

## **IPCSA Review of the European Commission's**

### **“REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on electronic freight transport information”**

The International Port Community Systems Association (IPCSA) has considered, across its membership, the proposal for the Regulation on electronic freight transport information. The considerations form a review focused on practical implementation of the proposal and includes both potential positive and negative impacts that if implemented in its current form would have.

It is recognised that at the current time this is just a proposal and will be discussed in detail between the European Commission and Member States, and we hope that this review helps those discussion. The review will be shared with Member States, the European Commission and other relevant trade Associations.

The proposal has identified the main problems in the European Union is related to the acceptance of documents, however trade is not limited to the European Union, it is global. It is accepted by IPCSA and its members that this proposal is a step forward but it must always be done in an international context, using internationally recognised standards, and accept that it is part of a wider international trade and therefore should accept electronic documents from the trade which may be located outside the EU as proof for the Authorities.

The principles of this proposal came from the Digital Transport and Logistics Forum (DTLF), however the final reports and conclusions of the DTLF only came after the proposal was made, and as such the detail of the work of the DTLF has not been fully taken into consideration within the proposal, and we would hope prior to the proposal being taken through the appropriate legislative process the DTLF outcomes will be taken more into consideration.

#### **Specific principles for consideration**

##### **Business to Government Only**

- The proposal should focus on only Business to Government (B2G) Documentation, however it is implied within the proposal that some Business to Business (B2B) documents may be included. All B2B communication should be outside the scope of legislative proposals as this should remain in the domain of business and not of regulatory Authorities as it is outside the scope of their responsibilities. Let “Business do Business”
- The Commission should avoid proposing a ‘one-size-fits-all’ solution

##### **Data and Processes**

- Data does not mean processes.
- The proposals focus is on data and to a certain degree technology, but not on the underlying processes. IPCSA and its members fully support harmonisation of data using intentionally recognised data models such as those developed by UN/CEFACT and WCO to name just two, but having data does not mean it fits the process. **Processes are critical** and paper process should be re-engineered at the time of the transition from paper to electronic, in order to optimise the re-use of data, understand

the when, the why and the who has access and can supply it, and who has responsibilities and liabilities relating to its accuracy. If you digitise a bad process, you will end with a bad digital process.

- In relation to processes it should also be recognised that several participants can provide data for a single transaction, these transactions should for commercial and data protection reasons be kept separate unless it can be shared which must be at their instruction.
- It is important to specify the processes, data format and dataset rather than the scope of the platform. A positive example in that respect is the European Import Control System Phase 1, which its focus on processes and data formats, which has led to success.
- Data Harmonisation and acceptance by Authorities is the most critical factor.

### **Certification**

- IPCSA has concerns over the process of Certification, which we also consider not absolutely necessary and which could create a potential bottle-neck as the proposal seems to consider that each country may have its own version of certification and country-specific design.
- IPCSA fully supports ensuring quality of EFTI providers but this should be reasonable, respect existing practices and not become a bottle neck. It should also focus just on the B2G elements as set out in this proposal and exclude B2B information.
- That is one of the main results of DTLF, SG 2 (the EFTI is result of SG1) - the concept of Federative Platforms.
- Certification competent bodies should recognise that some Authorities such as Customs already certify and if this is the case consideration should be given in terms of how this may be linked to a potential new certification process.
- It should also be recognised that an EFTI service provider is just a conduit for the relevant documents for Authorities and not the responsible economic operator. It is the responsibility of the economic operator to provide the electronic information and it should be Economic Operator that has the responsibility and liabilities for submitting the information not the EFTI service provider. The Economic Operator would have a Contract, Service Level Agreement or Terms of Reference with the EFTI provider whereby they have recourse to law if that agreement is not followed, this should remain a B2B agreement and be out of the scope of this proposal.
- EFTI and Member StatesMember States systems should be available 24/7 and should be safe and secure systems and detail who has access to the information made available by the Economic Operator.

### **Technology Neutral**

- The proposal should not state which type of technology is used by the EFTI provider but just how the Member StatesMember States required the data /information. The proposal and Member States should always have a technology neutral position.
- The DTLF report discusses the concept of "Federative Platforms". In our view, though, this should be left to Business to develop and implement.

- ISO is currently developing international standards for interoperability between platforms and thus using international standards for interoperability will support a stronger and more robust Electronic Freight Transport Information environment
- The proposal talks of a secure link, if a link is to be provided, what type of link, how is the link to be recognised, what is the security of that link and it should not tie to a specific technology or technology provider and should always be technology neutral. This should also be the same for all Member States.

### **EU Integrated Approach**

- There should be greater clarity on how this proposal interacts with other proposals like future EU Integrated Approach to Single Window, the EMSWe proposal and to data security and protection under GDPR.
- Future proposals from the European Commission such as the CERTEX initiative in terms of Customs SW could mean that this proposal is overruled by another proposal / regulation. Private Business will not invest in new IT systems if there is a risk that this investment in the near future will be redundant due to future proposals. Therefore an integrated approach from the beginning is critical.

