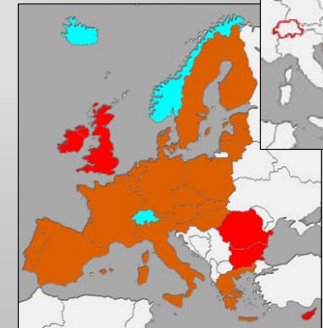


**Focus on Customs:
Its Role in EU Border Management**

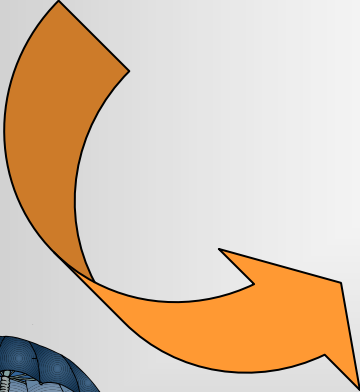
Dr. Peter Hobbing (CEPS)

**IMCO Meeting
Brussels, 14 June 2011**



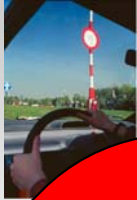
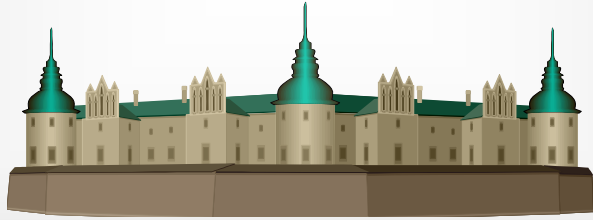
Tradition and Flexibility

Greco-Roman World



Protectionism

Middle ages – 18th century



Free trade



German Customs Union
1834-1870



19th/20th century

EU Customs Union
1957-2007



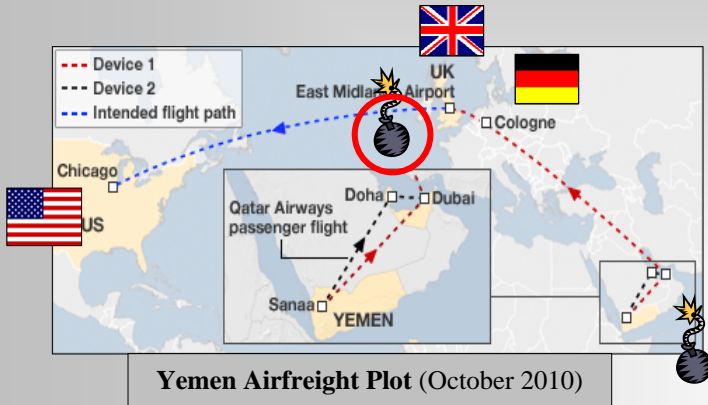
Safety/security



21st century



The End of Harmony? A Bone of Contention



EU IBM concept for the external border

2001-2

Laeken European Council/COM (2002) 233 final

- coverage of **all cross-border flows** (goods, persons)
- involvement of **all border-related agencies** (border guards/police, customs, veterinary, phytosanitary)
- coverage of both **facilitation and security concerns**

2006+

JHA Council 12/2006

- coverage of **persons only** (scope of Schengen Borders Code)
- primary involvement of **border guards/police** (customs in an auxiliary function only)
- coverage primarily of **security concerns**.

Similarly: **Stockholm Programme (2009)**
Internal Security Strategy (2010)

Lisbon Treaty (2009): some support to this vision

- border management as part of Title V on “**Area of Freedom, Security and Justice**” and subject to coordination by COSI (Art. 71)
- “border controls for **persons**” (Art. 67), “checks on **persons**” (Art. 77)
- customs only mentioned under “other **specialised law enforcement services**” in the context of combatting criminal offences” (Art. 87)

wide approach

narrow police/security-minded approach



Customs Capacities: Versatility and other Assets

Variety of skills



- **Revenue collection** (traditional)
- Enforcement of **interdictions/restrictions** (since 1970s)
- Enforcement of **counterterrorist policies** (since 2001)



Operational field



- **Checks & physical examination** according to flexible concepts (**risk management**)
- **Investigative skills** >> commercial/ trade practises („**papertrail**“)
- **Risk management concepts** „**smart**“ system to identify/address security risks



