

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **D**  
BUDGETARY AFFAIRS



Budgets

Budgetary Control

**Administrative performance  
differences between  
Member States  
recovering Traditional Own  
Resources of the  
European Union**

STUDY





**DIRECTORATE GENERAL FOR INTERNAL POLICIES**

**POLICY DEPARTMENT D: BUDGETARY AFFAIRS**

# **Administrative performance differences between Member States recovering Traditional Own Resources of the European Union**

**STUDY**

## **Abstract**

The European Commission oversees the recovery by Member States of Traditional Own Resources (TOR), that is customs debt and sugar levies, for the European Union's budget revenue. It fulfils high standards of control each year. According to the Commission 98 per cent of customs debt identified by Member States is entered in national accounts and transferred as TOR to the EU accounts without particular problems. Yet significant differences of performance exist between Member States. The report examines these differences, using published and accessible data to estimate the effects of such differences for the EU budget. It makes recommendations on how to improve even further the collection of this revenue and better safeguard all Member States share in TOR recovery.

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It designated Ms Esther de Lange to follow the research study.

## **AUTHORS**

Mr James SPENCE , Institut d'Etudes politiques (Sciences Po),  
27 rue Saint-Guillaume, F-75337 Paris Cedex 07, France, and consultant on EU budgetary matters  
Mr Hans DAVIDS, EurBalance, The Netherlands

## **RESPONSIBLE ADMINISTRATOR**

Mr Alexandre MATHIS  
Policy Department D: Budgetary Affairs  
European Parliament  
B-1047 Brussels  
E-mail: [poldep-budg@europarl.europa.eu](mailto:poldep-budg@europarl.europa.eu)

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## **ABOUT THE EDITOR**

To contact the Policy Department or to subscribe to its newsletter please write to:

[poldep-budg@europarl.europa.eu](mailto:poldep-budg@europarl.europa.eu)

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## LIST OF ABBREVIATIONS

<b>AT</b>	Austria
<b>BE</b>	Belgium
<b>BG</b>	Bulgaria
<b>CCC</b>	Common Customs Code
<b>CEU</b>	Council of the European Union
<b>CY</b>	Cyprus
<b>CZ</b>	Czech Republic
<b>DE</b>	Germany
<b>DG</b>	Directorate General
<b>DK</b>	Denmark
<b>EC</b>	European Commission
<b>ECA</b>	European Court of Auditors
<b>EE</b>	Estonia
<b>EL</b>	Greece
<b>EP</b>	European Parliament
<b>ES</b>	Spain
<b>EU</b>	European Union
<b>FI</b>	Finland
<b>FR</b>	France
<b>HU</b>	Hungary
<b>GNI</b>	Gross National Income
<b>IE</b>	Ireland
<b>IT</b>	Italy
<b>LT</b>	Lithuania
<b>LU</b>	Luxembourg
<b>LV</b>	Latvia
<b>MT</b>	Malta
<b>NL</b>	The Netherlands
<b>OLAF</b>	European Anti-Fraud Office
<b>OWNRES</b>	(Traditional) Own Resources database
<b>PL</b>	Poland

<b>PT</b>	Portugal
<b>RO</b>	Romania
<b>SE</b>	Sweden
<b>SI</b>	Slovenia
<b>SK</b>	Slovakia
<b>TOR</b>	Traditional Own Resources (customs duties and sugar levies collected for the EU budget)
<b>UK</b>	United Kingdom
<b>VAT</b>	Value Added Tax



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## **EXECUTIVE SUMMARY**

The European Parliament Budgetary Control Committee invited the research team to look into the possible existence of performance differences between Member States in the recovery of Traditional Own Resources and to review and assess the Commission's monitoring of Traditional Own Resources recovery in terms of these possible differences.

### **COLLECTING TRADITIONAL OWN RESOURCES (TOR) FOR THE EU BUDGET**

Customs debt and sugar levies make up Traditional Own Resources (TOR) as revenue for the European Union (EU) budget. TOR is one of the three resources that make up the revenue flowing into the EU budget, the other two being a share of VAT and a balancing item made up of a share of the Gross National Income (GNI) of each Member State. As the GNI contribution is the balancing item, if less TOR are recovered by Member States, more revenue is paid through the GNI contribution. If one Member State does not collect its full share in TOR recovery, the other Member States have to pay extra through their GNI contribution. This is a reason why the European Commission is monitoring whether all Member States share the same financial burden in TOR recovery.

The Union's legal framework for the collection of customs debt as part of Traditional Own Resources (TOR) applies to all Member States. All established amounts of TOR must be entered in one of two accounts kept by the competent Member State authorities: all amounts recovered or secured and not challenged must be entered in the ordinary or 'A-account'<sup>1</sup>; all amounts which have not yet been recovered and for which no security has been provided and amounts for which security has been provided but which have been challenged may be entered in the separate or 'B-account'<sup>2</sup>.

When customs debt has been recovered, these TOR must be transferred to the European Commission. Member States are currently entitled to a recovery fee of 25 %, which they retain when transferring TOR to the Commission. The vast majority of customs duties are collected without problem. They are recorded in the A-account and transferred to the EU accounts in each Member State. The recovery of some is irregular, either because of a dispute, through technical errors, or misclassification, or in rare cases due to attempted fraud. These are in almost all cases recorded in the B-account. Smuggled goods are sometimes detected, but may not all appear in the B-account as the goods may be destroyed and no duties levied.

The treaty requires that the financial interests of the European Union be safeguarded. The Commission has applied a policy of pursuing anomalies identified through legal procedures on a case-by-case basis, if necessary through the courts. This has had positive results.

### **TRADITIONAL OWN RESOURCES (TOR) RECOVERY PERFORMANCE OF MEMBER STATES AND THE IMPACTS ON THE EU BUDGET**

Apart from the common Union legal framework for the recovery of customs debt, Member States' customs services differ from each other in terms of their organisation, their legal powers, their practices and the extent of the tasks that they have to fulfil. Publicly available data on the customs recovery process in each of the Member States do indicate the existence of differences

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<sup>1</sup> Provided for in Article 6(3)(a) of Regulation (EC, Euratom) No 1150/2000 of 22 May 2000.

<sup>2</sup> Provided for in Article 6(3)(b) of Regulation (EC, Euratom) No 1150/2000 of 22 May 2000.

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between Member States' effectiveness in recovering duties – what we call their performance - in customs recovery.

Member States' performance may directly influence the amount to be paid by the Member States under the GNI contribution. Assessing the impact of existing Member State differences in customs recovery for the EU budget may not only show whether all Member States share a comparable financial burden but also indicate whether these differences have a structural character. It may even show patterns and trends, which could help the Commission to focus its inspection activities more on areas of high TOR recovery risk. This could help safeguard that all Member States are treated equally.

We developed a new conceptual framework and methodology for assessing the overall performance of Member States in the customs recovery field. We identified the consecutive stages of the customs collection and recovery process. Performance data in financial terms for each of these stages were found. We were able to define performance indicators for these individual stages, link them together, and thus assess the overall performance of customs debt recovery for the whole research period (2006-2011). These performance indicators were calculated for each of the six years 2006-2011 and for the whole period, merging data from the Commission's annual reporting cycle. We took the EU average for all stages of the customs recovery process and compared that to each Member State's performance for each year and for the whole research period. This gave us comparative performance of the Member States for all individual process stages and the process as a whole.

The research found substantial and structural differences between Member States in customs debt recovery and showed some trends. We were able to estimate the amounts lost between each consecutive stage of the customs recovery process. This loss we define as 'evaporation'.

We were also able to calculate the financial equivalent of the performance differences between the Member States. We also calculated the extra amount of TOR, which could be envisaged by the EU had all Member States performed to the highest possible standards. The recovered customs debt to be transferred to the EU is first reduced by a 25 % recovery fee retained by the Member States. All amounts in this report concerning customs debt recovery are gross amounts from which the 25 % recovery fee should be deducted.

We are aware that these differences may occur for quite legitimate reasons at Member State level. As existing differences in the financial output of customs debt recovery directly impact on Member States' GNI contributions, the differences should be made clear. Transparency of Member States' differences may in the end benefit the European taxpayer.

Our analysis may be innovative as to the overall concept of performance assessment by linking performance in individual stages of the process to find indicators of overall performance in customs debt recovery; assessing Member States' performance in a multi-annual framework and assessing all Member States in the same exercise. We feel that this concept may even benefit similar analysis in other fields of the EU budget. The research methodology could also be refined.

This analysis cannot substitute for careful analysis and follow-up on a case-by-case basis of shortcomings found in the recovery process, though it can complement and deepen understanding of the process and suggest improvements. The protection of the financial interests of the EU through such legal avenues has shown very positive results. Disparities may nevertheless occur in the way Member States' financial interests are safeguarded while structural differences remain.

## KEY FINDINGS

### 1) Detection of customs irregularities

- Detection indices showed **substantial differences in detection performance between EU Member States** between 2006 and 2011.
- The **theoretical** financial impact of these differences can be estimated by comparing high and low detection performance in the EU. If all Member States had detected customs irregularities in the way that the 'high detecting' Member State did, customs irregularities amounting to as much as €5 billion more could have been detected over the six years as compared to what would have been detected had all Member States performed as the 'low detecting' Member State did.
- **In this six year period, Member States actually did detect customs irregularities totalling more than €2 billion. If all Member States had detected irregularities as the high performer did, customs irregularities totalling an extra €3,5 billion could have been detected during 2006-2011.**
- **Member States detected customs irregularities from 2006-2011 whose total amount was 1,7 % of the overall gross amount of collected TOR in the EU.**
- Excluding outliers, we identified **five high performing Member States in detecting irregularities and nine low performers**, in total more than half of all Member States, separated by a factor of 8:1 from highest to lowest.
- Where in recent years the EU-wide customs detection rate tended to move to 2 %, 2011 shows a sharp drop to a detection rate of 1,4 %. The current drop in EU wide detection performance represents fewer detected customs irregularities totalling €72 million.

### 2) Establishment of customs debts in irregularity cases

- EU-wide B-account rates for the period from 2006 until 2011 show **substantial performance differences between Member States**.
- EU-wide correction rates for established customs debts also show **significant differences** and for the Member States with sizeable recoveries significant 'evaporation' occurs.
- Austria's B-account is the equivalent of 39 % of its A-account. Two other Member States show the same characteristics, Greece (18 %) and Portugal (15 %). These figures are notable as the B-account to A-account proportion for all other Member States is on average only 6 %.
- Italy's B-account is remarkable. During the period 2006–2011, the financial volume of Italy's B-account makes up 30 % of the EU volume.
- Four out of five large Member States (Spain, France, Italy and the UK) show 'negative' corrections (thus contributing to 'evaporation') during the research period. Germany has a structural pattern of 'positive' corrections, thus contributing to its 'establishment performance'.

### 3) Recovery of customs debts in irregularity cases

- Here too **substantial differences emerged between Member States' performances** in the period 2006-2011.
- Even though a **theoretical exercise**, the financial impact of these differences can be approximated by comparing high and low recovery performance in the EU. If all Member States had recovered customs debt in the way that the 'high recovering' Member State did, customs debt amounting to as much as €1,3 billion more could have been recovered over the six years as compared to what would have been recovered had all Member States performed as the 'low recovering' Member State did.
- **In this six year period, Member States actually did recover customs debt totalling €0,9 billion in this period. If all Member States had performed according to the best possible recovery standards** customs debt totalling more than €1,5 billion would have been recovered, and so **an extra €0,6 billion would have been recovered during 2006-2011.**
- We found the **recovery rate of 42 %** for the EU as a whole **for all irregularities detected over the period.**
- Excluding outliers, the recovery results identify two high (Germany and Sweden) and eight low performing Member States (Italy, Greece, Lithuania, Austria, Latvia, The Netherlands, Cyprus and Belgium).
- Taking the total amount of all material write-off decisions of the Commission as 100 % and leaving out performance percentages up to 5 %, **only five Member States sent requests to the Commission concerning significant amounts of irrecoverable customs debt. Only 11 Member States sent in any request leading to a material decision.**

### 4) Transfer of Traditional Own Resources (TOR) to the EU in irregularity cases

- **Substantial differences exist in transfer performance** between EU Member States.
- EU-wide, we concluded that **no net transfer 'evaporation' had taken place.** As long as the amount of B-account recoveries was more than the amount of OWNRES recoveries, we could conclude that all amounts that should have been transferred were indeed transferred to the EU. We are nevertheless concerned about the disparities.
- **Almost half of the Member States had a transfer rate of less than 100 %.** Such percentages mean that the amounts of B-account recoveries are less than the amounts of recoveries entered in OWNRES. **Some Member States showed B-account recoveries, which could not be matched up with Member States' OWNRES recoveries. The disparity amounted to more than €0,5 billion,** even if good reasons might exist to explain this.

### 5) Overall performance of Traditional Own Resources (TOR) recovery in irregularity cases

- **Substantial structural differences were found between Member States with highly effective performance and those with less effective performance.**
- The **theoretical financial** impact of these differences can be estimated by comparing high and low detection performance in the EU. If all Member States had performed as effectively as



the 'most effective' one did, an amount between €2 and €4 billion more (or earlier) for the six year period could have been recovered in comparison with the situation where all Member States had performed as the 'least effective' one did.

- **In this six year period, Member States actually recovered customs debts totalling around €1 billion over the period. Had all Member States performed as the 'most effective' one did, extra customs debt recoveries totalling €1-3 billion could have been expected over the period 2006-2011.**
- **The EU-wide overall customs performance rate during the research period is 0,7 %. This figure is made up of the performance rates at each stage. The financial estimates for each stage cannot be cumulated.**
- Further follow-up is needed with a view to safeguarding the recovery of TOR for the EU and to ensuring all Member States share comparable financial burdens.

## RECOMMENDATIONS

This analysis prompts questions which Commission services would be advised to examine with the Member States. Understanding the reasons for performance differences could lead to yet higher recovery of TOR, and a more comparable share of TOR recovery by all Member States.

### The European Commission should

- 1) Maintain its inspection and monitoring activities in TOR recovery, in holding Member States who do not recover TOR assiduously, financially liable for any damage done to the EU budget, thus protecting the financial interests of the European Union and those of other Member States and the EU taxpayers;
- 2) Explore existing administrative performance differences between the Member States in TOR recovery in particular where structural patterns or trends may be observed in customs debt recovery data available to the Commission with a view to better recovery performance. This could be implemented by new monitoring mechanisms such as:
  - a. Observing and comparing Member States' TOR recovery performance in terms of financial output of the customs debt recovery process through each of its stages;
  - b. Analysing structural performance patterns of Member States, individually and collectively, to identify best practice in the better performing Member States in legislation, policy, steering mechanisms, risk assessments, computer programmes etc. and helping to apply these best practices more widely;
  - c. Assessing and ranking Member State performance patterns in terms of TOR recovery risks and focussing future checks, inspections and audits also on this risk analysis on Member State level;
  - d. Taking all opportunities to raise the EU-wide financial output of the TOR recovery process;
- 3) Insist on targeted controls with Member States under the new conditions of the Lisbon Treaty where the budget execution is the responsibility of the Commission directly *'in cooperation with the Member States'*;
- 4) Consider linking performance in collecting TOR with the amount retained by Member States for the management of this process and clawing back the retained recovery fee in the event of Member State laxity;

- 5) Interpret its obligation to safeguard the EU's financial interests in the light of the new Treaty so as to help Member States safeguard their own financial interests in comparable and effective ways;
- 6) Extend data collection and transparency to allow follow-up of cases that are not recovered and transferred within the year and to ensure the budget principle of accuracy is fully respected;
- 7) Provide assistance in making available comparative results of the output at each stage of the TOR recovery process.

#### **EU Member States should**

- 1) Conduct a self-critical review of the process of collecting TOR, using analytical methods described in this report to identify weaknesses and to help find best practice, with the aim of more efficient and effective collection of TOR;
- 2) Reconcile data recording in the OWNRES data-base and the B-account more assiduously to ensure consistency and high quality information on detected customs irregularities and their follow-up;
- 3) Improve the timeliness of transfers of TOR to the EU, by ensuring seamless transparency between OWNRES recoveries and B-account transfers;
- 4) Pursue a critical evaluation of their own customs systems, undertake a gap analysis of the whole process to reduce evaporation; identify cost-effective improvements, backed up by EU wide programmes and IT systems, including reconsideration of the status of the B-account.

## SYNTHÈSE

La commission du contrôle budgétaire du Parlement européen a invité l'équipe de recherche à examiner l'existence possible de différences de performance entre les États membres lors de la perception des ressources propres traditionnelles et de passer en revue ainsi que d'évaluer le suivi de la perception des ressources propres traditionnelles effectué par la Commission par rapport à ces éventuelles différences.

## PERCEPTION DES RESSOURCES PROPRES TRADITIONNELLES POUR LE BUDGET DE L'UNION

Les droits de douane et les cotisations sur le sucre font partie des ressources propres traditionnelles (RPT), qui sont des recettes du budget de l'Union européenne (UE). Les RPT sont l'une des trois ressources qui constituent les recettes entrant dans le budget de l'UE, les deux autres étant une partie de la TVA et un solde comptable composé d'une partie du revenu national brut (RNB) de chaque État membre. La contribution RNB étant le solde comptable, si les États membres perçoivent moins de RPT, des montants supérieurs seront versés par la contribution RNB. Si un État membre ne perçoit pas sa part complète de RPT, les autres États membres devront payer un supplément par leur contribution RNB. C'est la raison pour laquelle la Commission européenne vérifie si tous les États membres partagent la même charge financière lors de la perception des RPT.

Le cadre juridique de l'Union pour le recouvrement de la dette douanière en tant que partie des ressources propres traditionnelles s'applique à l'ensemble des États membres. Tous les montants de RPT constatés doivent être repris dans l'un ou l'autre des deux livres comptables tenus par les autorités compétentes des États membres: tous les montants recouverts ou garantis et non contestés doivent être inscrits dans la comptabilité normale ou "comptabilité A"<sup>3</sup>; tous les montants qui n'ont pas encore été recouverts et pour lesquels aucune caution n'a été fournie ainsi que les montants garantis qui font l'objet de contestations peuvent être inscrits dans une comptabilité séparée ou "comptabilité B"<sup>4</sup>.

Lorsque les droits de douane ont été recouverts, ces RPT doivent être transférées à la Commission européenne. Les États membres sont actuellement autorisés à percevoir un droit de recouvrement de 25 %, qu'ils retiennent lors du transfert des RPT à la Commission. La grande majorité des droits de douane sont perçus sans aucun problème. Ils sont inscrits dans la comptabilité A et transférés dans les comptes de l'UE de chaque État membre. La perception de certains droits de douane est toutefois irrégulière, que ce soit en raison d'un contentieux, d'erreurs techniques, d'une mauvaise classification ou, plus rarement, de tentatives de fraude. Dans la plupart des cas, ils sont alors inscrits dans la comptabilité B. Par ailleurs, des marchandises de contrebande sont parfois découvertes, mais n'apparaissent pas toutes dans la comptabilité B, car il se peut qu'elles aient été détruites et qu'aucun droit n'ait été perçu.

Le traité exige la protection des intérêts financiers de l'Union européenne. La Commission a mis en œuvre une politique visant à poursuivre les anomalies constatées, par des procédures judiciaires déterminées au cas par cas et, si nécessaire, devant les tribunaux. Cette politique s'est avérée fructueuse.

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<sup>3</sup> Prévus à l'article 6, paragraphe 3, point a), du règlement (CE, Euratom) n° 1150/2000 du 22 mai 2000.

<sup>4</sup> Prévus à l'article 6, paragraphe 3, point b), du règlement (CE, Euratom) n° 1150/2000 du 22 mai 2000.

## **LA PERFORMANCE DES ÉTATS MEMBRES LORS DE LA PERCEPTION DES RESSOURCES PROPRES TRADITIONNELLES ET LES CONSÉQUENCES SUR LE BUDGET DE L'UNION**

Indépendamment du cadre juridique commun de l'Union pour le recouvrement des droits de douane, les services douaniers des États membres présentent des différences quant à leur organisation, leurs compétences juridiques, leurs pratiques et l'ampleur des tâches qui leur sont confiées. Selon les données accessibles publiquement relatives au processus de perception des droits de douane existant dans chaque État membre, il existe des différences au niveau de l'efficacité en la matière – nous parlons de performance – entre les États membres.

La performance des États membres peut influencer directement le montant qu'ils sont tenus de payer au titre de leur contribution RNB. L'évaluation des conséquences, sur le budget de l'UE, des différences existant entre les États membres lors de la perception des droits de douane permet non seulement de savoir si tous les États membres partagent une charge financière comparable, mais elle indique aussi si ces différences ont un caractère structurel ou non. Cette évaluation peut également faire apparaître des modèles et des tendances, ce qui pourrait aider la Commission à axer davantage ses activités d'inspection sur des domaines présentant un risque élevé pour la perception des RPT. Cela pourrait contribuer à garantir un traitement égal pour tous les États membres.

Nous avons développé un nouveau cadre conceptuel et une nouvelle méthodologie afin d'évaluer la performance globale des États membres en matière de perception des droits de douane. Nous avons déterminé les différentes étapes du processus de perception et de recouvrement des droits de douane. Pour chacune d'entre elles, nous avons obtenu des données de performance en termes financiers et avons pu définir des indicateurs de performance, tirer des liens entre eux et évaluer ainsi la performance globale en matière de recouvrement des droits de douane pour l'ensemble de la période de recherche (2006-2011). Ces indicateurs de performance ont été calculés pour chacune des six années de 2006 à 2011 ainsi que pour l'ensemble de la période, en fusionnant les données du cycle de rapports annuels de la Commission. Nous avons établi la moyenne européenne pour toutes les étapes du processus de perception des droits de douane et nous l'avons comparée à la performance de chaque État membre pour chaque année ainsi que pour l'ensemble de la période de recherche. Nous avons ainsi obtenu une évaluation comparative de la performance des États membres pour chaque étape du processus et pour le processus dans son intégralité.

Cette recherche a fait apparaître des différences importantes et structurelles entre les États membres en matière de recouvrement des droits de douane et a également révélé certaines tendances. Nous avons pu estimer les montants perdus entre chaque étape consécutive du processus de perception des droits de douane. Nous avons défini cette perte comme une "évaporation".

Nous sommes en outre parvenus à calculer l'équivalent financier des différences de performance entre les États membres. Nous avons également calculé le montant supplémentaire de RPT que l'UE aurait pu envisager d'obtenir si tous les États membres avaient respecté les normes les plus élevées possibles. Les droits de douane recouverts qui doivent être transférée à l'UE sont d'abord diminués d'un droit de recouvrement de 25 % retenu par les États membres. Tous les montants indiqués dans le présent rapport concernant le recouvrement de la dette douanière sont des montants bruts dont il convient de soustraire le droit de recouvrement de 25 %.

Nous sommes conscients que ces différences peuvent survenir pour des raisons assez légitimes au niveau des États membres. Étant donné que les différences liées au rendement financier du recouvrement des droits de douane influencent directement les contributions RNB des États

membres, il serait nécessaire de bien les comprendre. Rendre transparentes les différences entre les États membres pourrait en fin de compte bénéficier au contribuable européen.

Notre analyse peut se révéler innovante quant au concept général de l'évaluation de la performance, étant donné qu'elle combine la performance des différentes étapes du processus pour définir des indicateurs de performance globale en matière de recouvrement des droits de douane, qu'elle évalue la performance des États membres dans un cadre pluriannuel et qu'elle évalue simultanément tous les États membres. Nous estimons que ce concept pourrait également servir pour des analyses similaires menées dans d'autres matières du budget de l'UE. La méthode de recherche pourrait aussi être perfectionnée.

Toutefois, la présente analyse ne peut pas remplacer une analyse minutieuse et un suivi au cas par cas des manquements découverts dans le processus de perception, même si elle peut parfaire et approfondir la compréhension de ce processus et inspirer des améliorations. La protection des intérêts financiers de l'UE par de telles voies légales a donné des résultats très positifs. Des disparités peuvent apparaître dans la manière dont les intérêts des États membres sont protégés tandis que des différences structurelles peuvent subsister.

## PRINCIPALES CONSTATATIONS

### 1) Détection des irrégularités douanières

- Les indicateurs de détection ont montré d'**importantes différences de performance en matière de détection entre les États membres de l'UE** entre 2006 et 2011.
- Les conséquences financières **théoriques** de ces différences peuvent être estimées en comparant les niveaux extrêmes de performance en matière de détection dans l'Union. Si tous les États membres avaient détecté des irrégularités douanières de la même manière que l'État le plus performant, il aurait été possible en six ans de découvrir 5 milliards d'EUR d'irrégularités douanières de plus que si tous les États membres avaient agi de la même manière que l'État le moins performant.
- **Au cours de ces six années, les États membres ont en fait détecté des irrégularités douanières pour un montant total de plus de 2 milliards d'EUR. Si tous les États membres avaient découvert des irrégularités comme le plus performant d'entre eux, il aurait été possible de découvrir des irrégularités douanières pour 3,5 milliards d'EUR supplémentaires entre 2006 et 2011.**
- **Entre 2006 et 2011, les États membres ont détecté des irrégularités douanières pour un montant total représentant 1,7 % du montant brut global des RPT perçues dans l'UE.**
- En excluant les valeurs aberrantes, nous avons identifié **cinq États membres très performants en matière de détection des irrégularités et neuf États très peu performants**, représentant au total plus de la moitié de l'ensemble des États membres, séparés par un facteur de 8:1 entre le score le plus élevé et le score le plus bas.
- Tandis que, ces dernières années, le taux de détection des douanes dans l'UE tendait à s'approcher des 2 %, on constate une nette diminution pour l'année 2011 avec un taux de détection de 1,4 %. L'actuelle baisse de performance en matière de détection dans l'UE représente une chute des irrégularités douanières détectées pour un montant de 72 millions d'EUR

## 2) Constatation des droits de douane dans les cas d'irrégularités

- Les taux de la comptabilité B à l'échelle de l'Union pour la période 2006-2011 montrent **d'importantes différences de performance entre les États membres.**
- Les taux de correction à l'échelle de l'Union pour les droits de douane constatés révèlent des **différences significatives** et, pour les États membres ayant des recouvrements assez importants, on constate une "évaporation" considérable.
- La comptabilité B de l'Autriche représente 39 % de sa comptabilité A. Deux autres États membres présentent les mêmes caractéristiques: la Grèce (18 %) et le Portugal (15 %). Ces chiffres sont remarquables étant donné que, dans tous les autres États membres, la part de la comptabilité B par rapport à la comptabilité A n'est que de 6 %.
- La comptabilité B de l'Italie mérite également une attention particulière. Pour la période 2006-2011, le volume financier de la comptabilité B de l'Italie constitue 30 % du volume de l'Union.
- Au cours de la période de recherche, quatre des cinq grands États membres (Espagne, France, Italie et Royaume-Uni) affichent des corrections "négatives" (contribuant donc à l'"évaporation"). L'Allemagne présente en revanche un modèle structurel de corrections "positives", contribuant dès lors à sa "performance en matière de constatation".

## 3) Recouvrement des droits de douane dans les cas d'irrégularités

- **D'importantes différences apparaissent également entre les performances des États membres** en la matière pour la période 2006-2011.
- Bien qu'il s'agisse d'un **exercice théorique**, les conséquences financières de ces différences peuvent être estimées en comparant les niveaux extrêmes de performance en matière de recouvrement dans l'Union. Si tous les États membres avaient recouvré les droits de douane de la même manière que l'État le plus performant, il aurait été possible en six ans de recouvrer 1,3 milliard d'EUR de droits de douane de plus que si tous les États membres avaient agi de la même manière que l'État le moins performant.
- **Au cours de ces six années, les États membres ont en fait recouvré des droits de douane pour un montant total de 0,9 milliard d'EUR Si tous les États membres avaient respecté les meilleures normes possible en matière de recouvrement**, il aurait été possible de recouvrer des droits de douane pour un montant de plus de 1,5 milliard d'EUR, soit **0,6 milliard d'EUR supplémentaires pour la période 2006-2011.**
- Le **taux de recouvrement de toutes les irrégularités détectées au cours de la période** pour l'ensemble de l'UE s'élève à **42 %**.
- En excluant les valeurs aberrantes, les résultats en matière de recouvrement permettent d'identifier deux États membres très performants (Allemagne et Suède) et huit très peu performants (Italie, Grèce, Lituanie, Autriche, Lettonie, Pays-Bas, Chypre et Belgique).
- En considérant que le montant total de l'ensemble des décisions importantes de remise de dette de la Commission représente 100 % et en excluant les pourcentages de performance inférieurs à 5 %, **seuls cinq États membres ont envoyé des demandes à la Commission**

**concernant des montants considérables de droits de douane irrécouvrables. Seuls onze États membres ont envoyé une demande entraînant une décision importante.**

#### **4) Transfert des ressources propres traditionnelles à l'Union dans les cas d'irrégularités**

- **Il existe d'importantes différences de performance en matière de transfert** entre les États membres.
- À l'échelle de l'Union, nous avons conclu qu'**aucune évaporation nette n'avait eu lieu lors des transferts**. Dans la mesure où le montant des recouvrements de la comptabilité B est plus élevé que le montant des recouvrements de OWNRES, nous avons pu conclure que tous les montants qui devaient être transférés à l'UE l'ont bel et bien été. Nous sommes toutefois préoccupés par les disparités constatées.
- **Près de la moitié des États membres affichaient un taux de transfert inférieur à 100 %**. De tels pourcentages signifient que les montants des recouvrements de la comptabilité B sont inférieurs aux montants des recouvrements inscrits dans OWNRES. **Certains États membres présentaient des recouvrements de comptabilité B qui ne pouvaient pas être reliés aux recouvrements des États membres inscrits dans OWNRES. Cette disparité s'élevait à plus de 0,5 milliard d'EUR**, même s'il peut exister de bonnes raisons à celle-ci.

#### **5) Performance globale en matière de perception des ressources propres traditionnelles dans les cas d'irrégularités**

- **D'importantes différences structurelles ont été constatées entre les États membres affichant une performance élevée et ceux présentant une performance plus faible.**
- Les conséquences **financières théoriques** de ces différences peuvent être estimées en comparant les niveaux de performance extrêmes en matière de détection dans l'Union. Si tous les États membres avaient agi comme le plus efficace d'entre eux, il aurait été possible en six ans de recouvrer entre 2 et 4 milliards d'EUR de plus (ou plus tôt) que si tous les États membres avaient agi de la même manière que le moins efficace d'entre eux.
- **Au cours de ces six années, les États membres ont en fait recouvré des droits de douane pour un montant total d'environ 1 milliard d'EUR. Si tous les États membres avaient agi comme le plus efficace d'entre eux, on aurait pu s'attendre à un recouvrement de droits de douane de 1 à 3 milliards d'EUR supplémentaires entre 2006 et 2011.**
- **Le taux de performance globale des douanes dans l'UE pour la période de recherche s'élève à 0,7 %. Ce chiffre comprend les taux de performance de chaque étape. Les estimations financières pour chaque étape ne peuvent pas être cumulées.**
- Un meilleur suivi est nécessaire afin de garantir le recouvrement des RPT pour l'UE et de veiller à ce que tous les États membres partagent une charge financière comparable.

## **RECOMMANDATIONS**

La présente analyse suscite des questions que les services de la Commission devraient examiner avec les États membres. La compréhension des raisons des différences de performance pourrait permettre d'augmenter le taux de recouvrement des RPT et de garantir que la part de recouvrement des RPT soit davantage comparable entre tous les États membres.

### **La Commission européenne devrait**

- 1) poursuivre son inspection et ses activités de suivi en matière de perception des RPT, en tenant les États membres qui ne perçoivent pas assidûment les RPT financièrement responsables de tout dommage causé au budget de l'Union et en protégeant ainsi les intérêts financiers de l'Union européenne ainsi que ceux des autres États membres et des contribuables européens;
- 2) analyser les différences de performance administrative existant entre les États membres lors de la perception des RPT, en particulier lorsque l'on peut observer des tendances ou des modèles structurels dans les données de recouvrement des droits de douane qui sont accessibles à la Commission, en vue d'améliorer les performances en la matière. Cette analyse pourrait être effectuée au moyen de nouveaux mécanismes de suivi:
  - a. en observant et en comparant la performance des États membres en matière de perception des RPT en termes de rendement financier du recouvrement de la dette douanière, et ce, à chacune des étapes du processus;
  - b. en analysant les modèles structurels de performance des États membres, de manière individuelle et collective, afin de définir la meilleure pratique appliquée dans les États membres les plus performants en matière de législation, de politique, de mécanismes de direction, d'évaluations des risques, de programmes informatiques, etc. et en favorisant l'application plus large de ces meilleures pratiques;
  - c. en évaluant et en classant les modèles de performance des États membres en termes de risques pour la perception des RPT et en axant les futurs contrôles, inspections et audits sur cette analyse de risque au niveau des États membres;
  - d. en saisissant toutes les occasions d'améliorer le rendement financier, à l'échelle de l'UE, du processus de perception des RPT;
- 3) insister auprès des États membres sur les contrôles ciblés conformément aux nouvelles conditions fixées par le traité de Lisbonne, en vertu duquel l'exécution du budget relève directement de la responsabilité de la Commission "*en coopération avec les États membres*";
- 4) envisager de lier la performance en matière de perception des RPT au montant retenu par les États membres pour la gestion de ce processus et de récupérer le droit de recouvrement retenu, en cas de laxisme de la part des États membres;
- 5) interpréter ses obligations de protection des intérêts financiers de l'UE à la lumière du nouveau traité afin d'aider les États membres à protéger leurs propres intérêts financiers de manière efficace et comparable;
- 6) étendre la collecte de données et améliorer la transparence afin de permettre un suivi des cas qui ne sont pas recouverts et transférés dans l'année et de garantir le plein respect du principe de vérité budgétaire;
- 7) fournir une aide dans la mise à disposition des résultats comparatifs du rendement à chaque étape du processus de perception des RPT.

### **Les États membres de l'UE devraient**

- 1) effectuer un examen autocritique du processus de perception des RPT, en utilisant les méthodes analytiques décrites dans le présent rapport, afin de relever les points faibles et de favoriser la définition d'une meilleure pratique, dans le but de rendre la perception des RPT plus efficace et efficiente;



- 2) recouper de manière plus assidue les données inscrites dans la base de données OWNRES et dans la comptabilité B afin de garantir une cohérence et une bonne qualité des informations relatives à la découverte d'irrégularités douanières et à leur suivi;
- 3) améliorer le respect des délais pour les transferts de RPT à l'UE, en assurant une transparence homogène entre les recouvrements inscrits dans OWNRES et les transferts de la comptabilité B;
- 4) mener une évaluation critique de leurs propres systèmes douaniers, effectuer une analyse des écarts de l'ensemble du processus afin de réduire l'évaporation; déterminer des améliorations rentables confirmées par des programmes européens et des systèmes informatiques, concernant notamment le réexamen du statut de la comptabilité B.

## ZUSAMMENFASSUNG

Der Haushaltskontrollausschuss des Europäischen Parlaments hat die Forschungsgruppe damit beauftragt, die möglichen Leistungsunterschiede zwischen den Mitgliedstaaten bei der Erhebung der traditionellen Eigenmittel zu untersuchen und die Überwachung der Erhebung der traditionellen Eigenmittel durch die Kommission in Hinblick auf diese Unterschiede zu überprüfen und zu beurteilen.

### ERHEBUNG TRADITIONELLER EIGENMITTEL (TEM) FÜR DEN EU-HAUSHALT

Zölle und Zuckerabgaben bilden die traditionellen Eigenmittel (TEM) und dienen als Einnahmen für den Haushalt der Europäischen Union (EU). Die TEM gehören neben einem Anteil der Mehrwertsteuer und einem Ausgleichsposten, der sich aus einem Anteil des Bruttonationaleinkommens (BNE) jedes Mitgliedstaats zusammensetzt, zu den drei Einnahmequellen des EU-Haushalts. Die BNE-Eigenmittel sind ein Ausgleichsposten. Falls weniger TEM von den Mitgliedstaaten erhoben werden, werden höhere BNE-Eigenmittel erhoben. Falls einer der Mitgliedstaaten bei der Erhebung der TEM seinen vollen Anteil nicht erbringt, müssen die anderen Mitgliedstaaten über ihren BNE-Beitrag einen höheren Beitrag leisten. Deshalb kontrolliert die Kommission, ob alle Mitgliedstaaten bei der Erhebung der TEM die gleiche Finanzlast tragen.

Der Rechtsrahmen der Union für die Erhebung der Zollschulden als Teil der traditionellen Eigenmittel (TEM) gilt für alle Mitgliedstaaten. Die festgestellte Höhe der TEM wird in einem der zwei Bücher, die die zuständigen Behörden des Mitgliedstaats führen, vermerkt: Alle Beträge, die erhoben wurden oder für die eine Sicherheit geleistet wurde und die nicht angefochten werden, werden in der regulären oder „A-Buchführung“ verbucht<sup>5</sup>; alle Beträge, die noch nicht eingezogen wurden und für die keine Sicherheit geleistet wurde, sowie Beträge, für die eine Sicherheit geleistet wurde, die aber angefochten wurden, werden in einer getrennten oder „B-Buchführung“ verbucht<sup>6</sup>.

