**Från:** [redacted]

[redacted] tullunionen, Fi2023/02053

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Översiktlig beskrivning av den nya unionstullkodexen.pdf

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Remiss av EU-kommissionens förslag om en reform av tullunionen - Regeringen.se

# Remiss av EU-kommissionens förslag om en reform av tullunionen

## Remissinstanser

1. ABB
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9. Bring Parcel AB
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13. Domstolsverket
14. Ekobrottsmyndigheten
15. Electrolux

16. Elektronikbranschen
17. Elsäkerhetsverket
18. Ericsson AB
19. FAR
20. Fedex Express
21. Folkhälsomyndigheten
22. Företagarförbundet
23. Företagarna
24. Försvarets materielverk
25. Försvarsmakten
26. Förvaltningsrätten i Stockholm
27. Göta hovrätt
28. Göteborgs tingsrätt
29. H & M
30. ICC Sverige
31. IKEA
32. Innovations- och kemiindustrierna i Sverige (IKEM)
33. Inspektionen för strategiska produkter
34. Inspektionen för vård och omsorg
35. Integritetsskyddsmyndigheten
36. Jernkontoret
37. Justitiekanslern
38. Kammarrätten i Stockholm
39. Kemikalieinspektionen
40. Kommerskollegium
41. Konkurrensverket
42. Konsumentverket
43. Kronofogdemyndigheten
44. Kustbevakningen
45. Lif – de forskande läkemedelsföretagen
46. Livsmedelsföretagen
47. Livsmedelsverket
48. Läkemedelsverket
49. Länsstyrelsen i Gävleborgs län
50. Mobility Sweden
51. Myndigheten för samhällsskydd och beredskap
52. Naturvårdsverket
53. Näringslivets regelnämnd
54. Näringslivets skattedelegation

55. Polismyndigheten
56. Post- och telestyrelsen
57. PostNord Sverige AB
58. Regelrådet
59. Riksdagens ombudsmän, JO
60. Scania
61. Sjöfartsverket
62. Skatteverket
63. Skogsindustrierna
64. Skogsstyrelsen
65. Småföretagarna riksförbund
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70. Stockholms handelskammare
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74. Svensk Försäkring
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76. Svensk sjöfart
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87. TEKO
88. Textilimportörerna
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90. Transportindustriförbundet
91. Transportstyrelsen
92. Tullverket
93. UPS Sverige

94. Västsvenska handelskammaren
95. Åklagarmyndigheten

Remissvaren ska ha kommit in till Finansdepartementet **senast den 25 september 2023**. Mot bakgrund av att behandlingen av förslaget väntas påbörjas i juli med en genomgång av kommissionens konsekvensanalys och med författningsförslagen i början av september är det dock önskvärt om synpunkter lämnas så snart som möjligt.

Svaren bör lämnas per e-post till fi.remissvar@regeringskansliet.se och med kopia till gabriela.kalm@regeringskansliet.se och mats.barregren@regeringskansliet.se. Ange diarienummer Fi2023/02053 och remissinstansens namn i ämnesraden på e-postmeddelandet.

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Remissvaren kommer att publiceras på regeringens webbplats.

Roger Ghiselli
Kansliråd

Hälsningar

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**Regeringskansliet**

Regeringskansliet

**Remiss**

2023-06-21
Fi2023/02053

**Finansdepartementet**
Skatte- och tullavdelningen, Enheten för skatteadministration, skatteavtal och tullfrågor
Mats Barregren

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Remissvaren kommer att publiceras på regeringens webbplats.

Roger Ghiselli
Kansliråd

Regeringskansliet

**Finansdepartementet**
Skatte- och tullavdelningen, Enheten för
skatteadministration, skatteavtal och tullfrågor
Mats Barregren

## Översiktlig beskrivning av den nya unionstullkodexen

Förslaget om en ny unionstullkodex är omfattande. För att underlätta läsningen följer här en översiktlig beskrivning av innehållet per avdelning.

I avdelning I fastställs tullmyndigheternas uppdrag, EU:s tullområde och viktigare definitioner, t.ex. importör, exportör och tullförfarande. Det finns också bestämmelser om beslut.

I avdelning II fastställs importörens och exportörens ansvar gentemot tullmyndigheterna. Systemet med godkända ekonomiska aktörer (”AEO”) utvecklas genom införandet av en ny status, ”Trust and Check trader”. I avdelningen finns också bestämmelser om tullombud.

I avdelning III finns bestämmelser om en hubb för EU:s tulldatasystem, ”EU Customs Data Hub”. Tanken med förslaget är att på sikt ersätta dagens mer decentraliserade it-lösning med en centraliserad uppsättning system och tjänster. Uppgifter ska kunna lämnas till tullmyndigheterna genom hubben i stället för genom flera olika nationella system.

I avdelning IV finns bestämmelser om tullövervakning, tullkontroller och riskhantering. När det gäller riskhanteringsprocessen så innehåller avdelningen en beskrivning av roller och ansvarsområden för kommissionen, tullbyrån och medlemsstaternas tullmyndigheter.

Avdelning V innehåller de olika förfaranden som gör det möjligt för en näringsidkare att tillfälligt lagra varor eller låta dem övergå till fri omsättning på EU:s inre marknad.

