

THE MINISTRY OF INTEGRATION AFFAIRS

THE MINISTRY OF JUSTICE

THE MINISTRY OF TAXATION

THE MINISTRY OF FOREIGN AFFAIRS

Reply to the European Commission's letter of 18 May 2011 and answers to supplementary and follow-up questions from the meeting with the EU Commission on 27 May 2011 concerning the customs controls agreement.

In a letter of 18 May 2011 from Director General Stefano Manservigi, DG Home, to Ambassador Jeppe Tranholm Mikkelsen, Permanent Representative of Denmark to the EU, the Commission has raised a number of questions concerning planned future customs controls at internal Danish borders.

Following receipt of the letter of 18 May 2011, a meeting initiated by the EU Commission was held on Friday 27 May 2011 between a Danish civil service delegation and a delegation from the Commission. From the Danish side, the main elements of the agreement on customs controls were explained. It was made clear that the aim of the agreement is to achieve a strengthening of customs controls, and not to reinstate controls of persons at the Danish internal borders.

At the meeting, the Commission expressed the view that the assessment of the agreement's compatibility with EU rules will especially depend in particular on the practical implementation of the agreement. In this connection asked for further information on the content and context of the agreement. Accordingly, it was agreed that the Danish Government would send additional information, including a written answer to the Commission's letter of 18 May 2011. It was further agreed that the Commission will be informed in advance of the practical implementation of the agreement's various elements.

Denmark sent its first information to the Commission on 8 June 2011. The information relates to the initiation of the part of Phase 1 of the customs controls agreement that concern immediate deployment of 50 additional customs officers as soon as possible at the Danish borders. The additional 50 custom officers will perform the customs control in the same way as before the agreement was made. On June 14 Denmark also informed the Commission of an amendment to the text of the agreement which was agreed on 10 June 2011. As part of the amendment to the text of the agreement, it was clarified that the agreement must be accomplished within the framework of the current Schengen cooperation, and that this will be ensured in all phases of implementation.

Phase 2 of the implementation covers the period from 1 January 2012, the date from which the remaining 48 customs officers are added to the Danish customs inspection force in accordance with the agreement. In this connection a nationwide staffing plan will be established, which will be sent to the Commission. The planning of the construction of technical installations, roads and buildings will also be initiated.

Phase 3 includes the commissioning of the new or modified facilities. When facilities are ready for use phase 3 begins by the first acquisition of equipment. This is expected by the end 2013 or beginning of 2014.

Denmark is fully prepared to continue the dialogue with the Commission, and Denmark will ensure that the Commission is informed in advance of the practical implementation of phase 2 and 3.

In the letter of 18 May 2011, the Commission refers to the Schengen rules and to the basic provisions of the Treaty on the Functioning of the European Union (TFEU) concerning free movement within the EU, and questions whether the planned customs control measures will be consistent with the basic freedoms of the treaty. The Commission's letter contains 11 questions regarding the planned customs control measures. These questions are answered below in the context of the points raised during the meeting on 27 May 2011.

Background to the agreement on strengthened customs controls

The Danish Tax and Customs Administration reduced manning levels of customs controls at an early point in time, and until the beginning of 2011 maintained largely unchanged low levels for a number of years. Therefore, Denmark has deployed only a limited number of customs officers at border controls.

The Danish Tax and Customs Administration currently has a basic organisation of 142 staff manning border customs controls (internal and external). Their work includes smuggling controls, counterfeit goods controls, physical controls including the use of scanners, and operative customs support functions.

The Danish Tax and Customs Administration's customs controls have been, and will continue to be, based on risk-based and intelligence-based principles. Customs controls have so far been focused especially on external borders, domestically and targeted at received goods, based on risk assessments. Joint actions by customs and police (including collaboration with patrols within the borders) have been carried out inside the country. The execution of customs controls, as outlined, has been effective, and no changes will be made in this regard.

In recent years however, an increase in cross-border crime has been noted. E.g. as stated in the last report from Europol on EU organized crime threat assessment (OCTA) a new criminal landscape is emerging, increasingly characterized by highly mobile and flexible groups operating in multiple jurisdiction and criminal sectors. Europol states inter alia that organized crime groups from the Western Balkans, South East Europe and the Former Soviet Union are increasingly engaging in acts of property crime in the EU, the scale and level of violence of which is significant.