Nach der Erhebung der Zölle werden diese TEM an die Europäische Kommission abgeführt. Die Mitgliedstaaten sind derzeit berechtigt, zur Deckung ihrer Erhebungskosten 25 % der an die Kommission abgeführten TEM einzubehalten. Der Großteil der Zölle wird problemlos erhoben. Sie werden in der A-Buchführung verbucht und auf die EU-Konten in jedem einzelnen Mitgliedstaaten überwiesen. In einigen Fällen treten bei der Erhebung Unregelmäßigkeiten auf, entweder aufgrund von Uneinigigkeiten, technischen Fehlern oder Klassifikationsfehlern oder, in seltenen Fällen, aufgrund von Betrugsversuchen. Solche Fälle werden fast immer in der B-Buchhaltung verbucht. Schmuggelware wird manchmal entdeckt, aber nicht immer in der B-Buchhaltung erfasst, etwa wenn die Waren vernichtet und damit keine Zölle erhoben werden.

Gemäß den Bestimmungen des Vertrags müssen die finanziellen Interessen der Europäischen Union gewahrt bleiben. Die Kommission verfolgt die Strategie, bei Unregelmäßigkeiten, die durch rechtliche Verfahren festgestellt wurden, von Fall zu Fall und erforderlichenfalls durch die Gerichte zu entscheiden. Dies hat sich positiv ausgewirkt.

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<sup>5</sup> Gemäß Artikel 6 Absatz 3 Buchstabe a der Verordnung (EG, Euratom) Nr. 1150/2000 vom 22. Mai 2000.

<sup>6</sup> Gemäß Artikel 6 Absatz 3 Buchstabe b der Verordnung (EG, Euratom) Nr. 1150/2000 vom 22. Mai 2000.

## **LEISTUNG DER MITGLIEDSTAATEN BEI DER RÜCKFORDERUNG TRADITIONELLER EIGENMITTEL (TEM) UND AUSWIRKUNGEN AUF DEN EU-HAUSHALT**

Abgesehen von dem gemeinsamen Rechtsrahmen der Union für die Erhebung der Zölle, gibt es Unterschiede zwischen den Zolldiensten der Mitgliedstaaten in Hinblick auf ihre Organisation, ihre rechtlichen Befugnisse, ihre Verfahrensweisen und den Umfang der von ihnen zu erfüllenden Aufgaben. Die öffentlich zugänglichen Daten zu den Verfahren der einzelnen Mitgliedstaaten bei der Erhebung von Zöllen zeigen, dass es Unterschiede in der Effizienz der Mitgliedstaaten bei der Erhebung der Zölle gibt. In der vorliegenden Arbeit wird diese als Leistung bezeichnet.

Diese Leistung der Mitgliedstaaten kann sich direkt auf die Höhe der von den Mitgliedstaaten abzuführenden BNE-Eigenmittel auswirken. Eine Analyse der Auswirkungen der Unterschiede zwischen den Mitgliedstaaten bei der Zollerhebung auf den EU-Haushalt zeigt nicht nur, ob alle Mitgliedstaaten eine vergleichbare Finanzlast tragen, sondern auch, ob es sich um strukturelle Unterschiede handelt. Darüber hinaus könnten sogar Muster und Tendenzen aufgezeigt werden, die der Kommission dabei helfen könnten, ihre Kontrollmaßnahmen stärker auf mit hohem Risiko behaftete Bereiche bei der Erhebung der TEM zu konzentrieren. Dies könnte dazu beitragen, die Gleichbehandlung aller Mitgliedstaaten sicherzustellen.

Im Rahmen dieses Forschungsprojekts wurden ein neues Konzept und eine neue Methodik zur Bewertung der Gesamtleistung der Mitgliedstaaten bei der Erhebung der Zölle entwickelt. Außerdem wurden die aufeinanderfolgenden Phasen bei der Einziehung und Erhebung von Zöllen definiert. Für jede dieser Phasen konnten Daten zur finanziellen Leistung ermittelt werden. Darüber hinaus ist es gelungen, Leistungsindikatoren für die einzelnen Phasen zu definieren und miteinander zu verknüpfen und so für den gesamten Forschungszeitraum (2006-2011) die Gesamtleistung bei der Erhebung der Zölle zu beurteilen. Die Berechnung der Leistungsindikatoren erfolgte für jedes der sechs Jahre im Zeitraum von 2006 bis 2011 sowie für den Gesamtzeitraum durch die Zusammenführung der Daten aus dem jährlichen Bericht der Kommission. Für alle Phasen des Verfahrens zur Erhebung der Zölle wurde der EU-Durchschnitt zugrunde gelegt und mit der Leistung der einzelnen Mitgliedstaaten in jedem Jahr sowie im gesamten Forschungszeitraum verglichen. So konnten die Leistungen der Mitgliedstaaten bei jedem Verfahrensschritt sowie im Gesamtverfahren verglichen werden.

Im Rahmen des Forschungsprojekts wurden wesentliche und strukturelle Unterschiede bei der Erhebung der Zölle in den Mitgliedstaaten festgestellt und einige Tendenzen aufgezeigt. Die Beträge, die zwischen den aufeinanderfolgenden Schritten des Verfahrens zur Zollerhebung verloren gehen, konnten geschätzt werden. Diese Verluste werden als „Verflüchtigung“ bezeichnet.

Die finanzielle Entsprechung der Leistungsunterschiede zwischen den Mitgliedstaaten konnte ebenfalls berechnet werden. Zudem wurde die Höhe der TEM, über die die EU verfügen könnte, wenn alle Mitgliedstaaten die höchstmögliche Leistung erbracht hätten, berechnet. Von dem an die EU abzuführenden Betrag müssen immer erst 25 % abgezogen werden, die von den Mitgliedstaaten zur Deckung ihrer Erhebungskosten einbehalten werden. Bei allen im vorliegenden Bericht im Zusammenhang mit der Erhebung der Zölle genannten Beträgen handelt es sich um Bruttobeträge, von denen die 25 % Erhebungsgebühr noch abgezogen werden muss.

Natürlich gibt es oft berechtigte Gründe für die Unterschiede, die auf Ebene der Mitgliedstaaten festgestellt wurden. Da sich die Unterschiede bei den finanziellen Erträgen aus der Erhebung der Zölle direkt auf die Höhe der BNE-Eigenmittel der Mitgliedstaaten auswirken, sollten diese

Unterschiede aufgezeigt werden. Eine Offenlegung der Unterschiede zwischen den Mitgliedstaaten dient letztlich dem europäischen Steuerzahler.

Die vorliegende Untersuchung ist im Hinblick auf das allgemeine Konzept der Leistungsbewertung insofern innovativ, als sie die in den einzelnen Phasen des Verfahrens erbrachten Leistungen miteinander verknüpft und daraus Indikatoren für die Gesamtleistung bei der Erhebung der Zölle ableitet sowie die Leistung der Mitgliedstaaten über einen mehrjährigen Zeitraum hinweg bewertet und im Rahmen einer Untersuchung alle Mitgliedstaaten berücksichtigt. Es wird angenommen, dass sich dieses Konzept auch auf ähnliche Untersuchungen anderer Bereiche des EU-Haushalts anwenden lässt. Die Methodik könnte ebenfalls weiterentwickelt werden.

Die vorliegende Untersuchung kann eine sorgfältige Analyse und fallbezogene Weiterverfolgung der im Verfahren zur Erhebung festgestellten Mängel nicht ersetzen, aber sie kann die Einsichten in das Verfahren ergänzen und vertiefen und zu seiner Verbesserung beitragen. Der Schutz der finanziellen Interessen der EU mit Hilfe rechtlicher Mittel dieser Art hat sich sehr positiv ausgewirkt. Gleichwohl könnte ein Missverhältnis insofern eintreten, als die finanziellen Interessen der Mitgliedstaaten zwar gewahrt bleiben, die strukturellen Unterschiede jedoch fortbestehen.

## HAUPTERGEBNISSE

### 1) Aufdeckung von Unregelmäßigkeiten im Zollwesen

- Bei der Aufdeckungsrate von Unregelmäßigkeiten gab es **deutliche Unterschiede zwischen den Mitgliedstaaten** im Zeitraum von 2006 bis 2011.
- Die **theoretischen** finanziellen Auswirkungen dieser Unterschiede können durch einen Vergleich der hohen und niedrigen Aufdeckungsleistungen in der EU geschätzt werden. Wenn alle Mitgliedstaaten Zollunregelmäßigkeiten im selben Umfang aufgedeckt hätten wie Mitgliedstaaten mit hoher Aufdeckungsleistung, wäre der Wert der aufgedeckten Zollunregelmäßigkeiten fünf Mrd. EUR höher gewesen in dem Sechsjahreszeitraum als wenn die Aufdeckungsquote aller Mitgliedstaaten jener der Mitgliedstaaten mit geringer Aufdeckungsleistung entsprochen hätte.
- **Der tatsächliche Wert der von den Mitgliedstaaten in dem Sechsjahreszeitraum aufgedeckten Unregelmäßigkeiten im Zollwesen betrug insgesamt über 2 Mrd. EUR. Hätten alle Mitgliedstaaten Unregelmäßigkeiten im gleichen Umfang aufgedeckt wie die leistungsstarken Mitgliedstaaten, hätten zwischen 2006 und 2011 Zollunregelmäßigkeiten im Gesamtwert von zusätzlich 3,5 Mrd. EUR aufgedeckt werden können.**
- **Zwischen 2006 und 2011 wurden von den Mitgliedstaaten Zollunregelmäßigkeiten im Wert von insgesamt 1,7 % des Gesamtbruttobetrags der EU-weit eingezogenen TEM aufgedeckt.**
- Im Rahmen dieser Studie wurden, ohne Berücksichtigung der „Ausreißer“, **fünf Mitgliedstaaten identifiziert, die bei der Aufdeckung von Unregelmäßigkeiten eine hohe Leistung erbringen und neun, die eine niedrige Leistung erbringen.** Insgesamt machen sie mehr als die Hälfte aller Mitgliedstaaten aus und der stärkste und der schwächste Mitgliedsstaat liegen in einem Verhältnis von 8:1 auseinander.

- Während die EU-weite Aufdeckungsrate von Zollunregelmäßigkeiten in den letzten Jahren bei rund 2 % lag, fiel sie im Jahr 2011 auf 1,4 %. Der derzeitige Einbruch bei der EU-weiten Aufdeckungsleistung entspricht einer Verringerung der aufgedeckten Zollunregelmäßigkeiten im Gesamtwert von 72 Mio. EUR.

## 2) Feststellung der Zölle bei Unregelmäßigkeiten

- Die in der B-Buchhaltung ausgewiesenen Beträge für den Zeitraum von 2006 bis 2011 deuten EU-weit auf **erhebliche Leistungsunterschiede zwischen den Mitgliedstaaten** hin.
- Die Korrekturraten für die festgestellten Zölle sind EU-weit sehr unterschiedlich, und bei den Mitgliedstaaten mit beträchtlichen Erhebungen treten „Verflüchtigungen“ in erheblichem Umfang auf.
- In Österreich entspricht die B-Buchhaltung einem Anteil von 39 % der A-Buchhaltung. Das Gleiche gilt für zwei weitere Mitgliedstaaten, nämlich Griechenland (18 %) und Portugal (15 %). Diese Zahlen sind bemerkenswert, da das Verhältnis zwischen B- und A-Buchhaltung in allen anderen Mitgliedstaaten im Durchschnitt bei 6 % liegt.
- Die B-Buchhaltung Italiens ist ebenfalls beachtenswert. Im Zeitraum von 2006 bis 2011 entsprach das Finanzvolumen von Italiens B-Buchhaltung einem Anteil von 30 % des Gesamtvolumens für die EU.
- Vier von fünf großen Mitgliedstaaten (Spanien, Frankreich, Italien und das Vereinigte Königreich) weisen für den Forschungszeitraum „negative“ Korrekturen auf (und tragen damit zur „Verflüchtigung“ bei). Deutschland weist tendenziell „positive“ Korrekturen auf und trägt damit zu seiner Erhebungsleistung bei.

## 3) Erhebung der Zölle bei Unregelmäßigkeiten

- Auch hier wurden für den Zeitraum von 2006 bis 2011 **erhebliche Unterschiede zwischen den Leistungen der Mitgliedstaaten** festgestellt.
- Obgleich es sich um eine **theoretische Übung** handelt, können die finanziellen Auswirkungen dieser Unterschiede durch einen Vergleich der hohen und niedrigen Erhebungsleistungen innerhalb der EU geschätzt werden. Hätten alle Mitgliedstaaten Zölle im selben Umfang erhoben wie die Mitgliedstaaten mit hoher Erhebungsleistung, könnte der Wert der in dem Sechsjahreszeitraum erhobenen Zölle um 1,3 Mrd. EUR höher liegen als im gegensätzlichen Fall, in dem die Erhebungsleistung aller Mitgliedstaaten der der leistungsschwachen Mitgliedstaaten entspricht.
- **Der tatsächliche Wert der von den Mitgliedstaaten in dem Sechsjahreszeitraum erhobenen Zölle betrug insgesamt über 0,9 Mrd. EUR. Hätten alle Mitgliedstaaten die bestmögliche Erhebung durchgeführt,** wären zwischen 2006 und 2011 Zölle im Gesamtwert von über 1,5 Mrd. EUR und damit **zusätzlich 0,6 Mrd.** erhoben worden.
- **Für alle in diesem Zeitraum aufgedeckten Unregelmäßigkeiten** wurde in der gesamten EU eine **Erhebungsquote von 42 %** ermittelt.

- Ohne Berücksichtigung der „Ausreißer“ lassen sich aus den Erhebungsergebnissen zwei leistungsstarke (Deutschland und Schweden) und acht leistungsschwache Mitgliedstaaten (Italien, Griechenland, Litauen, Österreich, Lettland, die Niederlande, Zypern und Belgien) ermitteln.
- Setzt man den Gesamtbetrag aller Abschreibungen aufgrund wesentlicher Entscheidungen der Kommission als 100 % an und lässt Leistungswerte bis 5 % unberücksichtigt, **haben sich nur fünf Mitgliedstaaten wegen uneinbringlicher Zölle in erheblichem Umfang an die Kommission gewandt. Nur elf Mitgliedstaaten haben überhaupt Anfragen eingereicht, die zu einer konkreten Entscheidung führten.**

#### **4) Abführung traditioneller Eigenmittel (TEM) an die EU im Falle von Unregelmäßigkeiten**

- **Es bestehen erhebliche Unterschiede zwischen den EU-Mitgliedstaaten bei der Abführungsleistung.**
- EU-weit war festzustellen, dass **beim Nettotransfer keine „Verflüchtigung“** aufgetreten ist. Wenn der Betrag der in der B-Buchhaltung ausgewiesenen Erhebungen über den Erhebungsbeträgen im OWNRES-System lag, wurde davon ausgegangen, dass tatsächlich alle übertragungspflichtigen Beträge an die EU abgeführt wurden. Dennoch geben die bestehenden Unstimmigkeiten Anlass zur Sorge.
- **Bei fast der Hälfte der Mitgliedstaaten lag die Abführungsquote unter 100 %.** Quoten unter 100 % bedeuten, dass die in der B-Buchhaltung ausgewiesenen Erhebungsbeträge geringer als die im OWNRES-System ausgewiesenen Beträge sind. **Bei einigen Mitgliedstaaten stimmten die in der B-Buchhaltung ausgewiesenen Erhebungsbeträge nicht mit denen im OWNRES-System überein. Das Missverhältnis lag bei über 0,5 Mrd. EUR,** auch wenn es dafür gute Gründe geben mag.

#### **5) Gesamtleistung bei der Rückforderung traditioneller Eigenmittel (TEM) im Falle von Unregelmäßigkeiten**

- **Es wurden beträchtliche strukturelle Unterschiede zwischen den Mitgliedstaaten mit hoher und solchen mit geringerer Leistungseffizienz festgestellt.**
- Die **theoretischen finanziellen** Auswirkungen dieser Unterschiede lassen sich durch einen Vergleich der hohen und niedrigen Aufdeckungsleistungen innerhalb der EU schätzen. Wäre die Leistung aller Mitgliedstaaten so hoch wie die des leistungsstärksten Mitgliedstaats gewesen, hätte in dem Sechsjahreszeitraum ein Betrag zwischen 2 und 4 Mrd. EUR zusätzlich (oder früher) erhoben werden können als im gegensätzlichen Fall, in dem die Leistung aller Mitgliedstaaten der des leistungsschwächsten Mitgliedstaats entspricht.
- **Der tatsächliche Wert der von den Mitgliedstaaten in dem Sechsjahreszeitraum erhobenen Zölle betrug insgesamt etwa 1 Mrd. EUR. Wäre die Leistung aller Mitgliedstaaten so hoch wie die des leistungsstärksten Mitgliedstaats gewesen, wäre zwischen 2006 bis 2011 mit zusätzlichen Zöllen im Gesamtwert von 1 bis 3 Mrd. EUR zu rechnen gewesen.**

- **Die EU-weite Gesamtleistungsquote für die Zollerhebung während des Forschungszeitraums liegt bei 0,7 %. Diese Zahl ergibt sich aus den Leistungsquoten in jeder einzelnen Phase. Die finanziellen Schätzungen für einzelne Quoten sind nicht kumulierbar.**
- Weiterführende Forschungsarbeiten sind erforderlich, um sicherzustellen, dass die Erhebung von TEM für die EU ordnungsgemäß erfolgt und alle Mitgliedstaaten eine vergleichbare finanzielle Last tragen.

## EMPFEHLUNGEN

Durch die vorliegende Untersuchung werden Fragen aufgeworfen, die von den Dienststellen der Kommission mit den Mitgliedstaaten erörtert werden müssten. Die Kenntnis der Gründe für die Leistungsunterschiede könnte zu einer weiteren Verbesserung der TEM-Erhebungsquoten und einer gleichmäßigeren Aufteilung der TEM-Erhebungen auf alle Mitgliedstaaten führen.

### Die Europäische Kommission sollte

- 1) ihre Kontroll- und Überwachungsmaßnahmen bei der Erhebung von TEM fortsetzen, indem Mitgliedstaaten, die bei der Erhebung von TEM nicht gewissenhaft vorgehen, für jegliche Schädigung des EU-Haushalts finanziell verantwortlich gemacht und auf diese Weise die finanziellen Interessen der Europäischen Union, der anderen Mitgliedstaaten und der Steuerzahler geschützt werden;
- 2) die Unterschiede in der administrativen Leistung der Mitgliedstaaten bei der Erhebung der TEM weiter untersuchen, insbesondere wenn sich aus den Daten, die der Kommission zur Erhebung der Zölle zur Verfügung stehen, Strukturen oder Tendenzen zur Verbesserung der Erhebungsleistung ableiten lassen. Dies könnte durch neue Überwachungsmechanismen erreicht werden. Beispielsweise durch Mechanismen für:
  - a. die Beobachtung und den Vergleich der Leistung bei der TEM-Erhebung der Mitgliedstaaten mit Hinblick auf die finanziellen Erträge in jeder Phase des Verfahrens zur Zollschuldenerhebung.
  - b. die Untersuchung der strukturellen Leistung der einzelnen und der Gesamtheit der Mitgliedstaaten mit dem Ziel, die in den leistungsstärkeren Mitgliedstaaten angewandten bewährten Verfahren in den Bereichen Gesetzgebung, politische Maßnahmen, Steuerungsmechanismen, Risikobewertung, Computerprogramme usw. zu bestimmen und die breitere Anwendung dieser bewährten Verfahren zu fördern;
  - c. die Bewertung und Einstufung der Leistungsmuster der Mitgliedstaaten in Bezug auf Risiken bei der Erhebung der TEM sowie stärkere Überprüfungen, Kontrollen und Buchprüfungen auch im Hinblick auf die Risikoanalyse auf Ebene der Mitgliedstaaten;
  - d. die Ergreifung jeder Gelegenheit zur Steigerung der EU-weiten finanziellen Erträge aus dem Verfahren zur Erhebung der TEM;
- 3) bei den Mitgliedstaaten auf gezielte Kontrollen gemäß den neuen Bestimmungen des Lissabon-Vertrags bestehen, demzufolge die Kommission „zusammen mit den Mitgliedstaaten“ für die Ausführung des Haushaltsplans zuständig ist;
- 4) erwägen, den von den Mitgliedstaaten einzubehaltenden Betrag zur Verwaltung des Verfahrens zur Erhebung von TEM an die durch dieses Verfahren erzielte Leistung zu knüpfen

und diese einbehaltende Erhebungsgebühr im Falle nachlässigen Handelns von den Mitgliedstaaten zurückzufordern;

- 5) ihre Verpflichtung zur Wahrung der finanziellen Interessen der EU vor dem Hintergrund des neuen Vertrags auslegen, d. h. die Mitgliedstaaten bei der Wahrung ihrer eigenen finanziellen Interessen in vergleichbarer und wirksamer Weise zu unterstützen;
- 6) die Datenerhebung ausweiten und ihre Transparenz verbessern, um eine Nachverfolgung für Fälle zu ermöglichen, in denen die Erhebung und Abführung nicht innerhalb der Jahresfrist erfolgt, und die umfassende Einhaltung des Grundsatzes der Haushaltswahrheit sicherzustellen;
- 7) Maßnahmen unterstützen, durch die die vergleichenden Ergebnisse zu den Erträgen in jeder Phase des Verfahrens zur Erhebung der TEM verfügbar gemacht werden.

### **Die Mitgliedstaaten sollten**

- 1) eine selbstkritische Überprüfung ihres Verfahrens zur Einziehung von TEM unter Anwendung der im vorliegenden Bericht beschriebenen Analysemethoden durchführen, um seine Schwächen zu erkennen und die bestmögliche Verfahrensweise für eine effizientere und wirksamere Einziehung von TEM zu finden;
- 2) die Datenaufzeichnungen in der OWNRES-Datenbank und in der B-Buchhaltung gewissenhafter abgleichen und auf diese Weise die Konsistenz und Qualität der Informationen zu festgestellten Zollunregelmäßigkeiten und ihre Nachverfolgung sicherzustellen;
- 3) durch lückenlose Transparenz zwischen den im OWNRES-System ausgewiesenen Erhebungen und den abzuführenden Beträgen aus der B-Buchhaltung die rechtzeitige Abführung von TEM an die EU sicherstellen;
- 4) eine kritische Bewertung ihrer eigenen Zollsysteme und eine Lückenanalyse für das gesamte Verfahren durchführen, um die Verluste durch „Verflüchtigung“ zu verringern; kostengünstige Verbesserungsmöglichkeiten ermitteln, die von EU-weiten Programmen und IT-Systemen begleitet werden und eine erneute Prüfung des Status der B-Buchhaltung einschließen.



## 1 INTRODUCTION

This report, requested by the European Parliament (EP) Committee on Budgetary Control and prepared between July 2012 and November 2012, examines the administrative performance of the Member States recovering Traditional Own Resources (TOR) of the European Union (EU)<sup>7</sup>.

### 1.1 SUBJECT OF THE REPORT

The European Union (EU) is founded inter alia on the creation of a Customs Union for the trade of goods, which can move within the Union without internal borders according to the rules of the internal market and according to provisions of the Common Commercial Policy<sup>8</sup>. The 1957 Treaty of Rome created the Customs Union, which was then established on 1 July 1968. It has developed and adapted to new technologies and evolving security challenges such as counterfeiting, piracy and smuggling.

At external borders, the Common Customs Tariff, and the Integrated Tariff (TARIC), are applied to goods from third countries. Instruments such as the Community Customs Code should ensure that Member States' customs authorities apply the standards uniformly.

The 1970 European Communities (EC) Budget Treaty<sup>9</sup> determined that revenue for the EC budget should take the form of own resources stemming from the functions of the European Communities as a trading bloc and single market. Own resources are defined as *'revenue allocated irrevocably to the Union to finance its budget and accruing to it automatically without the need for any subsequent decision by the national authorities'*<sup>10</sup> even if collected by the individual Member States. Assigning customs duties to the financing of common expenditure is the logical consequence of the establishment of the common customs tariff for imports into the Union and of the free movement of goods within the EU.

The treaty requires that a legal decision on own resources is agreed unanimously by Member States in Council, after consulting the European Parliament, then ratified nationally<sup>11</sup>.

Revenue deriving from Traditional Own Resources are: *'levies, premiums, additional or compensatory amounts, additional amounts or factors, Common Customs Tariff duties and other duties established or to be established by the institutions of the Communities in respect of trade with non-member countries ... as well as contributions and other duties provided for within the framework of the common organisation of the markets in sugar'*<sup>12</sup>.

Agricultural levies on imports are also part of TOR but since the implementation into EU law of the Uruguay round agreements on multilateral trade, there is no longer any material difference between agricultural duties and customs duties. This distinction was thus removed when the Own Resources Decision (ORD) 2007 entered into force.

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<sup>7</sup> EP service order form IP/D/ALL/FWC/2009\_056/LOT 1/C2/SC1, ED n° 03200-01-05/15131/91510.

<sup>8</sup> Article 28 of the Treaty on the Functioning of the European Union (TFEU).

<sup>9</sup> Treaty amending certain budgetary provisions (1970) Official Journal of the EC L 2 of 2 January 1971; its provisions state: 'without prejudice to other revenue, the budget shall be financed wholly from own resources'.

<sup>10</sup> European Commission 'European Union Public Finance' OPOCE: Luxembourg 4th edition 2008 page 135.

<sup>11</sup> Article 311 Treaty on the functioning of the European Union (TFEU).

<sup>12</sup> Article 2(1)(a) of Council Decision 2007/436/EC, Euratom of 7 June 2007 (ORD 2007).

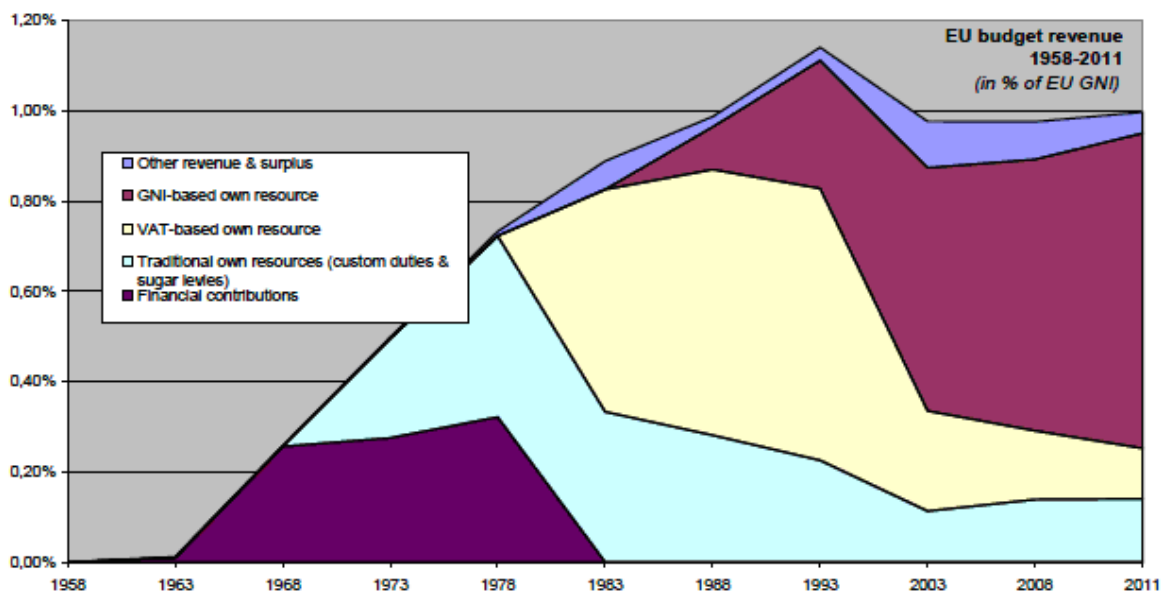
National provisions determine the method for collecting own resources. The Commission regularly reviews those provisions, while Member States regularly inform the Commission of any anomalies having a financial impact with respect to collection.

The two other resources are a percentage share of a uniform Value Added Tax (VAT) on traded goods and services within the common market, and a small share of the Gross National Income (GNI) of the Member States.

The various categories of own resources are assigned to the Communities in order to finance the budget of the European Union. The EU budget must be in balance, which means that the revenue then must total the adopted total expenditure. After collecting and transferring the TOR and the share of VAT to the Union, there is a shortfall which is made up by the GNI resource.

Graph 1 shows the extent to which the GNI based resource has taken the place of the original customs duties and VAT share over the period 1958 to 2011, and has distorted the original treaty principles. TOR provide about 15 per cent of the EU budget revenue currently, a share that has declined over the years<sup>13</sup>.

**Graph 1 - Structure of EU financing 1958-2011**



**Source:** European Commission Staff Working Paper 'Financing the EU budget' Report on the operation of the own resources system SEC(2011)876 final/2 page 12

This report examines only the 'Traditional Own Resource', that is customs duties and sugar and isoglucose levies. These are levied on economic operators and collected by Member States on behalf of the EU.

<sup>13</sup> [http://ec.europa.eu/budget/library/biblio/documents/fin\\_fwk1420/proposal\\_council\\_own\\_resources\\_\\_annex\\_en.pdf](http://ec.europa.eu/budget/library/biblio/documents/fin_fwk1420/proposal_council_own_resources__annex_en.pdf)

Since 2001 Member States retain 25 % of the amounts collected, to cover collection costs. Before 2001, 10 % was retained, but this percentage was increased to 25 % as part of the agreement of the multiannual financial framework or financial perspective 2000-2006 as an extra correction<sup>14</sup>.

The Commission has put forward in the proposed Own Resources Decision for the period after 2013 to return to 10 %, in keeping with its suggested incorporation of all correction mechanisms into lump sums.

## 1.2 AIMS OF THE REPORT

The report:

1. examines performance differences in TOR recovery between Member States.
2. reviews and assesses the Commission monitoring of the TOR recovery in terms of these possibly existing administrative performance differences between the Member States.

The study provides and applies methods of assessment of the administrative performance of Member States in TOR recovery. These assessments take account of the size of the flow of TOR per Member State, albeit only for comparing Member States which appear to be in a similar situation but nevertheless show performance differences or vice versa. The method is applied to all current Member States and ranks performance over time. The study assesses European Commission monitoring of the TOR recovery using performance differences between Member States.

The study also considers whether the method used could be applied to shared expenditure domains.

## 1.3 OVERVIEW OF THE PROBLEM

98 % of all amounts of TOR established are subsequently recovered without any particular problem: The European Court of Auditors annual report has regularly given revenue a positive statement of assurance. Its most recent annual report for the 2010 financial year stated: 'Based on its audit work ... the Court concludes that: (a) Member States' declarations and payments of TOR; ... for the year ended 31 December 2010 were free from material error'<sup>15</sup>.

All established amounts of TOR must be entered in one of two accounts kept by the competent Member State authorities; all amounts recovered or secured and not challenged must be entered in the ordinary or 'A-account'<sup>16</sup>; all amounts which have not yet been recovered and for which no security has been provided and amounts for which security has been provided but which have been challenged may also be entered in the separate or 'B-account'<sup>17</sup>.

The report went on to identify problems in the procedures and systems which affect the amounts included in the B-accounts' statements such as unjustified entries and write-offs, delays in the establishment of TOR, belated starting of recovery actions. A significant system weakness was identified concerning the reliability of the accounts for TOR in Belgium, which was also found by the Commission's inspection work.

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<sup>14</sup> Council Decision 2000/597/EC, Euratom of 29 September 2000 (ORD 2000).

<sup>15</sup> European Court of Auditors 2010 Annual Report chapter 2 §19 page 48, §37 page 56, §39 page 56, §40 page 57. <http://eca.europa.eu/portal/pls/portal/docs/1/9766724.PDF>

<sup>16</sup> Provided for in Article 6(3)(a) of Regulation (EC, Euratom) No 1150/2000 of 22 May 2000.

<sup>17</sup> Provided for in Article 6(3)(b) of Regulation (EC, Euratom) No 1150/2000 of 22 May 2000.

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The Court's report confirmed problems with the use of the B-accounts and with the reliability of the A- and B-accounts' statements. National customs supervision was found with weaknesses. The Court concludes *'that supervisory and control systems of Member States audited are only partially effective at ensuring that TOR recorded are complete and correct.'*

The Sixth report from the European Commission to the European Parliament and to the Council of the European Union on the operation of the inspection arrangements for TOR (2006-2009) identified 436 anomalies, 224 with a financial impact (51,4 %) and 110 a regulatory impact (25,2 %) <sup>18</sup>.

The report concludes: *'The results recorded from 2006 to 2009 show that the Commission's inspections of traditional own resources are necessary ... illustrated by improved compliance with Community provisions on the protection of the European Union's financial interests as well as at the financial level (the net amount made available came to around €237 million). This inspection activity ensures equality of treatment between the Member States as regards both application of the customs and accounting rules and protection of the European Union's financial interests'* <sup>19</sup>.

The report sets out the series of judgements of the European Court of Justice effectively correcting Member States' interpretation of the rules and certain practices. The risk of Member States' feeling that the system does not assure equal treatment is a constant concern.

Besides showing due diligence, the problem and the net amount made available as described in the report are significant. Improvements are demonstrably possible.

## **1.4 DATA COLLECTION AND METHODS**

The study used desk research methods, internet searches and interviewing in person, as well as data analysis. It applied comparative assessment methods, relying heavily on published sources of data and interviews of key personnel in the Union institutions.

Published sources of general interest include European Court of Auditors reports, the European Parliament's discharge reports, the European Commission's budget documentation, the Commission's Annual Internal Auditor's report, OLAF reports, the annual activity reports of the relevant Directorates General and the Synthesis Report and annexes, the Annual Financial Reports, and other relevant annual reports, and appropriate impact assessments. The research did not audit programmes and actions and it did not pursue its request for confidential audit material.

### **1.4.1 Specific data sources**

Stages in the customs recovery process consist of

- the detection of customs irregularities,
- the establishment of customs debts,
- the recovery of amounts of customs debts or the writing-off of irrecoverable customs debts and
- the transfer of recovered amounts to the EU as budget revenue.

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<sup>18</sup> Undertaken as required by Article 18(5) of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000.

<sup>19</sup> Section 2.1.

Published Commission documents contain relevant financial data on each of these stages at Member State level including the European Commission Annual Report on the protection of the European Union's financial interests and the fight against fraud and the annexed statistical evaluation, the Commission's Annual Financial Report, DG Budget's Annual Activity Report, and the Annual Accounts.

Where necessary data on Member State level could not be found in published documents or those made available to the European Parliament in the discharge procedure, information was requested from the appropriate Commission services. This for instance applied to the "B-account" data (on customs debts not yet having been recovered by the Member States), which though public is not a published document.

## **2 OBJECTIVES**

### **2.1 OBJECTIVE 1: TO EXAMINE PERFORMANCE DIFFERENCES IN TRADITIONAL OWN RESOURCES RECOVERY BETWEEN THE MEMBER STATES.**

According to EU law, customs debt recovery (representing the TOR involved) is a responsibility of each Member State, which has its own laws, rules and regulations and legal concepts to frame TOR-recovery. It has its own administrative policies and management structures, which affect the way customs debts are checked, established and recovered. Administrative traditions may also influence the results. We can thus expect performance differences in TOR recovery between the Member States as customs debt-recovery is organised differently.

How can these performance differences, based on different laws, rules, administrative traditions and practices, be measured and compared? Some argue that one cannot compare quite different systems. Any attempt to do so will fail as what are being compared are not comparable. This reaction can easily lead to performance differences in TOR recovery being taken for granted. The effect would be that differences in customs debt recovery would mean that not all Member States share the same proportional financial weight in assuring EU budget revenue; be it in TOR recovery or via the compensating mechanism of the GNI-contribution.

As the Commission should ensure that all Member States in the end share a comparable and proportional financial weight, a method for assessing the financial impact of existing differences in the Member States' administrative performance in this field should exist. So far, such evaluation methods appear not to be used, even if performance differences could be identified and compared for each Member State with EU-wide averages.

Some aspects of customs debt recovery performance has been studied in the past, but an overall, EU-wide evaluation method for how the TOR recovery process impacts on the distribution of financial responsibilities in budget revenue has not been established conclusively.

This proposal offers research into and application of a method, which could fill this gap. Preliminary research on a sample basis by the research team has shown that a method which would focus on the financial output of individual custom debt recovery processes but seen in the wider framework of the whole recovery process could possibly provide simple and objective results, based on factual financial performance indicators (amounts), and the calculation of mutual relationships in the recovery process (ratios).

Such performance information would also allow comparisons to be made between Member States' figures, provide calculations of EU-averages on not only individual stages of the customs debt recovery process but also for the process as a whole. This could even allow 'ranking' the Member States in terms of financial over- and under-performance in the TOR field, and provide indications of best practices.

The results could help both the Member States and the European Commission to take account of how performance differences in customs debt recovery between Member States, in terms of TOR-amounts, affect the distribution of their mutual budgetary responsibilities. Member States could become aware of how they perform in the light of the EU-average. Low performing Member States could use other Member States' examples to understand how they can improve their national custom debt recovery processes, such as through legislative or rules changes, effective practices and the like. Tracking budgetary risks in the Member States would also facilitate the Commission's questioning the Member States with a view to improving Member States' performance strategically.

### **2.1.1 Consecutive stages research and data period**

We identify the consecutive stages of the customs debt recovery process and have collected financial performance data on each of them. When data from a later stage are compared with data of the previous stages, one can find how much TOR 'evaporates' from one stage to another. If such calculations are made for all stages of the customs debt recovery process one can in the end find the overall performance ratio of TOR recovery for any given Member State, especially when this ratio is compared with the overall amount of TOR collected by that Member State.

The research team thus started the exercise by looking at all customs transactions, which could possibly be checked by customs, and then proceeding stage by stage of the customs recovery process until all stages had been identified and all related financial performance data had been collected.