### **An International Approach**

- Freight Transport is a global business and the international context should always be considered and accepted that as being part of this wider international trade means that electronic documents submitted by the trade will come from outside the EU should be recognised.
- Consideration should be given to how this proposal links to international agreements and what happens if there is a conflict. For example IPPC has central database and data set for Phytosanitary documents, eCMR has an established data set. Lack of clarity on this means there is a high risk of multiple data sets.

# **IPCSA’s Review of “REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on electronic freight transport information”**

## **Article by Article**

### **Overall Objectives of the proposal – The proposal sets out**

It is accepted that the main problem identified in the proposal is that Authorities’ have a low and varying degree of acceptance of information or documents made available electronically by businesses when the Authorities require them to provide evidence of compliance with regulatory conditions for the transport of goods on the different EU Member States’ territory.

IPCSA identifies with the problem that “(a) a **fragmented legal framework** setting **inconsistent obligations** for Authorities when accepting electronic information or documents<sup>4</sup>, and permitting different administrative practices to implement them;” however clarity on what electronic information or documents are, should be given, as this covers a wide range and scope of actives.

However, IPCSA does not identify completely with the problem that “(b) a **fragmented IT environment** characterised by a multitude of **non-interoperable systems/solutions** for electronic transport information and documentation exchange, both for business-to-administration and business-to-business communication.” Firstly as there is a certain degree of interoperability where service providers are following internationally recognised standards, as interoperability between them can be relatively simple using API’s and there is a clear business case for exchanging that data. However, as already stipulated we cannot accept that there should be legislative proposals governing any form of Business to Business relationships and this should and must remain outside the scope of the proposal.

The proposal also states that it “aims to allow electronic communication for fulfilling regulatory information requirements also beyond the points of entry, or before the point of exit, of the EU, on the entire territory of the Union. Geographically therefore, the scope of this initiative begins where that of the Union” but then it continues that it starts where the UCC finishes. Clarity is required to ensure if the proposal means that information received from operators outside the EU is acceptable as operators inside the EU receive the information in many cases from operators outside the EU. Therefore this statement causes confusion in the proposal and needs clarification.

### **Option 3: Full obligation for Member State Authorities to accept regulatory cargo transport information or documentation, with partially harmonised implementation**

“Option 3 was the preferred policy option on the basis of which this proposal has been developed. The choice between options 3 and 4 took account of the views of stakeholders, as well as considerations about proportionality. Industry stakeholders in the maritime, aviation and rail sectors in particular clearly made the point that while a multimodal approach is necessary, the Commission should avoid proposing a ‘one-size-fits-all’ solution. The main considerations relate to the investments in related solutions already made in these sectors. These solutions have been developed on the basis of current provisions in international

conventions and EU law which, as the legal analysis in this report has also highlighted, are mode-specific and differ significantly.

Reduced administrative burden is expected to be achieved by: ensuring that economic operators can make regulatory information available to Authorities electronically; and aligning the procedures used by Member State Authorities to check regulatory information made available electronically. As highlighted earlier, administrative costs for the industry are expected to fall significantly.”

IPCSA would agree administrative costs could fall, but clarity with regards to how and to what degree administrative costs could fall is still questionable. Economic Operators will need to use EFTI providers whereas at the moment they do not and as such there would be an increased cost as most Economic Operators do not have the capability to implement technology to share links and secure internet. This also raises the questions of storage of data and when and where it is stored and who has access to it. Authorities should be clear as to which Authorities will be able to access and review the information as well as which if any outside organisations can review and access the information.

## **BUDGETARY IMPLICATIONS**

The preferred option does not have budgetary implications as it is not considered within the proposal an impact on the EU budget. It is the opinion of IPCSA there is a budget requirement for the EU to manage and maintain data sets to ensure harmonisation and would include such things as data maintenance requests. In addition Member States will have high costs to implement and also the trade will have high costs to implement. These should all be considered before a final proposal is agreed or considered.

# **CHAPTER I GENERAL PROVISIONS**

## **Article 1 Subject matter and scope –**

The scope is clearly defined as

*“1. (a) lays down the conditions under which Member States’ competent Authorities are required to accept regulatory information when made available electronically by economic operators concerned;*

*(b) lays down rules for the provision of services related to making regulatory information available electronically by the economic operators concerned.”*

Thus it is clear from the scope that the proposal only covers for Business to Administration / Government (B2A / B2G) exchanges are included within the proposal and also that “provision of services” only relates to those services that concern B2A / B2G documents. IPCSA supports this scope but does not support in anyway encroachment of this scope into B2B activities.