In relation to customs controls at the internal borders, it has caused particular concern that in connection with special actions and planned extraordinary customs controls, significant quantities of illegal goods being smuggled into the country have been discovered. These seizures of goods are

not reflected in the annual statistics because they are carried out during a concentrated time period, but they show that there is a general need for strengthened customs controls at the border itself to curb cross-border crime.

To illustrate the point, the Danish Tax and Customs Authorities temporarily deployed extra border control staff in Q1 2011 in connection with a special finance bill project. This resulted in the seizure of, among other things:

- 6.5 kg of heroin at the border in Rødby harbour
- 40 kg of amphetamine at the border in Rødby harbour
- 200 litres of illegal pesticide for an organic farmer
- 300 kg freon in Aarhus harbour
- EUR 90,000 in cash taken out of the country in contravention of the obligation to declare under the Danish Customs Act
- 3 kg of cocaine and 10 kg of hash at the internal country border
- 22 litres of veterinary antibiotics that the recipient did not have permission to import
- 1.5 kg of hash and 18 kg of skunk (cannabis) at the internal country border
- a van transporting meat that had not been declared on entry via the Øresund Bridge

Furthermore, it has been established that there continues to be a large and increasing number of travellers who fail to declare sums of money exceeding EUR 10,000 which they bring along when leaving or entering Denmark. This applies to travel to and from both EU and third countries. In addition, an increase in the number of seizures of anabolic steroids in Denmark has been noted. In 2010, more than 110,000 units were seized – the highest number so far recorded.

It is important to underline that the agreement on increased customs controls is part of a general upgrade in measures against cross-border crime. The agreement has to be seen in connection with another agreement recently concluded between the Danish Government and the same parties regarding measures to combat organized crime throughout the country.

The latter agreement entails a general intensification of measures to combat organized crime, namely criminal gangs, organized burglaries, robberies in private homes, and itinerant criminal groups travelling across the borders within Europe. The agreement involves a number of initiatives, including the establishment of a new multidisciplinary anti-burglary unit to ensure evidence-based investigations across police districts. Investigations will be organized in close collaboration with the National Centre of Investigation (NEC) at the Danish National Police, and by increased use of foreign liaison officers.

At the same time, the police will increase their checks on locations and routes notorious for their use by itinerant foreign criminals, as well as other relevant locations identified by the anti-burglary unit.

The above-mentioned agreement on intensification of measures to combat organized crime is just the most recent initiative taken by the Danish Government in this field. Combating crime,

particularly organized crime, has continuously been a key priority for the Danish Government. During the last few years, a number of other initiatives have been launched in this area. The police and the Danish Tax and Customs Administration have engaged in a close collaboration to combat organized crime by targeting the financial outcome of criminal activities. This collaboration was upgraded significantly in 2010 through the allocation of extra resources. Also in 2010, the Danish Government launched a comprehensive multi-agency initiative to reduce the number of burglaries in private homes. In early 2011, the South Jutland Police, in collaboration with the Danish National Police, launched a new concept for the work of the Division for Control of Aliens at the South Jutland Police, in order to intensify the combating of cross-border crime such as smuggling narcotics, goods and persons into the country.

The Commission's questions in the letter of 18 May 2011:

Question 1: What will be the legal basis for the announced customs controls?

The legal basis for the announced customs controls is §10a of the Danish Customs Act, most recently amended by law no. 1558 of 21 December 2010, which states:

“§ 10a. The Danish Tax and Customs Administration implements controls of inward and outward movement and transit through the Danish customs area, to ensure that no violation of prohibitions of inward or outward movement or transit occur that are stipulated for security, health, veterinary, plant disease-related, currency or other reasons. The Danish Tax and Customs Administration hereunder implements controls of cash contained in unaccompanied consignments.”