Taking a snap shot of a Member States' performance in this field is insufficient. Most documents and information referred to are issued on an annual basis and therefore only reflect the (overall or partial) performance of a Member State in the reporting year. While a single year's data can already provide a picture, having a multi-year view of such performance is preferable. The consistency of the ratios found and the patterns identified are likely to be more reliable over several years. We take the last 6 years of published TOR recovery data and use it to calculate each Member State's partial and overall performance in TOR recovery; as 2011 is at this moment the last year for which this public domain data are available this would concern the period from 2006 until and including 2011.

### **2.1.2 Cohort data and multiannual data**

Data for this research exercise are of a generic character. The results of cases at one stage are not followed through to the next stages in the annual report, where the procedures concerned often take several years to complete. There is no strict accounting relationship at individual case level between the performance ratios found for each of the stages of the customs recovery process, since the cases may differ at each stage. Cohort data is not readily available, tracing through for individual cases what occurs at each stage.

Multi-annual data on customs performance on Member State level can be used to show more consistent performance patterns, which are maintained over time. The research team considers that providing such performance patterns in areas of possible budgetary risk could help to improve the monitoring of Member States' customs recovery performance. In this way, not only the Commission (and other European institutions) and the Member States could benefit but also the wider public ('the European taxpayer').

## **2.2 OBJECTIVE 2: TO REVIEW AND ASSESS THE COMMISSION MONITORING OF THE TRADITIONAL OWN RESOURCES' RECOVERY IN TERMS OF THESE POSSIBLY EXISTING ADMINISTRATIVE PERFORMANCE DIFFERENCES BETWEEN THE MEMBER STATES**

Having found TOR performance ratios for Member States showing customs recovery performance in individual Member States and at EU-level, the research team has interviewed the responsible Commission services to find out whether they have performed similar reviews and, if so, what the underlying objectives were and what the results were. This would enable an assessment of how far the Commission monitors the existence of administrative performance differences between the Member States in the customs field in the way we outline. Other evaluations of this work may be examined to cross-reference the assessments.

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### **3 SUBJECT: COLLECTING TRADITIONAL OWN RESOURCES**

#### **3.1 THE CURRENT OWN RESOURCES COLLECTION SYSTEM AND ITS PROCEDURES**

Member States collect own resources in accordance with their national provisions, which must be adapted to Community requirements according to Article 8 of the Decision on the own resources system. Member States can be required to make good any shortfall in TOR resulting from deficiencies in the way they manage the collection system. The detailed rules for making available own resources are spelt out in the amended Regulation (EC, Euratom) No 1150/2000 implementing the basic own resources decision<sup>20</sup>.

##### **3.1.1 Collection**

The Member States' administrative authorities collect own resources, acting on behalf of the Community, which does not have its own customs and tax authorities to carry out these tasks.

##### **3.1.2 Establishment and entry in the accounts**

The resources are established as soon as the conditions provided for in the customs regulations have been met for the entry of the entitlement in the accounts and the notification of the debtor (for sugar levies, the relevant date is that of the notification provided for in the Community regulations governing the sugar sector)<sup>21</sup>.

All established TOR amounts must be entered in one or other of the accounts kept by the competent authorities.

— In the ordinary or 'A'-account<sup>22</sup>: all amounts recovered or secured and not challenged.

— In the separate or 'B'-account<sup>23</sup>: all amounts that have not yet been recovered and for which no security has been provided; amounts for which security has been provided and that have been challenged and might, upon settlement of the disputes, be subject to change may also be entered in this account.

TOR must be entered in the accounts no later than the first working day after the 19th of the second month following the month in which the entitlements were established.

Member States make available own resources to the Commission by crediting the amounts of TOR to an account opened in the name of the Commission with their treasury or other appointed body.

Member States belonging to the Economic and Monetary Union make their own resources payments in euros and other Member States in their national currency. Any delay in making own resources available gives rise to the payment of interest by the Member State concerned.

##### **3.1.3 System of scrutiny**

As resources are collected at national level, it is firstly for the Member States' authorities to put in place an appropriate (internal) control infrastructure. As the Commission is the authorising body for revenue and therefore accountable to the budgetary authority, it must, of course, obtain

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<sup>20</sup> Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 2000/597/EC, Euratom on the system of the Communities' own resources (OJ L 130, 31.5.2000, p. 1), as amended by Regulation (EC, Euratom) No 2028/2004 (OJ L 352, 27.11.2004, p. 1).

<sup>21</sup> In accordance with Article 2 of Regulation (EEC, Euratom) N° 1150/2000 of 22 May 2000.

<sup>22</sup> Provided for in Article 6(3)(a) of Regulation (EC, Euratom) N° 1150/2000 of 22 May 2000.

<sup>23</sup> Provided for in Article 6(3)(b) of Regulation (EC, Euratom) N° 1150/2000 of 22 May 2000.



assurances that the Member States collect own resources in accordance with Community rules. It may therefore ask to be associated with national inspections and also ask Member States to conduct additional inspections. For TOR, the Commission may, itself and on its own initiative, carry out on-the-spot inspections.

Agents authorised by the Commission carry out these controls and inspections on behalf of the Community<sup>24</sup>. Inspection findings are set out in a report sent to the Member State concerned. The Advisory Committee on Own Resources (ACOR) then considers this report, together with the Member State's comments. The Committee is made up of representatives of the Member States and the Commission (which chairs the meetings and provides secretariat services). This ensures openness, as each Member State is aware of the findings of controls carried out in the other Member States. After discussion in ACOR, the Commission finalises its position and follows up the observations made until the matter is settled. ACOR can also examine any matters relating to the collection of own resources.

A report on the system for collecting TOR is produced every three years and sent to the budgetary authority.

The European Court of Auditors points out a difference in the treatment of Community debts subject to recovery procedures between those amounts, which have been unduly paid under the common agriculture policy and customs duty debts. This is notably the case under current EU legislation for write-off procedures and proposals for the next period maintain that inconsistency<sup>25</sup>. The Court considers that, as all Community debts should receive the same treatment, the procedures should also be harmonised<sup>26</sup>.

#### **3.1.4 The legal approach**

The Commission considers each customs entry in the B-account as a possible recovery. Each Member State in the first instance follows up each of its entries in the B-account. But in the final analysis the Commission is responsible for the execution of the budget in cooperation with the Member States, including for the collection of revenue. The Commission may consider that the Member State should take financial responsibility for the debt where it believes after examination that the Member State has not done all it could to recover the debt. It may decide that the Member State must take financial responsibility for that transaction. In the final analysis therefore the Community's judicial instances may be called on to judge whether the Member State has done all it could to recover the debt.

This approach requires a thorough examination of each transaction, and the collection by the Commission services of data that can be presented in court. In such circumstances, the generic nature of many transactions is of lesser importance than the particular aspects of each transaction.

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<sup>24</sup> Council Regulation (EC, Euratom) No 1026/1999 of 10 May 1999 determining the powers and obligations of agents authorised by the Commission to carry out controls and inspections of the Communities' own resources (OJ L 116, 20.5.1999, p. 1).

<sup>25</sup> Article 32 of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ L 209, 11.8.2005, p. 1) and Article 17 of Regulation (EC, Euratom) No 1150/2000, as amended. Article 12 of the amended proposal for a Council Regulation on the methods and procedure for making available the traditional and GNI-based own resources and on the measures to meet cash requirements COM(2011) 742 of 9 November 2011 would maintain this inconsistency.

<sup>26</sup> European Court of Auditors opinion 2/2012 OJ C112 of 18/4/2012 §24 page 5.

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Differences observed in practices and procedures in each Member State are not the priority subject of analysis when pursuing the protection of the financial interests of the European Union, as the Treaty requires.

The Commission does nevertheless draw general conclusions from comparisons of the cases in the B-accounts and promotes discussion of types of error identified in the ACOR.

## **4 METHOD: THE STUDY'S METHODOLOGY**

### **4.1 PRELIMINARY REMARKS**

Recovery of TOR by the Member States usually takes place by the recovery of customs debts by the Member States' customs services. It is, however, possible that a given commercial transaction gives rise not only to the existence of a customs debt representing TOR (such as customs duties) but also representing other (national) resources (such as value added tax and excise duties). These national resources fall of course outside the framework of this research and this report. Therefore, where this report refers to the customs recovery process, this should be read as only concerning the recovery of TOR.

### **4.2 PERFORMANCE VARIATIONS**

A Member State's customs service has practices, traditions and administrative rules that may differ from another and as a consequence, it may perform differently to other services. Member States should, however, in particular in the customs field, act as if they were one as EU legislation provides a framework that Member States must follow for the recovery.

The way in which customs debts are collected is typically to be found in Member States' legislation. The existence of the terms 'recovery' and 'collection' may be confusing but 'recovery' is actually a wider term than the more narrow 'collection'. So the EU governs the recovery process of customs duties.

Some customs sectors are not or not completely covered by EU legislation but by national legislation. Even in those sectors which are covered by uniform EU legislation, the way in which the rules are being applied by individual Member States may be influenced by national administrative cultures, legal systems, management concepts, strategic choices, electronic applications and the like. The Commission notes this in the 2011 Commission Report on the protection of the European Union's financial interests and the fight against fraud<sup>27</sup>. When commenting on differences in detection percentages between Member States, the Commission also notes that 'the percentage can significantly vary from one year to another'<sup>28</sup>.

The Commission mentions other factors which could equally result in different figures between the Member States: the type of traffic and trade, the level of compliance of the economic operators, the location of a Member State and its customs control strategy<sup>29</sup>. While a variety of factors may help indicate customs performance by Member State, whether these factors concern variations in time or in 'geographical distribution', they have not been the first priority of Commission action, which has centred on the protection of EU financial interests through legal actions.

The research team has examined these figures as indicators of performance. While it may be true that many 'distribution factors' may determine a different input of customs transactions in the customs recovery process, once these transactions have 'entered the pipeline' of the customs recovery process, one may expect them to be dealt with in more or less the same way. This would in particular be true for customs irregularities detected following customs checks and resulting in the establishment and recovery of customs debts.

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<sup>27</sup> The Commission acknowledges that 'there are differences within the Member States'. See Statistical evaluation of irregularities for the 2011 Commission Report on the protection of the European Union's financial interests and the fight against fraud §3.3.4.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

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Performance factors may vary from year to year (even substantially) and in an apparently random way. But does customs performance in these terms seen over a longer period of time show recognisable patterns?

Preliminary research on customs performance gave us reason to believe that Member State differences in administrative performance indeed existed. The research appeared, moreover to suggest that patterns in Member States' customs performance could very well exist seen over time. The patterns found suggested that the longer the period of observation the clearer the continuity in Member States' customs performance was. As patterns emerged, questions were raised as to whether these differences in Member States' customs performance could have consequences for the recovery of TOR in the EU and thus for the EU taxpayer.

The research team has followed the 'chronology' of this research's assignment: first focus on the possible existence of Member State performance differences in the customs recovery field and then evaluate the Commission's monitoring of these differences if any. This report will therefore have a corresponding structure. This Chapter will further highlight the methodology used. Chapter 5 will focus on exploring these possibly existing differences and showing results found. Chapter 6 will represent the research teams' review and assessment of the Commission's monitoring of these differences.

### **4.3 EXPLORING THE FIELD**

The Commission itself is responsible for the implementation of the policy concerning TOR, in cooperation with Member States. Two Commission services collect data on customs performance as we define it. DG Budget, the authorising officer by delegation for the EU's budget revenue, inspects the customs recovery process in the Member States; DG TAXUD monitors the quality of customs performance including customs recovery. The Internal Audit service may audit the systems of the two DGs most closely concerned. The Legal Service is involved with legal procedures in the Court of Justice. The European Court of Auditors audits the customs recovery process.

These inspections and audits have a common focus: checking customs recovery with a view to identifying anomalies in the Member States' implementation of budgetary responsibilities in the domain of EU revenue. Once such anomalies have been traced, and the effect on the EU budget calculated, the Commission through DG Budget will hold the Member States financially liable for this amount and take measures to ensure that the amount outstanding be transferred to the Commission. The Commission thus encourages individual Member States to improve their administrative performance and to address weaknesses leading to a loss of TOR. Payments for these cases reduce in effect the contribution of the Member States via the GNI resource in proportion to their contribution to the EU budget<sup>30</sup>. The importer who does not pay customs duties duly identified, is effectively requiring the taxpaying public to make up the loss.

Identifying such customs recovery anomalies presumes an inspection focus on case level. But it does not provide an assessment of overall customs performance. For that purpose the focus would be on tracing relevant data on all aspects of the customs recovery process and linking these data together in a comprehensive assessment framework to track data of a more generic nature on a multi-case level. The research team is aware of the discussions initiated by the Commission in the ACOR on specific themes which may have an effect on the overall performance of the customs recovery process; it is not convinced that these discussions exploit fully the data that are available

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<sup>30</sup> Statistical evaluation of irregularities for the 2011 Annual Commission Report on the protection of the European Union's financial interests and the fight against fraud § 3.1.3.

by individual services, which would provide detailed guidance for Member States on how to improve their performance.

The research team shows a way to fill this strategic gap, by developing a methodology for collecting data on all stages of the customs recovery process and linking this data together to allow customs performance assessment at both individual stages of the recovery process and on the level of customs recovery as a whole. This should allow comparisons of individual Member States' customs performances and EU-wide assessments to be made. The time-span of these data is limited to the period from 2006 until 2011.

#### **4.4 FINDING FINANCIAL DATA FOR STAGES IN THE CUSTOMS RECOVERY PROCESS**

Many financial data on the recovery process of customs debt can be found in published sources of information from the Commission, such as in the Annual EU Financial Report<sup>31</sup> and the EC Annual Anti-Fraud Report<sup>32</sup>. For example, the EU Financial Report for any given year states in Euro amounts of sugar levies and customs duties, which have been recovered in the EU (as a whole and in the Member States) including what amounts have been retained by the Member States as a recovery fee (and correction). The annual anti-fraud report provides in Euro the cost estimates of crime and other irregularities detected in the customs field (of the EU as a whole and of all Member States). The Annual Activity Report of DG Budget cites amounts of written-off customs debt in Euros. These data may show amounts of Traditional Own Resources recovered and what amounts of irregularities have been detected by the Member States. These can be taken as indicators of the performance of Member States' customs services. These data may also show amounts that have been written-off by the Member States and be used as an indicator of what we define as non-performance of the Member State's Customs.

Another category of data can be considered as financial data, those data which, at first glance, do not appear to have a financial character but which can be 'enriched' to provide financial figures by comparing with other data. Where non-financial data on stages of the customs recovery process are available, such as rates and percentages on the financial output of the customs recovery process in individual Member States, this information could be 'enriched' by linking these rates and percentages to the overall amount of customs debt recovered by those Member States. Once these amounts are known, they can also be used by linking them to other relevant financial data for assessing the Member States' performance in the wider perspective of the overall customs process.

As an example, the EC Annual Anti-Fraud report provides the recovery rate for customs debt established following detected irregularities in the customs field. This so called recovery rate is in fact a percentage which could be linked to the overall amount of all customs irregularities detected to estimate the amount recovered for all irregularities detected. As the Commission provides this recovery rate for all individual Member States, we can assess the recovery performance of each and every Member State on detected customs irregularities, by linking its recovered amounts to the results of its customs checks or detected amounts and also use the amount of its recoveries as indicators for wider performance assessments in the customs field.

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<sup>31</sup> EU Budget 2010 Financial Report and its annexes: [http://ec.europa.eu/budget/library/biblio/publications/2010/fin\\_report/fin\\_report\\_10\\_en.pdf](http://ec.europa.eu/budget/library/biblio/publications/2010/fin_report/fin_report_10_en.pdf) or EU Budget Financial Report 2011 [http://ec.europa.eu/budget/library/biblio/publications/2011/fin\\_report/fin\\_report\\_11\\_en.pdf](http://ec.europa.eu/budget/library/biblio/publications/2011/fin_report/fin_report_11_en.pdf)

<sup>32</sup> Report from the Commission to the European Parliament and the Council protection of the European Union's financial interests – fight against fraud annual report 2011.

#### 4.4.1 Stages in the customs recovery process

The customs recovery process aims to recover customs debt. As the amounts of customs debt recovered are TOR of the EU, we need a clear view as to what the customs recovery process actually consists of before assessing administrative performance.

Like any other financial administrative process, the customs recovery process consists of several consecutive identifiable steps. The steps begin with defining what data qualifies for the existence of a debt. On the basis of this definition, it is then possible to look at whether corresponding data are available. Where such data are available one could conclude the existence of a debt. Before this debt can be recovered, it must first be formalised. Collected amounts must also be accounted for and registered in the accounts.

What may be overlooked when making performance assessments is that the final result of the process is being determined by the accumulated performance at each step of the process. The final output of the process as a whole is the result of the output of all previous process stages, which are linked. The weakest link always determines the strength of a chain, so the final output of a process is also determined by the least effective process stage.

Assessing the performance of individual process stages of whatever financial administrative process has benefits. To assess the overall performance of the process concerned, we need to look also at the relations between these stages and see how these relations impact on the final output of the process. The sharper the image of all consecutive stages and the more data are available on the relations between these consecutive stages, the better the final picture becomes.

##### 4.4.1.1 Defining the existence of customs debt (1st step)

The basis (and point of departure) of the customs recovery process is the definition of what elements of a given transaction qualify for the existence of a customs debt. As the remit of customs recovery belongs to the official responsibilities of the State, like taxes, this definition is a legal one. In the customs field this definition is provided by the EU's Community Customs Code and its Implementing rules which describe the elements for 'the coming into life' of any customs debt<sup>33</sup>. Whether goods from outside the EU are imported into the EU in the framework of a commercial transaction or by an ordinary passenger crossing the border of EU territory, EU legislation determines whether a customs debt exists or not. On the basis of this legal definition it is possible to start collecting data on what transactions may qualify for a customs debt. **This legal start-up is the beginning of the customs recovery process: the first step.**

When providing further rules and regulations in their national regulatory process, Member States adopt national legislation in the customs field, sometimes even directly linked to the EU customs legislation referred to above which, in the end, impacts on the financial output of the customs recovery process. The same applies for other non-legislative rules and regulations such as instructions, policy concepts, manuals etc., which must be taken into account in a Member State when applying and executing EU legislation.

An example of how national legislation can impact on the final recovery result of customs debt is the legal framework in which custom duties must be recovered. Article 232 of the Community Customs Code states that 'where the amount of duty due has not been paid within the prescribed

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<sup>33</sup> Reg. no. 2913/92 (EEC) of the Council of 12.10.92 establishing the Community Customs Code and Reg. no. 2454/93 (EEC) of the Commission of 02.07.93 laying down provisions for the implementation of Reg. no. 2913/92 (EEC) of the Council of 12.10.92 establishing the Community Customs Code.

period, the customs authorities shall avail themselves of all options open to them under the legislation in force, including enforcement, to secure payment of that amount'<sup>34</sup>. In other words: the recovery of customs debt should take place according to national recovery law. Although this article from an EU Regulation contains a rule which, of course, is equally applicable in all Member States, it leads to recovery results which may vary from one Member State to another along the lines of the legal framework in question ('all options open to them').

Each individual Member State has its own national recovery law which contains specific rules for structuring the logistics of the recovery process such as notifying and reminding debtors of open debts, starting-up enforced recovery, taking execution measures, declaring bankruptcies and remitting or writing-off irrecoverable debts. In addition, such national recovery law also contains rules on other legal aspects linked to the recovery process such as the legal priority of debt when it comes to a dispute over which claims must be given priority when no sufficient assets are present for satisfying all creditors, and time-frames for time-barring.

When for instance two Member States have totally different regimes for time-barring of customs debt, this could theoretically result in one Member State chasing debtors with a view to prevent time-barring and transferring recovered amounts to the Commission whereas the other Member State is postponing recovery while no customs debts can become time-barred and consequently is not transferring any amount to the Commission.

Collecting financial data on this first step of the customs recovery process is difficult. Tracing Member State differences in the financial output of the recovery process and explaining them in terms of different legal systems is complex. Tracing different recovery results for customs debt between Member States is not too difficult (as we will see later); analysing differences between legal systems of Member States is also possible; explaining different recovery results by different legal systems, however, is very difficult. Many other factors play a role in the net effect of a recovery process. This report will therefore not concentrate on tracing financial data at this first step. The differences in Member States' recovery processes of customs debts remain. Where these differences are highlighted later on, existing legal differences will nevertheless be given further attention.

#### **4.4.1.2 Collecting data on customs transactions (2nd step)**

The next step in the customs recovery process is identifying all possible customs transactions, that is all transactions where the existence of customs debt may be at stake. As customs debt may arise in all cases of cross-border traffic of non-EU goods, customs services should in principle check all possible situations of such traffic whether of a commercial character or of a private nature.

The first source of information concerns all goods imported into the EU and having been declared as such to the customs authorities. These declarations are usually made with a view to paying the customs debt due on these imports. Sometimes, however, customs declarations contain errors whether intentional or not. Customs authorities must therefore check these declarations in order to safeguard that, in the end, the proper amount of customs debt can be recovered and the TOR made available to the EU.

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<sup>34</sup> Article 232 Paragraph 1 sub a of Reg. no. 2913/92 (EEC) of the Council of 12.10.92 establishing the Community Customs Code.

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A second source of information on the possible existence of customs debt is linked to the phenomenon of smuggling. It is not easy to trace financial data on smuggling: smugglers try to escape from all possible customs checks and therefore do not declare their 'customs transactions'. When customs authorities are able to track smuggling activities, this does not automatically mean that a customs debt is incurred. When customs authorities detect goods, liable to import duties but smuggled into the customs territory of the Community, these goods can be seized and simultaneously or subsequently confiscated. In such cases the customs debt incurred on the illegally introduced goods<sup>35</sup> is extinguished<sup>36</sup>.

It is easy to collect financial data on all possible customs transactions, as such data are declared for import before, whether declared on paper or electronically. Collecting data on undeclared and undetected transactions (smuggling) is difficult. Collecting data on detected smuggling cases is possible, as customs authorities report their positive detection results. It is, however, difficult to use data on smuggling cases for an assessment of administrative performance as its reliability may be questioned firstly because the amount of potential customs debt not discovered is unknown and secondly because the amount of potential customs debt discovered often does not contribute to the total amount of TOR recovered as the customs debt incurred is often extinguished.

In order to assess the administrative performance in customs debt recovery on the basis of the most reliable data, **this report therefore focuses on financial data of customs transactions declared for import: the second step.**

#### **4.4.1.3 Determining the amount of material customs debt (3rd step)**

Having all data on customs transactions (that is all transactions where the existence of customs debt may be at stake), it is now possible to determine the amount of customs duties due. In all cases customs duties can be calculated by multiplying the number of items imported with the customs value of each imported item and the applicable tariff, which depends on the tariff code of the goods concerned and the origin of these goods. This is easily done for all customs transactions declared for import. A customs import declaration typically contains these four elements enabling proper calculation of the material amount of customs debt.

It is different for all customs import declarations checked by the customs authorities where an irregularity was detected. Such an irregularity can concern one or more of these four elements for determining the material customs debt (tariff code, customs value, customs origin and quantity declared). After having corrected the elements in question, the customs authorities are able to calculate a new amount of customs debt.

Where the customs authorities have found that goods have entered the EU's customs territory without a proper customs declaration (and these smuggled goods not having been seized) they will act in a similar way. After having established the true nature of the smuggled goods, traced their real origin, determined the right customs value and found the proper number of smuggled items, the customs authorities will calculate the appropriate amount of customs debt.

Whether on the basis of customs declarations made by the declarer or irregularities found by the customs authorities, **determining the amount of material customs debt plays a primordial role in this report for assessing customs services' performance in debt recovery: the third step.**

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<sup>35</sup> Article 202 of Reg. no. 2913/92 (EEC) of the Council of 12.10.92 establishing the Community Customs Code.

<sup>36</sup> Article 233 sub d of Reg. no. 2913/92 (EEC) of the Council of 12.10.92 establishing the Community Customs Code.



#### 4.4.1.4 Establishing the amount of formal customs debt (4th step)

Once the amount of material customs debt is known, the customs debt must be formalised so as to notify the debtor thus informing him or her of the amount to pay while at the same time enabling him or her to ask for a review or to appeal against the amount of customs debt. Where customs declarations are made for imports, the amount of customs debt is formalised when the customs authorities accept declarations. Where the customs authorities have corrected customs declarations, the customs debt is formalised by the notification of the new corrected debt by the customs authorities to the debtor. **Establishing the amount of formal customs debt is also primordial in assessing customs services' performance in debt recovery: the fourth step.**

#### 4.4.1.5 Recovering the amount of customs debt (5th step)

On the basis of a formalised customs debt, recovery can start. In this stage, the recovery process of customs debt may differ according to how the debt was formalised. As most customs declarations are made with a view to pay the customs debt due, in the majority of cases, debtors concerned voluntarily pay the declared amount without any problem. In other cases, e.g. after the customs authorities have notified the debtor of a corrected customs debt, debtors may also choose to pay the debt right away. When they do not pay at once, it may be necessary to remind the debtors in question of their outstanding obligations or even take enforced recovery measures. These measures for safeguarding recovery possibilities can range from issuing warrants and seizing assets to auctions of goods seized and declaring bankruptcies. **The way in which, and the effectiveness with which, customs debt is recovered is also essential for assessing the administrative performance of custom services in this field: the fifth step.**

#### 4.4.1.6 Accounting for the amount of customs debt (6th step)

All amounts to be recovered and all collected amounts must be accounted for. In the case of recovered customs debt, there is an additional accounting obligation. Apart from national accounting concepts, regulations, systems and instructions, TOR must mandatorily be accounted for in a format set out according to EU legislation<sup>37</sup>. Whether or not this EU accounting format is incorporated in the national accounts for (customs) debt administration or not, Member States must always be able to show to the Commission to which amounts of TOR the Commission is entitled. Recovered and guaranteed amounts of customs debt must be made available to the Commission by crediting the accounts of the EU in good time<sup>38</sup>.

As non-performance in all previous process stages of the customs recovery process would impact on the amount of TOR to be transferred to the EU, also a no-show in this last stage of the process would have this effect: via the compensatory mechanism of the fourth resource (GNI-contribution) it would have consequences for the distribution of the financial burden between the Member States and for the tax-paying public. **This report therefore also examines the ways in which Member States implement these EU accounting obligations: the sixth step.**

#### 4.4.2 Financial data for stages of the customs recovery process

We were able to find financial data for those stages of the process, the output of which is dependent on the efforts of customs services. Each Member State does not have a direct and determining role in the legislative process of defining what customs debt is. So, apart from the fact

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<sup>37</sup> Regulation no. 1150/2000 of the Council of 22 May 2000 contains the necessary provisions.

<sup>38</sup> Similarly, amounts of other debt recovered by the customs authorities must be made available to the national treasury.

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that it is difficult to track financial data at this first stage, it is therefore not a priority to give attention to this stage as the customs services are not the 'responsible service' for adopting legislation, though they may be responsible for drawing up administrative guidance for their staff. The report will thus focus on tracing data in the following five stages of the customs debt process.

For customs debt paid on declaration, when declarers identify customs debt on import, customs accepts this declaration and the declarer pays the debt immediately, it is easy to find the relevant financial data. The customs transaction and the amount of the material customs debt is provided by the declarer (second and third stage); the formal customs debt is established by the acceptance of the declaration by customs (fourth stage); the debt is recovered by the payment by the declarer (fifth stage), following which customs will transfer the amount thus collected to the EU (sixth stage).

Apart from possible customs checks of these customs declarations, this process is a rather autonomous one, which proceeds on the initiative of the declarer. If more logistical responsibilities for customs (such as providing electronic declaration systems, enabling guarantee systems etc.) are not taken into consideration, the impact of this process on the financial output of customs debt recovery seems to depend more on the initiative of the declarer than on the efforts of customs services. Thus these customs declarations do not seem to be the best indicator for assessing customs performance.

The amount of TOR recovered by these payments on declaration represents the vast majority of collected customs debt. Over the research period (2006 to 2011 inclusive), the annual amount of resources thus recovered was in the range of €20 billion. Totalling these amounts (and comparing them with the financial impact of detected irregularities) shows that about 98 per cent of TOR are being collected without problem<sup>39</sup>.

This report focuses in particular on the financial output of customs debt recovery in those cases where customs checks (whether performed on the basis of customs declarations or on the basis of smuggling) have revealed the existence of customs irregularities with a financial character. The establishment of a corresponding customs debt, which in the end should be recovered, should typically follow these detections. It is here in this field of customs irregularities that differences in customs performance by the Member States can reasonably be expected. Such a Member State's performance can also be compared with others rather easily because, as soon as customs irregularities have been detected, the financial follow-up of these irregularities by the national customs authorities through the different consecutive stages of the recovery process is similar in all Member States. As we stated above, this focus of the report leaves out the first stage of the customs recovery process (as it not considered relevant for assessing the Member States' detailed performance in the customs debt recovery process).

The overall success rate of 98 per cent needs comment. The European Court of Auditors annual report has regularly given the Commission a positive statement of assurance for its implementation of revenue, in part because of the careful scrutiny of the customs collection process by the Commission, and in part for the meticulous legal follow-up of recovery by the Commission. The Court does however criticise from time to time Member States' implementation of the rules, and thus indicates that some Member States may be more effective at collecting this

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<sup>39</sup> Until 2010, consecutive Commission Reports on the Protection of the EU's financial interests covering the period of research, stated that over 95 % was recovered without a problem; in 2010 this percentage had evolved to 'over 97 %'; and in 2011 the percentage of 98 % was mentioned; an 'evolution' which will be commented on in the next chapter under: Detection performance.

revenue than others. And, in any event, two per cent of TOR is a significant sum of money, if it is possible to collect it.

#### 4.4.3 Showing the data found

A picture is worth more than thousand words, so the research team has sought a metaphor, which clearly illustrates the relations between the consecutive steps. The picture portrays a fyke, which is a fishing net for catching eels. The typical fyke is a fish trap consisting of several internal funnels each one narrower than the one before, designed to function as a trap for the fish swimming into the net. When the eel swims into the fyke and through the first funnel it is trapped behind the funnel. Though it is possible to go back from behind the first funnel and thus escape from the trap, it is very difficult to do so.

**Figure 1 - Eel-catching net, the fyke, as an analogy for the customs recovery process**



Experience shows that after the first funnel the eel swims into the second narrower funnel and then faces a problem twice as serious as before. While in theory escape from the system is still possible at that stage, it is very difficult. The more funnels that exist and the tighter each funnel becomes, the smaller chance of escape, and the bigger the catch for the eel monger.

The way the fyke functions appears to be a useful analogy for the customs recovery process. As in real life the fisherman has to choose the place where he puts his fyke net in the water, so customs legislation has to define what contributes to the existence of a customs debt. And as the fyke net has a system of consecutive and ever tighter funnels to trap the eel, the customs recovery process consists of a number of successive stages, which contribute to the final recovery result. Where the catch is more successful dependent on how many and how tight the funnels are, there the success of recovery is higher, dependent on the quality, efficiency and effectiveness of the customs performance in each of the process stages. And where the number of eels caught is the final performance indicator for the eel monger, there the amount of recovered customs debt is the best indicator of how well the recovery of TOR is managed.

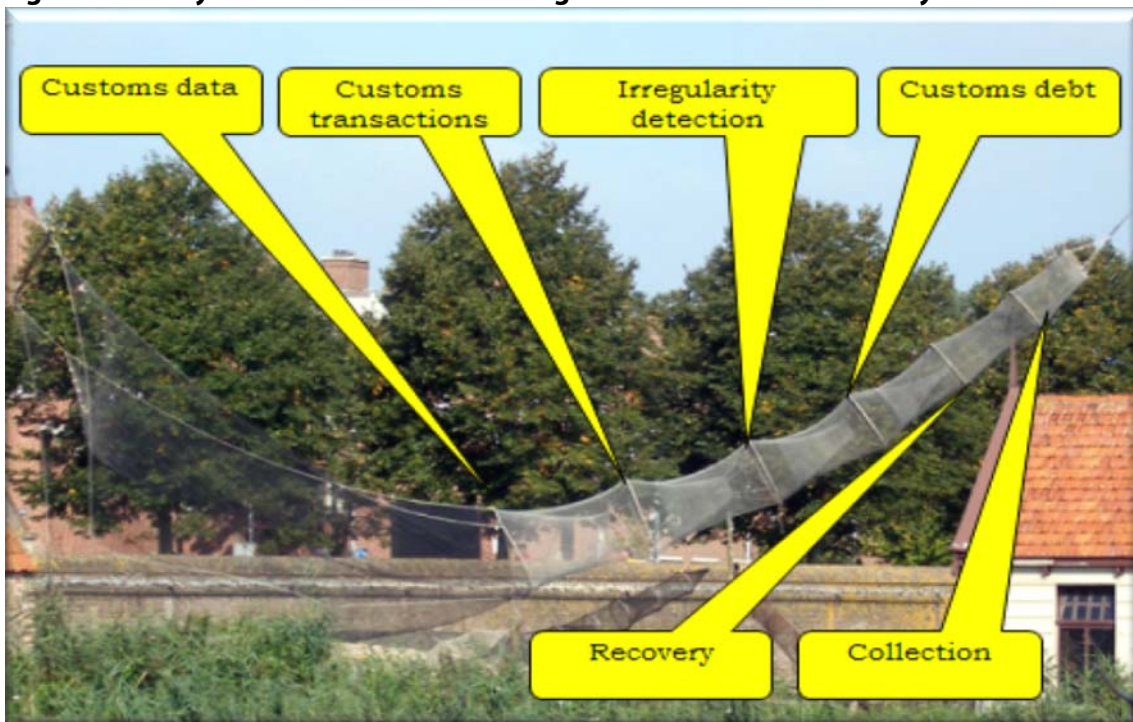
This report will use this analogy to show 'how many fish are caught' and 'how many fish escape'. The more customs debt recovered in the end, the higher the (overall) performance in customs debt recovery; the lower the debt recovered the lower this (overall) performance. Where it is possible to index a modal performance in each individual process stage or the customs recovery process as a

whole (e.g. on the basis of an EU-wide average), this report will do so. On the basis of such an index it is then possible to refer to both high and low performance, and to identify the steps or stages that show weaknesses.

**This report does not provide uncontested reasons for possible high and low performance in the customs field; it poses questions as to what range of performance is achieved in this field and suggests, where possible, what the reasons may be.**

Now making use of the fyke analogy, the consecutive stages of the recovery process of customs debt (explored above under 4.4.1) can symbolically be shown as in Figure 2:

**Figure 2 - The fyke and the consecutive stages of customs debt recovery**



#### **4.4.4 Assessing the stages in the customs recovery process: data sources and performance indicators**

This report thus focuses on those customs transactions:

- which have been checked by customs,
- where an irregularity with a financial impact on the EU budget has been detected and
- where the financial follow-up has to be further secured by customs through the different stages of the recovery process.

Such irregularities can have been detected during customs checks on customs transactions properly declared or through the discovery of other undeclared operations such as smuggling.

The following paragraphs will now focus on what we define as contributing to performance in each of the consecutive recovery process stages. As we aim to measure this performance in financial output terms, we first need to identify a financial figure as a point of reference. This is done in the next section 4.4.4.1 - Determining a point of financial reference.

Where we are able to identify the factors leading to positive recovery results, we should also be able to identify those, which typically contribute to worse recovery results, and losses. We look at both sets of factors. Where this report is describing 'non-performance' in the customs recovery process, it could use the popular term 'tax gap'. We choose to use the word 'evaporation'. Although not directly linked to the fyke metaphor, this term seems to describe best the situation in which (customs) debt, which could be recovered, in the end is not.

We also specify below the sources of information on the financial data needed for calculating what we define as performance rates. This information originates largely in published European Commission documents. In some cases the information is derived from accessible documents from Commission services. All financial information at the EU level used in this report is in the public domain. All financial information at Member State level was either already publicly available or accessed by request to the Commission.

A focus on detected customs irregularities ignores the first stage of the customs recovery process, as it is irrelevant for assessing the Member States' customs performance (or non-performance). Neither is much further attention given to the information defining the existence of customs debt (EU legislation such as the Community Customs Code (CCC)) for the reasons explained above. This is illustrated in Figure 3 below:

**Figure 3 - Data for the definition of customs debt – stage 1 of the customs recovery process**



#### **4.4.4.1 Determining a point of financial reference (2nd stage)**

To estimate overall performance in this recovery process we need not only data on the relationship between the different stages of the process but also to be able to link these data to a financial amount which functions as the basis of estimates expressing the performance in each individual and all consecutive stages in financial terms. This allows us to posit an estimated financial output of customs performance in the recovery process.

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The amount of overall customs debt recovered is a logical choice for these estimates, and is our basis for calculations. Pursuant to EU law<sup>40</sup> all EU Member States have to enter the amounts of all customs debts recovered, and the recovery of which is guaranteed, into the accounts<sup>41</sup>. This so called A-account provides the amount of TOR, which the Member States must transfer to the European Commission in the end<sup>42</sup>.

Apart from guaranteed (but not yet) paid amounts, the amounts in the A-account also represent other amounts paid on customs debt due (such as payments on customs debt entered into the B-account). Including amounts paid for customs debt entered into the B-account in our basis for estimates does not create problems. Firstly, payments on B-account debts only represent a very small fraction of all payments in the A-account. Secondly, the need to have a financial figure as a basis for estimates of administrative performance in the customs recovery process is statistical. As long as we take the comparable figure for each Member State as a starting point for our estimates, no significant methodological problem exists<sup>43</sup>. This report will therefore link detected customs irregularities and their subsequent financial follow-up to the overall amount of TOR recovered as shown in the A-accounts.