Telefonväxel: 08-405 10 00

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I avdelning VI finns bestämmelser om det nya förenklade förfarandet för införsel av varor till tullunionen. Tullmyndigheternas uppmärksamhet flyttas från den enskilda varusändningen till övervakning av leveranskedjan för att identifiera risker. Beroende på typen av tullförfarande finns det en minimiuppsättning information som måste tillhandahållas eller göras tillgänglig för tullmyndigheterna. Om tullen har relevant information i förväg och inte ser någon risk, behöver varorna inte kontrolleras utan kan röra sig fritt. I avdelning VII finns motsvarande bestämmelser för export.

I avdelning VIII finns bestämmelser om de särskilda förfarandena, dvs. transitering, tullager, frizoner, aktiv respektive passiv förädling samt tillfällig införsel och slutanvändning.

I avdelning IX finns bestämmelser för de faktorer som måste fastställas för tillämpning av import- och exporttullar samt andra åtgärder som är tillämpliga på varuhandeln, såsom antidumpningstullar, klassificering, värde och ursprung. Eftersom dessa regler har identifierats som särskilt komplicerade för e-handel innehåller avdelningen två förenklingar som importören kan välja att tillämpa vid fastställandet av den tull som ska tillämpas på transaktioner mellan näringsidkare och konsumenter.

I avdelning X finns bestämmelser om tullskuldens uppkomst och begränsning, betalning och återbetalning samt upphörande.

I avdelning XI finns bestämmelser om restriktiva åtgärder (dvs. internationella sanktioner) och om en krishanteringsmekanism. När det gäller restriktiva åtgärder så är tanken att tullbyrån ska stödja kommissionen och medlemsstaterna för att säkerställa att sanktionerna inte ska kunna kringgås. Förslaget om en krishanteringsmekanism motiveras bl.a. av erfarenheter från coronapandemin. Också här är det tänkt att tullbyrån ska få en nyckelroll genom att vid behov samordna operativ krishantering.

Genom bestämmelserna i avdelning XII inrättas EU:s tullbyrå, ”EU Customs Authority”. Här fastställs dess uppgifter och ansvarsområden samt hur den ska styras. En uppgift kommer att vara att på central nivå utföra uppgifter avseende riskhantering och att använda den stora mängden uppgifter i EU:s tulldatahubb för riskanalys. Denna analys kommer att ligga till grund för kontrollrekommendationer till medlemsstaterna som de måste tillämpa eller, om de inte gör det, motivera varför. Verksamheten kommer

inte att utgöra något hinder för medlemsstaterna att utföra riskanalys och riskhantering anpassad till nationella förhållanden. Byrån ska vidare ha en central roll i samarbetet med t.ex. marknadskontrollmyndigheter och brottsbekämpande myndigheter. Byrån ska också säkerställa det operativa samarbetet och samordningen med bland annat Europol och Frontex. En annan uppgift kan bli att utveckla och underhålla EU:s tulldatahubb om byrån tilldelas den uppgiften av kommissionen.

För att fullgöra sitt uppdrag samarbetar medlemsstaternas tullmyndigheter med andra myndigheter, t.ex. marknadskontrollmyndigheter, brottsbekämpande myndigheter, miljöskyddsmyndigheter och andra myndigheter med sektorsansvar. I avdelning XIII finns bestämmelser för ett strukturerat samarbete mellan tullmyndigheterna och dessa myndigheter.

I avdelning XIV finns bestämmelser om påföljder. Här föreslås en gemensam ram som fastställer en kärna av tullrättsliga överträdelser och icke-straffrättsliga påföljder. Ramen föreslås bestå av en gemensam förteckning över handlingar eller underlåtenheter som bör utgöra tullrättsliga överträdelser i alla medlemsstater. Vidare föreslås regler som föreskriver bl.a. minimibelopp för böter och möjlighet till återkallande av tulltillstånd samt förverkande av varorna.

I avdelning XV finns slutbestämmelser, t.ex. bestämmelser om tidpunkter för olika delars införande. Näringsidkare kan t.ex. börja använda EU:s tulldatahubb från och med januari 2032 och ska vara skyldiga att göra det senast 2037, då den är tänkt att vara i full drift. EU:s tullbyrå kommer att inrättas gradvis från 2026 och vara helt i drift från och med 2028.

Council of the European Union

Brussels, 22 May 2023
(OR. en)

9596/23

**Interinstitutional File: 2023/0156(COD)**

**UD 110**
**CODEC 917**
**ENFOCUSTOM 57**
**ECOFIN 452**
**MI 429**
**COMER 57**
**TRANS 194**
**FISC 95**

**PROPOSAL**

| | |
|---|---|
| From: | Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director |
| date of receipt: | 17 May 2023 |
| To: | Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union |
| No. Cion doc.: | COM(2023) 258 final |
| Subject: | Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the Union Customs Code and the European Union Customs Authority, and repealing Regulation (EU) No 952/2013 |

Delegations will find attached document COM(2023) 258 final.

Encl.: COM(2023) 258 final

EUROPEAN
COMMISSION

Brussels, 17.5.2023
COM(2023) 258 final

2023/0156 (COD)

Proposal for a

# REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

## establishing the Union Customs Code and the European Union Customs Authority, and repealing Regulation (EU) No 952/2013

(Text with EEA relevance)

{SEC(2023) 198} - {SWD(2023) 140} - {SWD(2023) 141}

# EXPLANATORY MEMORANDUM

## 1. CONTEXT OF THE PROPOSAL

### • Reasons for and objectives of the proposal

The EU customs union is a true success story of European integration and prosperity. It is the basis and the guardian of the EU single market[1], allowing goods to move freely within the Union. The Union speaks with one voice in international trade relations as one of the largest trading blocs in the world. The smooth functioning of the customs union is fundamental for the EU's economy and prosperity, and its international competitiveness. Citizens and companies benefit from international trade, while at the same time, customs tariffs, quotas, and other trade measures contribute to protect industrial production and jobs in the union and to provide revenue to public finances.