The provision is the legal basis for control of the illegal influx of goods which can pose a threat to freedom, safety and health in the EU, in combination with the Danish Customs Act § 15, subsection 1 and 2, which has the following wording:

“§ 15. With a view to the inspection and control of goods, the Danish Tax and Customs Administration can, without a court order, move unhindered along coasts, in harbours, in airports, in landing areas, in transport centres, in trains, on railway grounds and on roads to which there is public access. In these places, inspection and control can be carried out on goods sent by post, in warehouses, in containers, in conveyances and in other temporary or permanent places that can be used for storage of goods etc.

Subsection 2. The Danish Tax and Customs Administration has the right of unhindered access along the entire borders of the country. If adjacent areas are fenced in or cordoned off, the owners must take appropriate measures to ensure that the Danish Tax and Customs Administration has unhindered passage at all times.”

§§ 10a and 15 of the Danish Customs Act constitute part of the general legal basis for customs controls and the powers of the customs authorities. These provisions give the Danish customs

authorities the right to carry out controls of illegal cross-border trade (and other inward movements) everywhere in the Danish customs area.

These provisions have formed part of Danish customs law since the introduction of the internal market. There are no planned amendments to current provisions. In connection with the preliminary information on Phase 1 of the agreement, the Commission has received a copy of the Danish Customs Act, in chapter 4 of which the Danish customs controls provisions are stated.

§10a of the Danish Customs Act has been prepared in accordance with articles 36 and 65 of TFEU.

It should be made clear that the planned strengthening of the customs controls will be organised in a way that does not constitute arbitrary discrimination, or restriction of trade or movement of capital. The strengthened customs controls at the border are a constituent element in an overall strategy that applies to the entire Danish territory, and the customs controls at the border will as hitherto be carried out as spot checks, or based on risk assessments.

Furthermore, reference is made to regulation no. 1889/2005 of 26 October 2005 on controls of cash entering or leaving the Community, where it is stated in the preamble that the harmonisation at Community level of the maximum amount allowed does not affect the freedom of member states, in accordance with the existing provisions of the Treaty, to apply national controls to movements of cash within the Community.

A number of EU member states have introduced (and also had introduced before regulation no. 1889/2005 of 26 October 2005) national provisions on the obligation to declare and control cash at internal borders. In Denmark, customs controls on cash entering or leaving the Danish customs area are regulated in §§ 23 and 24 of the Danish Customs Act. In connection with an amendment to the Danish Customs Act in 2007, the threshold for obligatory declaration was reduced from EUR 15,000 to EUR 10,000 (\approx DKK 75,000) with a view to adjusting the national provisions to the provisions of regulation no. 1889/2005 of 26 October 2005, so that the threshold is identical, regardless of whether it is an internal or external border that is crossed.

Failure to comply with the obligation to declare can only be established when cash crosses the border, and so customs control of compliance with the obligation to declare will naturally be linked to border controls.

Additionally, a range of restrictions and prohibitions in relation to, for example, chemicals and pesticides, apply in Denmark as well as other EU countries. A number of restrictions are the result of the new pesticide regulation 1107/2009, which came into effect on 14 June 2011. Prior to this date, it was directive 91/414/EEC that determined the EU rules.

The new pesticide regulation states that active substances in pesticides must be approved at EU level. When active substances are approved they are included in an appendix to the regulation. If the active substance has been approved it can form part of a pesticide in the EU, but it also needs to be approved individually in each member state before marketing in that member state. This naturally

provides Denmark with the opportunity to refrain from approving a product, which might have been approved in another EU member state, if for example it is considered to be harmful to groundwater.

If Denmark has refrained from giving its approval to a pesticide, it is because of an associated health risk if this pesticide is brought into, and used in, Denmark.

The Danish Tax and Customs Administration, in collaboration with other authorities, controls compliance with the restrictions to ensure that unapproved pesticides do not enter the country.

Based on a collaboration agreement with the Environmental Protection Agency, it has been established, for example in relation to goods arriving from Poland, that attempts have been made to bring in large amounts of pesticides which are not approved in Denmark, and which are prohibited from being brought into, kept in, or used in Denmark.

Question 2: What will be the sources of information on which these controls will be carried out (police information or experience, profiling, risk analysis, etc.) and what will be their objectives?