**Member States are entitled to a recovery fee for their efforts to recover customs debts** the revenue of which is then transferred to the EU as TOR. At the moment, this fee is 25 % of the TOR collected and due<sup>44</sup>. **The net recovered customs debt amounts to 75 % of the original amount of the customs debt due. This report, however, focuses on the full amount of customs debt originally due.**

The total amount of recovered TOR can be easily identified. The Commission's Annual Financial Report publishes figures on the amounts of TOR recovered by each Member State and for the EU as a whole in the reporting year. The Financial Report breaks these figures down into amounts, which have been recovered for sugar levies and customs duties respectively; until and including 2008 the Financial Report also showed separately the amounts of agricultural duties recovered as TOR<sup>45</sup>. As this research report concerns the period from 2006 until 2011, it will therefore take the total amounts of recovered sugar levies and customs duties (and agricultural duties until and including 2008) as a starting point.

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<sup>40</sup> Provisions of Regulation no. 1150/2000 of the Council of 22 May 2000.

<sup>41</sup> Article 6 Paragraph 3 sub a of Regulation (EC/Euratom) no. 1150/2000 of the Council of 22 May 2000.

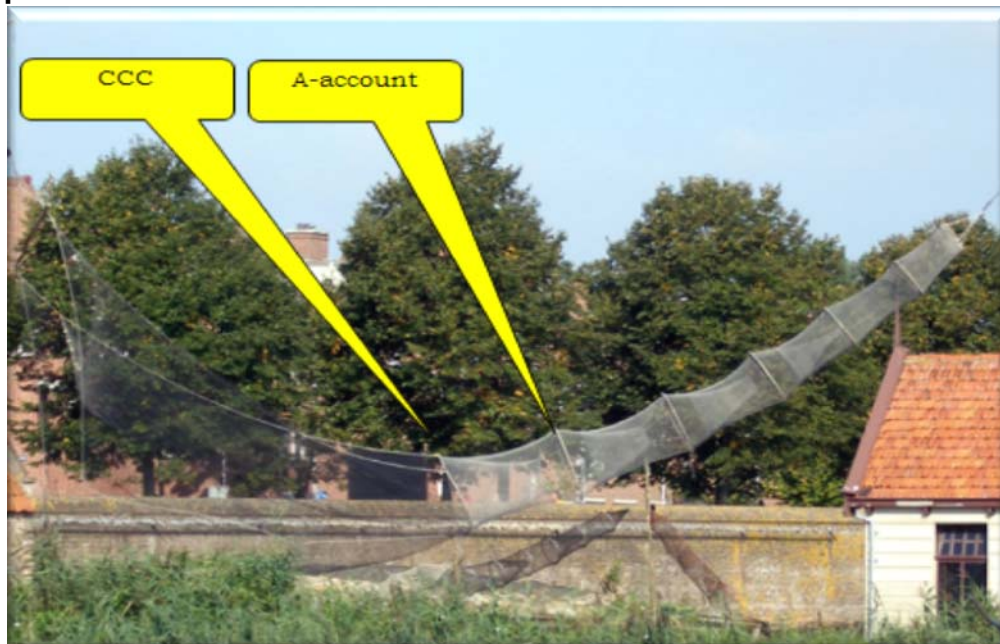
<sup>42</sup> See below under 4.4.9 - Transferring the amount of recovered customs.

<sup>43</sup> Major variations in the proportion of B-account to A-account transactions could however create a bias. Our data do not show such major variations.

<sup>44</sup> Article 10 of Regulation (EC/Euratom) no. 1150/2000 of the Council of 22 May 2000 and Article 2 § 3 and Article 10 § 3 of Decision 2007/436/EC/Euratom.

<sup>45</sup> Agricultural levies or duties are now dealt with in broadly the same way as customs duties due to the entry into force of EU legislation applying the results of the Uruguay round multilateral trade negotiations.

**Figure 4 - Data on the amount of customs debt recovered – stage 2 of the customs recovery process**



#### 4.4.4.2 Detecting customs irregularities (3rd stage)

What actually are customs irregularities? They can range from simple, more technical and unintentional errors (such as calculation errors when declaring imported goods) to irregularities resulting from fraud or even organised crime whereby, with criminal intent, more complex errors are made (such as using wrong tariff descriptions for imported goods or fraud as to the origin or custom values declared for imported goods). Customs services detect these irregularities when checking cross-border goods transactions whether declared or not. Customs services have a whole gamut of checks at their disposal. Whatever the nature of the customs check performed, every financial irregularity found could qualify as an irregularity, which according to EU legislation, must be registered. Article 6 Paragraph 5 of Regulation no. 1150/2000<sup>46</sup> instructs Member States to inform the Commission of all customs irregularities which have or could have a financial impact on the EU budget of over €10 000. Informing the Commission of these detected irregularities was in previous years done on paper forms, then through computer communications, and now can be made on line in a web-based application, as agreed by the Commission and the Member States.

This web-based application, commonly known to those in the sector as OWNRES is actually designed on the format of the paper forms used for these communications in earlier times. Regulation no. 1150/2000 instructs Member States to send an initial communication to the Commission for each new detected irregularity, which qualifies for reporting. It further instructs Member States to send follow-up communications to the Commission for each new phase in recovering the damage done to the EU budget until the case has come to an end. Although Regulation no. 1150/2000 still contains reporting deadlines<sup>47</sup>, it is now possible to report irregularities in real-time using the web-based OWNRES system. Where previously it was only obligatory to inform the Commission four times a year, one can now report all year long. This is, insignificant for the purposes of this research, however. As the last communication on customs

<sup>46</sup> Article 6 § 5 of Regulation (EC/Euratom) no. 1150/2000 of the Council of 22 May 2000.

<sup>47</sup> That is, at the end of the second month following the quarter in question at the latest.

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irregularities in a given year must be sent to the Commission on the last day of February of the following year at the latest, a simple query request from the OWNRES database on the first possible moment after this deadline suffices to get the full picture of all irregularities communicated to the Commission in the past year. All irregularities thus reported contribute to assess the performance of detecting customs irregularities.

Taking into account the different performance indicators discussed above, non-performance in this field can be caused by a 'no show' in performing customs checks; in not detecting possible irregularities; and in not or incorrectly registering detected irregularities.

When customs services do not check customs transactions, they cannot, of course, detect anything irregular. When customs services only perform few checks they cannot detect all possible customs irregularities, which can be found if they spend all available resources for customs checks. Taking into account the volume of customs transactions at present, the risk of certain irregularities, and the cost of controls, however, it is widely accepted that only a minority of all transactions can be checked. All customs services therefore need to determine which transactions to check, where and when.

As control strategies may consequently differ from one customs service to another, one may expect differences in control results of custom checks.

The amount of controls is perhaps a factor to take into account in assessing performance. This report focuses on the financial output of customs checks for assessing customs performances. Amounts of detected irregularities seem to be an objective, reasonable and justified indicator for a fair assessment of both detection and non-detection performance of customs. Seen over time: the higher the amount of detected irregularities, the better the financial output of customs checks; the lower the irregularity amount detected, the less effective the customs checks.

A second factor, which could contribute to non-performance, although of a more technical-administrative nature, is the absence of irregularity reports in OWNRES or the presence in OWNRES of incomplete or incorrect irregularity communications. Where customs has detected customs irregularities but has not entered these irregularities in the OWNRES database, customs cannot benefit from these results in detection statistics. Not registering detected customs irregularities in OWNRES which qualify for registration is therefore not only an offense against existing reporting obligations but it also deprives the Member State in question of the possibility of showing the results of their efforts in fighting fraud in the customs field.

Incomplete and incorrect OWNRES communications may show a misleading picture of the Member States' efforts in this sector. An erroneous OWNRES communication may therefore affect the financial interests of the EU, but this does not necessarily happen in all cases. When for instance a detected irregularity has been followed-up by the establishment of a corresponding customs debt while the detection has not yet been entered in OWNRES, it only appears as if the financial follow-up of this detection has not yet begun while in fact it may have been, and even the customs debt may already have been recovered, while OWNRES shows the customs debt in question as still open.

In principle, however, the Commission may use financial figures from OWNRES to obtain an impression of what specific cases are still open awaiting full recovery. Therefore, late or delayed OWNRES communications may contribute to an incorrect image of a Member States' efforts in checking customs transactions and fraud fighting. Yet as publicly available Commission documents on Member States' detection figures are construed on the basis of these OWNRES communications, Member States need to pay the maximum possible attention to precise and complete and timely reporting of irregularity cases in this database.



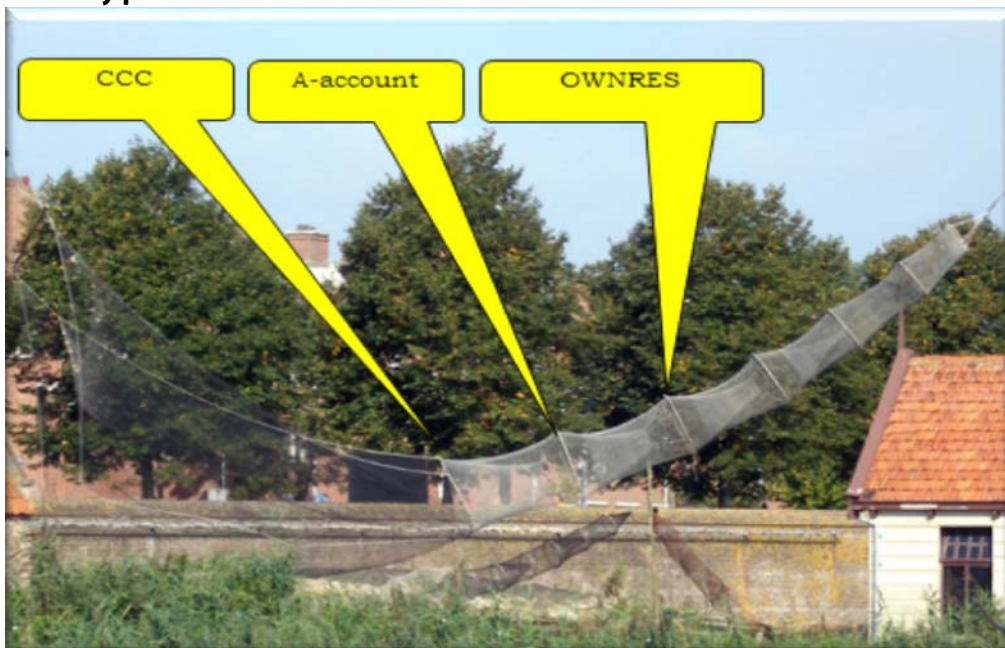
Other weaknesses in OWNRES communications include Member States forgetting to report unintentional detected customs irregularities, in contrast to more severe irregularities such as fraud and crime. Member States do not always properly report customs irregularities detected in the field of transit (as on average up to 90 % of all initial communications on transit in the end have to be corrected). Detected smuggling operations are not always properly followed-up, in particular when the customs debt following a seizure has to be considered extinguished. Further, a detected irregularity could be on the point of being registered in a national reporting system but not in the Commission's OWNRES database.

OWNRES is an application managed by the Commission, whose contents are the full responsibility of the Member States themselves. This applies to both what can be found in the system and to what is not. Despite these (possible) deficiencies in the Member States' reporting discipline in OWNRES, this report uses financial figures from it as published by the Commission as a basis for assessing the detection performance of Member States' customs services.

This conclusion to use OWNRES data is supported by the Commission's own practice in for instance the Statistical evaluation of irregularities for its Annual Report on the protection of the European Union's financial interests and the fight against fraud. This last shows the detection rate of customs checks using OWNRES data.

Each report for the research period 2006-2011 provides this detection rate as a percentage. As this report does, the Commission has also chosen to link detected customs irregularities to the overall amount of TOR recovered, with one major difference. Where the Commission Report appears to present the detection rate of customs checks, this report uses this rate for not only calculating customs' detection performance but also determining the overall customs performance as we define it, by linking this detection rate to the performance rates in the following stages of the recovery process and thus providing an estimate of overall performance. For the research team, the customs detection rate is only the first element of assessing customs performance.

**Figure 5 - Data on the amount of customs irregularities detected – stage 3 of the customs recovery process**



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#### **4.4.4.3 Establishing customs debt in irregularity cases (4th stage)**

Once a customs irregularity has been detected and the amount of financial impact calculated, a customs debt must be established by the customs authorities. After having notified the debt to the debtor, the debtor may choose to pay right away or discuss the debt with the customs authorities. When the debtor wishes to question the debt, the debtor might wish to postpone the payment. When a customs debt is established following the detection of an irregularity, the debtor is often unwilling to pay. Even if a good-willed debtor is confronted by an unanticipated irregularity detected by customs, the debtor may want to challenge the customs' opinion. In the case of a fraudster the chances are much greater that the debtor will contest the debt either by limiting the amount established as much as possible, or by postponing payment as long as possible. In such cases of postponed payment, it would be unreasonable to oblige Member States to transfer the amounts of TOR to the Commission while they have not yet recovered the corresponding customs debts from the debtors themselves. The EU would benefit from an interest advantage to which it is actually not entitled. Apart from these cases of unwilling debtors it is, of course, also possible that a debtor is in a situation where he or she simply cannot pay.

In all such cases, existing EU legislation enables Member States to enter such unpaid, and questioned customs debts in the B-account, even when the amounts discussed are actually guaranteed<sup>48</sup>. Member States must inform the Commission of all customs debts entered in the B-account on a quarterly basis.

As Member States can be released from immediate transfer of TOR to the Commission by entering not yet recovered customs debt in the B-account, one may anticipate that all customs debts which qualify for the 'B' will indeed be entered in this account: it is in each Member State's interest to do so. All this contributes to 'establishment performance' of customs debts in irregularity cases.

The contrary effect on the contents of the B-account is the 'evaporation' of customs debt amounts resulting from irrecoverability and correction of the debt. Irrecoverability is non-performance at the recovery stage of customs debt and will therefore be dealt with in the next section.

Furthermore, recovery is typically started up for debts, which are 'recoverable', that is debts, the amounts of which are considered irrevocable and cannot be put in question. Correction, on the other hand, is the result of a process whereby the amount of the debt itself in many cases is reduced following successful challenge of the legal basis of the debt. That is why correction should be considered as 'evaporation' at this stage of the customs recovery process.

Such 'evaporation' can appear as simple corrections, complete annulments or cancellations and result from such different forms of challenging debts as asking for a review and going for appeal or even (according to the Community Customs Code) applying for remission, repayment and non-recovery requests with the customs authorities. The fact that amounts of irrecoverable customs debt can have an effect on the volume of the B-account, does not pose major problems for this research on similar grounds to those cited above in 4.4.4.1, namely the statistical need to have a comparable financial figure as a starting point for performance estimates. We therefore use the contents of the B-account in the framework of this exercise and link them to detected customs irregularities as shown by the OWNRES database.

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<sup>48</sup> Article 6 Paragraph 3 sub b of Regulation (EC/Euratom) no. 1150/2000 of the Council of 22 May 2000.

One might expect a strong link between B-account entries and OWNRES-entries. As OWNRES contains cases of detected customs irregularities one would anticipate that every detected irregularity is typically followed-up by the establishment of a corresponding customs debt. One might equally anticipate that for any given year the overall amount of all B-account entries shows a link with the overall amount in OWNRES. There are just two exceptions to this assumption. Firstly: if the detected irregularity in OWNRES concerns a case of smuggling where the smuggled goods have been seized with a view to confiscation, most probably the customs debt must be considered extinguished in advance; in this case the detection will show up in OWNRES but not in the B-account. Secondly: if the customs debt which has been established following the detection of an irregularity is being paid right away by the debtor, the detection will be registered in OWNRES but not in the B-account (as the paid customs debt will lead to an entry in the A-account).

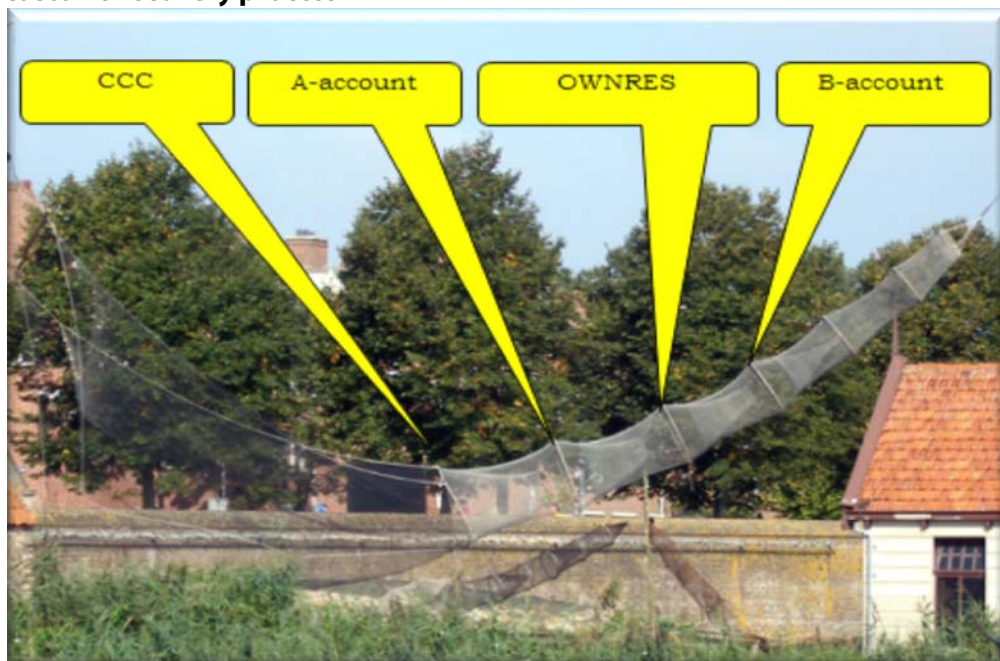
As detected smuggling irregularities usually form a minority of all detected customs irregularities and as customs debts established following a detected irregularity are typically not paid at once, one could reasonably assume that the amount of new detected irregularities (and registered in OWNRES) is only slightly higher than the amount of new customs debts duly established (and entered in the B-account).

‘Evaporation’ in the B-account may also occur if the B-accounts are not properly kept by the national services. It is, however, difficult to determine whether this leads to a ‘false establishment performance’ of the B-account or leads to ‘evaporation’ from the B-account. When for instance no proper reconciliation is made between national services responsible for entering cases of detected customs irregularities in OWNRES and entering customs debts in the B-account, it is possible that OWNRES cases appear not to have a B-account equivalent and that B-account entries cannot be matched with corresponding OWNRES-cases. Unless there is a full match between the OWNRES database and the B-account and vice versa, it is not always possible to bridge the gap in cases where one could reasonably expect to find a match. Too many entries in the B-account may suggest an unrealistic establishment performance whereas too few cases may indicate a too high level of ‘evaporation’.

No proper reconciliation between the B-accounts and the Member States’ national debt ledgers may have a similar effect. When a Member State’s B-account still shows customs debts as outstanding whereas, according to the debt ledger, they are not ‘open’ anymore, they are suggesting to the Commission that the amount of the debts concerned will still be received in future by the Commission whereas in fact it will not. This creates legitimate but erroneous revenue expectations in the Commission and also a false image of establishment performance in the B-account.

B-account data at EU-level may be in the public domain, while at Member State level it is not. As we need both sets of data to estimate the performance and ‘evaporation’ between the detection and the establishment stage of the customs recovery process, access to this information was requested from the Commission services and provided.

**Figure 6 - Data on the amount of established customs debt on irregularities – stage 4 of the customs recovery process**



#### **4.4.4.4 Recovering customs debt in irregularity cases (5th stage)**

When customs has notified the customs debt to the debtor and the debtor does not pay, the recovery stage of the customs recovery process is started. The term ‘recovery’ here must be interpreted as only meaning enforcing the financial claim from the customs debt, thereby using all available means and legal possibilities. It must not be interpreted here as concerning the whole process of customs debt recovery starting with calculating the amount of debt, then entering it into the accounts, notifying it to the debtor and safeguarding that the debt is being collected in the end. As we have already seen above (see under 4.4.1.1 - Defining the existence of customs debt) recovery takes place along the lines of national recovery law.

All recovery measures leading to collecting the amount due contribute to recovery performance. These measures may vary from sending simple payment reminders, issuing warrants, seizing assets and organising public auctions of seized assets when all other measures have failed. They may also include using other less well-known means such as declaring bankruptcies and requesting foreign recovery measures.

Situations, which lead to the irrecoverability of customs debt, have of course the opposite effect of contributing to non-performance in the recovery stage. Well-known examples of non-recovery are remission and writing-off: both of which concern irrecoverable customs debts but where remission is typically the result of an official decision from the recovery authorities with external effect, a write-off is just an internal decision with no external effect.

Delay in recovery may have the same effect. The longer a debt is outstanding, the less probable a final recovery success will be. Debtors die, companies go bankrupt, and assets evaporate. As long as debts remain in the accounts, one may expect that these debts are going to be recovered and this therefore does not contribute to non-recovery performance. Otherwise ‘evaporation’ occurs.

Written-off customs debts cannot necessarily be associated with a definitive loss of TOR. When a Member State has written-off an irrecoverable customs debt, this debt must also be removed from the Member State's B-account. Doing that does not automatically mean that the Member State in question is released from the obligation to make the corresponding TOR available to the Commission. If the written-off amount exceeds €50 000 the Member State has to communicate the written-off customs debt to the Commission while requesting it to be released from the obligation to make the Own Resources available. It is only after the Commission has taken a corresponding decision, that the Member State is indeed released from this obligation. The Commission only takes such decisions when the non-recovery of the customs debt is not attributable to the Member State<sup>49</sup>.

Where the Member State is released from making the TOR available, these resources must be considered lost and thus they contribute to 'evaporation' of customs revenue. When Member States are not released from the obligation to make TOR available in these circumstances, the Commission holds them financially liable for the damage caused to the EU budget. Member States in that situation have to pay the amount of the debt which could not be recovered from the debtor and thus contribute to recovery performance.

Whether or not the Commission decides that the non-recovery of the customs debt is attributable to a Member State is dependent on the Commission's opinion of the recovery efforts of the Member State in question. This opinion<sup>50</sup> takes account of the nature and the timeliness of the recovery steps taken by the Member State and may consider more establishment related issues.

Write-off data on irrecoverable customs debts can be found in the public domain. Both the EC annual Anti-fraud report and the Annual activity reports of some Commission services<sup>51</sup> provide financial information on whether or not the Commission has decided that Member States are released from the obligation to make TOR available (because the non-recovery was not attributable) and accordingly held financially responsible.

The Commission Report also contains recovery data on OWNRES cases. As the research team aims to assess the overall customs performance in the process of customs recovery by linking performance rates of all consecutive process stages with each other, the team is happy to find this financial information on both recovery and write-offs in customs debt cases; in particular because this information by nature concerns customs debt duly established on the basis of detected customs irregularities. This enables the team to calculate and report the recovery performance and the 'evaporation' at this stage of the process. As the research team also needed additional write-off data on Member State level, access to such figures was requested from the Commission services and provided.

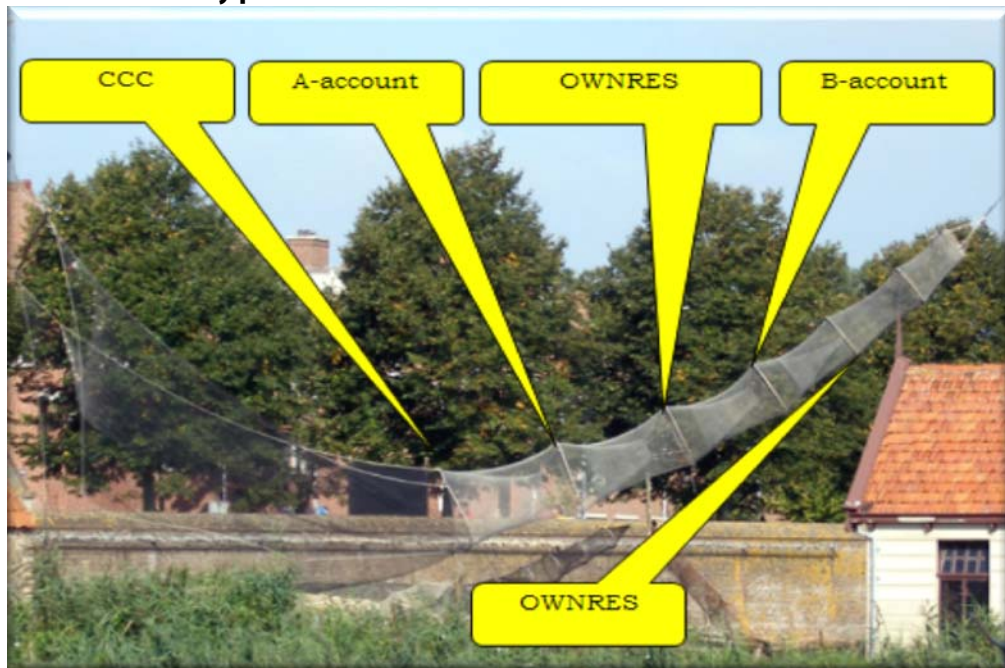
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<sup>49</sup> Article 17 Paragraph 2 of Regulation (EC/Euratom) no. 1150/2000 of the Council of 22 May 2000.

<sup>50</sup> See the Commission's Internal Procedure for managing write-off cases (the so called Compendium) a document additionally requested from the Commission services by the research team.

<sup>51</sup> See subsequent Annual Activity Reports from DG Budget.

**Figure 7 - Data on the amount of recovered customs debt on irregularities – stage 5 of the customs recovery process**



**4.4.4.5 Transferring the amount of recovered customs debt in irregularity cases (6th stage)**

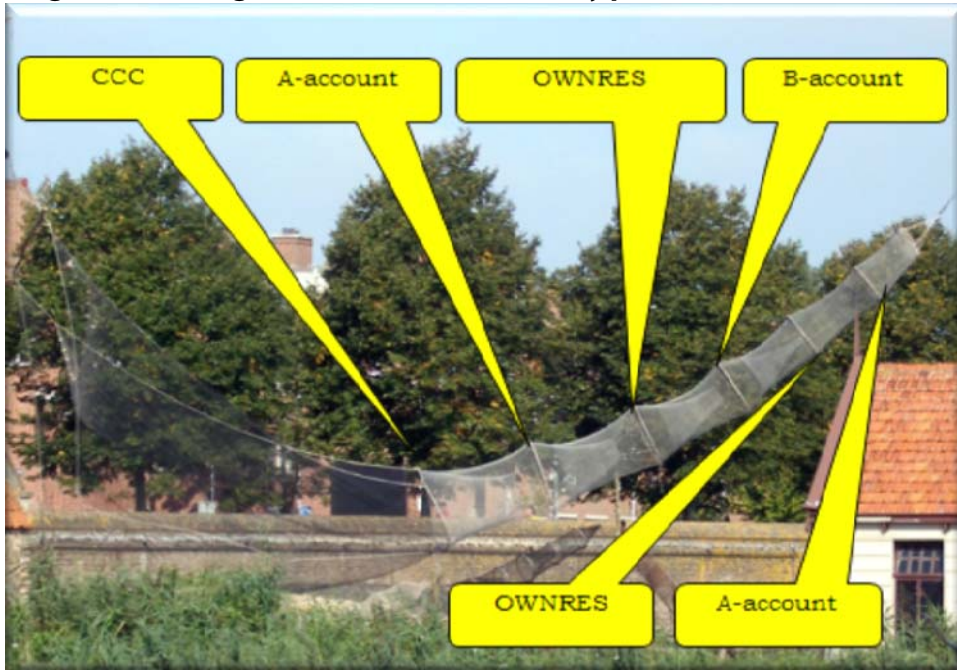
When customs debts have been recovered, the amounts collected must be entered in the A-accounts<sup>52</sup> and subsequently transferred to the Commission, irrespective of whether the amounts were collected on the basis of customs declarations or customs debts established following detected customs irregularities. Informing the Commission of A-accounts and transferring amounts of recovered (or guaranteed) customs debts must be made on a monthly basis.

As the Commission publishes no specific A-account data on payments received from the B-account, we would not know what amounts of such recoveries have to be made available to the Commission. We needed to know these amounts, so as to compare these obligatory transfers to the Commission with the actual realised recoveries in the previous process stage and to estimate transfer rates on Member State and EU level. So we requested the Commission services for this information. We could thus assess the transfer and non-transfer performance of Member States at this last stage of the customs debt recovery process.

According to existing EU legislation, Member States should transfer all recovered amounts to the Commission promptly giving a transfer performance of 100 %. But recovered amounts do sometimes ‘evaporate’ from the A-account when Member States’ A-accounts (and B-accounts) are not properly managed. When for instance the national debt ledger shows that a customs debt has been recovered but this recovery has not been entered in the B-account, the A-account will also remain ‘empty’. A particular Member State’s electronic systems for storing A-account data and supporting accounting software might not function well: have all recovered and guaranteed amounts indeed been entered into the A-account? Asking these questions of a more generic nature and receiving appropriate answers can be useful for explaining possible transfer ‘evaporation’ on Member State level and then correcting the problem.

<sup>52</sup> Article 6 § 3 sub a of Regulation (EC/Euratom) no. 1150/2000 of the Council of 22 May 2000.

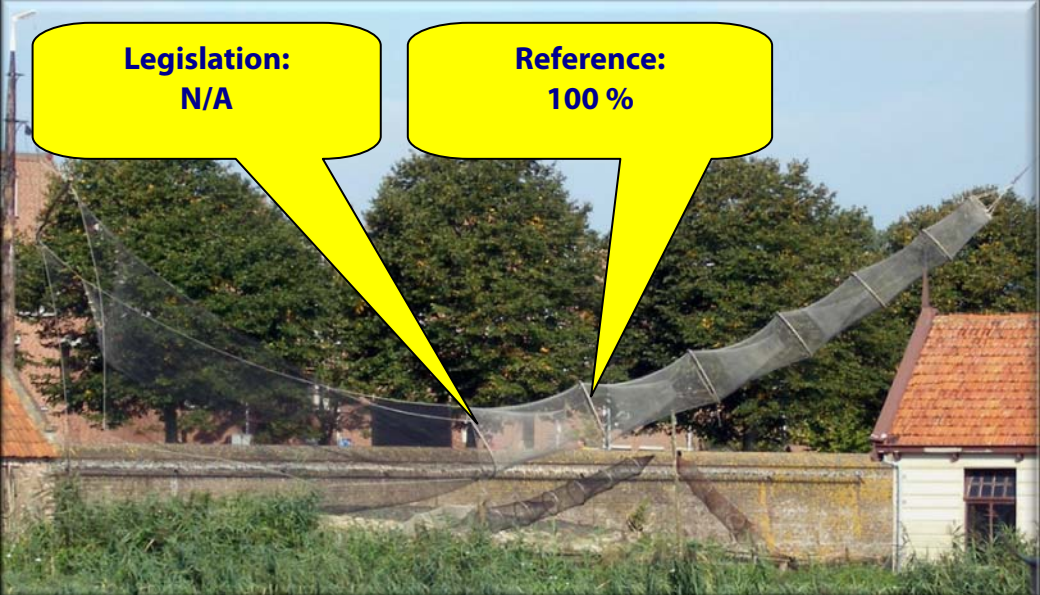
**Figure 8 - Data on the amount to be transferred from recovered customs debt on irregularities - stage 6 of the customs recovery process**



**5 RESULTS**

**5.1 POINT OF REFERENCE**

**Figure 9 - Point of reference for EU-wide customs recovery assessment in irregularity cases**



We take the amount of collected TOR as a point of reference for the assessment of administrative performance in the customs debt recovery process. We calculate performance rates and indices and are always able to calculate the financial impact of these rates and indices on the final recovery result. In this chapter, all sections link performance in the individual stages and the overall recovery process of customs debt to this point of reference.

**5.1.1 Calculation of the point of reference**

The point of reference is calculated for each Member State and each year of the research period (2006-2011). We were thus able to calculate an EU-wide point of reference for the whole of the research period by accumulating the overall amounts of collected TOR for all Member States during 2006-2011. These amounts can be found in the Commission’s Annual Financial Reports and Annual Reports on the protection of the European Union’s financial interests and the fight against fraud. The reference of 100 % shown above refers to this EU-wide point of reference. In each of the following sections this picture and this percentage returns so as to compare it with the performance percentage in the stage. We have chosen the example of Belgium in Table 1 below to illustrate the calculation.

**Table 1 - Point of reference for customs recovery assessment in irregularity cases – example of Belgium 2006-2011**

Member State 2006-2011 a	Collected TOR b	Rate c
BE d	€12 692 900 208,51	10%
EU e	€127 799 295 957,44	100%

**Source:** Calculations made on the basis of data from Annual Financial Reports of the Commission and Annual Reports on the protection of the European Union’s financial interests and the fight against fraud of the Commission 2006-2011



Summing collected TOR in Belgium for the period 2006-2011 gives the results in cell bd, that is €12 692 900 208,51. Summing the amounts from all Member States gives the EU-wide total for the research period in cell be - of €127 799 295 957,44. The relative share of Belgium in the EU's TOR recovery is set out as a percentage rate in the last column and calculated by dividing Belgium's collected TOR by the total EU collected TOR (cells bd/be). It shows that Belgian TOR recovery amounts to one tenth of the EU total. Table 2 gives the EU-wide results for the Member States' points of reference. All collected TOR amounts concern gross amounts (excluding recovery fees retained by Member States).

**Table 2 - Points of reference for customs recovery assessment in irregularity cases of Member States 2006-2011**

2006-2011 MS <sup>53</sup>	Collected TOR	Rate <sup>54</sup>
AT	€1 481 219 988,61	1,16 %
BE	€12 692 900 208,51	9,93 %
BG	€388 689 287,68	0,30 %
CY	€279 493 715,40	0,22 %
CZ	€1 482 026 636,62	1,16 %
DE	€25 144 100 928,51	19,67 %
DK	€2 551 890 881,31	2,00 %
EE	€212 284 970,04	0,17 %
EL	€1 615 833 458,99	1,26 %
ES	€9 343 584 856,47	7,31 %
FI	€1 120 264 680,73	0,88 %
FR	€11 227 075 844,57	8,78 %
HU	€819 796 494,83	0,64 %
IE	€1 577 854 521,05	1,23 %
IT	€13 098 995 435,23	10,25 %
LT	€356 559 304,79	0,28 %
LU	€120 900 190,21	0,09 %
LV	€186 892 696,04	0,15 %
MT	€86 450 788,05	0,07 %
NL	€14 608 816 957,37	11,43 %
PL	€2 707 977 148,36	2,12 %
PT	€1 034 221 180,20	0,81 %
RO	€925 402 947,67	0,72 %
SE	€3 418 872 115,36	2,68 %
SI	€556 553 236,68	0,44 %
SK	€753 978 716,40	0,59 %
UK	€20 006 658 767,74	15,65 %
EU	€127 799 295 957,44	100,00 %

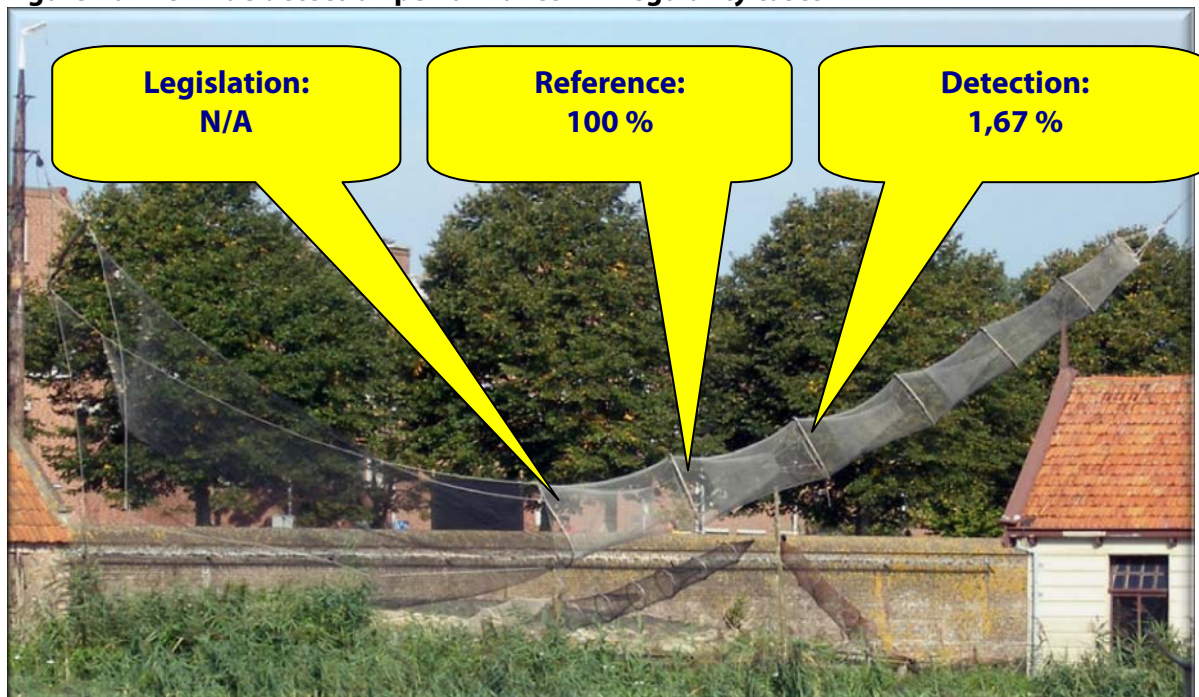
**Source:** Calculations made on the basis of data from Annual Financial Reports of the Commission and Annual Reports on the protection of the European Union's financial interests and the fight against fraud of the Commission 2006-2011

<sup>53</sup> Points of reference for Bulgaria and Romania are calculated on the basis of data as from 2007.

<sup>54</sup> Rates on the basis of EU-wide amount of TOR collected (EU = 100 %).