The EU economy is in the twin green and digital transition and has therefore adopted ambitious legislation, setting environmental, security, social and digital standards that shape the way businesses operate within and beyond the single market. This ambitious agenda risks being undermined if Union productions are replaced by imports from third countries that do not respect these standards. Without central supply chain monitoring and control by customs, the Union does not have full visibility on which goods enter and leave its territory. This weakens not only the credibility of the EU's sectoral policies, but also limits the EU's might as geopolitical actor.

**Customs authorities are increasingly burdened with an ever-growing range of tasks** stemming from the above mentioned very ambitious legislation that has been adopted in the last years. As a result, customs authorities are today squeezed between increasing tasks and complexity on the one hand, and a sharp increase of low value shipments in e-commerce on the other. Moreover, without a central supply chain supervision, the Union does not have full visibility and control over which goods enter and leave single market. This amplifies the inherent challenges to customs processes, data and IT, and the governance of the customs union. As the impact assessment demonstrates, customs authorities struggle in their mission to protect, with issues on the risk management and cooperation with market surveillance authorities, law-enforcement authorities and bodies, tax authorities and other partners. Also, problematic are the administrative burden for trade, the difficulties in performing controls on e-commerce goods, the limited data quality and access, as well as the divergences of implementation between Member States.

This reform strengthens the capacity of customs to supervise and control which goods enter and leave the customs union. The customs reform is a long-term strategic decision, aiming at adapting flexibly to changes in supply chains and better defending the financial interest of the EU and its Member States as well as EU's security, safety and public interests.

Against this background, in her political guidelines European Commission President Von der Leyen announced: *'It is time to take the customs union to the next level, equipping it with a stronger framework that will allow us to better protect our citizens and our Single Market. I*

[1] European Parliament resolution of 18 January 2023 on the 30th anniversary of the single market: celebrating achievements and looking towards future developments (P9_TA(2023)0007).

*will propose a bold package for an integrated European approach to reinforce customs risk management and support effective controls by the Member States'*[2].

As a first follow up, the Commission presented a Customs Action Plan[3], outlining concrete actions to prepare the reform. As announced in the plan, and following the request of the European Parliament, the Commission conducted an interim evaluation of the implementation of the Union Customs Code (UCC)[4], which recognised progress, but also identified the need to strengthen the framework on e-commerce and prohibitions and restrictions. In addition, the interim evaluation outlined the challenges in developing 27 national customs IT systems. The Customs Action Plan also announced an impact assessment of the pros and the cons of the reform, and the strategic discussion with national customs administrations in a reflection group on how to make the customs union more agile, technologically advanced and crisis-proof, which took place in 2022.

Recognising the need for structural change, the Commission engaged with stakeholders, academia and international partners in a foresight exercise on the future of customs in the EU 2040. The foresight report recommended *'to address the governance challenge of the customs union by giving preference to a joint, central structure in order to speak with one voice, to leverage technological advancements and to make the most effective use of customs' data'*.[5] Moreover, the independent report of the Wise Persons Group on challenges facing the EU Custom Union concluded that *'serious divergences remain between national customs authorities in the application of rules and procedures'* and *'today the level of protection of citizens and Member States depend on the place where goods are controlled, and fraudulent and negligent businesses enjoy a significant low-risk advantage over honest and compliant firms and individuals'*[6].

The European Court of Auditors identified challenges for customs in special reports. One report found that insufficient harmonisation in customs controls hampers EU financial interests, and recommended: *'to the Commission to enhance the uniform application of customs controls, and develop and implement a fully-fledged analysis and coordination capacity at EU level.*[7] The Court further concluded that delays in customs IT development were *'in particular due to changing project scope, insufficient resources allocated by the EU and Member States, and a lengthy decision-making process due to the multi-layered governance structure.'*[8] For e-commerce, the auditors highlighted challenges in collecting correct amounts of VAT and customs duties.[9] Another report highlighted shortcomings in the legal framework and an

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2 A Union that strives for more – My agenda for Europe Guidelines for the next European Commission 2019-2024.

3 Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee Taking the Customs Union to the Next Level: a Plan for Action, COM(2020) 581 final.

4 Commission Staff Working Document on the interim evaluation of the implementation of the Union Customs Code, SWD(2022) 158 final.

5 Ghiran, A., Hakami, A., Bontoux, L. and Scapolo, F., The Future of Customs in the EU 2040, Publications Office of the European Union, Luxembourg, 2020.

6 Putting more Union in the European customs, Ten proposals to make the EU Customs Union fit for a Geopolitical Europe - Report by the Wise Persons Group on the Reform of the EU Customs Union, Brussels March 2022.

7 European Court of Auditors, Special Report No 04 2021: Customs controls: insufficient harmonisation hampers EU financial interests.