The sources of information used for the control measures are risk analyses and threat assessments, which in turn are based on previous experience with controls through an evaluation of development trends, and through information received from our collaboration partners. The information contained in the risk analysis consist in other words of further studies and exploration in relation to e.g. modus operandi, traffic routes, specific high risk goods etc. Information on immigration is not elements of the analysis.

Spot checks are carried out using mobile scanning facilities that are being constantly developed to incorporate the latest scanning technology, which helps minimise the time taken for the controls. Spot checks are carried out in order to continuously acquire and operate with updated risk analyses.

Question 3: Will the announced measures be part of larger measures to combat crime throughout the whole Danish territory?

1. Actions in relation to cross-border crime are not only carried out at the borders. In recent years, the Danish Tax and Customs Administration has also increased its focus on other areas, such as tax controls of cross-border activities of citizens and companies, and strengthened international cooperation. This takes place for example in connection with controls carried out at companies, where customs officers also have the opportunity to check that there is a connection between movements of goods and money flow, whether duties on highly taxed goods have been correctly paid, and whether there are prohibited goods in the company. Excellent results have been achieved from these actions.

Customs controls at the border are thus only one of several instruments for combating crime.

The weighing-up of the various forms of activity is decided through an assessment of which actions are most effective in combating the problem.

The Danish Tax and Customs Administration has an overall action strategy in which customs controls form a constituent element.

In 2010, the Danish Tax and Customs Administration seized the largest number of illegal doping substances so far recorded. The danger of doping substance abuse is often greater than that associated with the abuse of narcotics.

Regarding highly taxed goods, Denmark is still assessed to be primarily a transit country for illegal transportation of cigarettes and other tobacco products to “high price countries” including Ireland, Norway and the UK. In other EU countries, major seizures of cigarettes have previously been made in which Denmark was or should have been a transit country – including temporary storage – often with Danish company names falsified on freight documents. This is supported by a seizure in Denmark in 2010 of approximately 28 tons of tobacco and packaging en route to an illegal cigarette factory in Ireland, and a similar seizure in Ireland in 2009 of 8 tons of tobacco and associated materials which also came via Denmark.

Denmark has also been used to a considerable extent as a storage place and collection point for illegal materials. This was recently documented by the Danish Tax and Customs Administration in connection with an extensive joint investigation with the police, which established that about 450 tons of material (31 full containers) had been despatched from one sender in Denmark to an illegal cigarette factory in another member country.

2. As mentioned, the agreement on increased customs controls is part of a general upgrade in measures against cross-border crime and has to be seen in connection with another agreement recently concluded between the Danish Government and the same parties regarding measures to combat organized crime throughout the country.

This latter agreement entails a general intensification of measures to combat organized crime, particularly criminal gangs, organized burglaries, robberies in private homes, and itinerant criminal groups travelling across the borders within Europe.

The agreement involves a number of initiatives, including the establishment of a new multi-disciplinary anti-burglary unit to ensure evidence-based investigations across police districts. Investigations will be organized in close collaboration with the National Centre of Investigation (NEC) at the Danish National Police, and by increased use of foreign liaison officers.

At the same time, the police will be increasing their checks on locations and routes notorious for their use by itinerant foreign criminals, as well as other relevant locations identified by the police.

To finance the new anti-burglary unit, the parties to the agreement on intensification of measures to combat organized crime agree to set aside DKK 30 million each year for personnel, and DKK 20

million for investments in new equipment, including new vehicles and equipment for observation, tracking and surveillance.

Regarding the agreement on increased customs controls, the same parties agree to set aside DKK 6.1 million for the upgrade in police personnel in areas near the borders to support the increased customs controls when the customs authorities uncover criminal activity. The costs of establishing and operating video surveillance of vehicles have not yet been estimated in detail. The increased resources for police personnel will follow the first phase of increased customs controls (more customs officers at the borders).

The above-mentioned agreement on intensification of measures to combat organized crime is just the most recent initiative taken by the Danish Government in this field. The combating of crime, particularly organized crime, has continuously been a key priority for the Danish Government. During the last few years, a number of other initiatives have been launched in this area.