## 5.2 DETECTION PERFORMANCE

**Figure 10 - EU-wide detection performance in irregularity cases**



Member States detected customs irregularities from 2006-2011 whose total amount was 1,67 % of the overall gross amount of collected TOR in the EU, as the picture above illustrates<sup>55</sup>. So the EU wide detection rate is 1,67 %. The total amount of collected TOR can be found in the Commission’s Annual Financial Reports. These amounts coincide with the accumulated amounts in the annual A-accounts from the Member States.

This detection rate concerns the financial output of the customs services’ detection performance, and has nothing to do with the number of customs checks undertaken. Using these financial amounts over time allows us to make comparisons between Member States and between them and the EU average. Financial data accumulated over the research period appear to us to be reliable enough to draw conclusions on Member States’ detection performance.

Commission documents mention that 98 % of all TOR are recovered without a problem<sup>56</sup>. This suggests that 2 % of all TOR recoveries are problematic. There is a risk of confusion with this figure, though. The total amount of all irregularities detected EU-wide represents around 2 % of the overall amount of TOR collected. The EU-wide detection rate of 1,67 % that we found is the six-year equivalent of this 2 %.

Once all detected customs irregularities have been established as custom debts, recovery of these debts can indeed be problematic. Roughly half of these debts are recovered, half are not (yet) recovered or are ultimately written-off. Recovery is problematic in that sense. For the half where the debt is recovered, one first needs to detect an irregularity, then establish a debt and begin recovery (perhaps enforced) before finally collecting the amounts due. For the half that is not (yet) recovered or is written off, nothing is recovered, at least so far.

<sup>55</sup> The total amount of collected TOR is gross, before deduction of recovery fees.

<sup>56</sup> See Statistical evaluation of irregularities of the 2011 Commission Report on the protection of financial interests and the fight against fraud section 3.1.1 page 13 and also EP specification document pages 1-3.

The annual amounts of recovered TOR recorded in the A- and the B-accounts and transferred to the EU are split 99 % to 1 %. On an annual basis for the research period as a whole, 99 % of all TOR collected EU-wide was collected without a problem. The financial equivalent of the difference between the 98 % and the 99 % over the six years is more than €1 billion.

So, the total amount of all customs irregularities detected EU-wide (for which recovery may become problematic) is around 2 % of the overall amount of collected TOR. Linking the 2 % to the recovered amounts in the A-account seems not entirely correct as the A-account reflects amounts already recovered whereas the 2 % percentage is an estimated proportion of possible future recovery problems.

Another possible misunderstanding may occur about this '2 % of 100 %' figure. The figure suggests that 2 % is the maximum proportion of TOR collected where customs irregularities may be detected. Member States' detection rates show that the detection percentage can be more than double this 2 % (see Table 4 below).

Customs checks on declared customs transactions can reveal undeclared amounts of material customs debt which could raise the total amounts to be recovered over the actually recovered amounts in the A-accounts, thus over the 100 % ceiling. The extra amount of TOR due to the impact of this effect could amount to billions of Euros over a six-year period.

### 5.2.1 Calculation of detection rates and indices

To calculate performance rates and indices for the detection stage of the customs recovery process of Member States, we first need to know the amount of all detected customs irregularities per Member State during the research period. The Commission's Annual Reports on the protection of the European Union's financial interests and the fight against fraud provide these amounts for all Member States. The Commission services have extracted this data from the own resources system database, OWNRES. Table 3 below illustrates the calculations for Belgium.

Adding the totals of all detected customs irregularities for all Member States' during the research period gives an EU total (cell 'eb' in Table 3 below). The amount of all detected customs irregularities per Member State (cell 'db' in Table 3 below for Belgium) can now be compared with the amount of all collected TOR by that Member State (cell 'da') and thus we can calculate the detection rate for that Member State (cell 'dc') during the research period.

Then comparing the EU total of all detected customs irregularities (cell 'eb') against the EU total of all collected TOR (cell 'ea') gives an EU-wide detection rate during the research period (cell 'ec'). We are then able to express Belgium's detection performance as an index (cell 'df') using the individual Member State detection rate (cell 'dc') compared to the EU rate (cell 'ec'). The Belgian detection performance or index is shown in cell 'df' of the table below.

**Table 3 - Customs detection performance in irregularity cases – example of Belgium 2006-2011**

Member State 2006-2011	Collected TOR a	Detected irregularities b	Rate db/da= c	Index dc/ec=f
BE – d	€12 692 900 208,51	€75 601 395,00	0,60 %	0,36
EU – e	€127 799 295 957,44	€2 138 454 704,00	1,67 %	1,00

**Source:** Calculations made on the basis of data from Annual Financial Reports of the Commission and Annual Reports on the protection of the European Union's financial interests and the fight against fraud of the Commission 2006-2011

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This index shows that the relation between all customs irregularities detected in Belgium during the research period and the total recovered TOR amount in Belgium is around one third of the EU average.

Why is the Belgian index only one third of the EU index? Are importers more law-abiding in Belgium than in the EU as a whole resulting in fewer irregularities to be detected? Are enough customs checks made in Belgium and, if so, are they of such a nature that they compare with customs checks of other Member States, which show higher detection results? Are all detected customs irregularities properly reported in the Belgian section of the OWNRES database thus assuring that the correct amounts of detections are communicated to the Commission? Why do neighbouring Member States have such different detection rates and indices in comparison with Belgium?

Such detection performance indices over time can reveal interesting detection patterns at both Member State and EU level. They also suggest a range of questions, which could be answered by further focussing on the situation of a particular Member State or comparing this Member State with neighbouring Member States or Member States, which are in a similar situation. These questions could also lead to the analysis of other problems to be remedied, risks to be avoided and opportunities to be taken: IT-problems, staff issues, legislative restrictions, management solutions etc. Table 4 gives the EU-wide results for customs detection rates and indices.

**Table 4 - Customs detection rates and indices in irregularity cases of Member States 2006-2011**

Member State <sup>57</sup>	Detection rate	Detection index <sup>58</sup>
LT	6,95 %	4,16
HU	4,42 %	2,65
LV	4,26 %	2,55
MT	4,15 %	2,48
RO	4,05 %	2,43
AT	3,50 %	2,10
DK	2,13 %	1,28
ES	2,12 %	1,27
UK	2,11 %	1,26
NL	1,91 %	1,14
IT	1,89 %	1,13
CZ	1,68 %	1,00
EU	1,67 %	1,00
DE	1,57 %	0,94
SI	1,56 %	0,93
FR	1,35 %	0,81
EE	1,29 %	0,77
PL	1,25 %	0,75
CY	1,12 %	0,67
BG	1,02 %	0,61
FI	0,99 %	0,59
SK	0,93 %	0,56
SE	0,88 %	0,53
IE	0,72 %	0,43
EL	0,71 %	0,42
BE	0,60 %	0,36
PT	0,56 %	0,34
LU	0,26 %	0,15

**Source:** Calculations made on the basis of data from Annual Financial Reports of the Commission and Annual Reports on the protection of the European Union's financial interests and the fight against fraud of the Commission 2006-2011

<sup>57</sup> Customs detection rates and indices for Bulgaria and Romania are calculated on the basis of data as from 2007.

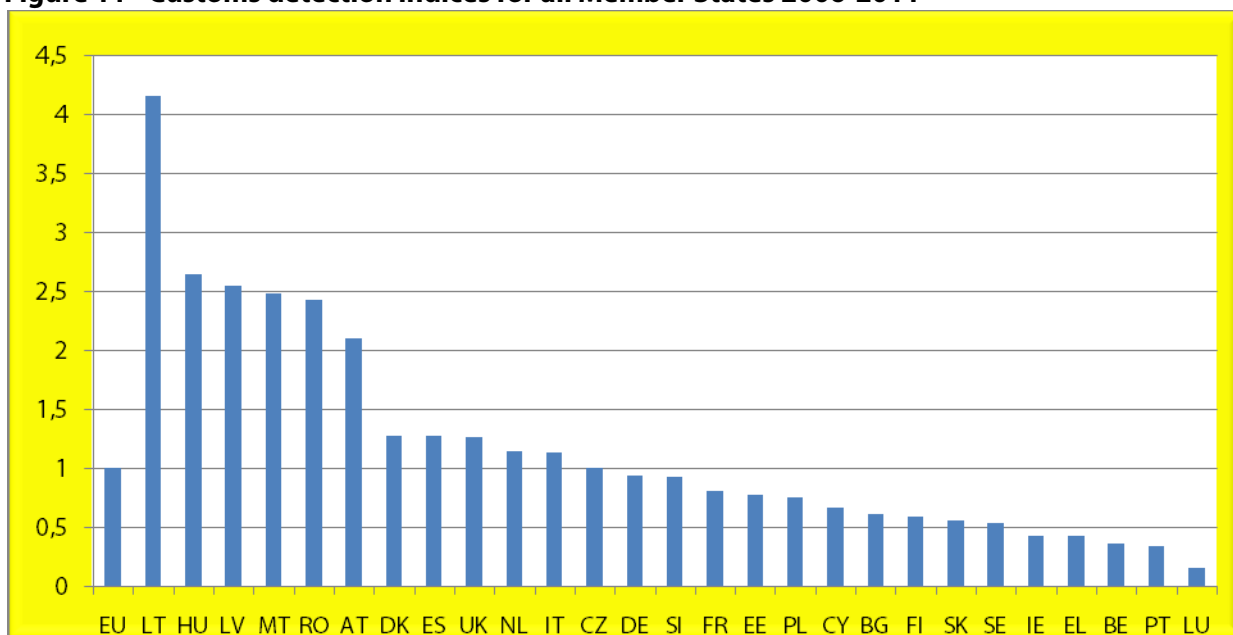
<sup>58</sup> Customs detection index on the basis of EU-wide detection rate average of 1,67 % (EU = 1).

### 5.2.2 Analysis of EU-wide detection performance

The performance of customs checks, the subsequent detection of customs irregularities and the corresponding registration of detected irregularities all contribute in our eyes to positive detection performance. Insufficient or poorly targeted customs checks, resulting in few detections and low detected amounts, and no or incorrect registration of detected irregularities, resulting in incomplete or incorrect OWNRES cases, are considered as contributing to negative performance in this stage of the process. This report provides detection performance rates and indices. It could also provide figures on detection non-performance (customs detection gap rate and indices). In the limited framework of this report, however, this makes no sense and is therefore not done.

The results found by the research team for the custom detection indices of the EU and individual Member States for the period from 2006 until 2011 can graphically be shown as follows:

**Figure 11 - Customs detection indices for all Member States 2006-2011**



**Source:** Calculations made on the basis of data from Annual Financial Reports of the Commission and Annual Reports on the protection of the European Union’s financial interests and the fight against fraud of the Commission 2006-2011

The figure above shows the EU average of all irregularity amounts detected by customs services from 2006 until 2011 as an index (at the left: EU=1)<sup>59</sup> and the corresponding values for the Member States. We can observe significant differences between Member States, which may prompt the need for explanation, especially when the difference between the Member State with the highest customs detection index and the Member State with the lowest index is almost 27:1.

We can observe that the financial output of irregularity detection of customs irregularities by the Member States not only differs a good deal from each other but also that these substantial differences appear in structural patterns.

<sup>59</sup> Customs detection indices for Bulgaria and Romania are calculated on the basis of data as from 2007.

Even dropping the highest and the lowest<sup>60</sup>, the differences need explanation. Using a +/-30 % band around the EU index as a 'tolerance zone', the results show 5 high performers and 9 low performers, more than half of all Member States, separated by a factor of 8:1 from highest to lowest. The reason to drop the outliers is prudence. Although we have looked at the Member States' data over time, we would like to exclude extraordinary performance 'scores' or outliers, which would otherwise, when included, increase variance significantly. The reason for using a 30 % - tolerance zone is similar. We took the EU-average in each customs recovery process as the basis for an EU-wide index. An average is the result of 'descriptive statistics' with no deontological value. Therefore, in order to prevent any possibly unreliable assessment of Member States' performance, we have chosen this 'safety bandwidth'. If we had not shown this care, our conclusions could possibly have been even more 'black and white', in particular when not excluding the outliers.

On the basis of our results, we are also able to compare detection indices of Member States, which appear to be in a similar situation. Member States have different geographical situations (island or continental, inland or seaboard, seaports and/or airports available), logistical infrastructure (IT-systems, transport networks) and administrative cultures (constitutional and legal systems, management cultures, Member State history) and show different detection rates accordingly. But when neighbouring Member States, which seem to be in similar situations, show substantial differences in their detection indices, further examination needs to be made. In the framework of this report, more detailed studies like this could not be made.

We would however be able, on the basis of our results, to take any Member State and to compare it with any other Member State which appears on whatever grounds to be in a similar situation but which has different scores. We would also be able to do the opposite: compare a Member State with another Member State because they appear not to be similar but have comparable scores. Every such grouping could result in interesting benchmarks in all sectors of TOR recovery.

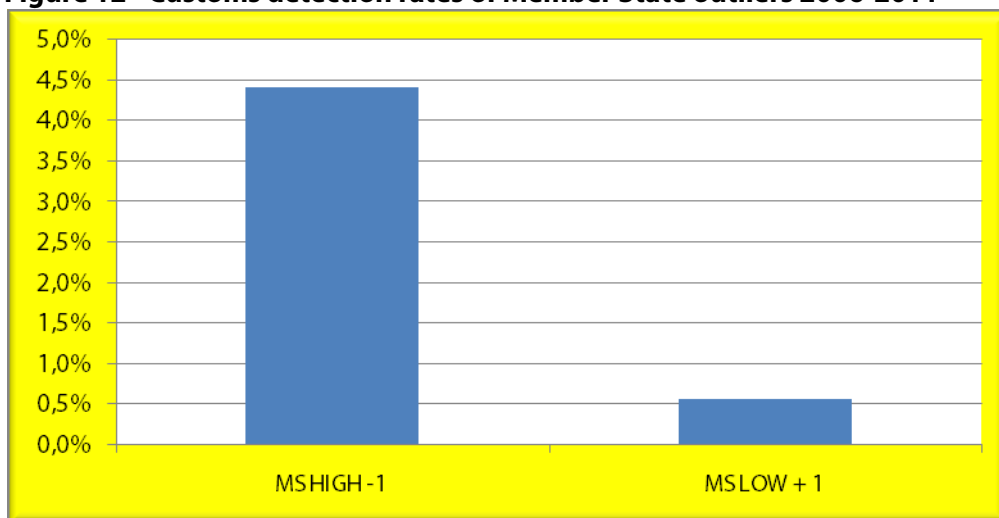
We also noted that the overall detection performance is dropping EU-wide. Applying the research methodology over time can also bring out patterns, which may have a strategic character and may complement the current priority for monitoring of the recovery of TOR. While what Member States *have done* may lead to legal measures and recoveries (as inspected and remedied by the Commission services), what Member States *have not done* (as shown by this research's results) can provide insights into practices that should be improved. Assessing the reasons for such differences may lead to identifying best practices and providing recommendations to all involved.

We cannot provide firm explanations for existing differences in the figures found. Our report highlights notable differences and similarities in existing patterns. If questions on these issues are not investigated by those monitoring TOR recovery, we may find that all detected customs irregularities are being recovered in the end but that no guarantee can be given that all Member States have made comparable efforts in detecting these irregularities and in sharing comparable financial burdens.

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<sup>60</sup> As both the Lithuanian and the Luxembourg data show. When the extraordinarily high Lithuanian customs detection index for 2011 (19.34) is not taken into consideration, the customs detection index for Lithuania for 2006-2011 would probably only be one third of the actual figure. Luxembourg did not report any detected customs irregularity in 2007, 2009, 2010 and 2011; the Luxembourg customs detection index is therefore low.

**Figure 12 - Customs detection rates of Member State outliers 2006-2011**

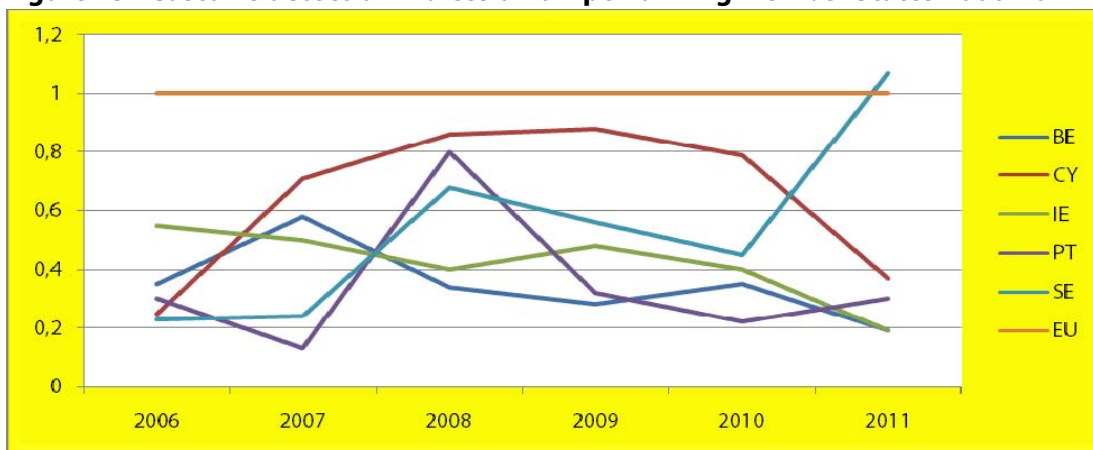


**Source:** Calculations made on the basis of data from Annual Financial Reports of the Commission and Annual Reports on the protection of the European Union’s financial interests and the fight against fraud of the Commission 2006-2011

Figure 12 shows the difference in detection performance between the ‘high detecting’-Member State-but-one and the ‘low detecting’-Member State-but-one. The figures show a difference of about 4 percentage points. If all Member States had detected irregularities as the high performer did, additional customs irregularities amounting to about 4 per cent of annual TOR might have been detected over the six-year period in comparison with the situation if all had detected irregularities according to the rate of the ‘low performer’. In the period 2006-2011, this detection difference would represent an amount of TOR of around **€5 billion**. Member States did in fact detect customs irregularities totalling more than €2 billion. If all Member States had detected irregularities as the high performer did customs irregularities totalling an extra €3,5 billion would have been detected during 2006-2011.

When patterns in Member State detection rates and indices emerge from such an analysis, this can help in targeting the discussions between Member States, and the best practices to follow. Trends may be identifiable. Downward trends in detection performance ask for special attention as less and less customs irregularities appear to be detected. ‘Regular performance patterns’ can be eye-catching when they represent a continuous performance under the EU average. We found such patterns, which are highlighted in the graphs below.

**Figure 13 - Customs detection indices of low performing Member States 2006-2011**

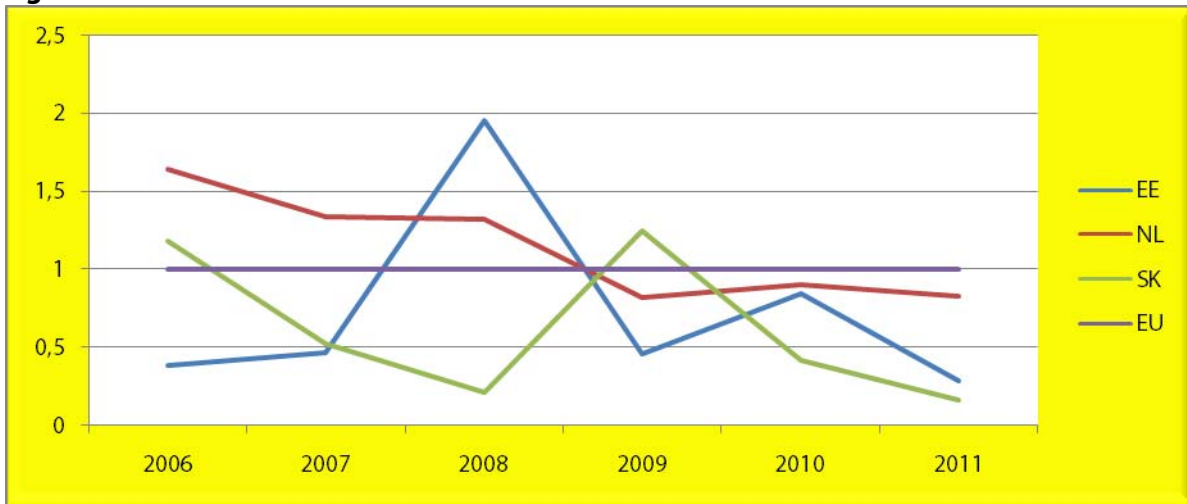


**Source:** Calculations made on the basis of data from Annual Financial Reports of the Commission and Annual Reports on the protection of the European Union’s financial interests and the fight against fraud of the Commission 2006-2011



Figure 13 provides results for Member States, which have a detection index below the EU average (EU index =1). With the exception of Sweden, which showed higher indices at the end of the period than the EU average, the other Member States, Portugal, Ireland, Cyprus and Belgium, have shown no consistent improvement, and if anything deterioration over the period. We recall here the critical comments of the European Court of Auditors in its 2010 annual report about possible weaknesses in the customs service in Belgium<sup>61</sup>.

**Figure 14 - Downward trends in customs detection indices of Member States 2006-2011**



**Source:** Calculations made on the basis of data from Annual Financial Reports of the Commission and Annual Reports on the protection of the European Union’s financial interests and the fight against fraud of the Commission 2006-2011

Figure 14 compares Member States whose detection indices have fallen over the period and are falling below the EU average. The Netherlands shows the most consistent decline and it is one of the Member States with a high level of customs duties.

The Commission’s Report on the Protection of the EU’s financial interests 2011 states that the amount involved in detected customs irregularities has dropped by 27 per cent<sup>62</sup>. Part may be due to the effects of the economic crisis on trade. Have fewer customs checks been performed in the Member States? Have customs checks been less effective? Have fewer irregularities been actually detected? Have fewer detected customs irregularities been reported to the Commission? Figure 15 below shows that this drop totals around €72 million.

<sup>61</sup> 2010 Annual Report from the European Court of Auditors § 2.15.

<sup>62</sup> Statistical evaluation of irregularities for the Commission Report on the Protection of the EU’s financial interests and the Fight against fraud for 2011 par. 3.2: “The number of cases communicated to OWNRES for 2011 is currently 15 % lower in comparison with 2010 (from 5 544 to 4 696). The amount of TOR involved is 27 % lower (from EUR 439 million to EUR 321 million)”. The number of customs checks of 5.544 and the amount of €439 million are accumulated figures used by the Commission instead of the equivalent figures reported in the 2010 Report totalling 4 744 customs checks and €392 million. Nevertheless, the drop in the amounts concerned remains substantial.

**Figure 15 - Amounts of customs irregularities detected by the Member States 2006-2011**

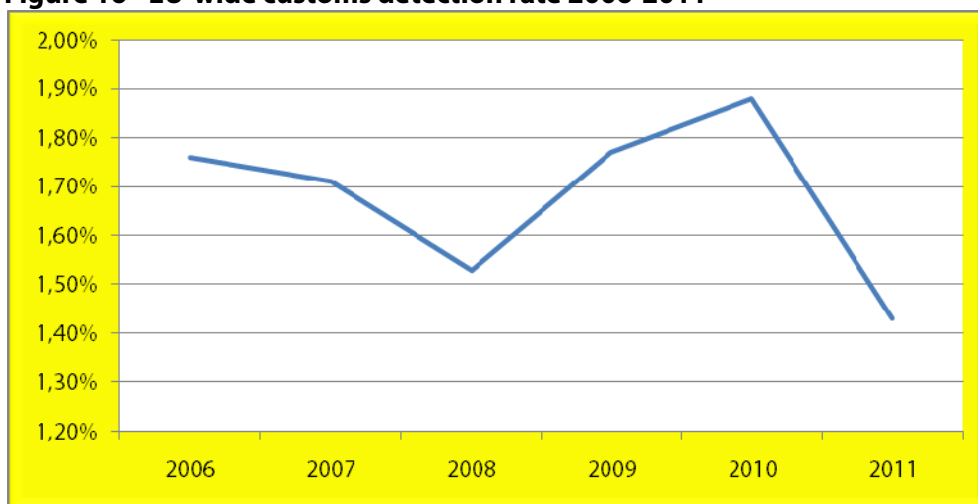


**Source:** Calculations made on the basis of data from Annual Financial Reports of the Commission and Annual Reports on the protection of the European Union’s financial interests and the fight against fraud of the Commission 2006-2011

A correspondingly lower recovery outcome may be expected when the lower amount of detected and reported customs irregularities in 2011 is compared with the total amount of TOR recovered in that year. Where in recent years the EU-wide customs detection rate tended to move to 2 % (see Figure 16 below), 2011 shows a sharp drop to a detection rate of 1,4 %. Has this drop in customs irregularities, fraud and crime come about through a substantial improvement of ethical values of economic operators in the customs field or due to a drop in trade flows? The EU-wide detection rate found for 2011 is the lowest EU detection rate for the whole research period.

The figure confirms the Commission’s estimates in previous Annual Commission Reports on the Protection of the EU’s financial interests that more than 95 % of all TOR was recovered without customs irregularities detected, and even as much as 98 % for the last several years.

**Figure 16 - EU-wide customs detection rate 2006-2011**



**Source:** Annual Reports on the protection of the European Union’s financial interests and the fight against fraud of the Commission 2006-2011

Patterns and trends emerge in Member States’ detection performance and show groups of Member States having similar patterns, which may aid identifying areas of risk in TOR recovery. While we do not examine these areas of possible risk for both the EU budget and the EU tax payer further here, a follow-up of these results could identify risk areas, contribute to an analysis of the

reasons why and remedy the situation in cooperation with the Member State authorities in question. When doing so, other aspects could be taken on board such as the absolute amount of TOR recovered each year by the Member States, an aspect not taken fully into account in this report, which focuses on relative data.

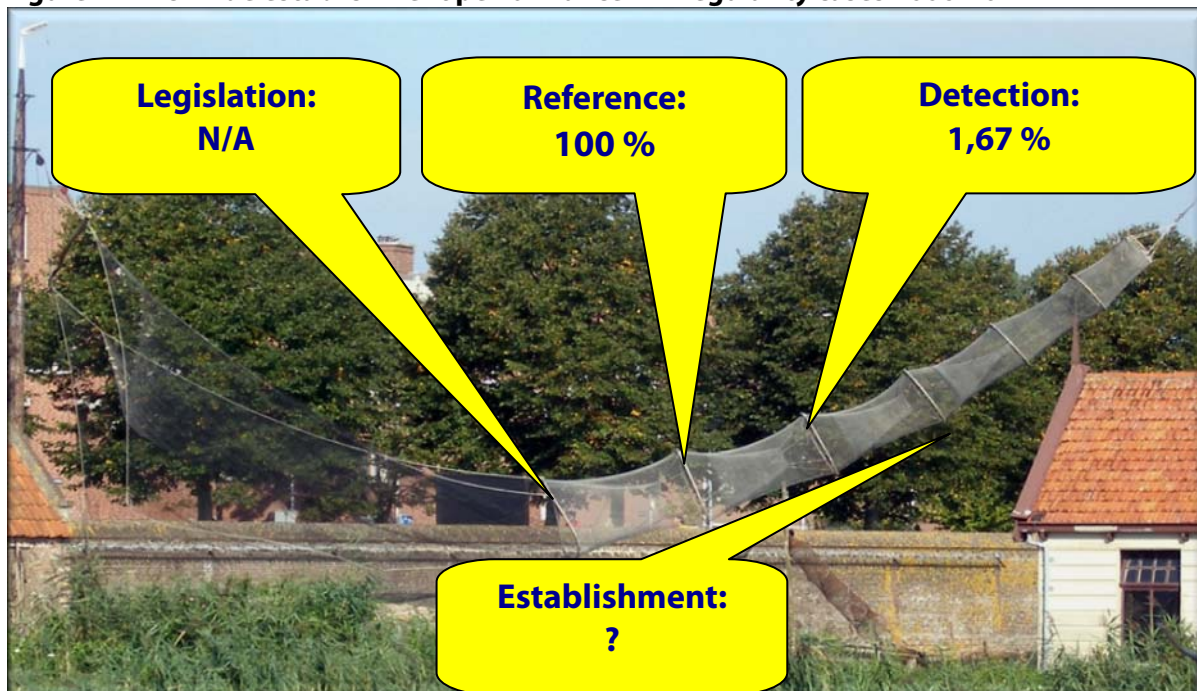
### 5.2.3 Summary of findings on the detection stage

#### KEY FINDINGS

- This section identified EU-wide detection rates of customs irregularities for the whole period from 2006 until 2011.
- Member States detected customs irregularities from 2006-2011 whose total amount was 1,67 % of the overall gross amount of collected TOR in the EU.
- Excluding outliers, we identified five high performing Member States and nine low performers, more than half of all Member States, separated by a factor of 8:1 from highest to lowest.
- Detection indices showed substantial differences in detection performance between EU Member States. The financial impact of these differences can be approximated by comparing high and low detection performance in the EU, even though this is a theoretical exercise. If all Member States had detected customs irregularities in the way that the 'high detecting' Member State did, customs irregularities amounting to as much as €5 billion more could have been recovered over the six years as compared to what would have been recovered had all Member States performed as the 'low detecting' Member State did.
- In this period, Member States actually did detect customs irregularities totalling more than €2 billion. If all Member States had detected irregularities as the high performer did customs irregularities totalling an extra amount of €3,5 billion would have been detected during 2006-2011.
- Some apparent structural patterns emerged and trends were observed which could be of strategic relevance, in particular when Member States' long-term detection performance was under the EU average or tended to move under the EU average.
- Where in recent years the EU-wide customs detection rate tended to move to 2 %, 2011 shows a sharp drop to a detection rate of 1,4 %. The current drop in EU wide detection performance represents fewer detected customs irregularities totalling €72 million. The results seem to require further follow-up with a view to safeguard the recovery of TOR for the EU and all Member States sharing comparable financial burdens.

### 5.3 ESTABLISHMENT PERFORMANCE

**Figure 17 - EU-wide establishment performance in irregularity cases 2006-2011**



Whereas we were able to show an EU wide detection rate for assessing the Member States' detection performance in the customs recovery process, we were not able to do so for the establishment stage. That explains why the picture above only shows a question mark and not an establishment rate. We cannot provide an establishment index either. While we recognise that it is possible though difficult to calculate establishment rates and indices we need additional data, which are not at our disposal now<sup>63</sup>.

The lack of an index poses no real problem for assessing the customs services' establishment performance and overall customs performance in the customs recovery process for the reasons explained before<sup>64</sup>. As the recovery rate is based in all cases on recoveries of established customs debts, which in turn in all cases are based on previously detected customs irregularities, we can nevertheless calculate a reliable overall customs performance rate for the period 2006-2011, directly linking recoveries to detections. It would have been better if we had also been able to show the 'evaporation' between the detection stage and the establishment stage on the one hand, and between the establishment stage and the recovery stage on the other.

We are, however, able to use B-account data to explore the Member States' performance in this field and to find B-account rates for all Member States for the whole research period. These B-account rates allow us to map existing differences between the Member States and to see whether these differences are of a structural nature. This paragraph will use such B-account data for estimating establishment performance and for analysing 'evaporation'. We asked the Commission services to provide these B-account data, as they were not readily available in public domain sources.

<sup>63</sup> See section 4.4.4.3 - 'Establishing customs debts in irregularity' cases in chapter 4.

<sup>64</sup> Idem.

### 5.3.1 Calculation of establishment rates and indices

We would need data on all customs debt established in the follow-up of detected customs irregularities in order to find performance rates and indices for the establishment stage of the customs recovery process of Member States. Linking these data to available data on detected customs irregularities would enable the calculation of establishment rates and indices for the Member States and for the EU for the research period.

In the absence of these data, we calculated B-account rates instead. We first took the total amount of all B-account entries per Member State during the research period. We then calculated the total amount of all Member State's B-account entries to find the EU-total during the research period. With this last amount we were able to calculate the percentage of the amount of all B-account entries per Member State and compare that with the corresponding EU total (see rate below). As these B-account entries could not be linked for methodological reasons to previous detections<sup>65</sup> it is not possible to calculate a B-account index either. We will illustrate this calculation with an example on the Belgian establishment performance (see below).

**Table 5 - B-account rate - example of Belgium 2006-2011**

2006-2011	B-account	Rate	Index
BE	€616 558 624,00	8 %	N/A
EU	€7 741 077 132,00	100 %	N/A

**Source:** Calculations made on the basis of B-account information 2006-2011 access to which was requested from the Commission services

On the basis of information received from the Commission services, we were able to determine the total value of B-account entries for Belgium in the period 2006-2011. Comparing these Belgian data with similar data from all other Member States, we were able to calculate the EU total of B-account entries. We then calculated the share of the Belgian B-account in the EU-wide B-accounts (with the formula: Belgian B-account in € / EU B-accounts in € in per cent).

The result prompts the question: does the B-account rate correspond to a comparable A-account rate, which could be calculated for Belgium? And when the Belgian B-account rate is higher than the A-account rate (which it is), what are then the reasons for this difference: is Belgian TOR recovery less successful than that in other Member States? Does Belgium write-off irrecoverable customs debts less often than other Member States do? Or do they simply not communicate written-off customs debts to the Commission, as they should do?

Other questions are prompted when the Belgian B-account rate is compared with the rates from other Member States, which are in a similar situation to Belgium but nevertheless show different scores. Using the methodology and analysing the comparison results as we did could thus suggest many questions and possible problems to be solved. The answers and solutions could further improve Belgian TOR recovery. This would benefit the EU (higher financial flows from TOR recovery), Belgium (higher recovery fees and fewer cases where it has to assume financial responsibility), and the other Member States (lower GNI-contributions). The following table shows the B-account rates for all Member States.

<sup>65</sup> See section 4.4.4.3 - 'Establishing customs debts in irregularity cases' in chapter 4.

**Table 6 - B-account rates and indices of Member States 2006-2011**

Member State <sup>66</sup>	B-account rate
IT	30 %
DE	20 %
ES	9 %
AT	8 %
BE	8 %
FR	6 %
UK	6 %
EL	4 %
NL	4 %
PT	2 %
DK	1 %
HU	1 %
BG	0 %
CY	0 %
CZ	0 %
EE	0 %
FI	0 %
IE	0 %
LT	0 %
LU	0 %
LV	0 %
MT	0 %
PL	0 %
RO	0 %
SE	0 %
SI	0 %
SK	0 %
EU	100 %

**Source:** Calculations made on the basis of B-account information 2006-2011 access to which was requested from the Commission services

### 5.3.2 Analysis of EU-wide establishment performance

We try to estimate the level of 'establishment performance' in this, the establishment stage of the customs recovery process (see section 4.4.4. for the factors contributing to this stage). Customs debts, which qualify for the B-account, are in almost all cases entered in this account as this is in the interest of each Member State. But all forms of correction must be considered as 'evaporation' in

<sup>66</sup> Customs B-account rates for Bulgaria and Romania are calculated on the basis of data as from 2007.

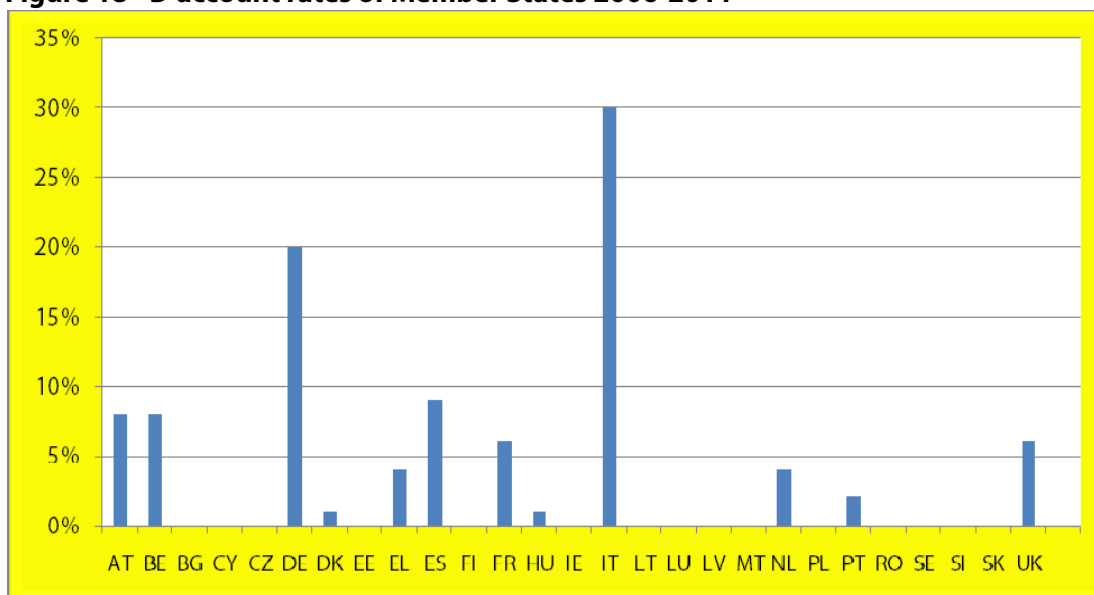
this process stage of customs recovery. Whether the B-accounts, which are not properly kept by the national services, contribute to 'establishment performance' or 'evaporation' is not always clear.

The amount of established customs duties entered in the B-accounts could be compared with the amounts for cases entered in the OWNRES database. The result of this comparison needs to be treated with care. Although the situation at the end of the reporting year for both the contents of the B-account and OWNRES must be taken into account, the B-account data differ from OWNRES data in the sense that the initial establishment data have already been reduced by for instance payments during the reporting period. The initial detection data in OWNRES is not reduced and remains the same. Our research material permits comparisons of Member States' and EU B-account amounts with OWNRES-data and the overall amount of collected TOR. We can thus find structural relations between the financial figures of Member States' B-account, OWNRES cases and A-account).