Political landscape

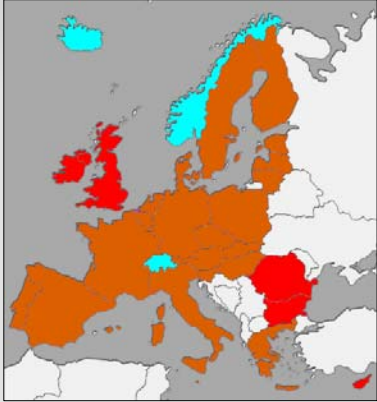


- **Long-term pioneer of European integration** familiarity with EU **mainstream policy-making**
- **Partnership with business and trade** „**trade facilitation agency**“
- **More „civilian“ way of policy-making** >>> more than traditional law enforcement agencies



Customs Capacities: Possible Deficits/Disadvantages

**Schengen vs customs:
diverging territories**

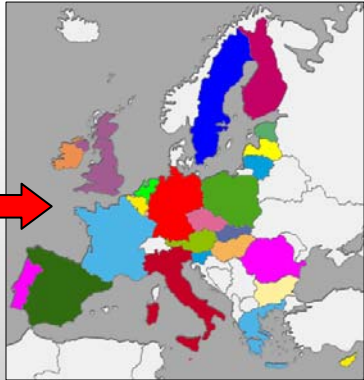
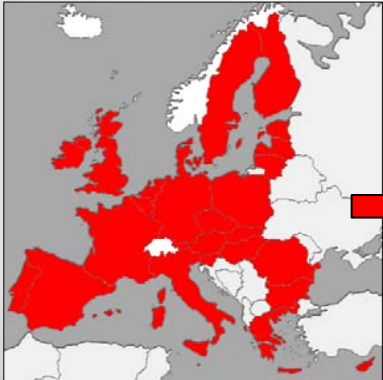


Split geography - split border lines
>> limited synergy gains to be expected from common border management

■ Schengen+Customs combined
■ Customs only
■ Schengen only

Less than 50% of the current external border lines (14,200 km) are common Schengen and customs borders (6,500 km). Customs has to shoulder more than 50% on its own (6,600 km), the Schengen authorities 15% (1,100 km)

Uniform application of the law: a delicate issue



EU customs law to be implemented by 27 distinct national administrations
>> risk of divergent application

2006 incident: US complaint before WTO, that the EU „failed to administer the uniform application of EU customs law“ (Art. X.3(a) GATT 1994)



Solutions envisaged:

- Objective: national administrations to „operate as efficiently and effectively ... as would one single administration“ (2013 Action Programme)
- Improved monitoring of national decisions by means of e-border mechanisms (MCC 2008)

Possible Deficits 2

The vexed question of penalties



Customs law



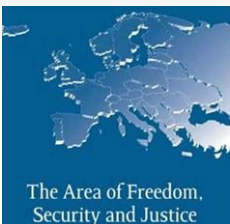
Customs penalties

- Two harmonisation attempts in vain (1980s, 1990s)
- New approach under **Lisbon Treaty: approximation** in the sense of **minimum rules** (Art. 83(2) TFEU)
- Also considered: harmonisation of **administrative penalties**

Less funding for training and equipment



Single Market
1980s-1990s:



The Area of Freedom,
Security and Justice
Area Freedom,
Security, Justice
1999+

Shift of resources

Customs:
Matthaeus Progr.