For several years, the Danish Tax and Customs Administration and the Danish Police have been jointly combating organized crime by targeting the financial outcome of criminal activities, a tactic known as “the Al Capone method”. The Tax and Customs Administration has established a special department for economic crime, which spearheads efforts against organized economic crime. In 2010, this department was upgraded by 40 man-years to strengthen the combating of organized crime, leading to increased use of the Al Capone method and more visible control.

In the Al Capone method, the police single out relevant persons affiliated with circles of organized criminal groups. The Tax and Customs Administration then carries out an economic and fiscal scrutiny of each person, including any businesses the person may own. If there is no current basis for instituting proceedings on charges of tax evasion, the tax authorities will maintain their attention on the person in question. A large number of persons have been scrutinized over the last few years.

In parallel, the Tax and Customs Administration, in collaboration with the police, have carried out several raids in recent years targeting vehicles with foreign number plates. In addition, the Tax and Customs Administration regularly participates when the police carry out checks on activities in the circles of organized criminal groups. This has resulted in the seizure of numerous cars, as well as cash, motorcycles, jewellery etc. belonging to members of these groups.

In response to a steep rise in the number of burglaries in private homes in recent years, the Danish Government launched a comprehensive multi agency-initiative in 2010 to reduce the number of such burglaries. The initiative was developed in close collaboration between the Ministry of Justice, the Police, the Prosecution Service, the Crime Prevention Council, the Prison and Probation Service, the Ministry of Economic and Business Affairs, the Ministry of the Environment and the Danish Insurance Association. The aim is to ensure a coherent and holistic approach to the combating of burglaries in private homes, addressing the full spectrum of prevention, investigation, prosecution and rehabilitation.

One element of the initiative is a broad upgrade in counselling and information given by both public authorities and other stakeholders on how to adequately secure private homes against burglary, e.g. a new guide targeted at homeowners, architects, workers, residents' associations etc.

Other elements of the initiative are the encouragement of neighbourhood watches, and the encouragement and guidance of municipalities on how to incorporate prevention of burglary into the local planning of public areas, e.g. in relation to street lighting, pathways etc. Legal access to establish private video surveillance in local neighbourhoods has also been expanded.

In addition, the combating of burglaries in private homes has been singled out as one of the key priorities for the Danish Police in 2010 and 2011. The Danish National Police has developed a plan of operation against burglaries in private homes to support the increased efforts of the local police districts, which in turn have developed operational plans tailored to local conditions. The National Police is monitoring local efforts to ensure that adjustments are made if necessary, e.g. based on best practice from other police districts.

The initiative also addresses the demand for stolen goods, including tougher punishment for receiving stolen goods.

The Division for Control of Aliens at the South Jutland Police has been assigned the task of carrying out targeted investigations and raids with the purpose of uncovering the smuggling of narcotics, goods and persons, as well as aliens staying illegally in Denmark.

On 1 February 2011, the South Jutland Police, in collaboration with the Danish National Police, launched a new concept for the work of the Division for Control of Aliens in order to intensify the combating of cross-border crime.

The concept entails an intensification of investigations of organized crime committed in areas near the border, where organized criminal groups are active on both sides of the border, as well as increased attention – in cooperation with the German Police – on crime crossing the border. The new concept also means that police work in the areas near the border will increasingly be based on analysis, in order to focus efforts and increase contributions to the combating of crime committed by aliens in other police districts. Furthermore, the new concept means that the Division for Control of Aliens – on behalf of all police districts in Denmark – will handle all cases concerning goods stolen in Denmark which are found abroad.

- The agreement concerning security is enclosed for information.

Question 4: Will the announced controls be carried out on a regular and/or systematic basis? Concretely, will all vehicles or persons crossing borders between Denmark and other Member States be submitted to these controls?

No. There will be no systematic or regular controls of all vehicles, persons or goods entering or leaving the Danish customs area. Subjects for controls are selected on the basis of risk profiles and spot checks, and it is not expected that controls will affect the legal transport of goods.

Following implementation of the agreement on strengthened customs controls, the control frequency at the internal border will still be minimal in relation to the traffic crossing the border. The number of customs officers forming part of the agreement on strengthened customs controls itself indicates that there will be no systematic or regular customs controls. In relation to Denmark's neighbouring countries, which have a control frequency from 0.1% to 0.4%, there is no expectation that the control frequency will exceed this range. 24-hour staffing with the presence of just one customs officer in 24 hours means a resource use of 7 persons (24 hours duty = factor 7). Factor 7 is calculated from the fact that holidays, weekends, and disease are taken into account. Converted into practice a resource consumption of 7 customs officers is used in order to ensure the presence of one customs officer throughout the day.