We focus on the existence of differences in Member States' B-account performance and 'evaporation' by corrections and we therefore do not calculate establishment indices. This has no effect on the assessment of the overall recovery performance as taking into account recovered amounts of customs debt by nature means that the amounts to be recovered have been established first. Linking recovered amounts of customs debt to amounts of detected customs irregularities therefore poses no problem<sup>67</sup>.

Figure 18 shows the B-account rates of the individual Member States for the period from 2006 until 2011 when the Member States' total B-account amounts are compared with the corresponding EU figure:

**Figure 18 - B-account rates of Member States 2006-2011**



**Source:** Calculations made on the basis of B-account information 2006-2011 access to which was requested from the Commission services

<sup>67</sup> Directly linking amounts of new cases of detected customs irregularities from OWNRES to new entries of established customs debts in the B-account could best be made by querying the OWNRES database. It would thus be possible to produce cohort data for these stages in the customs recovery process. As the contents of the OWNRES database are, however, the Member States' responsibility, only the Commission seems to be able to receive authorisation for such queries. The research team did not request the Commission to provide this information.

Including B-account rates of more than 5 %, the figure shows that 7 Member States are responsible for around 87 % of the EU B-account volume. This is not very surprising as large Member States or Member States with a high amount of annual TOR recovery may be expected to have large B-accounts, too. So the presence of Belgium, Germany, Spain, France, Italy and the UK may be considered normal.

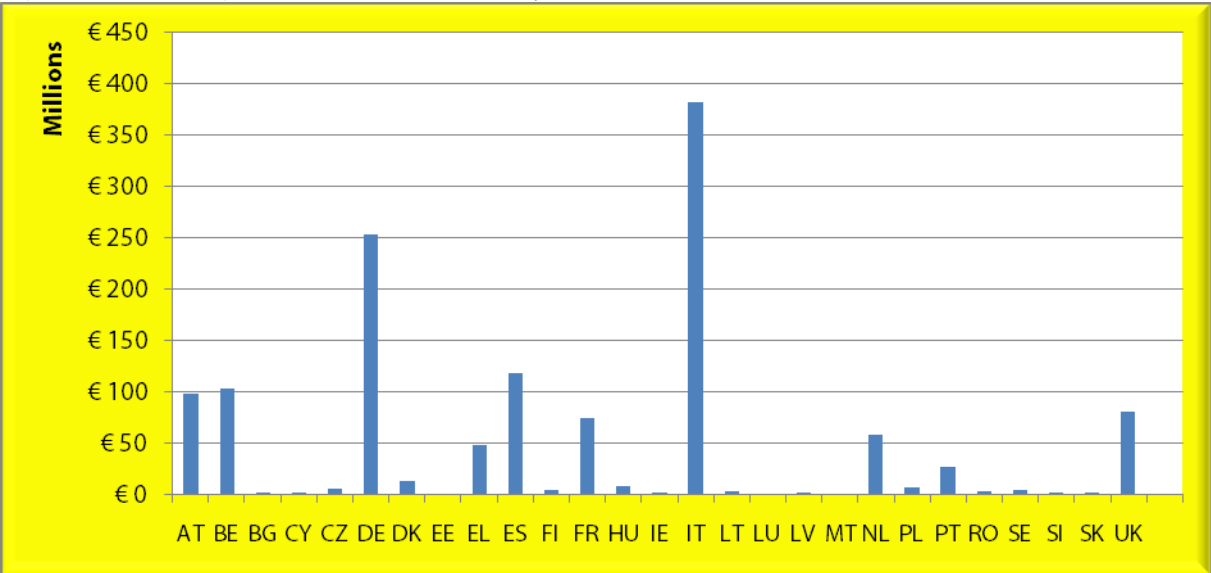
Equally, it may be expected that smaller and newer Member States have corresponding B-account volumes. The latter have growing B-accounts; the longer they are in the Union, the more irregularities are detected, which lead to establishment, the more there are B-account entries.

We have also included in the figure other Member States, which are small or do not have high amounts of annual TOR recovery, but whose B-account is proportionately large as compared to its A-account. Austria’s B-account is the equivalent of 39 % of its A-account. Two other Member States, which show the same characteristics are Greece (18 %) and Portugal (15 %). These figures are notable as the B-account to A-account proportion for all other Member States is on average only 6 %.

Italy’s B-account is the most remarkable. During the period 2006–2011, the financial volume of Italy’s B-account makes up 30 % of the EU volume. As the B-account is typically being used for all customs debts not having been recovered so far, one would anticipate that the Italian B-account contains either many customs debts, which are being discussed with the customs authorities or are still in the process of recovery and have not yet reached the stage of non-recoverability. Italy also has a rather high rate of its B-account to its A-account of 18 %.

The financial impact of these differences in Member States’ B-account records is illustrated in the figure below, which shows the average amounts of the Member States’ B-account during the research period. Italy’s B-account has a volume of around €400 million on average while the three other Member States mentioned above (Austria, Greece and Portugal) account for more than €170 million.

**Figure 19 - Average B-account amounts by Member State 2006-2011**



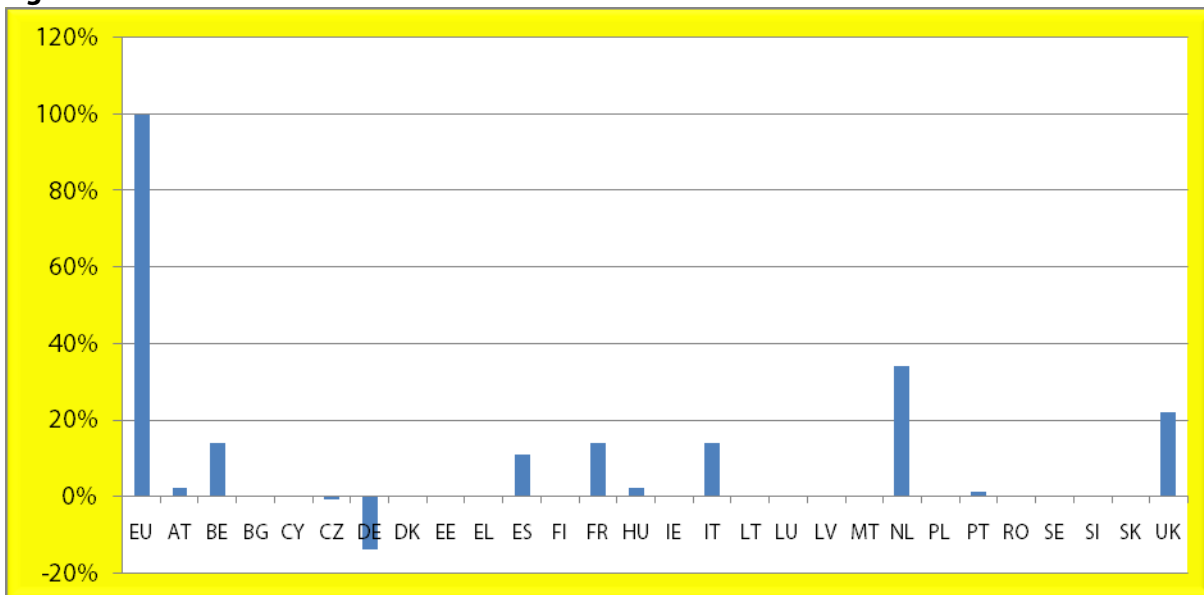
**Source:** Calculations made on the basis of B-account information 2006-2011 access to which was requested from the Commission services



An establishment gap can occur when previously established customs debts are corrected downwards following reviews, appeals or application for remission by the debtor. It can also occur when detected customs irregularities have been registered in OWNRES but are not followed up by a regular entry in the B-account. This can be the result of the absence of a proper reconciliation between the Member State's OWNRES-system and its B-account<sup>68</sup> or because OWNRES-cases came to an end before they reached the establishment stage. Examples of such situations are administrative investigations which at first glance appear to reveal customs irregularities but later were finalised without the detection of an irregularity; investigations which ended with a detection of customs irregularities, which gave rise to criminal proceedings which, however, finally resulted in a court decision that no offence was committed (and thus no according customs debt was established); or a delay in a Member State's establishment performance. In this last situation the OWNRES-case just remains 'open'. Establishment gaps can also occur following improper management of a Member State's B-account.

On the basis of additional information access to which was requested from the Commission and provided, the research team has calculated the total amount of corrections in the Member States' B-accounts during the research period for all Member States and the EU. Taking this EU amount of corrections as a basis, the Member States' corrections were compared with the EU total with a view to find the correction rate for each Member State. Figure 20 below shows the results:

**Figure 20 - Member States' B-account correction rates 2006-2011**



**Source:** Calculations made on the basis of B-account information 2006-2011 access to which was requested from the Commission services

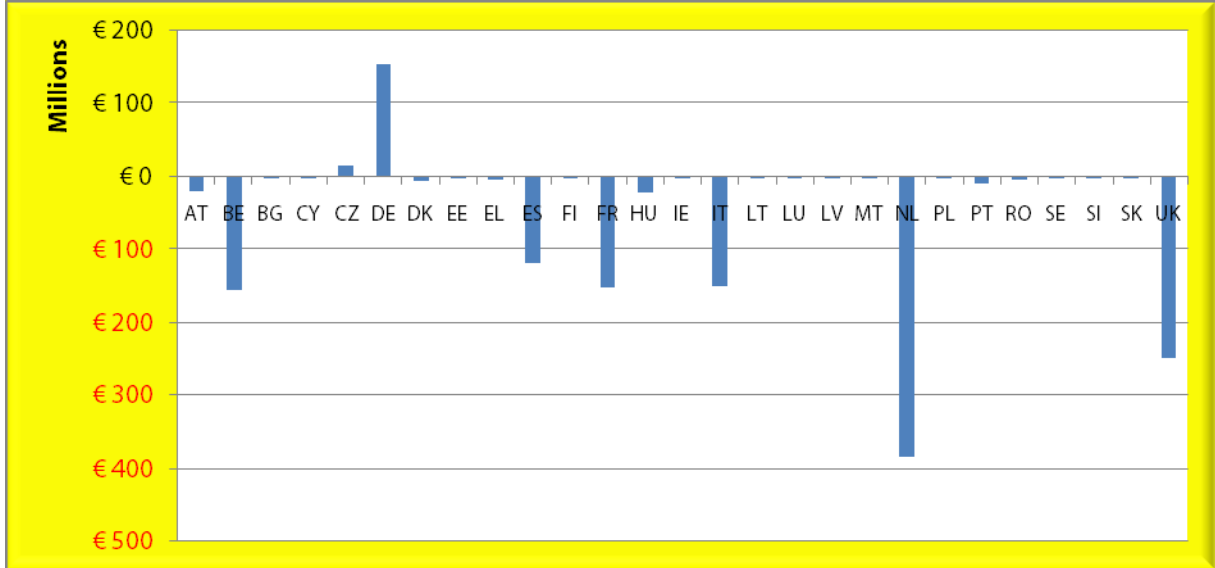
Annual Commission Reports on the Protection of the EU's financial interests already commented that, due to the large import flows through the ports of Antwerp and Rotterdam, the Netherlands and Belgium may show more corrections than on average, because establishments related to transit occur more frequently than otherwise. For closed cases relating to transit, corrections may reach up to 90 %<sup>69</sup>. Thus leaving aside the Netherlands and Belgium, the figure shows that 4 out of 5 large Member States (Spain, France, Italy and the UK) show 'negative' corrections (thus

<sup>68</sup> As discussed above under 4.4.4.3 - 'Establishing customs debt in irregularity cases' in chapter 4

<sup>69</sup> Such as the Statistical evaluation of irregularities for the Commission 2011 Annual Report on the protection of the European Union's financial interests and the fight against fraud par.3.4.1.

contributing to ‘evaporation’) during the research period. Negative corrections are those, which diminish the established amount, making the amount to be recovered lower than before. This is what we term ‘evaporation’ in the establishment stage. As such this is not an unusual phenomenon. The remaining ‘big one’ (Germany) has remarkably enough a structural pattern of ‘positive’ corrections, thus contributing to ‘establishment performance’. Positive corrections are those, which increase the established amount, making the amount to be recovered higher than before. This enhances establishment performance. The correction amounts involved (see Figure 21 below) are sizeable.

**Figure 21 - Member States' B-account corrections 2006-2011**



**Source:** Calculations made on the basis of B-account information 2006-2011 access to which was requested from the Commission services

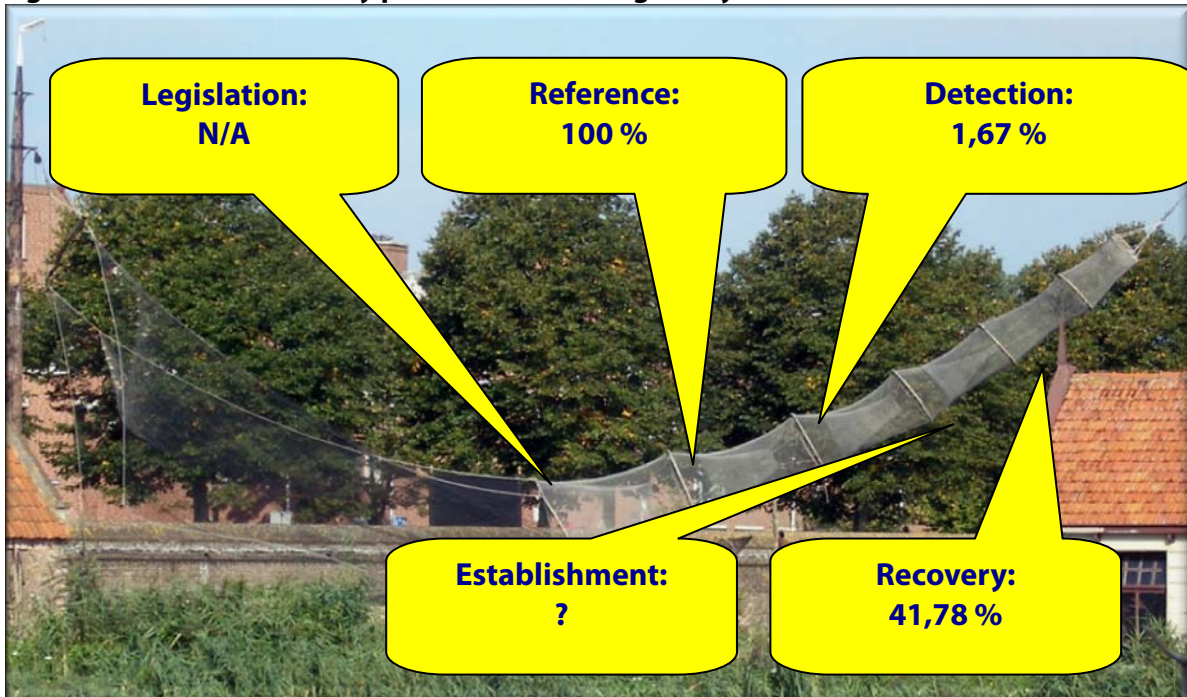
**5.3.3 Summary of findings on the establishment stage**

**KEY FINDINGS**

- EU-wide rates for the period from 2006 until 2011 show substantial B-account performance differences between Member States. EU-wide correction rates for established customs debts also show significant differences.
- Austria’s B-account is the equivalent of 39 % of its A-account. Two other Member States show the same characteristics, Greece (18 %) and Portugal (15 %). These figures are notable as the B-account to A-account proportion for all other Member States is on average only 6 %.
- Italy’s B-account is remarkable. During the period 2006–2011, the financial volume of Italy’s B-account makes up 30 % of the EU volume.
- Four out of five large Member States (Spain, France, Italy and the UK) show ‘negative’ corrections (thus contributing to ‘evaporation’) during the research period. Germany has a structural pattern of ‘positive’ corrections, thus contributing to its ‘establishment performance’.

## 5.4 RECOVERY PERFORMANCE

Figure 22 - EU-wide recovery performance in irregularity cases



The picture above illustrates our findings that the EU-wide recovery rate during the research period from 2006-2011 was 41,78 %. Member States recovered customs debts in irregularity cases<sup>70</sup> in that period totalling that per cent of the amount of detected customs irregularities<sup>71</sup>. So, for every €100 euro of detected customs irregularities for which customs debts were established, about €42 were recovered in the same year.

The data on detected irregularities and recovered customs debts can be found in the Commission's Annual Reports on the protection of the European Union's financial interests and the fight against fraud. The data on detections and recoveries are retrieved from OWNRES, the Commission's database for the reporting of detected customs irregularities by the Member States and the financial follow-up of these.

By comparing recovered amounts of customs debts established after irregularities are detected, we are able not only to assess the Member States' performance in the recovery stage of the customs recovery process but also to compare this recovery performance for each of the Member States. By further focussing on the Member States' recovery performance over the long run we may find different structural patterns of Member States' recovery results. We can also link these recovery performances (expressed as percentages) to our point of reference, the total amount of all EU-wide collected TOR, and thus estimate the financial equivalent of these Member States' differences.

<sup>70</sup> Recoveries in the same year as the detection of the customs irregularities underlying the customs debts.

<sup>71</sup> Both the amounts of detected irregularities and recovered customs debts are gross amounts (recovery fees are not deducted).

### 5.4.1 Calculation of recovery rates and indices

We can calculate performance rates and indices for the **recovery stage** of the customs recovery process of Member States in a similar way to that used to calculate detection rates and indices.

We already know the EU amount of detected customs irregularities during the research period (see section above). We calculated the total recovered customs debts for the EU<sup>72</sup>, and thus can estimate the EU-wide recovery rate (on the basis of the formula: recovered customs debts in € / detected customs irregularities in € in per cent) and the EU index (on the basis of the formula: EU recovery rate = 1).

We can now determine the recovery rate and index for each Member State during the research period in the same way. We illustrate the calculations with an example on Belgium's recovery performance in Table 7 below.

We take the amount of all recovered customs debt per Member State during the research period (column c below); we total Member States' amounts of recovered customs debt during the research period giving us the EU-wide total (cell ce). The amount of recovered customs debt per Member State can then be compared with the amount of detected customs irregularities (column b) to calculate the recovery rate for that Member State during the research period (cell fd). Then comparing the EU total recovered customs debt against the EU total of detected customs irregularities (row e) gives us the EU recovery rate during the research period (cell fe). We can then express each Member State's recovery performance as an index (column g). This index shows that Belgium's performance in recovering customs debts from the irregularities detected in Belgium is around 60 % of the EU average.

**Table 7 - Customs recovery performance in irregularity cases - example of Belgium 2006-2011**

2006-2011 a	Detected irregularities b	Recovered customs debt c	Rate c/b = f	Index fd/fe=g
BE – d	€ 75 601 395,00	€ 18 182 975,45	24,05 %	0,58
EU – e	€ 2 138 454 704,00	€ 893 547 090,90	41,78 %	1,00

**Source:** Calculations made on the basis of data from Annual Financial Reports of the Commission and Annual Reports on the Protection of the EU's financial interests and the Fight against Fraud of the Commission 2006-2011

Why is the Belgian index only 60 % of the EU index? Is Belgian recovery more negligent than comparable processes in other Member States? Do the Belgian authorities responsible for the recovery of customs debt have the same tools at their disposal as other Member States' authorities in their recovery processes? Is it possible that the relatively low recovery rate in Belgium is caused by a great number of corrected customs debts in the field of transit irregularities? Or is Belgian recovery more successful in later years (as our recovery rate is calculated on the basis of recoveries made in the same year as the detections underlying the customs debts)? Are all recoveries made in Belgium properly reported in the Belgian section of the OWNRES database?

Calculation of such recovery performance indices over time can reveal recovery patterns at both Member State and EU levels. The patterns may suggest questions, which should or could be answered by further focussing on the situation of a particular Member State or comparing this Member State with neighbouring Member States or Member States, which are in a similar situation. These questions could also lead to the analysis of other problems to be remedied, risks to be

<sup>72</sup> Recovered in the same year as the detection of the customs irregularities underlying the customs debts.

avoided and opportunities to be taken. Table 8 shows the EU-wide results for customs recovery rates and indices for the research period.

**Table 8 - Customs recovery rates and indices in irregularity cases of Member States 2006-2011**

Member State <sup>73</sup>	Recovery rate	Recovery index <sup>74</sup>
IE	80,64 %	1,93
DE	70,40 %	1,69
SE	69,75 %	1,67
DK	50,05 %	1,20
FI	49,59 %	1,19
ES	48,73 %	1,17
PL	48,66 %	1,16
SI	48,37 %	1,16
UK	47,62 %	1,14
FR	45,55 %	1,09
EU	41,78 %	1,00
EE	41,37 %	0,99
BG	40,61 %	0,97
CZ	40,24 %	0,96
RO	40,01 %	0,96
HU	38,41 %	0,92
PT	38,35 %	0,92
SK	37,42 %	0,90
BE	24,05 %	0,58
CY	23,97 %	0,57
NL	23,21 %	0,56
LV	20,11 %	0,48
AT	19,28 %	0,46
LT	16,58 %	0,40
EL	9,28 %	0,22
IT	7,69 %	0,18
MT	4,92 %	0,12
LU	N/A	N/A

**Source:** Calculations made on the basis of data from Annual Financial Reports of the Commission and Annual Reports on the protection of the European Union's financial interests and the fight against fraud of the Commission 2006-2011

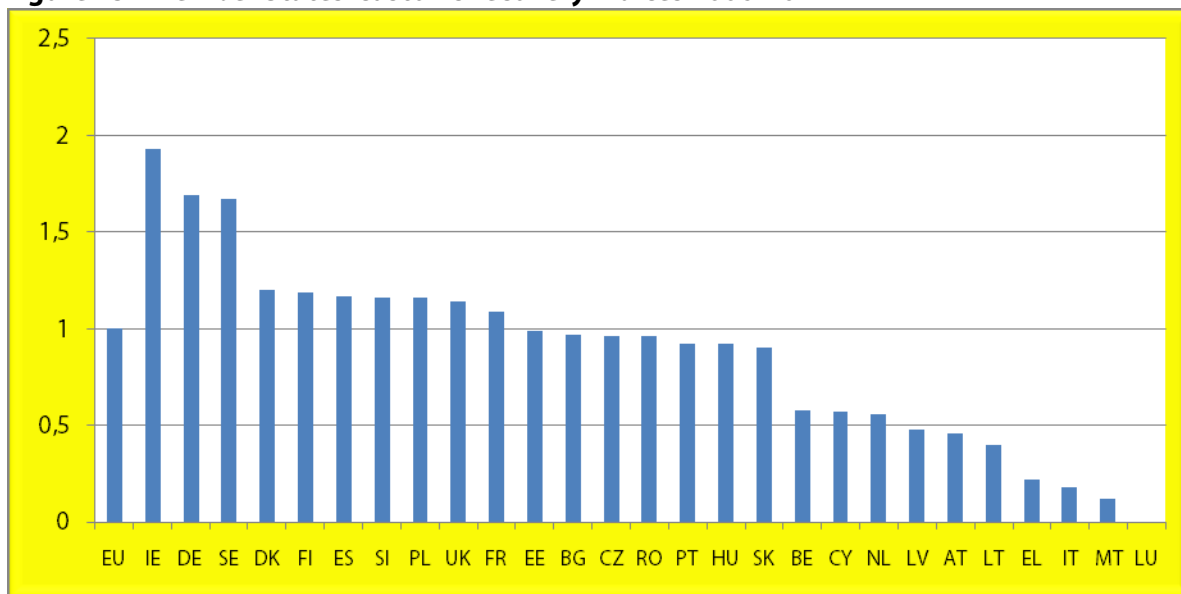
<sup>73</sup> Customs recovery rates and indices for Bulgaria and Romania are calculated on the basis of data as from 2007.

<sup>74</sup> Customs recovery index on the basis of EU-wide customs recovery rate average of 41,78 % (EU = 1).

### 5.4.2 Analysis of EU-wide recovery performance

All recovery measures assuring the final success of collecting the amount due contribute to recovery performance. Situations that lead to the non-recoverability of customs debt (such as remission and writing-off) have the opposite effect of contributing to non-performance in the recovery stage. This section explores the level of this recovery performance and ‘evaporation’. Apart from this recovery performance, this report could also provide figures on non-performance (and calculate a ‘recovery gap’ rate and a corresponding customs recovery gap index). In the limited framework of this report, however, this is not done.

**Figure 23 - Member States' customs recovery indices 2006-2011**



**Source:** Calculations made on the basis of data from Annual Financial Reports of the Commission and Annual Reports on the protection of the European Union’s financial interests and the fight against fraud of the Commission 2006-2011

The ratio between the highest and lowest on this index is about 16:1, or when leaving out the outliers more than 9:1<sup>75</sup>. Treating the data as in the foregoing sections by taking a 30 % bandwidth around the EU index as a ‘tolerance zone’, the results identify two high (Germany and Sweden) and eight low performing Member States (Italy, Greece, Lithuania, Austria, Latvia, The Netherlands, Cyprus and Belgium).

Why the speed of the recovery process in one Member State is higher than in another may be due to several factors. The same can be said of the amount of losses, which have to be accepted when irrecoverable customs debts are written-off at the end of the recovery process<sup>76</sup>. National rules, regulations, instructions and procedures determine both speed and success of the recovery process including the recovery of customs debt. Both factors impact on the amount of TOR being received by the Commission and as a consequence on the level of the budgetary contribution of the Member States under the GNI resource.

<sup>75</sup> As Luxembourg reported no detected customs irregularity in 2007, 2009, 2010 and 2011, it is impossible to calculate a meaningful recovery rate and corresponding recovery index. Luxembourg is therefore excluded from consideration in this paragraph.

<sup>76</sup> A write-off can result from a Member State decision declaring that a customs debt can no longer be recovered or from the fact that, according to Article 17(2) of Regulation no. 1150/2000, a customs debt must be deemed irrecoverable by a Member State at the latest five years from the date on which the debt was established, or in the event of an administrative or judicial appeal, the final decision was given, or the last part-payment of the debt was made, whichever is the later.

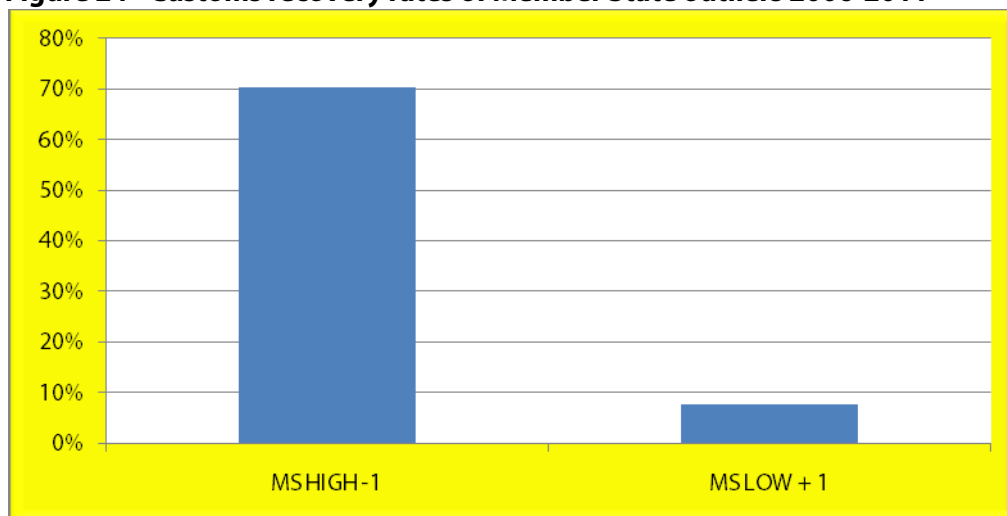
The write-off of customs debt means that amounts of customs debts, which were outstanding in Member States' debt ledgers and accordingly entered in the B-account and thus would benefit the EU Budget once recovered, are no longer recoverable. The Member States must therefore compensate this loss for the EU Budget with a corresponding GNI contribution to replace the duties that should have been paid by importers. This is one of the consequences of a balanced budget system in the EU. Customs recovery could, however, have one strange consequence: losses of TOR caused by recovery laxity in one Member State are compensated by all other Member States including those which have an exemplary recovery performance. High performing Member States may suffer from low performance in other Member States.

To try to ensure that all Member States nevertheless share a comparable financial burden in this field, the Commission checks Member States' write-offs as part of the monitoring of its recovery processes. If the Commission comes to the conclusion that the non-recovery of customs debts is attributable to the Member State in question, the Commission will hold that Member State financially responsible for the damage done to the EU Budget. If the Member State then pays the amount of its financial liability to the Commission, strictly speaking, no 'evaporation' of TOR occurs. If, however, the Commission accepts a Member State's write-off and does not hold that Member State responsible for the damage to the Budget, the other Member States in practice have to make up the loss to the Budget.

As long as customs debt is recoverable but not yet recovered, the EU Budget does not benefit from any payments. The Member States must then contribute to the Budget for the amounts expected but not yet received. This could be considered a rather artificial situation as it may be expected that the amounts due will be received by the Budget in the end.

However loss of interest remains a disadvantage for the Budget; the higher the amounts expected but not yet received, the higher the putative interest loss for the EU. Moreover amounts, which are considered recoverable today, could be declared not recoverable tomorrow and accordingly written-off. Experience shows that every day of non-recovery that passes increases exponentially the risk of non-recoverability. The progress of the recovery process in the Member States should therefore be a high priority for those responsible for monitoring the recovery of TOR both in terms of timely recovery and possible Member States' liability for non-recoverable amounts.

**Figure 24 - Customs recovery rates of Member State outliers 2006-2011**



**Source:** Calculations made on the basis of data from Annual Financial Reports of the Commission and Annual Reports on the protection of the European Union's financial interests and the fight against fraud of the Commission 2006-2011

In the period 2006-2011, Member States did actually recover customs debts totalling around €0,9 billion. Figure 24 above shows the difference in recovery performance between the high 'recoverer' and the low 'recoverer', excluding outliers. It is equivalent to around 63 % of the amount of detected irregularities shown above (in cell BE in Table 5), or a difference in financial terms of about **€1,3 billion**. If all Member States had performed 'as if they were one' and according to the best possible standards of the high 'recoverer', that difference would have appeared in comparison with a situation of 'collective low performance' (if all Member States had performed to the standards of the low 'recoverer'). If all Member States had performed according to the best possible recovery standards, amounts of recovered customs debt would have totalled more than €1,5 billion. Comparing this amount with the €0,9 billion actually having been recovered during this period, additional recoveries of around €0,6 billion could have been envisaged.

OWNRES figures are used as a basis for calculating these recovery rates and indices but only represent recoveries of customs debts made in the same year as the detections of the irregularities were reported to the Commission. These figures do not predict the final amount recovered. A customs debt, established in one year could be recovered in full in the next year. So, cumulative figures on amounts recovered in later years than the reporting year of detected irregularities would provide more stable figures<sup>77</sup>.

Detailed research into these cumulative recovery figures (where available<sup>78</sup>) shows us that recovered amounts can sometimes change substantially both up and down. Nevertheless, using recovery data from the year of detection is feasible in that such figures are published and are available for all Member States for the whole of the research period, allowing comparisons of Member States' performance on a similar basis.

The Commission monitors writing-off of irrecoverable customs debts. As the Commission states, a proper 'examination of Member States' diligence in these cases constitutes a very effective mechanism for gauging their activity in the field of recovery. It encourages national administrations to step up the regularity, efficiency and effectiveness of their recovery activity, since any lack of diligence leading to failure to recover, results in individual Member States having to foot the bill<sup>79</sup>.

*The best possible monitoring of Member States' performance does not only focus on what the Member States have done but also what they have not done.* The Commission should not only check the write-off requests<sup>80</sup> of compliant Member States<sup>81</sup>, but also check which Member States are not compliant and which do not send in such requests, when it examines writing-off irrecoverable customs debts. Member States, which do not send in such requests, may be avoiding their recovery efforts being checked by the Commission and being held financially responsible for any damage done to the Budget. Customs debts which technically speaking are not recoverable and should effectively be written-off and reported to the Commission but which are not, thus remain 'open' in

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<sup>77</sup> Although the Statistical evaluations of irregularities for the Commission's Annual Report for the Protection of the EU's financial interests and the Fight against fraud for 2007, 2008, 2009, and 2011 contain cumulative recovery data on the previous year, the 2010 version only contained recovery data on 2010. It was therefore not possible to calculate reliable multi-annual recovery figures for the whole of the research period. Moreover, cumulative recovery figures for 2011 are not yet available.

<sup>78</sup> See previous footnote.

<sup>79</sup> Statistical evaluation of irregularities for the Annual Commission Report for the protection of the European Union's financial interests and the fight against fraud 2011 par. 3.1.2.

<sup>80</sup> Officially: requests to be released from the obligation to make Traditional Own Resources available (see Article 17(2) of Regulation (EC/Euratom) no. 1150/2000 of the Council of 22 May 2000.

<sup>81</sup> Written-off customs debts with an irrecoverable amount exceeding €50 000 must be communicated to the Commission which has to decide whether the necessary conditions are fulfilled for releasing the Member State from the obligation to make the Traditional Own Resources available.



the B-account, falsely suggesting to the Commission that the amount due will still be recovered in the future. All Member States should apply the law with the same assiduity and in the same way and send requests to the Commission for all customs debts written-off or deemed irrecoverable in their ledgers promptly. All Member States should thus share a comparable burden.

Do all the Member States indeed act accordingly? How does the Commission check that all Member States do? There may be a range of acceptable reasons including legal ones why Member States do not send such requests to the Commission promptly. In the long term, however, never sending any requests (or only sending a limited number of requests with small amounts of irrecoverable customs debts) may mean that more assiduous Member States' requests are being scrutinised by the Commission, run the risk of being held financially liable for attributable non-recovery. This may mean that they have to pay an extra GNI contribution for irrecoverable customs debts of other Member States, which do not run the risk of financial responsibility as no similar requests are being sent.

On the basis of data partly available in open source information from the Commission and partly received from the Commission on the basis of a request for public access to additional data, the research team analysed and determined which Member States had sent requests to the Commission to be released from the obligation to make the amount of irrecoverable customs debts available to the Commission and which requests led to a material Commission decision<sup>82</sup>.

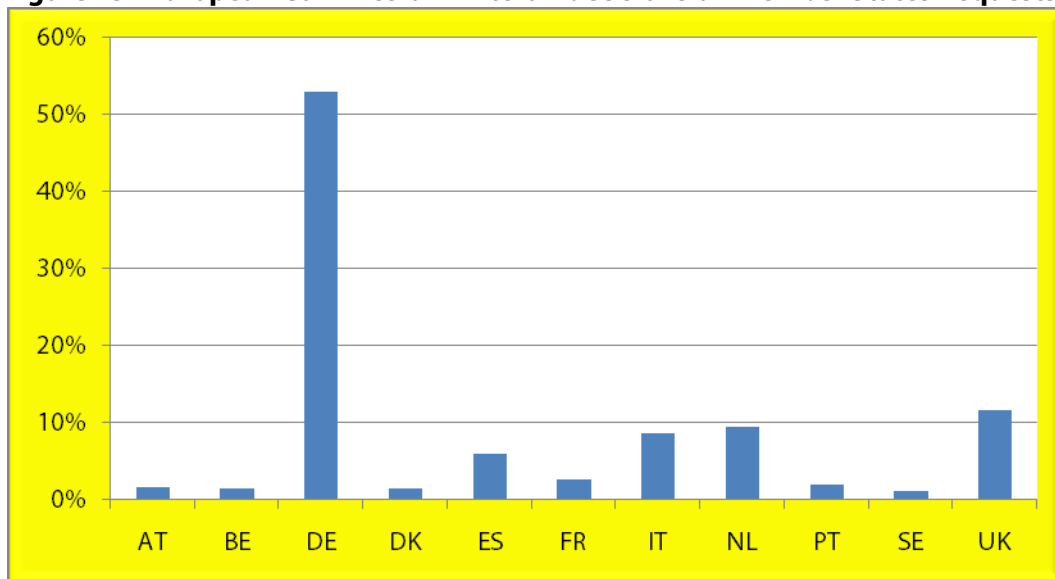
A material Commission decision, according to our definition, is either a decision whereby the Commission accepts that the non-recovery is not-attributable to the Member State, thus leading to a release for the Member State to make the amount concerned available to the Commission, or a decision whereby the Commission arrives at the conclusion that the non-recovery is attributable to the Member State, thus leading to a corresponding transfer from the Member State to the Commission.

During the research period these material write-off decisions represented TOR of more than €400 million. The following figure provides an overview on the Commission's material decisions following Member States' requests.

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<sup>82</sup> Excluding from the analysis requests from the Member States, which the Commission decided were not appropriate for treating, and requests, which were returned to the Member States, as additional information was needed to enable the Commission to take a final decision.

