



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL HOME AFFAIRS

19 JULI 2011

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Your Excellency, *Mr. Jeppe*

As the Commission has indicated in previous correspondence and meetings with the Danish authorities, notably in the letter of 13 May 2011 from President Barroso to Prime Minister Rasmussen and in my letter to you of 18 May 2011, the decision by the Danish Government to introduce strengthened control measures by the customs authorities at the Danish internal borders with other Member States, ostensibly in order to fight cross-border crime and tax evasion, raises grave concerns with regard to respect for several of the fundamental freedoms provided for in the Treaty on the Functioning of the European Union (TFEU) and in corresponding secondary European Union legislation, including the rules forming part of the Schengen *acquis*.

The visit to Denmark undertaken on 14 July last by a number of Commission services, under the leadership of DG Home Affairs, has not allayed those concerns. Indeed, many of the concerns which we have already expressed to you were confirmed and in some respects strengthened.

The Commission is concerned that the intensified controls being conducted by the Danish customs authorities, and in particular the spot-check operations being carried out at the internal borders between Denmark and other Member States, may, whatever their purported purpose, be having the impact of unjustifiably impeding the free movement of goods and persons within the European Union. In particular, it is not clear how, and to what extent, the planning and implementation of spot-check operations is being determined on the basis of risk analysis arising from the criminal / customs law purposes which it is claimed are being pursued. Nor is it clear on the basis of what kinds of information sources the risk analysis is being made.

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At the same time, the Commission would like to have a clearer picture of how the spot-check operations being conducted by the customs authorities at the internal borders between Denmark and other Member States are being complemented by other measures being take by the relevant Danish law enforcement authorities 'inland' and at Denmark's external borders, for the same purposes.

As regards the impact of the measures being introduced, the Commission is concerned that the adverse impact of these spot-check operations, in terms of impeding the free flow of goods and persons within the Union, is not being sufficiently mitigated in a manner which would ensure that any negative impact is proportionate to the threats being addressed and in full conformity with EU law. In particular, the Commission has concerns about the impact of the measures on traffic flows at the internal land borders between Denmark and Germany and between Denmark and Sweden, as well as on the deterrent effect which the perception that border controls are being re-introduced may have on the free movement of EU citizens and other persons with a right to travel throughout the Union.

During the visit last week, the Commission indicated that questions put by the team orally on that occasion would be followed up by more detailed questions in writing, and that monthly statistical data would also be requested in order to enable the Commission to closely monitor the implementation by Denmark of its intensification of spot-check operations by the customs authorities at the internal borders. Accordingly, I would be grateful to receive the information requested in items 1 to 13 of the attached annex by the end of August 2011. As for item 14, the monthly data requested for the months of July and August, I would be grateful to receive this information by the 15<sup>th</sup> of September 2011, and thereafter on a monthly basis, on the 15<sup>th</sup> of each month until further notice. I should add that I cannot at this stage exclude that it may be necessary for the Commission to subsequently request further information from the Danish authorities.

Finally, I would like to take this opportunity to thank the Danish authorities for their good cooperation during the visit of Commission officials to Denmark last week, and for the ongoing dialogue over the preceding weeks. I look forward to continuance of the constructive dialogue which we have been conducting on this matter in the weeks and months ahead.