Put briefly, there will be 7 extra customs officers per 24 hours to cover the entire length of Denmark's border crossings. When the border agreement has been fully implemented with 98 extra customs officers in total, it will correspond to a staffing increment of 14 customs officers, which should also be seen in relation to the total number of border crossings in Denmark, noting that customs efforts at the external borders will not be reduced

Question 5:

Could you provide concrete details on how the video surveillance to be established on the highway will be used to trigger controls?

1. The practical realization of both stationary and mobile video surveillance of vehicles awaits the development of the necessary technical solutions and equipment. The establishment of stationary video surveillance will also depend on finalization of the traffic regulation facilities on the highway, as the system will be established in connection with the latter.

The technical system for video surveillance is expected to be ready for use around August 2013, and the traffic regulation facilities on the highway by late 2013. It is thus the intention to start the video surveillance of vehicles towards the end of 2013, possibly with a slightly earlier start of the mobile video surveillance depending on technical feasibility.

It should be noted that the main purpose of the video surveillance of vehicles is to serve as a proactive tool for subsequent police investigations, and not to trigger controls on persons at the border.

Video surveillance of vehicles entering Denmark via the highway from Germany is intended to be established in the form of stationary cameras placed above each of the lanes where the highway passes through the traffic regulation facilities. The cameras will record images of vehicles as they

pass through the post to allow for automatic reading of number plates and automatic checks (hit/no hit) in Danish police databases of searched vehicles and vehicles otherwise related to criminal activity.

The stationary video surveillance at the traffic regulation facilities on the highway will be targeted only at inbound traffic, and will cause no hindrance to the free flow of traffic.

In the event of a hit, the police – not the customs controls at the border – will receive an automatic notification. Based on the registered information about the vehicle in question, the police will decide on what action to take.

In the vast majority of cases, it is expected that the police will handle the hit without involving customs authorities. A hit will not necessarily entail any immediate action from the police, as the surveillance is primarily intended as a tool for police investigations.

Where relevant, the police will notify customs authorities about a hit. In rare circumstances, a hit might result in customs authorities stopping a vehicle at the border to carry out customs control. But this will definitely be the exception, as generally there will be insufficient time to do so before the vehicle has passed through the traffic regulation facilities on the highway. It should be kept in mind that the traffic will continue to flow freely, regardless of the video surveillance.

There is no question of the video surveillance triggering checks on persons at the border.

It has not yet been decided exactly what will trigger a hit, or if there will be different kinds of hit, or if there will be some kind of triviality limit. Some uncertainty thus remains regarding this matter.

Likewise, it has not yet been decided exactly what information will be stored, how long it will be stored etc. However, during the implementation phase, due consideration will be given to ensuring that the video surveillance is established in full accordance with relevant data protection principles and under full observance of relevant EU law.

The stationary video surveillance on the highway will be supplemented by mobile surveillance equipment to be used strategically on the minor roads crossing the border. Like the stationary video surveillance, the mobile video surveillance will be targeted at inbound traffic. However, once the equipment for mobile video surveillance has been developed, it will serve as a regular tool for police work. It may thus occasionally be used for other purposes, whether this be inside the country or to target outbound traffic at the border, if for example the German police request assistance.

2. Every year, around 9 million inbound border crossings by vehicles are counted on the German-Danish border, of which around 3 million are on the highway. This includes crossings by both Danish and foreign vehicles.

Currently, around 18,000 vehicles are registered as searched by Danish authorities. The figure includes all grounds for search, including theft and unpaid registration fees.

As mentioned above, the exact criteria for triggering a hit have not yet been decided upon. Nevertheless, the figures indicate that only a small proportion of vehicles crossing the border will have the potential to trigger a hit.

Not all searched cars will cross the border from Germany to Denmark, and of the cars crossing the border from Germany to Denmark, it is expected that a minuscule proportion of inbound traffic will be subject to customs controls as a consequence of the video surveillance of vehicles.