### **Article 3 Definitions**

The inclusion of definitions is critical but again clarity is needed to confirm that 'electronic freight transport information' (EFTI) means any set of data elements processed on electronic support for purposes of exchanging regulatory information between the economic operators concerned and with the competent Public Authorities and thus an EFTI only means Business to Administration activities.

There is also no distinction between EFTI Platform and Service and this should be made clear.

## **CHAPTER II REGULATORY INFORMATION MADE AVAILABLE ELECTRONICALLY**

### **Article 4 Requirements for economic operators concerned**

1. “The regulatory information shall be made available in machine-readable format and, at the request of the competent authority, in human-readable format.” This needs clarity as differing Member States may consider different documents in human-readable or machine-readable format. Clarity is also needed to ensure that Member States only require one format not both, as if both are required then the burden on the trade will increase, for example Customs have transit documents fully digitised, but for inspection “on the road” it is required for Truck drivers to have a papercopy on board. It is recognised that a human readable format would only be required at request but would mean that an Economic Operator would need to have both Human and machine readable format available thus increased cost.

Also the format should be defined to ensure an ease of the current burden. What happens to documents in other languages or different formats are they acceptable as proof of regulatory compliance or not within a member state. This should be discussed and made clear in the implementing act.

To reiterate will there still be a need to have the original paper work travel with the goods? this should be clarified and made clear to all authorities as there could be a high investment in technology for other bodies such as the Police to be able to access documents electronic during a road side inspection. It should be stipulated that paper is no longer required...unless electronic information is not available

“Information in human-readable format shall be made available on the spot” what does “on the spot” mean? This could be better defined and will this be the same for all Member States?

2. “The Member States shall take measures to enable their competent Authorities to process regulatory information made available by the economic operators concerned in machine-readable format pursuant to the second subparagraph of paragraph 1, in accordance with the provisions established by the Commission pursuant to Article” Clarity is needed on what is meant by machine readable, a data set just provides information and can be read by machine but also by human, however the data set means nothing outside the purpose for its submission

and thus will it have to be converted into a document format to be able to be read by the competent Authorities

#### **Article 5 Acceptance by competent Authorities**

“Member States’ competent Authorities shall accept regulatory information made available electronically by the economic operators concerned in accordance with Article 4”

This article should also allow service providers on behalf of economic operators or at the request of economic operators to provide such information.

#### **Article 7 Common EFTI data set, procedures and rules for access**

“(a) a common EFTI data set and subsets in relation to the respective regulatory information requirements, including corresponding definitions for each data element included in the common data set and subsets;”.

The Commission should use already recognised international data sets and primarily those of UN/CEFACT and where data elements are not available provide resources to manage and maintain those data sets. Cross Border trade is international. If the data set is unique to the EU then there will be extensive conversion and cost for Economic operators to translate / convert data from sources outside the EU into EU data sets

“(b) common procedures and detailed rules, including common technical specifications, for competent Authorities’ access to EFTI platforms, including procedures for processing of regulatory information made available electronically by the economic operators concerned.”

This element of the proposal needs much more explanation and clarity as if common procedures and rules should be EU wide not member state wide and therefore has an implication on the EU budget and to MS budgets. How is access management provided and who does it, who gives it.

Explanation of “access to EFTI Platforms” should also be made clear, as it is understood from the proposal that an EFTI Platform provides a link to electronic “documents”, such as a postbox and therefore it is assumed that “Access” means access to the links not the platform itself.

## **CHAPTER III EFTI PLATFORMS AND SERVICES**

### **SECTION 1 REQUIREMENTS FOR EFTI PLATFORMS AND SERVICES**

#### **Article 8 Functional requirements for EFTI platforms**

The functional requirements should be guidelines and not a regulation, a regulation implies it will be measured and checked. Is this really the role of Authorities to check how business operates? Therefore IPCSA would suggest having the elements listed as a minimum

requirement and be a recommendation as most providers will go far beyond these basic requirements.

“(a) personal data can be processed in accordance with Regulation (EU) 2016/679;” It is the responsibility Economic Operator (EO) to ensure that they have consent from the person whose data may be processed and to ensure they are aware why that data is being processed and by whom.

The EFTI platform should have procedures in place to ensure that the personal data is kept safe and secure and that they have an agreement with the EO in place stipulating what the data is and how the data will be used and for how long it would be stored

There is also a responsibility on Authorities to ensure they comply with the regulation 2016/679 and provide information to the EO and EFTI who and what the data being shared will be used for.

“(b) commercial data can be processed in accordance with Article 6;”

It is not only the EFTI Operator that should keep information confidential. There is an obligation for Authorities in Member States to keep information confidential. If an EO uses an EFTI there would be a SLA or similar contract in place stipulating how and what that data can be used for and why. In the event if it is not kept confidential then there is recourse to the law and judicial review. However there is no agreement with Authorities and there should be liabilities and responsibilities for Authorities to keep that data safe and if not have consequences fines etc.