8 European Court of Auditors, Special Report No 26/2018: A series of delays in Customs IT systems: what went wrong?

9 European Court of Auditors, Special Report No 12/2019: E-commerce: many of the challenges of collecting VAT and customs duties remain to be resolved.

ineffective implementation in import procedures, including *'differing approaches in terms of customs controls to tackle undervaluation, misdescription of origin and misclassification and to impose customs penalties'*, impacting the trader's choice of customs office.[10]

This reform simplifies the UCC and cuts red tape, in line with the Commission's regulatory fitness and performance programme (REFIT). It is part of the Commission Work Programme 2022 under the priority 'An economy that works for the people'.[11]

This reform includes two additional legislative proposals which were adopted by the Commission today as part of a broad package, notably for amending the VAT directive,[12] on one side, and the Duty Relief Regulation and the Combined Nomenclature,[13] on the other side. Both amendments complement the customs reform in relation to the necessary measures needed to address the challenges of distance sales of goods (e-commerce transactions), namely by way of removing the threshold of EUR 150, above which customs duties are due under current rules.

- **Consistency with existing policy provisions in the policy area**

The UCC is the main legal and IT framework for customs processes in the customs territory of the Union. This reform revises and repeals the basic act. A revision of the detailed implementing acts and delegated acts will follow.

The reform is consistent with the legislation on own resources for the Union budget that establishes customs duties as a direct source of its revenue[14], and with the rules on how they are made available to the Union.[15]

The proposal ensures full alignment between the VAT and customs treatment of B2C e-commerce sales related to goods dispatched from third countries or territories. This alignment entails the scope, the deadlines applicable for the determination, collection and payment of duties and taxes, the related reporting obligations as well as the harmonisation of the liabilities of the online sellers, in particular the marketplaces. The synchronised rules will allow online sellers to offer a true all-inclusive price when selling goods online to consumers in the EU for all goods imported from third countries, except when the goods are subject to EU harmonised excise duties[16] and commercial policy measures.

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10 European Court of Auditors, Special Report No 19/2017: shortcomings in the legal framework and an ineffective implementation impact the financial interests of the EU.

11 Commission Work Programme 2022, Making Europe stronger together.

12 Proposal for a Council Directive Proposal for amending Directive 2006/112/EC as regards VAT rules relating to taxable persons who facilitate distance sales of imported goods and the application of the special scheme for distance sales of goods imported from third territories or third countries and special arrangements for declaration and payment of import VAT (OJ L …..).

13 Proposal for a Council Regulation amending Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty and Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, part of a broad and comprehensive reform of the Customs Union (OJ L …….).

14 Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom (OJ L 424, 15.12.2020, p. 1).

15 Council Regulation (EU, Euratom) No 609/2014 of 26 May 2014 on the methods and procedure for making available the traditional, VAT and GNI-based own resources and on the measures to meet cash requirements (Recast) (OJ L 168, 7.6.2014, p. 39).

16 Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods (OJ L 348, 29.12.2017, p. 7).

On 27 February 2023, the European Commission and the Government of the United Kingdom reached a political agreement in principle on the Windsor Framework, a comprehensive set of joint solutions aimed at addressing, in a definitive way, the practical challenges faced by citizens and businesses in Northern Ireland. The joint solutions cover, amongst other things, new arrangements on customs. On 24 March 2023, the EU-UK Joint Committee adopted Decision No 1/2023 laying down the arrangements relating to the Windsor Framework, notably in the field of customs. Decision No 1/2023 stipulates that the United Kingdom may notify the Union and, in case no solution is found, suspend certain provisions of the Decision setting out arrangements for moving goods not at risk of entering the Union from another part of the United Kingdom to Northern Ireland, if the Union acts providing for facilitations relating to these movements of goods cease to be in force, in whole or in part, in such a way that they no longer provide for the same level of facilitations. The revision of customs legislation set out in this Regulation will not affect the level of the facilitations referred to in Joint Committee Decision No 1/2023.

- **Consistency with other Union policies**

Customs action supports the enforcement of a wide and growing number of over 350 different Union legislation, in policy fields such as trade, industry, security, health, environment and climate.[17] The reform strengthens the capacity of customs to provide this service, and introduces a cooperation framework with market surveillance, law enforcement and other authorities, and Union agencies and bodies, including the European Union Agency for Law Enforcement Cooperation (Europol) and the European Border and Coast Guard Agency (Frontex). The reform is consistent with other Union policies, notably:

- The **Market Surveillance Regulation,**[18] which provides the legal framework for risk-based controls of certain non-food products sold on the Union market, in particular through a systematic cooperation and exchange of information between Market Surveillance Authorities and customs authorities for detecting unsafe or non-compliant products entering the single market. Customs will also be called to implement the revised **General Product Safety Regulation**[19] and the new rules aimed to effectively ban the placing on the single market of products made wholly or in part by **forced labour,**[20] once the respective proposals are adopted.

- In the field of **environmental legislation**, customs authorities are involved in the enforcement of numerous rules *inter alia* on chemicals,[21] the protection of species of

17 European Commission, Directorate-General for Taxation and Customs Union, Integrated EU prohibitions & restrictions list: indicative calendar and list as of 1.1.2022 legal notice, Publications Office of the European Union, 2022.

18 Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011 (OJ L 169, 25.6.2019).

19 Proposal for a Regulation of the European Parliament and of the Council on general product safety, amending Regulation (EU) No 1025/2012 of the European Parliament and of the Council, and repealing Council Directive 87/357/EEC and Directive 2001/95/EC of the European Parliament and of the Council [COM(2021)346].

