referred in their explanations to exchanges of data between companies and customs authorities, in particular to data available in companies that is already or could be shared with customs authorities with a view to streamlining customs procedures. It was stated that no additional bureaucratic burdens should be set up for companies and that requirements for additional data would put trade at risk, would oblige companies to IT investment, lead to more administrative burden or add distribution costs in some cases. These statements demonstrate that a number of respondents understood that companies might be asked to provide additional data to customs authorities, which is not the scope and intention of the initiative. Against this background the aforementioned result is to be considered with caution.

One respondent stated that a well-structured framework for data exchange could contribute to receiving more and better data at a much earlier stage, and hence help customs to identify more illicit goods and, doing so, prevent material and social damage. The most important advantage however, would be that legitimate trade could be processed more fluently. Physical controls would remain necessary to intercept illicit goods. Another respondent expressed the view that organisations of fraudulent traders have well understood that the asymmetry in information flows between customs administrations (including sometimes even between Member States) is a bias they can easily profit from.

74.2% of the respondents to the OPC saw a need for further EU action in this area with a view to providing an enhanced policy framework for systematic exchanges of customs-related information with third countries.

Individual responses showed that stakeholders see a need for enhanced cooperation between customs authorities in the policy area, which nevertheless should not unnecessarily interfere with legitimate trade. In particular, respondents stated that sharing information would have a significant impact on customs' ability to enhance their risk analysis. By a better integration and exchange of information, areas of concern could be identified more efficiently and controls can focus on the high-risk areas,

relieving the compliant organisations from the burden controls bring to their organisation directly and indirectly.

One respondent stated that the data exchange between the involved authorities should be intensified. While only local authorities should perform the customs controls, they should also assure the foreign authorities of the correctness and the compliance to existing rules.

Another respondent expressed the view that regular automatic exchange of data equals exchange of meta-data, which can be justified by public security but not by any customs purpose. It would require collecting data on legitimate transactions, which are not under fraud-suspicion. A respondent highlighted that information exchange is dependent on the level of cooperation extended by third countries and might therefore only be beneficial where trade agreements have been concluded between countries.

Another respondent stated that fraud is nowadays largely transnational and cross-border, be it customs fraud or tax fraud (VAT carousels). OLAF action should be reinforced and backed by a new body that facilitates, encourages and supports the sharing of high-quality data among EU Member States and with third countries. This would promote customs compliance and counter fraud. Moreover, there is need to harmonise IPR protection policies.

Another respondent concluded that considering the size of illicit trade, it is clear that the launch of new initiatives is indispensable.

Asked for specific consequences resulting from the current set-up of exchanges of customs-related information with third countries, 48.4% of the respondents confirmed moderate to very serious consequences as regards losses in public revenue, while 31.5% of the respondents considered the consequences small or not existent, and 19.4% did not have any opinion or did not answer to the question. 58.1% of the respondents confirmed moderate to very serious consequences on the fluidity of trade lanes for legitimate trade, while these were seen as small or not existent by 32.3%, and 9.7% of the respondents did not have an opinion or did not answer the question. As regards the consequences on illicit trafficking of goods endangering the security and safety of EU residents, 51.6% of the respondents considered them as moderate to very serious, 25.8% expressed the view that there are only small or no consequences, and 22.6% of the respondents did not have any opinion or did not answer to the question. 54.8% of the respondents confirmed moderate to very serious consequences on illicit trafficking of goods infringing IPR, while these were seen as small or not existent by 22.6%, and 22.6% of the respondents did not have an opinion or did not answer the question.

One respondent noted that numerous studies have clearly highlighted the consequences of trade in counterfeit goods in terms of, inter alia: (a) loss of revenue and jobs in EU; (b) danger for consumers' health and safety; (c) poor labour conditions in which the counterfeit products are manufactured; (d) links with organised crime and terrorism.

Another respondent expressed the view that a well-structured framework for data exchange could contribute to receiving more and better data at a much earlier stage, and hence help customs to identify more illicit goods and, doing so, to prevent material and social damage. The most important advantage however is that legitimate trade can be processed more fluently. Physical controls will remain necessary to intercept illicit goods.

Objectives and possible benefits of the exchange of customs-related information with third countries

Asked for the contribution of systematic exchange of customs-related information with third countries to achieving strategic objectives, 64.5% of the respondents were of the opinion that systematic exchanges would facilitate trade and 51.6% that it would improve the protection of financial interests. The contributions would be limited or moderate for 16.1% and 22.6%, respectively. 43.4% of the respondents considered the contribution in the area of security and safety of the supply chain considerable, while for 29% it would be moderate or limited.

One respondent stated in particular that systematic exchange of customs-related information with third countries would contribute to legal certainty and that a standardised system would reduce bureaucratic costs and administrative burden.

As general remark, respondents highlighted the risk to slow down the supply chain by imposing

advance exchange of information and the particular attention that should be devoted to the confidentiality of information. These statements showed again that for a number of respondents the actors in the information exchange in the context of this initiative were not clear and some companies understood that they might have to provide additional information.

