

Establishing the 'Customs' programme 2021-2027

Impact assessment SWD(2018) 321 final, SWD(2018) 322 (summary), accompanying a Commission proposal for a regulation of the European Parliament and of the Council on establishing the 'Customs' programme for cooperation in the field of customs COM(2018) 442.

This note is one of a series of brief initial appraisals of European Commission impact assessments (IA) accompanying the multiannual financial framework (MFF) proposals, tailored to reflect the specificities of the MFF package and the corresponding IAs.¹ It provides an initial analysis of the strengths and weaknesses of the European Commission's [impact assessment](#) (IA) accompanying the above-mentioned [proposal](#), submitted on 8 June 2018.

Political and legal context; objectives

Cooperation in the field of customs lies at the heart of EU integration. At present, this cooperation is supported by the [Union Customs Code](#) (UCC) (in force since 2016, and due to be implemented by 2025) and the [Customs 2020 programme](#) (which provides funding for the period between 2014 and 2020). Both the UCC and Customs 2020 support the functioning and modernisation of the EU's customs union. The proposed new Customs programme would support the EU's customs union in the next MFF period between 2021 and 2027, with a significantly increased budget.

The IA report presents lessons learned from the previous programmes, drawn from the [final evaluation](#) of the Customs 2013 programme (the framework programme preceding Customs 2020) and the mid-term evaluation of Customs 2020.

The main problem identified in the IA is the inefficient functioning of the customs union and its insufficient uniformity. The problem drivers are seen as being three-fold: unequal capacity of customs administrations; uneven interpretation and implementation of legislation; and obstacles to cooperation between customs administrations and with other stakeholders.

The IA identifies the **general objectives** of the initiative as being to support the customs union and customs authorities in order to protect the financial and economic interests of the Union and its Member States, to ensure security and safety within the Union, and to protect the Union from unfair and illegal trade. The **specific objective** is defined as being to support the preparation and uniform implementation of customs legislation and policy as well as customs cooperation and administrative capacity building, including human competency and the development and operation of the European electronic systems for customs (IA, p.17). The specific objective is expressed in rather general terms and the IA does not spell out operational objectives to express the deliverables of policy options as required by the Better Regulation (BR) guidelines.

Programme structure and priorities; delivery mechanisms of the intended funding

The proposed programme is organised in two clusters, generally drawing on the structure of the existing programme. The first cluster is concerned with competency-building actions. The second cluster covers the development of IT infrastructure and systems, including digitalisation. The clusters appear to correspond to the specific objectives of the initiative. The Commission explains that the delivery mechanism is proposed to remain the same as for previous programmes, i.e. direct management through grants and procurements.

The impact assessment presents four options for addressing the problems:

Option 1: EU 27 – baseline. This scenario would mean maintaining the objectives and fundamental arrangements of the current Customs 2020 programme. It would take account of the UK's withdrawal from the EU and would correspond to a drop in the customs union budget (from €74.7 million per year currently to €62.3 million per year). The IA explains that this scenario, in which the budget is reduced by 15 %, would hardly allow the customs union to be maintained in 2020. A significant part of the enhancements that were made by the UCC in 2016 would have to be repealed. In the long run, this situation would compromise EU policy objectives.

Option 2: Critical mass. According to the IA, this scenario would mean completing the core UCC electronic systems by 2025 thanks to budget allocations agreed with the Member States. The Commission explains that under this option cooperation would be limited to supporting the implementation of the UCC. The resources available in this scenario would not be sufficient to cover the whole range of priorities, especially in the field of IT. Over time, the IA expects that the EU would lose significantly in terms of competitiveness and be more vulnerable to security and safety threats. Option 2 includes a big increase in expenditure (total budget €999.9 million); however, the IA explains that this increase would only allow for the implementation of the UCC, leaving other objectives unattained.

Option 3: Continuity 'plus'. According to the Commission, Option 3 is the necessary minimum for the customs union to continue to function after the adoption of the UCC. This scenario includes completing the core of the UCC by 2025 and taking steps beyond that in terms of deeper cooperation between operational services on the ground and also in the area of IT. Option 3 proposes a new regulatory interface for the economic operators' 'single window', and, like Option 2, includes the same increase in funding.

Option 4: Structural centralisation. In this scenario, a new agency is proposed to ensure that customs policy is applied uniformly throughout the EU. According to the report, this agency would also 'favour a uniform attitude towards third countries', and 'facilitate dealing with the increasing challenges customs are faced with' (IA, p. 25). As the IA admits, this scenario would mean a change of operating model for the customs union and is therefore largely unrealistic.

The **preferred option** is identified as **Option 3 – Continuity plus**. Overall, the range of viable options appears to be limited in fact to just one, as neither the baseline scenario nor Options 2 and 4 would appear realistic based on the explanations provided. The explanatory memorandum of the proposal indicates that the preferred option was chosen 'after analysis at political level' (p. 8), but the report does not explain how the options were compared. Moreover, the options do not appear to be thoroughly assessed against the achievement of several objectives, e.g. innovation, or unfair and illegal trade. Finally the options were not assessed for potential environmental, social and economic impacts, contrary to the requirements of the BR guidelines.