20 Proposal for a Regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market [COM (2022) 453 final].

21 Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC.

wild fauna and flora,[22] and the fight against climate change by minimising the use and emissions of dangerous substances.[23] [24] Customs authorities will also be called on to apply new Union rules to curb deforestation[25] and treat waste shipments.[26] Moreover, the Sustainable Products Initiative proposal calls on customs authorities to cross-check the customs declaration with the information on the imported goods contained in the newly created *digital passport for products*, to reduce the negative life cycle environmental impacts of products placed on the single market.[27] The proposal to establish a **Carbon Border Adjustment Mechanism**[28] will help ensure that the EU's climate objectives are not undermined by the risk of carbon leakage and encourage producers in non-EU countries to green their production processes. The mechanism applies to imported goods, and customs supports the enforcement.

- On the **enforcement side**, the legal basis for mutual assistance among national authorities and with the Commission regarding the application of customs and agricultural legislation provides for relevant measures. They include the rules for preventing, investigating, and prosecuting customs fraud[29] and the operational cooperation framework between Member States' and Union's law enforcement authorities and bodies aimed to ensure security inside the Union against e.g., drug and illicit firearms trafficking.[30]

- The new **Digital Services Act** sets clear obligations for digital service providers to tackle illegal content, which results in strengthened traceability and checks on traders in online marketplaces to ensure products placed on the Single Market are safe.[31]

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22 Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ L 61, 3.3.1997, p. 1).

23 Regulation (EU) No 517/2014 of the European Parliament and of the Council of 16 April 2014 on fluorinated greenhouse gases and repealing Regulation (EC) No 842/2006 (OJ L 150, 20.5.2014, p. 195).

24 Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer (OJ L 286, 31.10.2009, p. 1).

25 Proposal for a Regulation of the European Parliament and of the Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 (COM (2021) 706).

26 Proposal for a Regulation of the European Parliament and of the Council on shipments of waste and amending Regulations (EU) No 1257/2013 and (EU) No 2020/1056 (COM/2021/709 final).

27 Proposal for a Regulation of the European Parliament and of the Council establishing a framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC (COM/2022/142 final).

28 Proposal for a Regulation of the European Parliament and of the Council establishing a carbon border adjustment mechanism [COM (2021) 564].

29 Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 82, 22.3.1997, p. 1).

30 More information on operational cooperation.

31 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act).

## 2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

### • Legal basis

Article 3(1)(a) of the Treaty on the Functioning of the European Union (TFEU) establishes that the Customs Union is an exclusive competence of the Union. As a consequence, only the Union can adopt customs legislation, while Member States are responsible for its implementation.

The legal basis for this initiative is Articles 33, 114 and 207 TFEU.

Articles 33 and 114 TFEU give the European Parliament and the Council the right to take measures to strengthen customs cooperation between Member States and between the latter and the Commission to ensure the proper functioning of the internal market through the abolition of internal borders and the achievement of free movement of goods.

Article 207 TFEU builds on the premise that the scope of the initiative extends beyond cooperation between customs authorities to include trade facilitation and protection against illicit trade as an important aspect of trade policy, in accordance with the applicable international framework for trade policy with third countries.

### • Subsidiarity (for non-exclusive competence)

As this proposal follows within the exclusive competence of the Union, the subsidiarity principle does not apply.

### • Proportionality

The common customs rules and processes established in the UCC are implemented by Member States. The existing framework has encountered problems in terms of uniform implementation and harmonisation, generating a fragmentation of processes, practices and approaches that puts the customs union at risk. Such fragmentation and related consequences cannot be solved at national level. A revised and comprehensive, set of rules on customs processes, common data management and Union-level governance to address the problems identified and to be implemented in the same way is thus necessary.

This initiative does not go further than is necessary to achieve these objectives. The above-mentioned elements are mutually reinforcing and will enable a significant reduction of burden on both public authorities and private sector operators, effective harmonisation of rules and practices, and a level playing field for economic operators in the fulfilment of customs-related obligations.

### • Choice of the instrument

The choice of instrument (regulation) is essential because the customs union must provide legal certainty for trade and public authorities. The customs union needs to ensure the smooth flow of legitimate trade and at the same time provide for effective, risk-based intervention by public authorities to contribute to the implementation of major elements of the Union acquis, notably the single market, the single market, security of the Union and the Union budget, through traditional own resources. The legal instrument of the UCC, which will be repealed by the reform is also a Regulation.

## 3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

### • Ex-post evaluations/fitness checks of existing legislation

In 2022, the Commission presented an interim evaluation of the implementation of the legal provisions and the delivery of the IT systems of the UCC in terms of effectiveness, efficiency, relevance, coherence with related policies and EU added value.[32] The evaluation report indicated that the success of the UCC's implementation in the period 2016-2020 is partial.

First, while the state of implementation of the legal provisions was considered to be on track, some difficulties still remain with the implementation of the 17 IT systems established by the Code. Eight systems were successfully deployed by 2020 and are working satisfactorily according to stakeholders, four more were deployed in 2021 while five systems are to be deployed gradually by end 2025.