“(c) a unique electronic identifying link can be established between the data processed and the physical shipment of a determined set of goods to which that data is related, from origin to destination, under the terms of a single transport contract, irrespective of the quantity or number of containers, packages, or pieces;”

Is it considered there would be a unique link for each consignment? Where does the operational information (B2B) come from and what is meant by a link?

“(d) data can be processed solely on the basis of authorised and authenticated access;”

Who determines authorised and authenticated access ?

“(e) all processing operations are duly recorded in order to allow, at a minimum, the identification of each distinct operation, the natural or legal person having made the operation and the sequencing of the operations on each individual data element; if an operation involves modifying or erasing an existing data element, the original data element shall be preserved;” there are limits to time as to how long data can be stored and for what reason and also where sensitive data is concerned it should be kept for not longer than is required.”

Clarity is needed over the process involved, if a data element is changed how and where is the original kept, is a new link needed and how are different and updated links collated under a single consignment.

“2. The Commission shall adopt, by means of implementing acts, detailed rules regarding the requirements laid down in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14(2).”

The trade should be involved in the development of the implementing acts and be part of the expert group supporting the EC and Member States

### **Article 9 Requirements for EFTI service providers**

**We see articles for requirements for service providers for EFTI Platforms but we are missing any reference or article to EFTI platform developers which may not be the ultimate EFTI Platform provider.**

“(a) data is processed only by authorised users and according to clearly defined user role and processing rights within the EFTI platform, in accordance with the relevant regulatory information requirements;”

EFTI service providers are not Authorities in most cases. Thus how does this correlate as how a user role and processing rights are determined by business and then Authorities. Thus it is the EO who provides the rights and access and the service provider is just a platform exchanging it with Authorities. If an EO does not give permission to the EFTI service provider to share data with an Authority the EFTI cannot share it. An EFTI-Platform or Service Provider will have to set up a sophisticated authorization concept per process, every single step, status and role.

“(b) data is stored and accessible for an appropriate period of time, in accordance with the relevant regulatory information requirements;”

This is different depending on the requirements and also may need to be kept longer for national accounting purposes invoices etc.. Specific reference or a link to existing regulations should be made in the implementing acts.

There is no mention of how this data link is stored and what happens if a link is broken....who is responsible...Also how is that link shared and how are all of the certificates and other such documents link to a specific consignment.

“(c) authorities have immediate access to regulatory information concerning a freight transport operation processed by means of their EFTI platforms, when this access is given to the authorities by an economic operator concerned;”

Does this mean that when an EFTI platform has access to the data in the EFTI service subject to the EO has granted access, thus there is no real declaration anymore, but the EO just grants the link to the specific Authority. Can this still be considered a declaration??

Clarity is meant as it is understood the EFTI platform provides just a link to a document and not to a freight transport operation?

“(d) data is appropriately secured, including against unauthorised or unlawful processing and against accidental loss, destruction or damage.”

What happens if this starts at an Authority.....we have seen problems around the world where Authorities systems are compromised which have then compromised electronic platforms as the security....

**There is no Section 2.....**

### **SECTION 3 CERTIFICATION**

#### **Article 10 Conformity assessment bodies**

1. “conformity assessment body shall assess the compliance of the EFTI service provider with the requirements laid down in Article 9(1)”

who is this conformity assessment body and what resources do they have to assess and what competencies.... So does every authority have its own conformity resource? If so will conformity be the same?

Where an authority such as Customs has a certification scheme does this mean all EFTI service providers have to comply with that scheme? Or only the ones exchanging information with Customs?

### **CHAPTER IV**

#### **DELEGATIONS OF POWER AND IMPLEMENTING PROVISIONS**

#### **Article 13 Exercise of the delegation**

Delegated acts should be consulted with the trade and economic operators to agree and not just Member States. The cost implication to trade is higher than to MS and thus they have a right to be part of the decision making process

## **ABOUT IPCSA**

IPCSA's members operate across the world, exchanging electronic information at more than 100 sea and air ports, rail and inland waterways, and border crossing points. This equates to more than 400 million TEU and 7 billion tonnes of world trade a year, a reach of over 1 million users, exchanging over 20 billion messages per annum and in excess of 20m electronic messages per day.

In European maritime terms this means that approximately 70-80% of all European maritime message exchanges are handled through IPCSA members' community systems.

IPCSA's membership provides representation in each of the five UN Regional Commission regions. This geographical reach enables it to address the needs of members on a regional as well as international basis. IPCSA also has consultative status at the International Maritime Organization and Special Consultative Status at UN ECOSOC, both providing an important platform for representing the needs of its members and its members' users at the highest level. IPCSA also takes part in international standards meetings including WCO, ISO, UN/CEFACT and IATA.

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