Schengen
External Border Fund:
1,533 MEuro

Customs
2013 Programme
11.4 MEuro



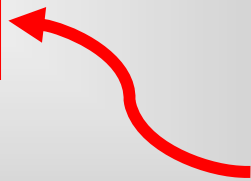
Political support



Ministry of
Finances



Ministry
of Home Affairs



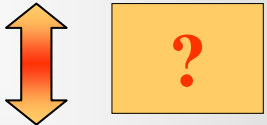
Possible Deficits 3

Customs coordination
– a vacant position

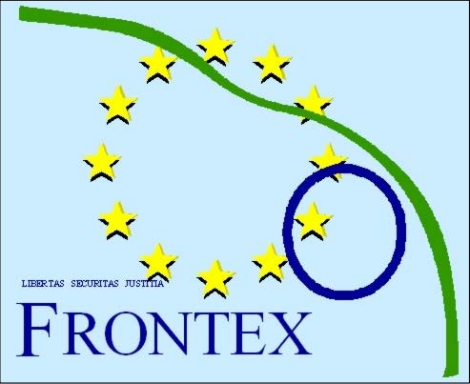
1960s-1990s

1990s +

Customs



Border guards
Police

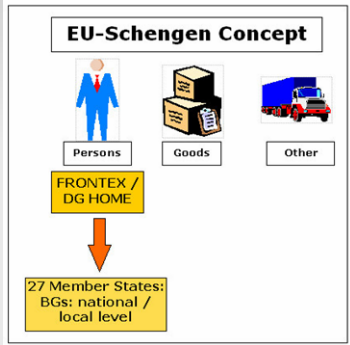


The Right Choice for Managing the external Border: General Criteria

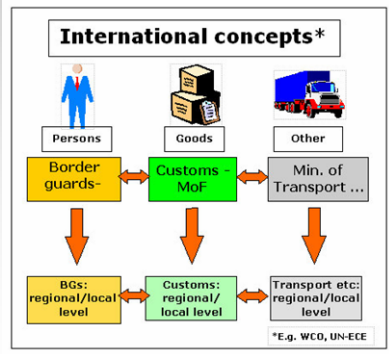
1. Who?
(which services to be involved)

2. What?
(which subjects to be covered)

3. How?
(Merger or coordination?)



Source:
JHA Council 12/2006

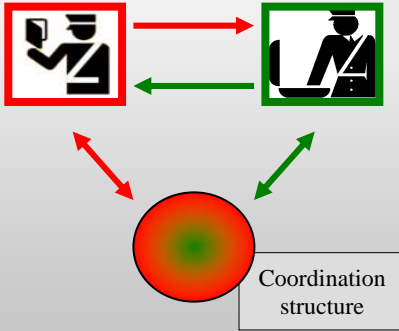
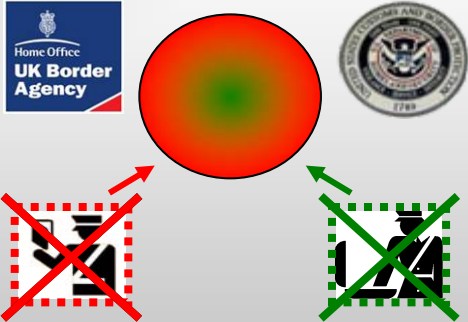


Sources:
WCO, UNDP, OSCE,
EC Guidelines 2009

- General findings:**
- Border management is a **comprehensive task**
 - We **cannot isolate person-related threats from goods-related threats**
 - We **cannot isolate security concerns from facilitation concerns**
 - The skills of **all relevant agencies** are needed.

„Monolithic“
structure (merger)

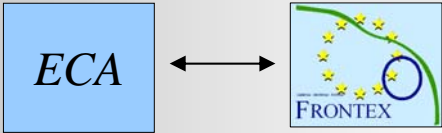
Network
(coordination)



- General findings:**
- Merger solutions practised in only a few countries world-wide.
 - **Most** EU member states are in favour of **coordination**
 - Network/coordinated systems go along well with or even require **coordination structures** (EU agency?)

The Right Place for Customs in IBM: Concrete Options

1. Creation of a **European Customs Agency (ECA)**



2. Functions conferred to the **Council CCWP**



3. Creation of customs department within **FRONTEX**



pro	con
Customs „on a par“ with FRONTEX	Financial implications (spending cuts 2014-2020)
EU-wide coordination of customs issues: - security - uniform application of customs law - ...	

pro	con
Long-standing experience in cooperation with law enforcement authorities	Lack of experience in - general customs law - facilitation matters
	Lack of infrastructure, coherence - shortage of staff, resources - rotating presidency
	Retrospective „ 3rd Pillar “ orientation - strategy without EP involvement - uncertain future

pro	con
Financial advantages	Difficult role for the customs team within a (perceived) police authority
	Difficult status towards customs authorities at the national/local level
	General objections towards „ super-agencies “

Concrete Options 2

4. Creation of customs department within **Europol**



5. Joining forces with the **European Anti-Fraud Office (OLAF)**



6. Further options: - „**Common Platform for Risk Analysis**“ as a predecessor of future ECA

Common RA Platform



ECA

pro	con
Financial advantages	Difficult role for the customs team within a police authority
	Difficult status towards customs authorities at the national/local level
	General objections towards „ super-agencies “

pro	con
Common roots (OLAF originating from a predecessor of DG TAXUD)	Organisational/structural and financial adaption s necessary
Common „clients“ (close cooperation of OLAF with customs at national/ local level)	
Resource advantages	

Outlook/Perspective



„Efficient in Diversity“