Second, some tangible progress in improving the customs environment has been realised but does not evenly concern all the areas analysed in the evaluation. The UCC contributed to clarifying and harmonising customs rules, in order to reduce divergent approaches across Member States, such as in the areas of customs decisions, conditions for granting the status of Authorised Economic Operator (AEO) and in some special procedures. However, harmonisation is insufficient in certain other areas, in particular risk management and monitoring of the AEO status, and varied interpretations of rules continue to be a problem. Moreover, as many of the most significant changes introduced by the UCC, such as some simplifications to the customs clearance process (e.g. EU-level centralised clearance at import and related trade facilitations), are dependent on ongoing IT projects, many of the anticipated benefits of the UCC are yet to be realised.

Third, the evaluation revealed that the implementation of the UCC did not fully tap into the potential synergies with related policies and that proper coordination and information exchange between customs authorities and other relevant national administrations in charge of applying other Union policies at the border is lacking, particularly with regard to goods subject to prohibitions and restrictions. Insufficient coordination for the purpose of aligning requirements, standards (particularly regarding data collection and sharing) and procedures has reportedly been an obstacle for digitalisation and held up progress on implementing crucial simplifications.

The evaluation also considered the relevance of the UCC as regards the most pressing challenges that customs are faced with today, such as the capacity to handle the huge volume of customs declarations and procedures from e-commerce operations. In this respect, the evaluation acknowledged that the UCC was conceived for a business model mainly based on traditional trade, where cargo vessels move large quantities of similar goods by sea. While this model still largely exists today, the dramatic increase in e-commerce transactions, in which low value consignments are individually shipped from third countries to the final consumers in the Union, puts customs authorities and customs legislation under pressure. In 2022, 890 million e-commerce transactions were declared with the H7 declaration, representing 73% of all import customs declarations, but only 0,5% of all import value. E-commerce transactions are also problematic as regards compliance with prohibitions and restrictions applied in the EU linked

[32] Commission Staff Working Document on the interim evaluation of the implementation of the Union Customs Code, SWD/2022/0158.

to non-financial risks. For these, reasons, the evaluations suggested that further action is needed in order to address these challenges in legislation.

- **Stakeholder consultations and collection of expertise**

A public consultation on the revision of customs legislation was launched on 20 July until 19 September 2022.[33] The questionnaire was available on the EU 'Have Your Say' platform in all official EU languages and received 192 responses. Among the policy changes and mechanisms that could be included in a reform of the customs union, respondents *strongly agree* to include the following, in order of preference:

1. Simplifying customs formalities for reliable and trusted traders established in the Union (69.47%);

2. Enhancing cooperation between customs and non-customs authorities (55.79%), in particular regarding information exchange (65.97%), operational coordination (59.47%) and improved enforcement of prohibitions and restrictions (47.37%);

3. A new partnership with trusted traders and other competent authorities for better risk management, including reinforced advance cargo information (53.16%);

4. Providing for an Union-level customs information environment (54.21%), in which the most favoured features would be a simplified provision of data (enabling re-use of data, avoiding duplications, etc.) for 73.16% of replies, data management capabilities (64.21%) and the concept of 'single window' for the handling of non-customs formalities (63.16%);

5. Adapting customs legislation to e-commerce transactions, for example by strengthening supervision of business-to-consumer flows and liability of involved actors for all fiscal and non-fiscal rules (52.11%);

6. 35.79% strongly agree about reforming the governance of the customs union to provide for an EU layer (with another 23% that tend to agree, about 4.5% disagree, the rest did not provide an opinion); *but* if such an EU layer would exist, it should be tasked in particular with the training of customs officers (59.47%), IT management (51%), the financing of customs equipment (44.74%) and EU crisis response (41.5%);

7. Integrating the green agenda in the customs agenda should absolutely be part of a reform only for 31%, while 27.8% tend to agree to this and 6.31% disagree.

In addition to the public consultation, a range of targeted consultation activities were organised to gather views of expert stakeholders, as follows (see Annex II to the Impact Assessment for details):

- Discussions with national customs administrations in the context of the Reflection Group[34] on (i) the recommendations included in the Wise Persons Group report, the need and features of a new partnership with traders and strengthened customs

[33] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13316-Revision-of-the-Union-Customs-Code_en

[34] The Customs Reflection Group is a subgroup of the Commission Customs Policy Expert Group. See Commission Register of Expert Groups, code E00944.

supervision and risk management; (ii) an enhanced cooperation framework with other authorities and green customs agenda and (iii) a new data paradigm and governance.

- Discussion with trade representatives in the Trade Contact Group[35] in four dedicated meetings about (i) the business needs and suggestions for a revision of the UCC, (ii) the recommendations of the Wise Persons Group report, (iii) the results of the public stakeholder consultation and (iv) key elements of the reform.

- Consultation of Member States customs administrations in a Reflection Group composed of the Directors Generals of national customs authorities, specifically set-up to look at the various building blocks of the reform package;

- Consultation of Union-level trade associations, federations and individual companies represented in the Trade Contact Group;

- Consultation of Commission services working with various regulatory requirements on goods applicable at the borders;

In addition, evidence supporting this initiative was gathered from existing documentary sources including legislation and other policy documents, customs and trade statistics, evaluations and reports on relevant policies and information on related initiatives, as listed in Annex I to the Impact Assessment. External expertise used for the impact assessment included in three studies on the evaluation of the UCC implementation, on the AEO programme and on solutions to the challenges posed by e-commerce.[36]

The consultation activities allowed for the collection of qualitative and quantitative information and data, which were processed and analysed systematically using appropriate techniques. Qualitative data (including from submissions and contributions sent to the Commission) was coded according to key themes, then reviewed and analysed from different angles and presented in narrative form. Quantitative data (survey responses) was processed using Excel and Commission's public consultation dashboard tool and analysed using statistical methods such as frequency counts, cross-tabulations and simple trends.