**Figure 25 - European Commission write-off decisions on Member States' requests 2006-2011**



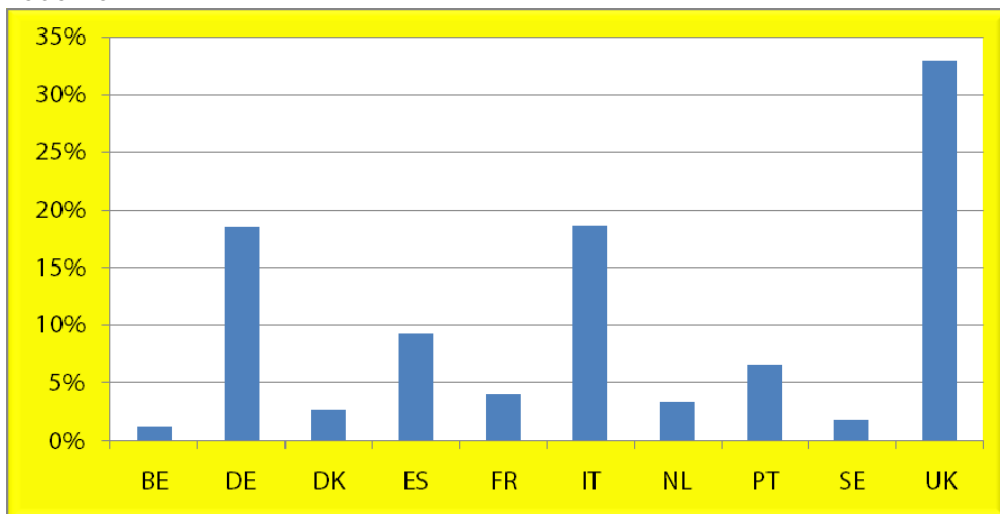
**Source:** Calculations made on the basis of write-off information 2006-2011 access to which was requested from the Commission services

Taking the total amount of all material write-off decisions of the Commission as 100 % and leaving out performance percentages about or less than 5 %, Figure 25 shows that only five Member States sent such requests to the Commission concerning significant amounts of irrecoverable customs debt. It also shows that only 11 Member States sent in any request leading to a material decision and thus that 16 Member States did not.

Part may be due to the fact that the EUR-10 Member States entered the EU in 2004 and that Bulgaria and Romania only entered the EU in 2007. Their customs debts, which became recoverable after accession, may not yet have been declared or deemed irrecoverable.

Legitimate reasons may explain not sending irrecoverable customs debt requests to the Commission, but Member States, which do so, run a lesser risk of being held liable by the Commission and of footing the bill for non-recovery. This is further illustrated by the figure below.

**Figure 26 - European Commission negative write-off decisions on Member States' requests 2006-2011**



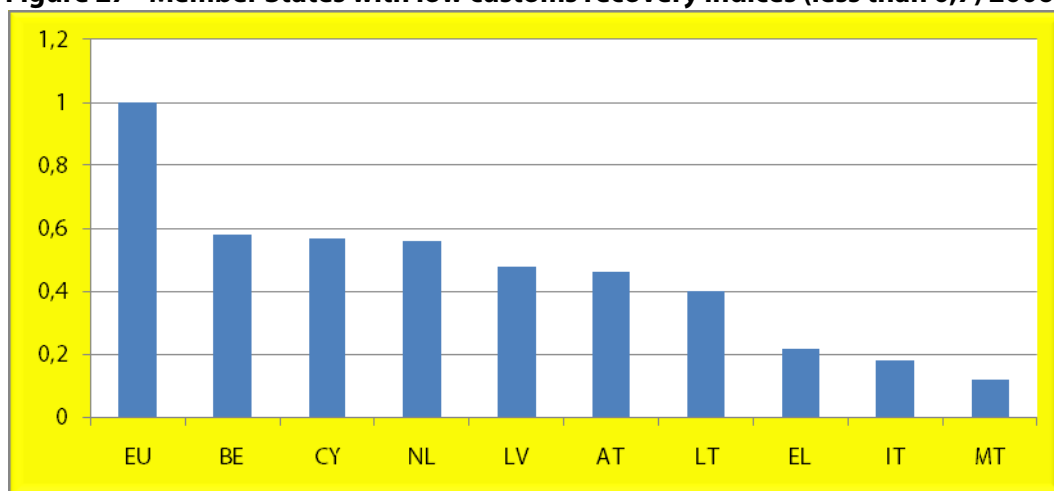
**Source:** Calculations made on the basis of write-off information 2006-2011 access to which was requested from the Commission services

Taking the total amount of all 'negative' material write-off decisions from the Commission as 100 % and leaving out percentages in the figure about or less than 5 %, Figure 26 shows that only five Member States were held financially responsible for about 87 % of all irrecoverable customs debts for which the Commission refused the requests from the Member States to be released from the obligation to make TOR available. Four out of these five Member States (Germany, Spain, Italy and the UK) had also sent irrecoverable customs debt requests to the Commission for considerable amounts (see Figure 25). In the period 2006-2011, these Commission refusals represent an amount of more than €100 million.

Each recovering Member State may have to face the risk of writing-off irrecoverable customs debt. Bigger volumes of customs debt to be recovered may result in bigger amounts of irrecoverable debt, even when the write-off risk as such is constant. It is therefore not surprising that Member States responsible for large amounts of TOR recovery send write-off requests for considerable amounts to the Commission and then are possibly held responsible for substantial amounts of irrecoverable customs debt. One can, however question the percentages for which they are in the end held liable. This equally applies for Member States, which have so far not been held responsible for such amounts.

One can also ask whether Member States, which have a low recovery rate and thus run a bigger risk of non-recovery, send in a correspondingly higher number of write-off requests to the Commission. The following figure concerns this issue.

**Figure 27 - Member States with low customs recovery indices (less than 0,7) 2006-2011**



**Source:** Calculations made on the basis of data from Annual Financial Reports of the Commission and Annual Reports on the protection of the European Union's financial interests and the fight against fraud of the Commission 2006-2011

Figure 27 above shows Member States, which have a structural customs recovery index of under 0,7 (that is below the EU average minus a bandwidth of 30 % as a 'tolerance zone' of statistical acceptable recovery performance). When the results from the distribution overview of Member States communicating write-off requests to the Commission are now compared with Figure 27 above, we find that, leaving out the Member States which have sent in write-off requests (see Figure 25) and equally leaving out 'new' Member States (as their recoverable debts may not have yet reached the stage of irrecoverability), the only Member State remaining is Greece.

During the research period, the Greek figures show both a rather low customs debt recovery rate and an equally low performance for having sent write-off requests to the Commission, which led to material Commission decisions. So, on the basis of 'the lower the recovery rate, the more

irrecoverable debt', one would expect Greece to have sent many write-off requests. It did not send any request to the Commission, which led to an acceptance or refusal decision.

This report already concluded that written-off customs debt would contribute to 'evaporation' in customs recovery unless the Member State writing off is held financially liable by the Commission. In that case the compensatory liability payment by the Member State 'neutralizes' the 'evaporation' and thus contributes to positive recovery performance. If not, the write-off contributes to the recovery gap.

Other forms of 'recovery gaps' can be of a more technical nature: due to the absence of a proper reconciliation between the Member State's debt ledger and its B-account and/or between its B-account and its OWNRES-system, it is possible that amounts which have effectively been recovered may not correctly be fed into the OWNRES system. These amounts do not then 'score' in recovery queries and are therefore not accounted for in Commission queries and documents. In the meantime, however, recovered amounts may have been correctly entered in the A-account and accordingly made available to the Commission. In such situations the OWNRES-cases concerned just remain 'open'.

Is awareness of the existence of what appears to be structural differences in write-off performance a challenge to Member State discussions on their budgetary responsibilities vis-à-vis the EU? The Commission seems to be fully aware of such differences. In the Commission's 2011 Anti-Fraud Report<sup>83</sup> the Commission states that 'Member States have to recover all established amounts including those they register in OWNRES. For a variety of reasons an established amount may not be completely recovered, despite Member States' efforts. The proportion varies from Member State to Member State'<sup>84</sup>. The Commission further notes that 'there are big differences of the recovery rate within the Member States'<sup>85</sup>.

This report therefore suggests that the observation of such differences and patterns prompts questions having a more trenchant character than many of the questions asked at present for monitoring the recovery of Traditional Own Resources. In this report we shall highlight these differences and show existing patterns without trying to explain them.

### 5.4.3 Summary of findings in the recovery stage

#### KEY FINDINGS

- This section identified EU-wide recovery rates of customs debts for the whole period from 2006 until 2011 and calculated corresponding recovery indices for all Member States. These indices showed substantial differences in recovery performance between EU Member States.
- The results identify two high (Germany and Sweden) and eight low performing Member States (Italy, Greece, Lithuania, Austria, Latvia, The Netherlands, Cyprus and Belgium).
- The theoretical financial impact of these differences can be estimated by comparing high and low recovery performance in the EU. If all Member States had recovered customs debts as the Member State with the 'most effective recovery' rate, about €1,3 billion more might have been recovered when compared to applying the performance of the least effective Member State.

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<sup>83</sup> Statistical evaluation of irregularities for the Commission's Annual Report on the protection of the European Union's financial interests and the fight against fraud 2011.

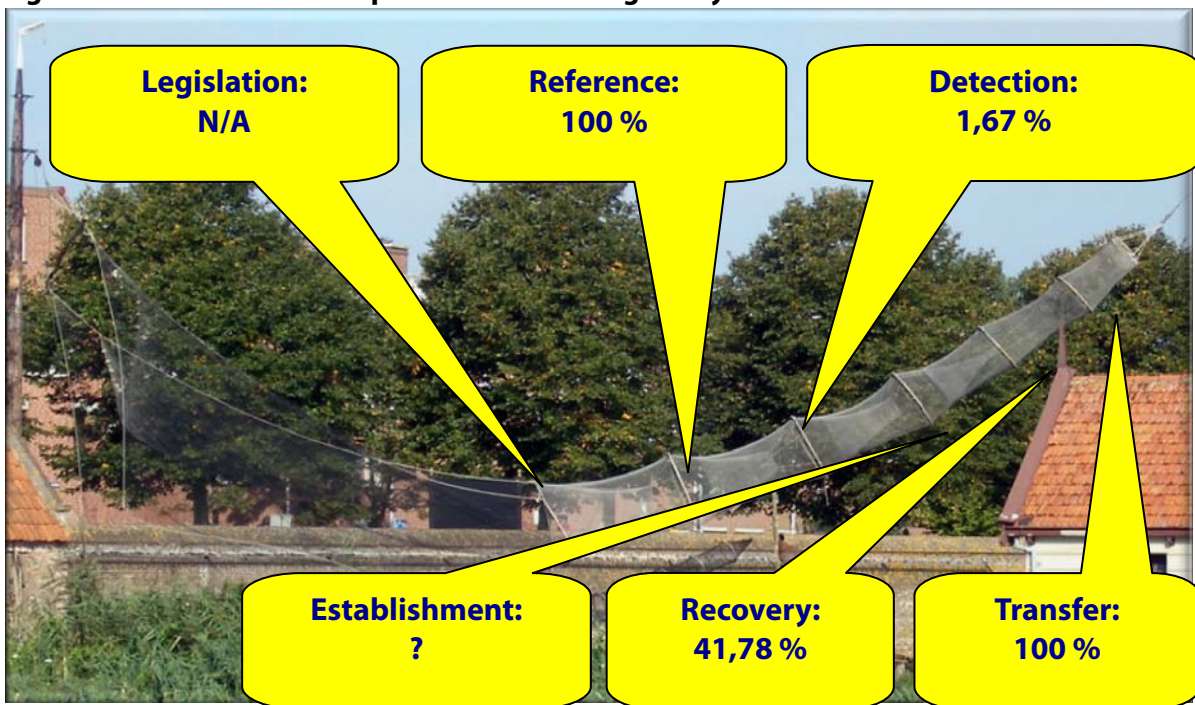
<sup>84</sup> Ibid par. 3.4.1.

<sup>85</sup> Ibid par. 3.4.2.

- If all Member States had performed according to the best possible recovery standards, amounts of recovered customs debt would have totalled more than €1,5 billion. Comparing this amount with the €0,9 billion actually recovered during this period, additional recoveries of around €0,6 billion could have been envisaged.
- Where differences appeared to show structural patterns, these were given further attention.
- Bigger volumes of customs debt to be recovered seem to result in bigger amounts of irrecoverable debt, even when the write-off risk as such is constant.
- Taking the total amount of all material write-off decisions of the Commission as 100 % and leaving out performance percentages up to 5 %, only five Member States sent requests to the Commission concerning significant amounts of irrecoverable customs debt. Only 11 Member States sent in **any** request leading to a material decision.

## 5.5 TRANSFER PERFORMANCE

Figure 28 - EU-wide transfer performance in irregularity cases 2006-2011



The picture above illustrates our findings that the EU-wide transfer rate during the research period can be considered to be 100 %. At EU level for the period from 2006-2011, the total of recovered amounts, which, according to OWNRES, should have been transferred to the Commission, appeared to be transferred.

The sources for this were partly derived from the Commission's Annual Reports on the Protection of the EU's financial interests and the Fight against fraud and partly the Commission information, access to which was requested by the research team. Data from the Commission's Annual Reports concerned recovered amounts for customs debt in irregularity cases, as reported in OWNRES. The information from the Commission concerned amounts recovered, which have been accounted for in the Member States' B-accounts.

Comparing these recovered amounts from OWNRES with comparable figures from the B-accounts shows disparities at both Member State and EU levels. At EU level, and 'looking from OWNRES to the B-account', all amounts of recovered customs debt (appear to) have been transferred to the Commission. 'Looking from the B-account to OWNRES' gives a different picture. Taking account of recovered amounts of customs debt from both sources (OWNRES and B-account) and examining the disparities between OWNRES and B-account provides an indication of Member States' transfer performance.

### 5.5.1 Calculation of transfer rates and indices

Performance rates for the **transfer stage** of the customs recovery process of Member States can be calculated by first taking the amount of all customs debt recovered during the research period and entered as such in the Member State's B-account, then taking the amount of all customs debt recoveries reported as such in the OWNRES database. We calculate the percentage of the Member State's B-account recoveries of the Member State's OWNRES-recoveries (see rate below). If this percentage is higher than 100 %, the transfer rate is considered to be 100 % and shown accordingly. Then from all amounts of all Member States' B-account recoveries and all Member States' OWNRES-recoveries we can calculate the EU transfer rate during the research period. As some Member States' transfer rates are actually over 100 %, calculation of a corresponding transfer index makes no sense. We illustrate this calculation with figures from Belgium (see below).

**Table 9 - Customs transfer performance in irregularity cases – example of Belgium 2006-2011**

2006-2011 a	Recovered customs debt in the B-account b	Recovered customs debt in OWNRES c	Rate	Index
BE d	€ 42 197 000,00	€ 18 182 975,45	100 %	N/A
EU e	€1 412 200 000,00	€ 893 547 090,90	100 %	N/A

**Source:** Calculations made on the basis of B-account data 2006-2011 access to which was requested from the Commission services and Annual Reports on the protection of the European Union's financial interests and the fight against fraud of the Commission 2006-2011

With the figures of Belgian B-account recoveries, as received from the Commission services, we can calculate the total amount of recovered B-account customs debt in Belgium during 2006-2011 (cell bd in the table above). Using the Annual Commission Reports we can calculate the comparable amount of Belgian OWNRES recoveries for this period (cell cd in the table above). By comparing these two recovery amounts (on the basis of the formula: recovered customs debt in the B-account in € / recovered customs debt in OWNRES in € in per cent) we find that the B-account recoveries in Belgium exceed its OWNRES recoveries. As, for the time being, we are primarily interested whether Belgium has transferred all recovered amounts of customs debt in irregularity cases to the Commission, we note transfer rates > 100 % as 100 % (B-account recoveries made available to the Commission in excess of the amount of OWNRES recoveries harm neither the EU budget nor the interests of the Member States and their tax payers). The Belgian transfer rate is therefore considered to be 100 %.

We might anticipate that all amounts of established customs debt to be found in OWNRES could also be found in the B-account and vice versa. Belgian OWNRES and B-account would not be an exception to this rule. But in the research period, Belgian B-account recoveries were more than twice its OWNRES recoveries. The Belgian transfer rate would theoretically show a percentage of more than 200 %. What is the reason for this disparity?

According to EU legislation, recoveries from the Belgian B-account must be entered in the Belgian A-account and then transferred to the European Union so these amounts should be correct.

But why are the Belgian OWNRES recoveries so much less? Are not all recovered customs debts in irregularity cases registered in the Belgian sector of the OWNRES database resulting in too many OWNRES cases remaining 'open'? Perhaps not all irregularity cases are entered into OWNRES by the Belgian authorities.

Does this disparity result from the fact that the Commission's Annual Report is based on OWNRES queries which only take into account recoveries made in the same year as the detection of the underlying irregularity, whereas the B-account may also contain recoveries concerning previous years?

Applying our data-sifting methods and thus assessing Member States' transfer performance leads us to ask questions and perhaps might indicate possible answers, especially when the Belgian situation is compared to other Member States' situations.

The following overview shows the EU-wide results for customs transfer rates.

**Table 10 - Customs transfer rates in irregularity cases of Member States 2006-2011**

Member State <sup>86</sup>	Transfer rate <sup>87</sup>
MT	100 %
IT	100 %
EL	100 %
CY	100 %
AT	100 %
LV	100 %
BE	100 %
PT	100 %
DE	100 %
UK	100 %
EU	100 %
NL	100 %
FR	100 %
PL	100 %
LT	97 %
FI	94 %
HU	89 %
SK	86 %
DK	85 %
ES	71 %
BG	62 %
SI	59 %
SE	53 %
IE	46 %
EE	35 %
CZ	32 %
RO	12 %
LU	N/A

**Source:** Calculations made on the basis of B-account data 2006-2011 access to which was requested from the Commission services and Annual Reports on the protection of the European Union's financial interests and the fight against fraud of the Commission 2006-2011

Many Member States have transfer rates substantially under 100 %. Why do some Member States enter recoveries in OWNRES, which appear not to be entered at the same time in the B-account and subsequently transferred to Brussels? The Commission's Annual Reports uses OWNRES recoveries to inform the public how well the Member States did to protect the EU's financial interests and were able to claw back criminal proceeds in the fight against fraud. These OWNRES recoveries are based on data entered into OWNRES by the Member States. If Member States do enter recoveries in OWNRES, which are not at the same time entered in their B-accounts and consequently transferred to the Commission, their contribution to recovery in irregularity cases will be erroneous.

<sup>86</sup> Customs transfer rates for Bulgaria and Romania are calculated on the basis of data as from 2007.

<sup>87</sup> Customs transfer rates > 100 % shown as 100 %.



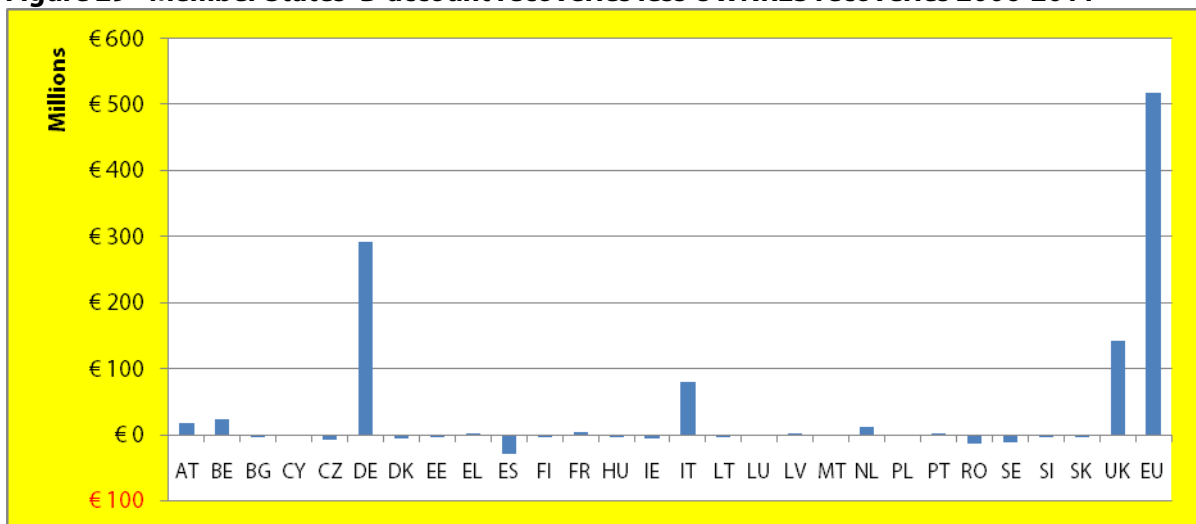
### 5.5.2 Analysis of EU-wide transfer performance

According to EU legislation, all recovered amounts to be transferred to the Commission should indeed be transferred. In this case a 100 % transfer performance would be achieved. But a transfer gap remains possible either due to inappropriate management of the A-account or to faulty A-account hard- or soft-ware. This applies for all recovered TOR, irrespective of whether the recoveries are made voluntarily in the framework of import declarations or following the establishment of customs debt after customs irregularities have been detected. We aimed to identify the last category in particular.

We added to the ‘evaporation’, in the transfer stage of the customs recovery process, the absence of a proper reconciliation between OWNRES and the Member States’ B-accounts where recovered amounts are at stake.

We first calculated the transfer rates. We then deducted the amount of OWNRES recoveries from the amount of B-account recoveries to see whether B-recoveries for the EU as a whole and individual Member States at least equal OWNRES-recoveries. The following figure shows the results of this comparison.

**Figure 29 - Member States’ B-account recoveries less OWNRES recoveries 2006-2011**

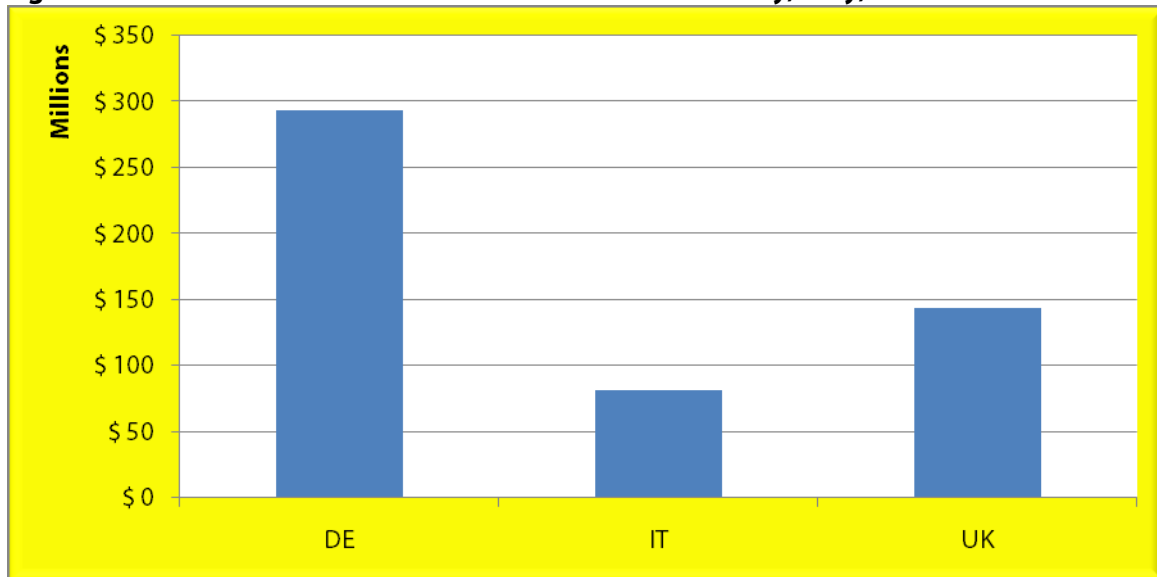


**Source:** Calculations made on the basis of B-account data 2006-2011 access to which was requested from the Commission services and Annual Reports on the protection of the European Union’s financial interests and the fight against fraud of the Commission 2006-2011

The figure above confirms that, at the EU-level, B-account recoveries exceed OWNRES recoveries. The difference between the two totals is more than €0,5 billion over the research period. The largest differences occur in Germany; UK and Italy. The research team nevertheless concludes that overall recovery data on irregularity cases in OWNRES do not show ‘evaporation’ at EU-level.

The following figure further analyses the difference between B-account and OWNRES recoveries for Germany, Italy and the UK.

**Figure 30 - B-recoveries less OWNRES recoveries of Germany, Italy, and the UK 2006-2011**



**Source:** Calculations made on the basis of B-account data 2006-2011 access to which was requested from the Commission services and Annual Reports on the protection of the European Union’s financial interests and the fight against fraud of the Commission 2006-2011

Germany, Italy and the UK together account for more than €0,5 billion of the excess between B-account recoveries and OWNRES recoveries. This difference equals the net amount of EU-wide excess in the period 2006–2011. Such phenomena are an aspect of administrative performance in the TOR recovery field. Performance differences in detection of customs irregularities and recovery of customs debt may concern interaction with economic operators and be more challenging than other steps such as establishing customs debts, entering debts in the accounts, and transferring recovered amounts to the EU. But these latter working processes contribute to the existence of administrative performance differences between the Member States and should therefore not be underestimated.

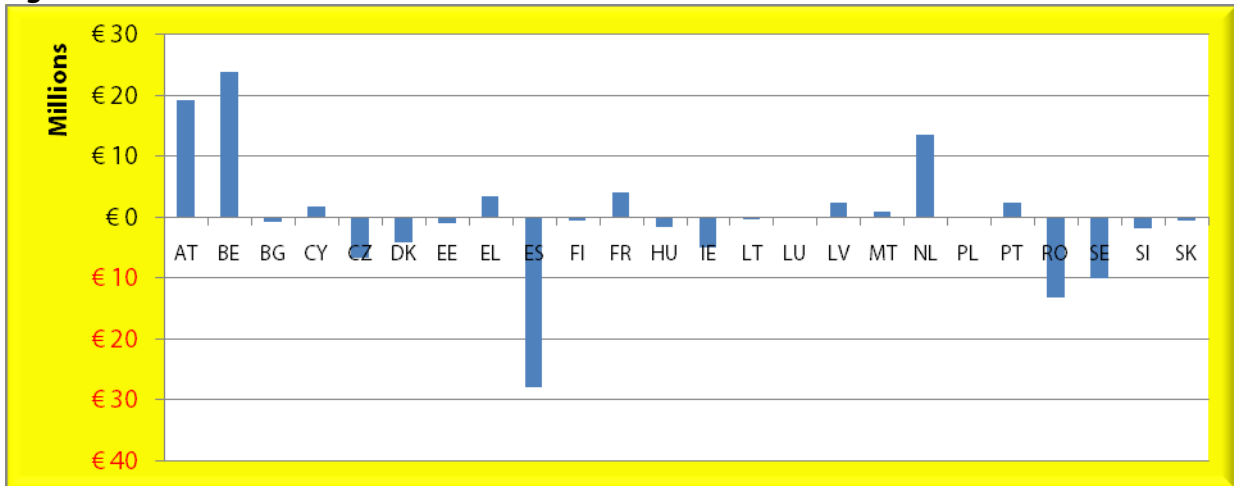
While not a matter of major concern that Member States have recovered (and accordingly transferred to Brussels) more than might be expected on the basis of OWNRES recoveries, as the EU budget – and therefore the other Member States and the EU tax payers - will thus benefit from this positive recovery performance. What is, however, surprising is that Germany’s, Italy’s and the UK’s B-accounts contain so many additional recovered amounts, which at first glance do not match with corresponding recoveries in OWNRES.

This may be caused by the fact that B-account recoveries could concern more than one year while OWNRES queries do not. This would either suggest that the B-accounts concerned contain many customs debt entries which do not have an equivalent OWNRES case or that many B-account recoveries have not yet been registered in OWNRES. Both possibilities put in question the accuracy of the OWNRES reporting. These figures are based on cumulative data from 2006–2011 and thus represent patterns in Member State behaviour during the research period; they are not a one-off phenomenon. They are also structural: Germany, Italy and the UK show such ‘additional recoveries’ in all years.

If all this can be explained by lax OWNRES reporting, entering all cases in OWNRES which qualify for registration and registering all linked recovery results, could result in a better recovery rate in the customs recovery process for all Member States involved. Both Germany and the UK would then benefit with an improved recovery rate, which can already be considered good on the basis of EU average standards, 70 % and 48 % respectively. The situation of Italy is more surprising: during the

research period, Italy already had a low recovery rate (8 % - the lowest EU recovery rate but one). If the amount of 'additional recoveries' in Italy's B-account were to be reported in OWNRES, the Italian recovery rate could improve to a rate just under the EU average. The figure below shows how the other Member States do.

**Figure 31 - EU-wide B-account recoveries less OWNRES recoveries 2006-2011**



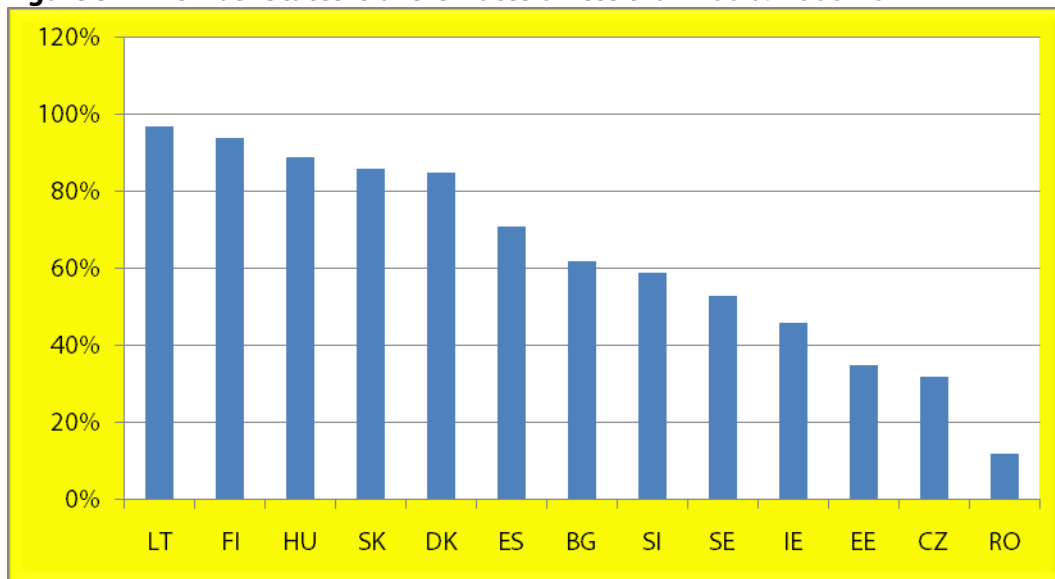
**Source:** Calculations made on the basis of B-account data 2006-2011 access to which was requested from the Commission services and Annual Reports on the protection of the European Union's financial interests and the fight against fraud of the Commission 2006-2011

If the 'big three' (Germany, Italy and the UK) are excluded, a similar picture is shown for those Member States who have bigger B-account recoveries than OWNRES-recoveries. Member States who show 'negative' recovery results, have reported more recoveries in OWNRES than in their B-accounts. One would typically expect that paid customs debts would be first accounted for in the national debt ledger; then in the Member State's B-account and subsequently registered in OWNRES. Under this assumption one would not expect to find recoveries in irregularity cases in OWNRES, which have not been entered in the B-account before. Questions are prompted on how national debt administrations, B-accounts and OWNRES are coordinated by the Member States.

Our findings show that almost half of the Member States have a transfer rate of less than 100 % (see figure below). Such percentages mean that the amounts of B-account recoveries are less than the amounts of recoveries entered in OWNRES. Recoveries accounted for in OWNRES cannot match with data in the B-account.

Where Member States have entered the results of their recovery efforts in irregularity cases in OWNRES but not in the B-account, no amounts will be transferred to these Member States' A-accounts and as a consequence also the EU budget will not receive anything. In the end, this 'transfer evaporation' will thus fall on other Member States and the EU taxpayers.

**Figure 32 - Member States' transfer rates of less than 100 % 2006-2011**



**Source:** Calculations made on the basis of B-account data 2006-2011 access to which was requested from the Commission services and Annual Reports on the protection of the European Union's financial interests and the fight against fraud of the Commission 2006-2011

Using our method, we would conclude that the overall performance rates to be calculated for the customs recovery process in these Member States should be correspondingly reduced by these percentages. We are reluctant to go that far, as the figures on OWNRES recoveries stem from subsequent Commission Annual Reports on the Protection of the EU's financial interests whereas the B-account recovery figures originate in Commission documents access to which was provided on request by the research team. Both these documents originate in the Commission, on the basis of Member States' entries. We should be prudent in taking account of the impact of these transfer rates on the final assessment of performance in the customs recovery process.

Given the methodology of the fyke metaphor, the research team has had to take these figures as they are. This report will thus show two figures, the overall performance in the customs recovery process not taking these transfer rates into account, and that while taking these rates into account.

### 5.5.3 Summary of findings in the transfer stage

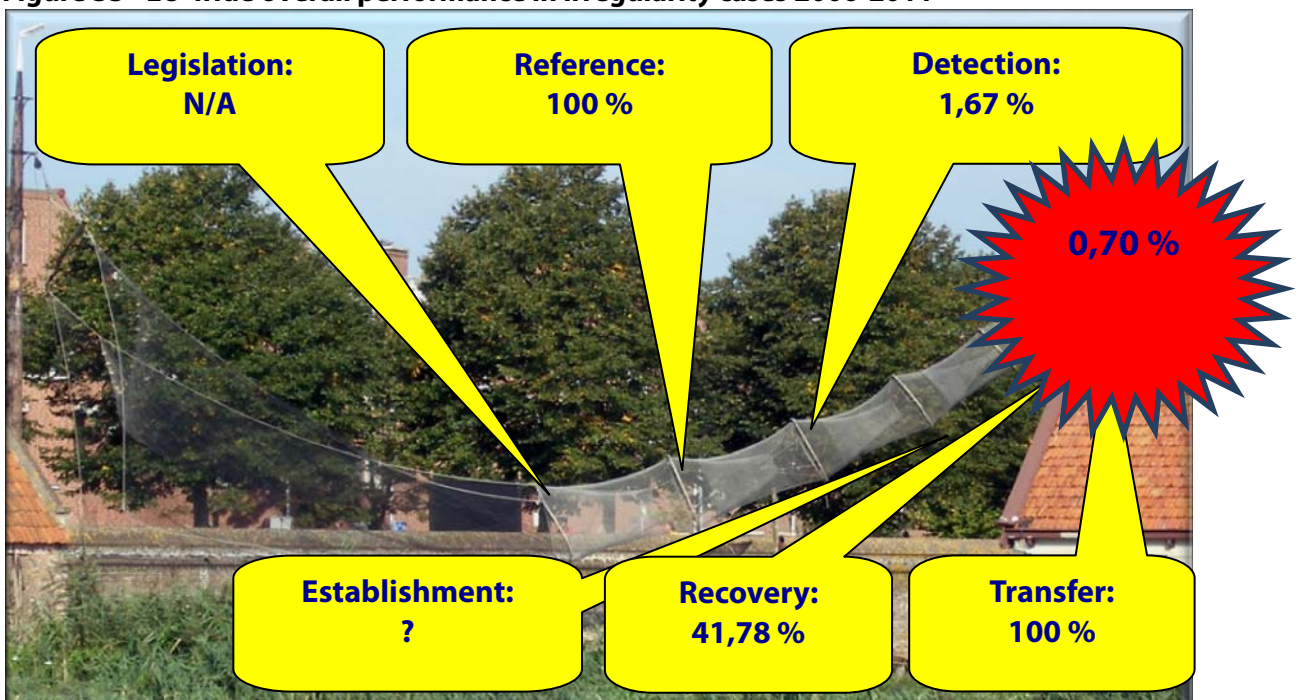
#### KEY FINDINGS

- We calculated EU-wide transfer rates of TOR for the whole period from 2006 until 2011 for all Member States and the EU as a whole.
- As long as the amount of B-account recoveries at least equalled the amount of OWNRES recoveries we concluded that no 'transfer evaporation' had taken place. When the amount of B-account recoveries was less than the amount of OWNRES recoveries, in principle, we concluded that the risk of 'evaporation' in the transfer stage existed.
- Substantial differences exist in transfer performance between EU Member States. Some Member States showed B-account recoveries, which could not be matched up with Member States' OWNRES recoveries. The disparity amounted to more than €0,5 billion, even if good reasons might exist to explain this.

- Almost half of the Member States have a transfer rate of less than 100 %. Such percentages mean that the amounts of B-account recoveries are less than the amounts of recoveries entered in OWNRES. Recoveries accounted for in OWNRES cannot match with data in the B-account.
- The results require closer examination and further follow-up with a view to safeguard the recovery of TOR for the EU, and to ensure that all Member States share a comparable financial burden in the budgetary revenue field.

## 5.6 OVERALL PERFORMANCE

Figure 33 - EU-wide overall performance in irregularity cases 2006-2011



We examined the six stages of the customs recovery process in the previous sections. We assessed the administrative performances of the different Member States in each of the stages where the Member States' customs services have an impact on the final result of the process. We found that the EU-wide detection rate during the research period was 1,67 %. This rate means that, for the EU as a whole, Member States detected customs irregularities amounting to 1,67 % of the overall amount of collected TOR. So for the period from 2006-2011, for each €100 of declared and paid customs transactions in the EU, Member States' customs services detected €1,67 of customs irregularities.

We then looked at the establishment stage. We were not fully able to link the establishment stage to the detection stage with an appropriate rate and therefore decided to link the detection stage to the recovery stage. This created no problem as EU data on recovered amounts in irregularity cases are already linked to detection scores. Having been able to calculate establishment rates as well would have further refined our research results but did not materially impact on our conclusions. We found that the EU-wide recovery rate for 2006-2011 was 41,78 %. This rate meant that of the amount of detected irregularities 41,78 % were recovered in the year of detection. In the absence of cohort data on historical recovery rates, it was not possible to calculate more refined recovery

rates. However, as the recovery data in OWNRES are extracted on the same basis for all Member States, this should not impact on our assessment results.

Finally we calculated transfer rates. We found that, at the EU level, all recoveries for customs debts established in irregularity cases can be considered transferred to the Commission.

The picture above brings us to the end of our assessment process, to complete it with assessing the overall customs recovery process.