Question 6: Will there be controls specifically targeting transported goods? If so, which categories of goods will be concerned?

Targeted controls of transported goods will solely be carried out in accordance with risk profiles and threat assessments.

The strengthened customs controls in Denmark will focus solely on illegal transportation of goods. The level of activity will vary in relation to the contemporaneous level of threat, so that from time to time there may be an increase in focus on particular categories of illegal goods such as dangerous waste, chemicals, radioactive material and explosives.

Question 7: How will Denmark ensure that these controls will not lead to an obstacle to trade and to fluid flow at road crossing-points concerned at internal borders infringing the free movement of goods and persons guaranteed under EU law?

The strengthening of customs controls in Denmark does not change the objectives laid down in the European Parliament's and Council's Regulation no 450/2008 of 23 April 2008 on the European Community's Customs Code. The objectives of the modernised customs code are to lay down rules and procedures that apply to goods brought into or taken out of the Union's customs area in order to enable the Customs Union to function effectively as a central part of the internal market.

The modernised customs code with its associated implementation provisions focuses on making it easier to run a business by ensuring standardised customs procedures via application of a paperless environment, while at the same time ensuring appropriate controls of goods brought into or taken out of the Union.

Denmark fully supports these objectives. The effort that Denmark makes to ensure optimal conditions for the business community in the EU, and to make it easier to run a legal trade, does not change as a result of the agreement on strengthened customs controls in Denmark.

Appropriate controls in relation to compliance with the customs code's many regulations and procedures will be carried out as hitherto, including spot checks, document controls and post-clearance audits, both at the border and inside the country.

The main purpose of the customs code provisions is to regulate the flow of goods entering or leaving the Community's customs area. The code does not prevent member states from implementing national provisions concerning controls arising from consideration of, amongst others, articles 36 and 65 of TFEU. The strengthened customs controls in Denmark are exactly focused on considerations arising from the TFEU articles on health and safety, and the prevention of violations of national laws and regulations in the tax and duty area.

The strengthened customs controls will concentrate on illegal goods and illegal trade, based on risk profiles and threat assessments, which are maintained via spot checks.

It is essential to the Danish Government to ensure the free movement of legal goods and capital. It is also important to prevent illegal movements of cash and the illegal transport of goods, and in order to satisfy both considerations and at the same time attend to the safety of customs officers and road users during customs controls, it will be necessary to establish traffic regulation facilities at a few of the internal borders.

It is important for the Danish Government to stress that the operation of the traffic regulation is part of phase 3 in the agreement. It is expected that the traffic regulation is operative from the end of 2013 at the earliest.

The traffic facilities will be designed and constructed so that free movement is ensured by free passage when there are no controls. In consideration of road safety when carrying out customs controls, there will be a need at some border crossings for certain speed reductions, which is already being implemented today. Customs controls are currently carried out using mobile and temporary measures. The stationary traffic measures are expected both to help optimise safety for customs officers and road users, and to ensure more fluid traffic flow during customs controls actions.

As already stated the Danish Government will ensure that the Commission is informed in advance of phase 2 and 3 being implemented in practice.

Question 8: Is Swedish cooperation on controls on the Swedish side of the Oresund Bridge confirmed? What would be the legal basis for such cooperation?

The Danish-Swedish cooperation on border controls concerning the Øresund Link (the bridge) is regulated by the agreement of 22 June 2000 between Denmark and Sweden on border customs cooperation concerning the Øresund Link. The agreement was published in executive order no. 40 of 23 June 2000, and was given out at the meeting with the Commission on 27 May 2011.

The agreement, which regulates the practical aspects of customs cooperation at the Øresund Link, is applied and implemented, and there is excellent cooperation with the Swedish authorities in this regard. The agreement provides the opportunity to use the Swedish buildings, but talks have not yet commenced with the Swedish authorities in relation to the agreement on strengthened customs controls.