- **Impact assessment**

The draft impact assessment report was submitted to the **Commission's Regulatory Scrutiny Board (RSB)** on 30 September 2022. Following the meeting on 26 October 2022, the RSB issued a negative opinion on 28 October 2022, suggesting several areas for further improvement. The revised report was resubmitted on 21 December 2022. The Board issued a positive opinion with reservations on 27 January 2023. The revision addressed all matters identified for improvement by the Board, which included better justifying the urgency and rationale to act now, the links to evaluation and European Court of Auditors work, the coherence with other initiatives, the delineation of the dynamic baseline (including the Customs Action Plan), the intervention logic, the mapping of the objectives, the contribution to Green Deal

35 Commission Register of Expert Groups, code E02134.

36 Study to support the interim evaluation of the implementation of the Union Customs Code, Oxford Research, Ipsos, CASE, Wavestone and Economisti Associati, 2021. Study on the Authorised Economic Operator programme, Oxford Research, Ipsos, Wavestone, CT Strategies and Economisti Associati, 2023. Study on an integrated and innovative overhaul of EU rules governing e-commerce transactions from third countries from a customs and taxation perspective, Pricewaterhouse Coopers EU Services, 2022 (not final).

objectives, the way each option would work in practice, the extent to which options and measures are cumulative and exhaustive, the identification of combinations of options, the feasibility and funding risks, the presentation of costs and benefits, the impact analysis including in relation to the proposed governance structures, consumers, and IT cost assumptions, the reflection of stakeholder views, the monitoring and evaluation arrangements, the identification of individual measures in the options in customs processes and trusted traders, the explanation of e-commerce options including the removal of the EUR 150 exemption threshold, the one-in, one out approach, the delineation between costs and benefits and of illustrative figures, the impact analysis of governance solutions, the consumer impacts in particular regarding the removal of the EUR 150 duty exemption, and ex-post evaluation.

The impact assessment, as improved following the opinion of the Regulatory Scrutiny Board, distilled and summarised the five main problem areas underlying the need for reform:

1. *Customs struggle in their mission to protect the Union financial interests, and the ever-increasing non-financial requirements* under sectoral policies (product safety, security, protection of human, animal, plant health, of the environment etc.). Since only a small share of imports and exports can be physically controlled, customs depend on risk management – however, risk management today is not sufficiently effective, uniform or comprehensive at EU level. In addition, customs must **work with other authorities** across a wide range of challenges, but the quality and effectiveness of this co-operation is often sub-optimal and varies across the EU.

2. *Current customs processes* require traders to provide similar information on goods several times in the supply chain to different authorities via multiple and not always interoperable IT systems. This creates *administrative burden for legitimate operators.*

3. **The current customs model is not fit for e-commerce.** The huge rise of e-commerce has changed the nature of trade, from goods traditionally brought into the Union in big quantities via cargo, to millions of small consignments shipped directly to individual consumers. Customs authorities are not prepared to cope with the increase of volumes of goods and declarations. In addition, there is evidence of the systematic abuse of the €150 threshold below which customs duties are not charged; moreover, this exemption favours third-country e-commerce operators over traditional trade and EU retailers, distorting competition.

4. **Data quality, access and analysis is limited.** Although customs processes are digitalised, and customs risk analysis and controls rely on data, *the data needed for carrying out customs supervision, risk analysis and controls are fragmented* and duplicated across multiple systems in a decentralised customs IT infrastructure. This is costly for customs authorities, not flexible and hampers an efficient use of data. The lack of a comprehensive legal framework in the UCC on exchange and use of data also hampers its sharing between customs, the Commission, other authorities or partner countries.

5. The *operational implementation in Member States diverges significantly* in control practices and methods, implementation of simplifications, and penalties for infringements of the customs legislation. There is no appropriate Union-level risk analysis to properly supervise trade flows and detect non-compliant trade, and non-compliant operators can target EU points of entry with lower levels of controls.

Because of these problems: (i) not all **customs duties** are collected – loss of revenues undermines the financial interests of the EU and the Member States; (ii) dangerous, non-compliant or counterfeit products still enter or exit the EU single market, and (iii) **illegal goods** are smuggled into the EU, adapting to increased control activities of customs in one country by finding other entry points. These consequences undermine the competitiveness of compliant industry, translate to a loss of profit, jobs and revenues of legitimate businesses including in particular small and medium sized enterprises (SME) and put at risk EU citizens' safety and security.

The impact assessment identified the key drivers behind the problems as (i) the inadequacy and excessive complexity of the customs processes; (ii) the fragmented and complex customs digitalisation, and (iii) the fragmented customs union governance structure.

To address these problems and the underlying drivers, the impact assessment identified three major policy choices, which will largely determine the extent to which the customs union gets the desired capacity to collect, protect and simplify as one. These are:

- to what extent should customs processes be reformed?
- to what extent should the customs data management approach be reformed?
- to what extent should the governance of the Customs Union be reformed?