The picture above shows us that the EU-wide overall customs performance during the research period is 0,7 %, which we arrive at by multiplying the performance rates from the detection, recovery and transfer stages. So for the period from 2006-2011, for each €100 of declared and paid customs transactions in the EU, Member States' customs services transferred €0,7 to the Commission for all customs debts which were established following the detection of customs irregularities.

Further refining the available tools may contribute to more reliable results. Nevertheless, as we analysed available data over six years, we feel that our results are reliable especially as we were able to observe differences and patterns over time and to compare Member States' relative performance.

### 5.6.1 Calculation of overall performance rates and indices

We calculated overall performance rates and indices for the customs recovery process of Member States, by first taking the detection rate, the recovery rate and the transfer rate per Member State during the research period. We then multiplied these rates to provide the overall performance rate per Member State during the research period for the customs recovery process. The result of multiplying the EU detection rate, the recovery rate and the transfer rate provides the EU overall performance rate for the customs recovery process during the research period. This EU overall performance rate can be used as an index.

Using the overall performance rate of a Member State we are able to create an index for its overall customs performance compared to the Union average. We illustrate this calculation in the table below using Belgium as an example.

**Table 11 - Customs overall performance in irregularity cases - example of Belgium 2006-2011**

2006-2011 a	Detection rate b	Recovery rate c	Transfer rate d	Rate b*c*d = g	Index
BE e	0,60 %	24,05 %	100 %	0,14 %	0,20
EU f	1,67 %	41,78 %	100 %	0,70 %	1,00

**Source:** Calculations made on the basis of detection, recovery and transfer rates 2006-2011 calculated above

We multiply the Belgian detection, recovery and transfer rates (cells be, ce, and de in table above) to find its overall customs performance rate of 0,14 %. We then take the EU overall customs performance rate (which is calculated in a comparable way) of 0,70 % as an index and calculate the Belgian index of 0,20 (performance rate BE (cell ge) / performance rate EU (cell gf)). Belgium performs overall one fifth as well as the EU average.

Why are Belgium's detection rate and its recovery rate below the EU average? Why is the overall performance index of the Belgian customs administration so low as compared with the EU average? Are there other reasons than purely operational ones from the detection and recovery

stage, which may explain Belgium's relatively low performance? If so, do these reasons concern matters such as staff issues, managerial responsibilities, audit policies etc.? Why is the Belgian performance so different from those of its neighbours?

The next two tables show the overall performance rates and indices for all Member States, the first with overall performance rates up to the transfer stage and the second including the transfer stage. The reservation concerns the fact that high performers in the transfer stage were considered to be 100% performers without us being able to give a full assurance of that and the fact that low performers have reported recoveries in OWNRES, which apparently have not yet been entered into the B-accounts. But given the figures from the Commission and the Member States, we have no alternative than to draw the conclusions we do.

**Table 12 - Customs overall performance rates and indices in irregularity cases of Member States up to transfer stage 2006-2011**

Member State <sup>88</sup>	Overall performance rate	Overall performance index <sup>89</sup>
HU	1,70 %	2,43
RO	1,62 %	2,32
LT	1,15 %	1,65
DE	1,10 %	1,58
DK	1,07 %	1,52
ES	1,03 %	1,47
UK	1,00 %	1,43
LV	0,86 %	1,22
SI	0,76 %	1,08
EU	0,70 %	1,00
AT	0,68 %	0,97
CZ	0,68 %	0,96
FR	0,62 %	0,88
SE	0,62 %	0,88
PL	0,61 %	0,87
IE	0,58 %	0,83
EE	0,53 %	0,76
FI	0,49 %	0,70
NL	0,44 %	0,63
BG	0,42 %	0,59
SK	0,35 %	0,50
CY	0,27 %	0,39
PT	0,22 %	0,31
MT	0,20 %	0,29
IT	0,15 %	0,21
BE	0,14 %	0,20
EL	0,07 %	0,09
LU	N/A	N/A

**Source:** Calculations made on the basis of detection and recovery rates 2006-2011 calculated before

<sup>88</sup> Customs overall performance rates and indices for Bulgaria and Romania are calculated on the basis of data as from 2007.

<sup>89</sup> Customs overall performance index on the basis of EU-wide customs performance rate average of 0,70 % (EU = 1).

**Table 13 - Customs overall performance rates and indices in irregularity cases of Member States with transfer stage 2006-2011**

Member State <sup>90</sup>	Overall performance rate	Overall performance index <sup>91</sup>
HU	1,52 %	2,17
LT	1,11 %	1,59
DE	1,10 %	1,58
UK	1,00 %	1,43
DK	0,90 %	1,29
LV	0,86 %	1,22
ES	0,73 %	1,05
EU	0,70 %	1,00
AT	0,68 %	0,97
FR	0,62 %	0,88
PL	0,61 %	0,87
FI	0,46 %	0,66
SI	0,45 %	0,64
NL	0,44 %	0,63
SE	0,33 %	0,46
SK	0,30 %	0,43
IE	0,27 %	0,39
CY	0,27 %	0,39
BG	0,26 %	0,37
CZ	0,22 %	0,31
PT	0,22 %	0,31
MT	0,20 %	0,29
RO	0,20 %	0,28
EE	0,19 %	0,27
IT	0,15 %	0,21
BE	0,14 %	0,20
EL	0,07 %	0,09
LU	N/A	N/A

**Source:** Calculations made on the basis of detection, recovery and transfer rates 2006-2011 calculated before

<sup>90</sup> Customs overall performance rates and indices for Bulgaria and Romania are calculated on the basis of data as from 2007.

<sup>91</sup> Customs overall performance index on the basis of EU-wide customs performance rate average of 0,70 % (EU = 1).



### 5.6.2 Analysis of EU-wide performance in the customs recovery process

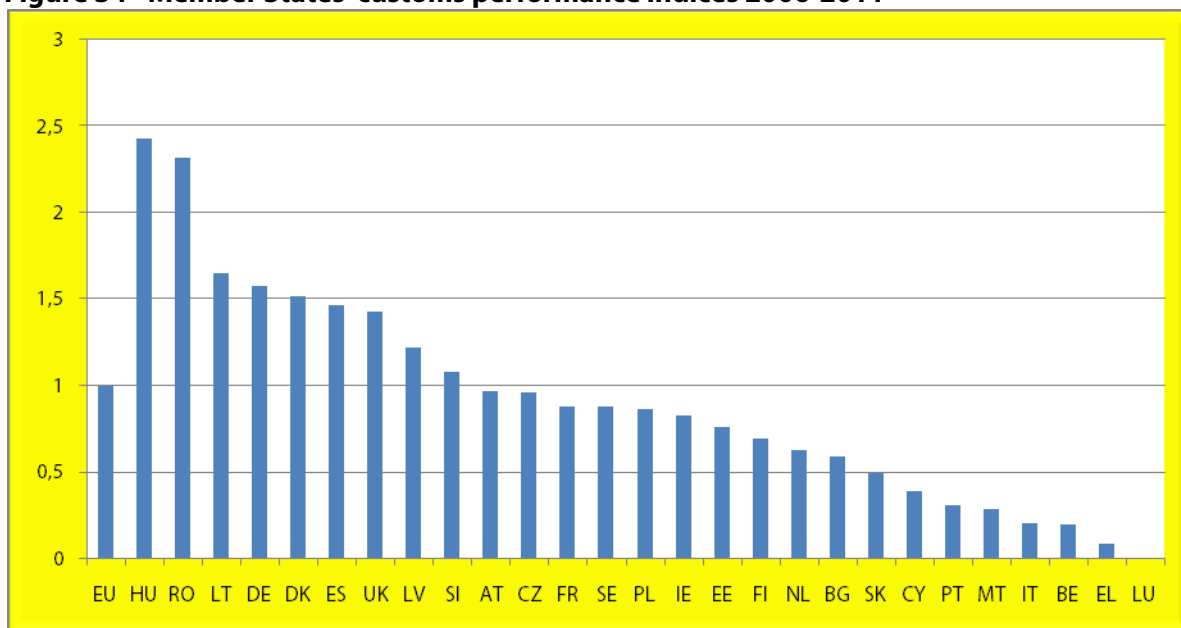
Irregularity detection, debt establishment, recovery and transfer performance in the customs field contribute to the final success of the customs debt recovery process and overall customs performance in recovering TOR. The higher the performance rates and indices in the individual stages, or in our analogy in the 'funnels of the fyke', the higher is the final financial output.

We also found the reverse, with the effect of minimising the effectiveness of customs recovery, and thus contributing to non-performance in the overall recovery process. The lower the performance rates and indices or the larger the performance gap and lower the indices, the more 'evaporation' occurred.

The performance at each stage of the process affects the following stage. The higher the initial performance, the higher the output in the end; the lower the performance at the entry of the fyke the less 'catch' at the end.

We calculated the EU-wide overall performance rates and indices and show the results in Figure 34 below. Given the objectives of this research we did not calculate non-performance ('evaporation') rates and indices. They would show what could be referred to as the 'customs performance gap' and can be considered the opposite of the figures we provide now.

**Figure 34 - Member States' customs performance indices 2006-2011**



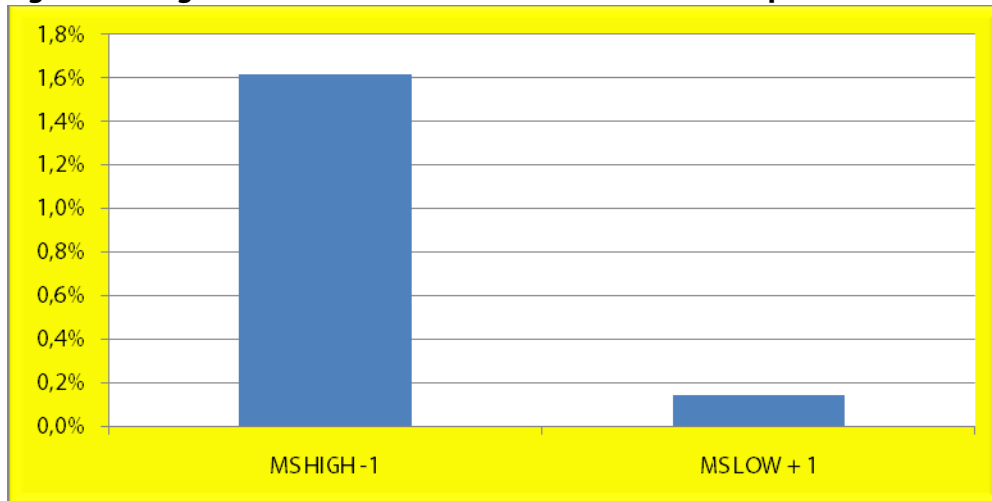
**Source:** Calculations made on the basis of detection and recovery rates 2006-2011 calculated before

Figure 34 illustrates the considerable difference between the highest and lowest performing Member State. Excluding the outliers, the difference between the 'high performer' and 'low performer' is more than 11:1<sup>92</sup>. Even taking a 30 % band around the EU index as a 'tolerance zone' of statistically acceptable performance and again excluding the outliers, the picture nevertheless gives us six 'high performing' Member States and eight 'low performing' Member States.

<sup>92</sup> As Luxembourg did not report any detected customs irregularity for 2007, 2009, 2010 and 2011, it is impossible to calculate a meaningful performance rate and corresponding performance index for Luxembourg. Luxembourg is therefore left out from consideration in this paragraph.

A range of legal and policy reasons may explain why customs services in one Member State achieve high performance and those in others low performance. The existence of these differences affects the amount of TOR being received by the Union and as a consequence on the level of the budgetary contribution of the Member States under the GNI resource.

**Figure 35 - High-low difference in Member States' customs performance rates 2006-2011**



**Source:** Calculations made on the basis of detection and recovery rates 2006-2011 calculated before

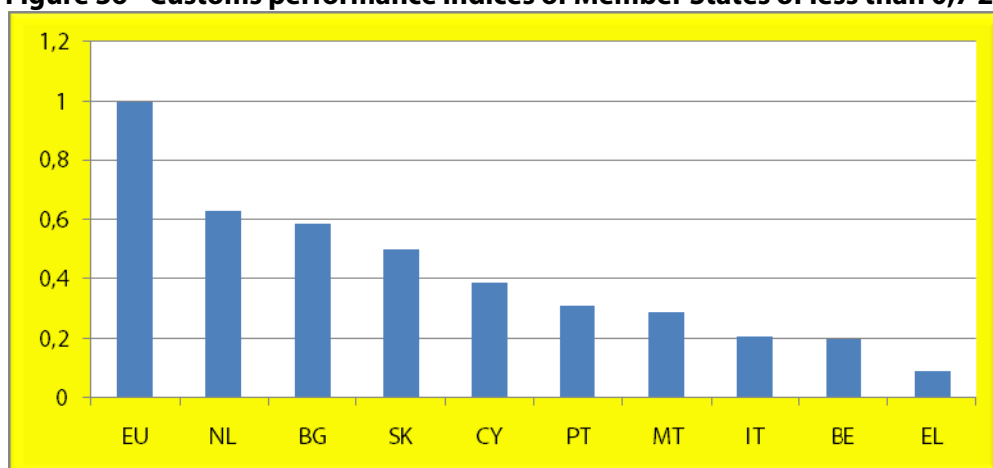
Figure 35 shows the difference in overall customs performance between the 'high performing' Member State but one and the 'low performing' Member State but one. The figure demonstrates that this gross difference is around 1,5 percentage points. This may appear to be a small difference, but it is a significant one. In absolute terms, this difference is equivalent to about **€2 billion** over the whole period.

If all Member States' customs services had performed in customs recovery as the 'high performer' did, additional amounts in the range of €2 billion might have been recovered and transferred to the European Union as compared with the situation if all had performed according to the performance rate of the 'low performer'. Around €1 billion has actually been recovered during the research period, so an extra amount of around €1 billion in recovered customs debt could have been envisaged.

As a basis for calculating these overall performance rates and indices, inter alia OWNRES recovery figures are used which only represent recoveries of customs debts made in the same year as the reporting year of the detected customs irregularities. These figures do not exclude the possible future payments leading to the full recovery of the customs debts concerned.

Similarly the overall performance rates and indices are calculated on the basis of the Member States' detection figures from OWNRES. These data are used for the calculation of both detection and recovery rates and indices. They are available for all Member States, are published by the Commission on the basis of Member States' entries, and give a fair, transparent and reliable comparison. Using such data on irregularity detection in the reporting year does not exclude the possibility of further irregularity detection on that year in later years. These aspects should be borne in mind when looking at the following figure.

**Figure 36 - Customs performance indices of Member States of less than 0,7 2006-2011**



**Source:** Calculations made on the basis of detection and recovery rates 2006-2011 calculated before

Figure 36 above shows Member States, which have a structural customs performance index of under 0,7, well below the EU average. Awareness of the existence of such structural differences in overall customs performance should lead to discussions on Member States' budgetary responsibilities in the EU revenue field.

If one took both the highest detection rate among the Member States, excluding the outlier, and the highest recovery rate among the Member States excluding the outlier, and multiplied these rates, we could estimate the maximum financial output if all Member States had detected customs irregularities as the most effective Member State did and had recovered customs debts as the 'most effective recovery' Member State had, we find a larger figure of the order of about **€4 billion** over six years when compared to the financial output of customs debt recovery if all Member States had detected and recovered as the least effective detector and recoverer but one did. If all Member States had performed to these highest possible standards, where an amount of around €1 billion has actually been recovered during the research period, an extra amount of recovered customs debt of around €3 billion could have been envisaged.

We are aware that calculating financial equivalents of existing differences in the way we have may be considered a **theoretical exercise**. But it indicates the scale of the budgetary problem where high performing Member States make up for low performing Member States.

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### 5.6.3 Summary of overall findings in the customs recovery process

#### KEY FINDINGS

- We estimated EU-wide overall performance rates for customs recovery for the whole period from 2006 until 2011 and calculated corresponding performance indices for all Member States. These indices showed substantial differences in overall customs performance between EU Member States in the TOR recovery process.
- Excluding the outliers, the results show six 'high performing' Member States and eight 'low performing' Member States.
- The theoretical financial impact of these differences can be estimated by comparing high and low recovery performance in the EU. If all Member States had performed as the 'most effective' Member State did, about €2-4 billion more might have been recovered as compared with the least effective performance.
- During the research period an amount of around €1 billion has actually been recovered. Had all Member States performed as the 'most effective' Member State did, additional recoveries of customs debt totalling €1-3 billion could have been envisaged.
- The results need further follow-up.

## 6 COMMISSION MONITORING OF TOR RECOVERY

The second objective of this report is to review and assess the Commission monitoring of TOR recovery in terms of possible administrative performance differences between the Member States. We have shown substantial but also structural differences between the Member States. Has the Commission also identified and analysed these differences and patterns?

### 6.1 PRIORITIES IN SAFEGUARDING THE EU'S FINANCIAL INTERESTS

The data we collected did not indicate that the kind of analysis that we have undertaken had high priority for the Commission departments concerned. Commission services are aware that Member States are different and that their administrations and their customs services work differently. They are reluctant to make comparisons between Member States on the basis of the statistics the Commission has collected over time, including the data collected from the Member States on a regular basis.

The Commission has the data, is used to assessing TOR recovery at each stage of the customs debt recovery process, and can compare Member States' performance at each stage and overall. The thematic report from the Commission's DG Budget on the Member States' customs control strategies of 2011 for instance is based on the results of inspections carried out in the Member States in 2009 and 2010. It compares Member States' customs clearance and post-clearance controls. It assesses Member States' performance in terms of Red-Amber-Green (RAG) analysis used by the European Court of Auditors, red for not satisfactory, amber for partly satisfactory, green for generally satisfactory<sup>93</sup>. The Commission should therefore be able to assess and evaluate Member States' performance in the customs recovery process over time.

Our data show that the Commission carefully scrutinises all Member States' activities in TOR recovery. All monitoring actions, inspections and audits from the Commission are focussed on whether Member States' activities comply with EU legislation and safeguard the EU's financial interests.

Where the Commission checks reveal case-level anomalies the Commission asks whether this anomaly represents a one-off error or a more systematic one. In both cases the Commission will calculate the damage done to the EU budget and hold the Member State in question financially responsible. Thus the damage for the budget may be repaired. Other Member States would not need to compensate for this loss with larger GNI contributions in that case.

Giving low priority to exploiting the financial output of TOR recovery as the result of a production process by Member States' customs services might indicate customs debt recovery processes in the Member States being taken for granted, provided these processes take place in EU compliant administrative frameworks. The differences that we found should argue against such a position.

### 6.2 EQUAL OR COMPARABLE TREATMENT

The DG Budget 2011 Annual Activity Report states: *'DG Budget is responsible for checking that Member States' administrations have complied with Community law when collecting TOR. ... Failure to comply with the rules may lead to a financial liability to the EU Budget'*<sup>94</sup> and *'the focus of the*

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<sup>93</sup> As the report mentions, this tool has also been used by Special Report No. 1/2010 from the European Court of Auditors.

<sup>94</sup> DG Budget Annual Activity Report 2011 part 3.1.1.1, page 45.

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*inspections is the identification of the key procedures and systems in each Member State that ensures correct and timely collection and making available of TOR<sup>95</sup>.*

When describing the key inherent risks of own resources management, the Commission identified the main risk as Member States not paying or not paying (T)OR in time<sup>96</sup>. Yet the Commission controls aim at equal treatment for all Member States<sup>97</sup>. Does this refer to treating the Member States in the same way, or treating Member States in a comparable way, that is according to the way in which they differ from each other?

Later DG Budget Action programmes for TOR inspections during the research period seem to point in this last direction. The summaries of all programmes from the research period state that *'the task (...) is to scrutinise the way in which the Member States discharge their responsibility for collecting TOR. These inspections have three objectives:*

- *to protect the EU's financial interests by ensuring that the financial burden is shared out fairly among the Member States,*
- *to maintain a level playing-field for economic operators and*
- *to keep the budgetary authority and the Court of Auditors properly informed<sup>1</sup>.*

The data we collected suggested this first objective referred to inspecting all Member States in the same way.

The current Commission activities of monitoring, inspecting and auditing customs debt recovery can be considered as treating the Member States in the same way. On the basis of pre-set thematic objectives in annual control plans and pre-arranged control manuals, guidelines and checklists, the Commission tries to take account of protecting the EU financial interests in the best way possible. It is, of course, its first responsibility to protect the financial interests of the EU. Does monitoring, inspecting and auditing Member States on the basis of the same methods, thematic focuses, and checklists, also guarantee that Member States in the end share a comparable financial contribution in TOR recovery?

### **6.3 TREATY OBLIGATION TO SAFEGUARD THE EU'S FINANCIAL INTERESTS**

But where in the treaty is the Commission's obligation to protect not only the financial interests of the EU but also those of the Member States? The treaty obligation to protect the financial interests of the EU is described in TFEU Article 325. *'The Union and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Union through measures to be taken... which shall act as a deterrent and be such as to afford effective protection in the Member States, and in all the Union's institutions, bodies, offices and agencies'*.

Paragraph 2 of that article states *'Member States shall take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own interests'*. It lays the obligation on Member States to apply comparable standards.

The provisions of TFEU Article 325 target fraud and any other illegal activities affecting the financial interests of the Union. If that is considered too narrow a definition, other TFEU articles comfort our arguments that the Commission should look to protect EU financial interests and

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<sup>95</sup> Ibid., page 46.

<sup>96</sup> Ibid., in Annex 5: internal control templates for budget implementation, page 69.

<sup>97</sup> Ibid., in Annex 5: internal control templates for budget implementation, page 70.

ensure comparable contributions of Member States. Article 317 TFEU requires that the Commission shall implement the budget *'in cooperation with the Member States... , having regard to the principles of sound financial management'* where the latter implies economy, efficiency and effectiveness, thus, inter alia, applying comparable standards among Member States in recovering TOR.

The current Commission strategy aims to safeguard that all TOR, which ought to be transferred to the EU, are indeed transferred, using the financial liability weapon when necessary to enforce Member States' obligations. The thematic report from DG Budget on the Member States' customs control strategies in the MS (referred to above) points out that the only objective of Commission inspections playing a role was to see whether Member States protect the EU's financial interests by carrying out effective customs controls<sup>98</sup>.

#### **6.4 COMPARING PERFORMANCE AS HIGH PRIORITY**

Other objectives could bring added value to the TOR recovery process. Comparing Member States performance allows us to ask and perhaps answer questions about why Member States, which appear to be in a similar situation on TOR recovery, nevertheless have different success rates, and vice versa. Understanding the reasons why enables us to identify best practices from which all could benefit. Comparing a Member State's performance over time provides additional insights, which might explain how far existing differences and similarities are of a structural nature, and whether or not trends can be observed.

Such understanding and insights on TOR recovery may lead to the early identification of negative trends, and allow appropriate measures to be taken in good time to remedy the situation. This would also lead to identifying risks to TOR-recovery at Member State level and could even result in additional revenue for the EU budget.

What extra TOR could this analytical approach bring into the EU's accounts? The research results show that when all Member States, during the research period, had performed as the best detector, up to €1 billion additional TOR revenue could have been expected. If all Member States had been able to detect irregularities as the best performer, and recover as the best recovery performance, as much as €3 billion extra could have been recovered during this period.

Both the EU and the Member States would benefit. Apart from the fact that higher TOR recoveries mean higher recovery fees for the Member States, more TOR recoveries and less difference in TOR recovery between the Member States would benefit the European taxpayer as fewer GNI contributions would need to be transferred to the EU budget and more importers would pay the due amounts of duty.

The DG Budget Report of the Berlin seminar on TOR-inspections<sup>99</sup> contains several germane remarks. *'... Member States expressed the need for an equal treatment on the basis of transparent and common standards'*<sup>100</sup>. One Member State *'expressed the importance of co-operation in protecting the EU budget as well as the MS' budgets'*<sup>101</sup>. As regards the possibility for Member States to assess TOR recovery efforts in other Member States, this Member State remarks that *'the presentation of results from all inspections at the Advisory Committee of Own Resources (ACOR) is regarded as not*

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<sup>98</sup> Customs control strategy in the Member States, thematic report from DG Budget, 2011, Executive summary.

<sup>99</sup> Report of the seminar Inspections on Traditional Own Resources Present and future, held in Berlin on 27-28 October 2011.

<sup>100</sup> Ibid., page 2.

<sup>101</sup> Ibid., page 3.

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*always relevant as reports often refer to country specific issues*<sup>102</sup> and *'a more intensive and technical discussion in the ACOR may achieve a more measurable comparison of Member States'*<sup>103</sup>.

## 6.5 MEASURES TO IMPROVE PERFORMANCE

The EU finances a customs programme that aims to help the customs union to *'function seamlessly as one, instead of a patchwork of 27 implementing administrations'*<sup>104</sup> The Programme allows, *inter alia*, the national administrations to handle 7 customs declarations every second, totalling 211 million per year, without disruptions for imports and exports. Over one billion information messages are exchanged every year between customs administrations via IT systems covered by the EU tax and customs programmes, with an average growth rate of 40 % over the period of 2006-2010. The European-wide secure computer network interconnects all customs and tax administrations avoiding the need to establish bilateral networks. Sharing information on legal entities between Member States avoids the need for economic operators to register in each Member State to perform customs operations, significantly reducing red tape and the cost of doing business. Entirely electronic handling (replacing paper for all dealings with customs in all EU) offers further savings potential. These advances should have effects on the performance rates of all Member States. If all efficiency savings could be diverted to checking risk transactions and resolving irregularities detected we would expect significant improvements in performance overall.

The European Court of Auditors (ECA), on its audit of the Commission's TOR inspections, said that *'...as the EU's external auditor, the ECA contributes to improving financial management and acts as the independent guardian of the financial interests of the citizens of the Union'*<sup>105</sup>; that *'the inspections are also important from the perspective of a Single Market and Trade Policy, as they assess that customs controls in all Member States are as robust at each point of entry at the EU's external frontier'*<sup>106</sup>. The Court stressed *'the importance of this transparency as all Member States should be able to see that the Commission is being just as thorough with other Member States'*<sup>107</sup>. During the seminar's plenary session participants urged that *'more technical discussions on the basis of thematic reports'* be held and that *'presentation of common aspects on financial and legal shortcomings (be made) in a more consolidated and comparative manner'*<sup>108</sup>.

These comments comfort our analytical approach, which in our view could benefit the collection of the Union's revenue.

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<sup>102</sup> Ibid., page 5.

<sup>103</sup> Ibid., page 6.

<sup>104</sup> This paragraph borrows heavily from European Commission Staff Working Paper 'The added value of the EU budget' SEC(2011)867 of 29.6.2011

[http://ec.europa.eu/budget/library/biblio/documents/fin\\_fwk1420/working\\_paper\\_added\\_value\\_EU\\_budget\\_SEC-867\\_en.pdf](http://ec.europa.eu/budget/library/biblio/documents/fin_fwk1420/working_paper_added_value_EU_budget_SEC-867_en.pdf) page 42

<sup>105</sup> Report of the seminar Inspections on Traditional Own Resources Present and future, held in Berlin on 27-28 October 2011. page 7.

<sup>106</sup> Ibid., page 7, 8.

<sup>107</sup> Ibid., page 8.

<sup>108</sup> Ibid., page 11.



## **7 CONCLUSIONS AND RECOMMENDATIONS**

### **7.1 LEGAL PURSUIT OF ANOMALIES A PRIORITY**

The legal pursuit of anomalies by the Commission services is indispensable. Commission documents examined persuade the research team that the Commission is carefully scrutinizing whether Member States comply with EU TOR recovery law in order to protect the EU's financial interests but is not giving great weight to monitoring whether Member States share a comparable financial burden in recovering TOR. Depending on whether guaranteeing equal treatment for Member States not only means checking TOR recovery in the Member States in the same way, but also includes ensuring that all Member States share a comparable burden, our findings justify the recommendation to improve the TOR recovery process and its financial output.

### **7.2 APPLICATION OF THE METHOD OF COMPARATIVE PERFORMANCE NEEDED**

The research team's methodology for assessing the overall performance of the customs recovery process linked performance results of consecutive stages of the customs recovery process. Performance rates from the individual stages were combined to give an overall performance rate. Individual and overall performance rates were compared to the EU averages. This method has not been exploited extensively by others to assess the level of performance of Member States in EU budgetary matters, neither over time nor to identify structural patterns. The research team recommends the Commission services use the described methodology for assessing TOR recovery processes as an extra tool in monitoring, inspecting and auditing TOR recovery, refining the methodology where necessary and improving the reliability of the figures. A TOR recovery checklist is annexed.

### **7.3 POSSIBLE FINANCIAL BENEFITS OF THE APPLICATION**

This report identifies structural differences between Member States' performances in customs debt recovery and estimates the financial equivalent of the differences found. Depending on whether the whole process or only part of it is assessed, the research team estimates that between €1 and €3 billion more could be collected as TOR revenue over the period 2006-2011 if all Member States performed according to the highest standards.

### **7.4 IMPROVING THE DATA**

Our data could be used to calculate the overall performance in the customs recovery process. We noted that the data for calculating recovery rates were restricted to recoveries made in the same year as the customs irregularity underlying the recovery. This does not exclude the possibility that later years will show more recoveries. However, as all Member States' data 'suffer' from this same condition, we feel that the assumption did not materially impact the research results. We did not expect that Member States would differ on this. Recovery rates for all years of the research period would have contributed to even more reliable performance figures.

The study found inconsistencies in the B-account and OWNRES data, which need to be corrected by assiduous recording of irregularities and their prompt treatment throughout the process.

### **7.5 TACKLING MEMBER STATES' NEEDS FOR MEASURABLE AND MEANINGFUL DATA**

Member States stressed the need for more comparable and measurable data on their TOR recovery during the Berlin seminar on TOR inspections in 2011. Member States supported equal treatment on the basis of transparent and common standards. They underlined the importance of cooperation in protecting the EU budget as well as the Member States' budgets and they called for

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more technical discussions on the basis of thematic reports and presentation of common aspects on financial and legal shortcomings in a more consolidated and comparative manner.

All parties concerned would benefit from adopting our analytical method when organising and planning TOR recovery checks. If during 2006–2011 additional customs debt of €3 billion had been collected, Member States had received 25 % of this amount as a recovery fee and the EU had received 75 % of this amount as TOR.

Each EU taxpayer would have contributed accordingly less each year (and importers into the EU would have made up the difference).

## **7.6 MORE SELF-CRITICAL ENVIRONMENT AMONG MEMBER STATES**

A firmer and much more self-critical environment among Member States concerning both their own practices and procedures in collecting TOR and those of their fellow Member States would help. It is not sufficient to conclude, as so many ACOR discussions did, *that 'the inspectors ... explained whether the presumed anomalies are systematic or one-off and whether they have or may have a financial impact on TOR. ... The other Member States were given the opportunity to express their views. ... No major objection from the MS was noted.'*

## **7.7 COMMISSION AS RELIABLE INTERLOCUTOR**

Member States may find it more difficult to assess each others' financial and administrative processes such as TOR recovery than the Commission, unless they are prepared to examine in more detail each others' strengths and weaknesses. The Commission can help in this. This would be in keeping with the tighter EU surveillance of economic and fiscal policies, the European semester – to discuss economic and budgetary priorities at the same time every year, and the new treaty.

## **7.8 APPLYING THE METHOD ELSEWHERE**

Finally, as a postscript, we also suggest this stage by stage approach might be applied beneficially in other fields of Union budgetary activities involving the recovery of Union funding, such as for clearance of accounts, financial corrections and similar processes for indirect or shared management expenditure.

## ANNEX: CHECKLIST - TOR RECOVERY IN IRREGULARITY CASES

Checklist: TOR recovery in irregularity cases

(can be used for any given period; or for any MS, group of MS or the EU as a whole)

Positive performance	Negative performance ('evaporation')	Performance assessment
Point of reference		
Determination of the amount of collected TOR		What is the total amount of collected TOR?
Detection Stage		
Detection of customs irregularities	Non-detection of customs irregularities following no or insufficient customs checks	What is the total amount of detected customs irregularities?
Registration of detected customs irregularities in OWNRES	Non-registration of detected customs irregularities in OWNRES	Have all detected customs irregularities <sup>109</sup> been entered into OWNRES?
Determination of the amount of detected customs irregularities in OWNRES	(Determination of the amount of non-detected customs irregularities in OWNRES)	What is according to OWNRES the total amount of detected customs irregularities?
Calculation of Detection rate	Calculation of Detection gap rate	On the basis of the formula: all (not) detected customs irregularities in € / all collected TOR in €
Comparison of Member States' Detection rates	Comparison of Member States' Detection gap rates	On the basis of comparative Member State (or EU) figures
Establishment stage		
Establishment of customs debt in irregularity cases	Non-establishment of customs debt in irregularity cases resulting from correction, cancellation of annulment following review, appeal or remission	What is the total amount of established customs debt in irregularity cases?
Registration of customs debt established in irregularity cases in OWNRES	Non-registration of customs debt established in irregularity cases in OWNRES	Have all customs debt established in irregularity cases been entered into OWNRES?

<sup>109</sup> Which qualify for OWNRES registration, that is which could have a possible impact on the EU budget of more than €10 000 (see Article 6 par. 5 of Reg. 1150/2000).

Positive performance	Negative performance ('evaporation')	Performance assessment
Determination of the amount of customs debt established in irregularity cases in OWNRES	Determination of the amount of customs debt not established in irregularity cases in OWNRES	What is according to OWNRES the total amount of customs debt established in irregularity cases?
Calculation of Establishment rate in irregularity cases	Calculation of Establishment gap rate in irregularity cases	On the basis of the formula: all customs debt (not) established in irregularity cases in € / all detected customs irregularities in €
Comparison of Member States' Establishment rates	Comparison of Member States' Establishment gap rates	On the basis of comparative Member State (or EU) figures
Recovery stage		
Recovery of customs debt in irregularity cases	Non-recovery of customs debt in irregularity cases following too late recovery or write-off	What is the total amount of customs debt recovered in irregularity cases?
Registration of customs debt recovered in irregularity cases in OWNRES	Non-registration of customs debt recovered in irregularity cases in OWNRES	Have all customs debt recovered in irregularity cases been entered into OWNRES (reconcile with B-account)?
Registration of customs debt recovered in irregularity cases in the B-account	Non-registration of customs debt recovered in irregularity cases in the B-account	Have all customs debt recovered in irregularity cases been entered into the B-account <sup>110</sup> (reconcile with OWNRES)?
Determination of the amount of customs debt recovered in irregularity cases in OWNRES	Determination of the amount of customs debt not recovered in irregularity cases in OWNRES	What is according to OWNRES the total amount of customs debt recovered in irregularity cases?
Determination of the amount of customs debt recovered in irregularity cases in the B-account	Determination of the amount of customs debt not recovered in irregularity cases in the B-account	What is according to the B-account the total amount of customs debt recovered in irregularity cases?
Calculation of Recovery rate in irregularity cases	Calculation of Recovery gap rate in irregularity cases	On the basis of the formula: all customs debt (not) recovered in irregularity cases in € / all customs debt established in irregularity cases in €
Comparison of Member States' Recovery rates	Comparison of Member States' Recovery gap rates	On the basis of comparative Member State (or EU) figures

<sup>110</sup> Which qualify for the B-account (see Article 6 par. 3 sub b of Reg. 1150/2000).

Administrative performance differences between Member States recovering Traditional Own Resources of the European Union

Positive performance	Negative performance ('evaporation')	Performance assessment
Transfer stage		
Transfer to the EU of TOR recovered in irregularity cases	Non-transfer to the EU of TOR recovered in irregularity cases following problems with the B- and/or the A-account	What is the total amount of TOR transferred to the EU following recoveries in irregularity cases?
Registration in the B-account of all TOR recovered in irregularity cases and to be entered into the A-account	Non-registration in the B-account of all TOR recovered in irregularity cases and to be entered into the A-account	Have all TOR recovered in irregularity cases and to be entered into the A-account been entered into the B-account?
Registration in the A-account of all TOR recovered in irregularity cases	Non-registration in the A-account of all TOR recovered in irregularity cases	Have all TOR recovered in irregularity cases been entered into the A-account?
Determination of the amount of TOR recovered in irregularity cases transferred to the EU	Determination of the amount of TOR recovered in irregularity cases not transferred to the EU	What is according to the A-account the total amount of TOR transferred to the EU following recoveries in the B-account?
Calculation of Transfer rate in irregularity cases	Calculation of Transfer gap rate in irregularity cases	On the basis of the formula: all TOR recovered in irregularity cases (not) transferred to the EU in € / all TOR recovered in irregularity cases in €
Comparison of Member States' Transfer rates	Comparison of Member States' Transfer gap rates	On the basis of comparative Member State (or EU) figures
TOR recovery process		
Detection of customs irregularities	Non-detection of customs irregularities	What is the Detection (gap) rate?
Establishment of customs debt in irregularity cases	Non-establishment of customs debt in irregularity cases	What is the Establishment (gap) rate in irregularity cases?
Recovery of customs debt in irregularity cases	Non-recovery of customs debt in irregularity cases	What is the Recovery (gap) rate in irregularity cases?
Transfer to the EU of TOR recovered in irregularity cases	Non-transfer to the EU of TOR recovered in irregularity cases	What is the Transfer (gap) rate in irregularity cases?
Calculation of Overall performance rate in irregularity cases	Calculation of Overall performance gap rate in irregularity cases	On the basis of the formula: Detection (gap) rate x Establishment (gap) rate x Recovery (gap) rate x Transfer (gap) rate
Comparison of Member States' Overall performance rates	Comparison of Member States' Overall performance gap rates	On the basis of comparative Member State (or EU) figures



DIRECTORATE-GENERAL FOR INTERNAL POLICIES

## POLICY DEPARTMENT BUDGETARY AFFAIRS **D**

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