In this context it should be mentioned that Denmark also has excellent cooperation with the German authorities. Since Denmark entered into Schengen cooperation in 2001 with ensuing demolition of the permanent control posts at Frøslev at the Danish-German land border, spot checks and risk-based control actions have been carried out with the German police and customs authorities at the Frøslev motorway. The German border police first installed temporary speed limit signs on the German side, and later in Germany installed permanent speed limit signs (light boards), which could be activated according to need. Subsequently a temporary control facility was established.

When using this temporary facility, it was and still is necessary out of consideration for safety to use a sign vehicle to direct road user attention to the controls, and to direct the traffic into one lane.

In 2008, the Danish Parliament granted DKK 10 million in the finance law for the establishment of a high-tech traffic management system at the Frøslev border crossing, where traffic will be directed into a lane 5 in an examination zone, from which some road users will be directed to a control zone in a specific area.

In connection with this grant, the Danish Tax and Customs Administration and the German road authorities have entered a legally binding agreement on the establishment and operation of this facility, and the Danish Tax and Customs Authorities and the Danish Road Directorate have prepared an agreement on the establishment of the facility, which was put out for EU tender on 9 May 2011 with a deadline of 20 June 2011 for submitting bids.

The tender has been published on the Danish Road Directorate's website.

Construction of the facility is expected to start during summer 2011 with commissioning at the beginning of 2012. The Danish Road Directorate and the Danish Tax and Customs Administration have prepared a collaboration agreement with an associated steering group which deals with issues raised in connection with the establishment of the facility.

The Danish Tax and Customs Administration and the German road authorities entered an agreement on 21 December 2010 on construction, handover and maintenance of the facility.

The current political agreement was passed on 11 May 2011 – and according to the basis of the agreement this high-tech facility is presupposed to form part of a solution until the new Frøslev facility 2 has been completed – probably at the end of 2013 or beginning of 2014.

Question 9: Should the implementation of the measures announced by the Danish Government have the potential to lead to serious disruption of the free movement of goods, are the Danish authorities aware of their obligation under Council Regulation (EC) No 2679/98 of 7 December 1998 ("Strawberry" Regulation) to immediately inform the Commission on any occurrence of threat of an obstacle to the free movement of goods among Member States and to take all necessary and proportionate measures so that the free movement of goods is assured in the territory of the Member State in accordance with the Treaty?

The Danish authorities are fully aware of their obligations under the “Strawberry” Regulation, which concerns obligations following occurrences of obstacles to the free movement of goods between the member states. The planned control measures will strengthen actions against illegal goods and so form an obstacle to illegal goods. It is the Danish Government’s assessment that the measures will not result in a duty to inform the Commission according to this regulation.

Question 10 and 11: Given the RUT registration system allowing the Danish authorities to check, wherever necessary, the compliance with their social legislation during the posting of workers, could Denmark explain the purpose of introducing an additional prior control measure at the internal borders and in what way this would be necessary to achieve the purpose to be achieved? Could Denmark confirm whether the intended border controls would, among others, specifically aim at checking compliance with the registration requirement in RUT imposed on self-employed service providers? And if so, could Denmark explain what the justification of such border controls would be and why such controls would be necessary and proportionate to the aim to be achieved?

If, during customs controls, persons are discovered who do not comply with RUT, the necessary notifications etc. will be initiated as hitherto, as will also be the case elsewhere in the Danish customs area where it is established that persons have failed to comply with RUT. The planned control measures are targeted at the illegal trade of goods, and thus the agreement does not aim to control compliance with the registration requirement in RUT.

As mentioned, the agreement on strengthened customs controls in the first phase is the deployment of 50 additional customs officers. During the following phases, a number of building and traffic facilities will also be established to ensure that all road users who are not selected for control can pass the border, with a certain reduction in speed, as smoothly and with as little hindrance as road safety allows. When customs controls are carried out, it is important that safe and orderly conditions are ensured for both customs officers and road users, and that the necessary traffic measures are established to ensure safe and smooth traffic flow.

Customs controls will continue to be carried out according to the same methods and principles as hitherto.

The Danish Government hopes and expects that this letter will help clarify the questions the Commission has raised in relation to the Danish agreement on customs controls. It should also be emphasised that Denmark is fully prepared to continue the dialogue with the Commission, and as previously expressed, Denmark will ensure that the Commission is informed in advance of the practical implementation of various elements of the agreement.