Yours faithfully,



Stefano MANSERVISI

Annex: Questions / Monthly Statistical Data requested

## Questions / Monthly Statistical Data

1. As border control *per se* is, according to Denmark, not the objective of the spot-check operations being carried out at the internal borders between Denmark and other Member States, please explain (a) the precise purpose/s of these checks, and (b) what measures are being taken to pursue those purposes other than spot-checks being carried out at the internal borders. In particular, please describe in detail what measures are being taken 'inland' and at Denmark's external borders to further the objectives in question, and how the intensity of these measures compares with the spot-checks being carried out at the internal borders.
2. Describe the nature, the structure and the operation of the risk-analysis system used by Denmark, and how it is being used to determine the location, timing and intensity of spot-check operations to be carried out at the internal borders between Denmark and other Member States. (*What is the scope of the risk analysis? What kinds of risks are assessed? What are the kinds of information sources on which the risk analysis is based? How is the information assessed, at which level and by whom? How is the information transformed into operational planning, guidance or instructions to be used at the operational level throughout Denmark? How/to whom are the results of spot-check operations reported?*)
3. If any considerations other than risk analysis are used in determining the location, nature, intensity or timing of spot-check operations, please explain in detail the nature of these considerations and how they are translated into operational planning / guidance / instructions for the conduct of spot-checks.
4. If spot-check operations are being intensified at certain internal border crossing points rather than others (for example, road crossing-points, rather than ferry or air crossing-points), please explain why, and on what factual basis this distinction is being made.
5. Describe in detail the modus operandi of customs officials carrying out spot-checks at the internal borders between Denmark and other Member States. (*How are vehicles to be stopped selected? Who is authorised to make a decision to stop a vehicle? What information is sought from persons in vehicles stopped? Is the identity of the driver and/or passengers systematically verified? If not, in what circumstances is it verified? What databases and/or information sources are consulted during spot-checks? What information is recorded following spot-checks, and what is done with this information?*)
6. Describe the profiling system used, if applicable. How and on the basis of what kinds of information are the profiles created and by whom? How detailed are the profiles?
7. Please describe in detail what precise steps are being taken to ensure that spot-check operations do not have an adverse impact on the fluid flow of traffic at road crossing-points at internal borders, and that any impact on traffic flow is proportionate to the

perceived threat which is motivating the organisation of the spot check in question, both as regards phase 1 but also subsequent phases.

8. Please describe any positive measures being taken by the Danish authorities to ensure that the right of free movement of EU citizens and other persons with a right to move freely within the EU is fully and effectively respected, including measures to ensure that the controls will not in practice create obstacles to free movement. In particular, please provide any written guidelines or instructions setting out the rules/procedures to be followed as regards checks on persons, in particular EU citizens and their family members, for the customs officers operating at the internal borders.
9. Please provide details of training carried out for customs officers operating at the internal borders (basic/continuous training), and in particular copies of any curriculum/a or other training programme/s used for this purpose.
10. Please provide details of the extent and timing of recent and planned staffing increases for the purposes of intensifying spot-checks at the internal borders (with as much precision as possible), and how these staffing levels compare to comparable staffing levels over the past three years. Have there been during this period any staff increases in other services involved in crime prevention activities (police or others) and performing similar checks inside the territory, or are any such increases planned? If so, please quantify these increases / planned increases.
11. Please provide details of the exact procedure for shifts planning for spot-check operations to be carried out at the internal borders between Denmark and other Member States.
12. Please provide as many details as possible with regard to Denmark's plans for subsequent phases of intensification of controls by customs authorities, and especially phase 3 (*building up of new infrastructure and traffic facilities; increase in staffing levels; timing; nature and extent of current and envisaged cooperation with other Member States, and in particular with neighbouring customs officers/neighbouring police; etc*).
13. What type of equipment (e.g. scanners, x-rays, geiger counters, video supervision, sniffer dogs) are you using or do you intend to use at the borders between Member States, and how does such use compare to controls for the same purposes within Denmark and at the external borders?
14. Please provide, on a monthly basis, the following data:

- Location/Timing/Intensity/ Nature/Results of checks at the internal borders

*Please provide a table with: the precise geographic location and date/time of each spot-check operation; the number of officers deployed for each spot-check operation; the duration of each spot-check operation carried out; the number of vehicles checked during each spot-check operation, broken down by vehicle type (car/truck) and registration plate nationality, and the total number of vehicles which passed through the crossing-point during the spot-check operation; for each spot-check operation, the number and type of goods seized, and number of persons (incl. nationalities) handed over to the police authorities or refused entry to Denmark, if*

*any, including the reasons why such persons were handed over or refused entry; impact of each spot-check operation carried out on traffic flow.*

- Total number of spot check operations carried out, and the overall results for the reporting period (number of vehicles checked & as a percentage of total number of vehicles passing crossing points / location of spot check operations / quantity and type of goods seized / number of persons apprehended + their nationality)
- Comparative statistical data on operations by police and customs authorities inside the territory and at Denmark's external borders for the same purposes being pursued by customs officials operating spot-checks at the internal borders; if customs authorities do not carry out such checks, please provide information on 'inland' police checks, or the checks being carried out by other services. This data should enable a meaningful comparison to be made between the intensity of the latter operations and the spot-check operations being carried out by the customs authorities at the internal borders.

On the *first occasion* that this data is provided, Denmark is requested to provide – to the greatest extent possible – comparative data for controls carried out at the internal borders during the first six months (January-June) of 2011.