The large majority of the respondents agreed that the systematic exchange of customs-related information with third countries can have an impact for customs administrations in several fields. 74.2% of the respondents agreed that it would be an additional source of data to fight against fraud, in particular undervaluation, counterfeiting and piracy. Exactly the same number of respondents expressed the view that it would represent an additional source of data also for risk analysis. In both cases the percentage of negative replies was low (9.7% and 3.2%). 64.5% of the respondents agreed that the exchange of information would bring improvements for the common EU-wide risk management in the area of security and safety, while 67.7% confirmed that it would allow more efficient handling of customs resources through concentration on high-risk movements of goods. According to 64.5% of the respondents, the effectiveness of customs checks would be increased, and for 58.1% of the respondents the trade in goods would be smoother and faster. However, 32.3% of the total expressed no opinion as regards the effectiveness of customs checks, whereas 22.6% of the respondents disagreed that the trade in goods would be smoother and faster. Information exchange can represent a potential risk in terms of data protection/privacy for 45.1% of the respondents, while 25.8% somewhat or completely disagreed. One of the respondents warned against the risk that a big amount of data could slow down customs procedures rather than improving the quality of work. In order to better manage the information flow, one respondent advised to harmonise the information to avoid increase in the workload. Another risk identified by a respondent was that a systematic exchange of information could expose traders to extra verification by third countries' authorities and consequently slow down trade.

The impact of the systematic exchange of information for economic operators has been considered relevant in different areas. 61.3% of the respondents agreed that it would ensure smoother and faster trade in goods as well as more effective customs checks. 64.5% of the respondents considered the systematic exchange of information as an additional source of data to fight against fraud, in particular undervaluation, counterfeiting and piracy, and for 61.3% it would reduce clearance times. This opinion was however not shared by 19.4% of the respondents. 41.9% of the respondents expressed the view that information exchanges have an impact on data protection/privacy, while 35.5% disagreed with this analysis and the remaining 22.6% did not express a specific opinion. No further risks for economic operators have been identified by the respondents.

In this context, one respondent agreed to re-use the data already provided by economic operators, with special attention to the privacy. The confidentiality of information is a sensitive point highlighted in more than one comment.

Another suggestion provided was to give more importance to the recognition of traders in all the countries with an AEO system than to the developing of data exchange.

Asked about the impact of systematic exchange of customs-related information with third countries on EU residents, each of the potential impacts was estimated by respondents as more likely to occur than not to, independently of whether the possible impact was positive (less border crime/fraud, enhanced security and safety, simplification of customs procedures, faster delivery of goods) or negative (risks related to fundamental rights/data protection). The impacts considered most likely were less border crime and fraud (58.1%), enhanced security and safety (58.1% of respondents) and simplification of customs procedures (51.6%). Faster delivery of goods and data protection-related risks were considered somewhat less likely (48.4% and 38.7%, respectively). In each case, the percentage of respondents neither agreeing nor disagreeing (including those with no opinion) was relatively high, ranging from a quarter to over a third of all respondents.

One of the respondents who provided additional comments pointed out the need for a solid legal basis to exchange the data of law-abiding citizens.

Another respondent stressed that the technical specifications for the possible exchanges are not known at this stage.

Scope, format, conditions and policy options of the potential information exchange

As regards the scope of information shared with third countries only a small proportion of respondents (9.7% in total) considered one-directional exchanges (either from the EU to third countries or vice versa) to be the most suitable option. The vast majority was evenly split between bilateral and multilateral exchanges.

In their detailed comments, respondents highlighted the importance of exchanges taking place on a reciprocal basis, in a way that benefits both participating administrations, whether bilaterally or multilaterally.

One respondent advocated that the EU limits itself to current exchanges because of the lack of interoperability between different administrations.

As regards the frequency of information exchange with third countries a clear majority of the respondents (71%) was in favour of a systematic exchange of information rather than on a case-by-case basis (25.8%).

Arguments presented in favour of systematic exchanges included their contribution to enhancing risk assessment, increasing legal certainty and reducing bureaucratic costs and administrative burdens. Other respondents criticised systematic exchanges, arguing that only data concerning suspicious transactions, and not legitimate ones, should be exchanged.

Asked for the possible options regarding the future policy on exchange of customs-related information with third countries, each of the five options proposed encountered more favour than opposition, in the sense that for each of these options a majority of respondents (either relative or absolute) gave a positive opinion, and in no case did negative replies outnumber positive ones. The most popular option was the systematic inclusion of general provisions in future agreements with 67.7% of favourable replies compared to 9.68% of negative ones, followed closely by a multilateral instrument (64.5% vs 13%) and an EU regulation or annexing of protocols to existing agreements (58.1% and 54.9% in favour respectively). The option which attracted the least consensus was to continue with the status quo, with 38.7% in favour and 22.6% against.

Detailed suggestions provided by respondents included institutionalising exchanges of information at the international level in order to fight illicit trade, especially in products infringing Intellectual Property Rights as well as expanding the current network of bilateral agreements. One respondent indicated exchanges should not cover the value of goods, as this is calculated in different ways at export and import.

Additional comments provided

Respondents had the possibility to provide additional arguments. Here, different respondents stressed the general importance of international cooperation.

One respondent stated that practice and figures show that customs cooperation could and needs to be improved and information exchanges should be adapted to international trade flows using all available technologies. Collaboration should be thought of in an incentive manner (co-allocation of business success for example). Protection of personal data and privacy should not become an obstacle to the optimisation of practices. In the same way that the exchange of information must be global and all customs authorities should be involved in a systematic way, it must involve the intermediaries which are at the heart of international trade and can play a decisive role in the fight against. Two respondents in particular referred to trade in IP infringing goods and underlined the need for cooperation given the international character. One respondent stated that cooperation between customs organisations needs to be institutionalised with a view to developing more transparency in international intelligence practices. This would also contribute to obliging intermediaries like postal companies and shipping companies, which now comfortably hide in anonymity, to take responsibility in tracking actors in the trade in IP infringing products.

One correspondent noted that the 'Brexit' might additionally emphasize the need for exchanges of information between customs authorities.

Three respondents submitted position papers supporting the arguments presented in their replies. Two respondents shared models developed for information exchanges between economic operators and customs authorities.