Budgetary or public finance implications

In accordance with the MFF proposal, the budgetary framework of the new Customs programme is €950 million in current prices for the period 2021-2027. The current programme has a budget of €547.3 million.

SME test / Competitiveness

According to the Commission, none of the proposed measures are aimed directly at SMEs, but it expects some indirect benefits from 'common portals, available training tools and progress made towards a single window'. The IA seems not to touch upon the issue of competitiveness in any detail.

Relations with third countries

The IA does not discuss relations with third countries in any depth, although the nature of the proposal would logically have implications in this field. In particular, the options do not include an analysis of impacts on candidate countries or the EU's European Neighbourhood partner countries.

Simplification and other regulatory implications

The Commission explains that the chosen option would lead to further simplification by avoiding 'the annual administrative burden of comitology' through the 'possibility of adopting a multi-annual work programme' (explanatory memorandum of the proposal, p. 8). It considers the proposal to be consistent with the UCC as well as with other EU initiatives in the fields of taxation, anti-fraud activities, and border and visa management. A brief discussion on synergies and complementarities with other EU action programmes and funds is included in the IA report (IA, p. 31).

Subsidiarity / proportionality

The legal bases for the proposal are Articles 33, 114 and 207 of the Treaty on the Functioning of the European Union (TFEU). Article 33 covers the strengthening of customs cooperation; Articles 114 and 207 cover action concerning the internal market and common commercial policy respectively.

The Commission states that the EU added value is most present in the area of IT 'where the programme allows developing and running a series of commonly defined European electronic systems at a reduced cost than if done nationally' (IA executive summary, p.1).

The Commission considers the choice of instrument – a new funding programme – appropriate and proportionate; however, proportionality is not discussed in the IA. No reasoned opinion was submitted by national parliaments by the subsidiarity deadline of 13 September 2018.

Quality of data, research and analysis

The Commission conducted an [evaluation](#) of the Customs 2013 programme, prepared externally. The IA points out that the method chosen for the evaluation reflects the inherent difficulties in evaluating the Customs programme, notably the scarcity of quantitative data and reliance on stakeholders' perceptions. The impact assessment and the evaluation were carried out in parallel and the IA quotes frequently from the evaluation. The IA report also draws partially on a detailed [study](#) performed by an external consultant (Deloitte).

Stakeholder consultation

The Commission conducted six online [public consultations](#) for the MFF proposals, clustered by policy area, rather than one online public consultation for each accompanying IA, as normally required by the BR guidelines. Instead of the mandatory twelve weeks, these six public consultations ran for eight weeks only, from 10 January to 9 March 2018. The level of involvement of relevant stakeholders in the public consultation was extremely low (only 0.32 % of the total number of respondents reported experience with the existing programme). The Commission also organised various other activities, such as two workshops with customs administrations of Member States and candidate countries, a survey and a case study. The details of the stakeholder consultation activities are presented in Annex 2 of the IA report, in line with the BR guidelines. While the Commission conducted a wide range of stakeholder consultation activities, it is not clear from the IA how they fed into the formulation of options, as stakeholder views are not reflected.

Monitoring and evaluation

The IA report explains that the impact of the proposed programme would be assessed by monitoring a set of indicators (IA, p.46). These appear to be carried over from the existing programme and amended in the light of the mid-term evaluation. An interim and final evaluation of the programme would be provided for by the Customs legal act.

Commission Regulatory Scrutiny Board

The Commission's Regulatory Scrutiny Board (RSB) issued a positive [opinion](#) on a draft version of the IA on 27 April 2018, making several recommendations for improvement. In particular, it considered that the report should better clarify why the doubling of the size of the proposed Customs programme is needed and that there was a need to demonstrate that the current management and organisation of the programme could absorb an increase in funding.

Coherence between the Commission's legislative proposal and IA

The proposal appears to be coherent with the analysis in the impact assessment.

Conclusions

The impact assessment provides a good overview of the problems facing EU customs cooperation that need to be tackled after 2020, and sets out well the rationale for the new programme. However, the overall analysis is undermined by the limited range of viable options and the absence of a proper comparison of the options and assessment of their impacts, contrary to the Better Regulation guidelines. A more thorough assessment would have helped to better explain the choice of the preferred option.

ENDNOTES

¹ The almost parallel adoption of the spending programmes and the MFF proposals had an impact on the IA process and resulted in simplified IAs, with their format and scope differing from the standard IAs as defined by the Commission's Better Regulation Guidelines (see also [Toolbox 10 Financial Programmes and Instruments](#)).

This briefing, prepared for the Committee on Internal Market and Consumer Protection (IMCO), analyses whether the principal criteria laid down in the Commission's own Better Regulation Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal.

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