The impact assessment considered four options, each providing a coherent package of measures addressing these three policy choices:

1. **Option 1 – a package of simpler processes**. This examined the key, interdependent, process components, notably the process steps themselves, the roles of the different actors and their compliance responsibilities, the use of data, the treatment of more reliable operators, the treatment of e-commerce flows, and the way in which penalties are applied across the EU to deter non-compliance. This package would reduce and simplify import process steps, clarify the responsibilities of the actors (notably importers and exporters), remove the customs duty exemption for goods valued at up to EUR 150, and provide for electronic platforms to be deemed importers and account for customs duties for business-to-consumer e-commerce traffic, with a simpler duty calculation approach. It would introduce a new *Trust and Check* approach to partnership with trade, where additional privileges (such as fewer and more targeted customs controls, and the possibility to "self-release" goods) would be available for transparent, reliable traders. It would introduce a common approach to administrative penalties. It would improve the Commission's access to data to support risk management. These changes would be carried out under the current digitalisation model and the existing customs governance structure, which, it was assessed, would limit their impact.

2. **Option 2** would complement Option 1 with an **EU Customs Authority to coordinate cooperation** between the Member States in risk management, support uniform implementation of rules, and manage customs programmes. This package would rely on the current digitalisation model.

3. **Option 3** would create an **EU Customs Data Hub**, managed by the Commission, to implement the simpler customs processes identified in Option 1, in a centralised IT model. The data hub would facilitate collecting information from different actors,

processing it for EU customs risk management and exchanging it with other competent authorities. As regards governance, the role of the Commission would be reinforced, in particular in the organisation of risk management, subject however to the limitations of the Commission's capacities and its lack of an organisational mandate to deliver the full potential of the new data environment.

4. **Option 4** includes simpler customs processes implemented via the **EU Customs Data Hub** managed by an **EU Customs Authority** in charge of (in addition to Option 2) operational risk management and data management and supporting the delivery of simplified processes.

**Option 4 is the preferred option.** Its three elements (reformed customs processes, implemented in a central EU Customs Data Hub, managed by an EU Customs Authority) reinforce each other to deliver better results and create synergies across the EU. This is the most efficient option, as the investment in central structures significantly reduces the cost for Member States and businesses. In particular, it has the following benefits[37]:

- **Customs supervision is strengthened.** Improved access to and processing of data via the EU Customs Data Hub will make EU risk management more efficient and increase customs' capacity to detect fraud by identifying profiles of risky operators acting at Union level. It will generate additional revenues for the Union and its Member States. Improved access to data and better coordination among authorities will increase customs capacity to detect and stop goods not complying with Union requirements to the benefit of citizens and consumers.

- **Administrative burden for legitimate trade is reduced**. The revised processes are simpler, and data is collected once from the right source via a single interface in the EU Customs Data Hub. The assessment estimated savings could be in the region of EUR 1.2 billion to EUR 2.6 billion annually (taking account of the increased customs duty charge to businesses arising from the removal of the EUR 150 threshold on business-to-consumer e-commerce traffic, estimated in the region of EUR 1 billion annually).

- **Centralisation of functions (IT, data and risk management)** in the EU Customs Authority results in significant **savings for Member States'** customs IT expenditure. The assessment estimated these could start in the region of EUR 194 million and rise over a 15 year window to around EUR 2.3 billion annually. The **EU Customs Authority ensures coordination** between national customs administrations and other authorities.

- **E-commerce playing field is levelled with traditional trade**. The revised processes allow e-commerce actors to provide financial and non-financial information in a simpler manner and make them liable for it; consumers benefit from more transparency of prices and fees.

- **The customs union acts as one.** The revised processes are delivered in a central EU Customs Data Hub by a central EU Customs Authority to facilitate uniform implementation in all Member States and avoid divergences.

[37] Based on the assumptions and time horizon indicated in the impact assessment, at the time of its compilation.

As regards **social and environmental impact,** this option is expected to bring significant benefits through better enabling customs to enforce legislation that pursues social and environmental goals, in co-operation with the relevant other authorities. In particular:

- The preferred option, by combining the operational co-ordination mandate of the EU Customs Authority with the data tools and processes provided in the EU Customs Data Hub, will best enable structured, EU-wide co-operation between customs and relevant social and environmental policies in order to improve their outcomes from customs action at the border.

- The additional information that operators provide to customs should further improve the capacity of customs to help to enforce specific legislation pursuing social goals, such as the legislation banning forced labour, or environmental goals.

- Removal of the EUR 150 duty exemption will put an end to the practice of splitting orders of a high value into several consignments lower than EUR 150 to profit from the duty exemption, with the consequent positive environmental effect on transport emissions.

- Better enforcement of product requirements on imported goods might lead to a relocation of production into the Union

The use cases in the impact assessment further illustrate how the reform will support the implementation of relevant current policy objectives, including in the areas of ecodesign and sustainable products, consumer emissions, single-use plastics, persistent chemicals, and reduction of unfair competition from non-compliant imports affecting EU industry and jobs, and market surveillance activities in general.

As regards **Sustainable Development Goals,** the impact assessment identified how the reform would contribute to the implementation of these through measures taken in relation to international trade in goods and supply chains, which would, in particular:

- improve the facilitation of legitimate trade, connected with Goal 8;

- improve the detection and prevention of imports or exports which contravene relevant EU rules on, for example, waste, chemicals, or safe and sustainable product design, connected with Goal 12;

- strengthen the protection of territorial ecosystems (from e.g. imports which are products of deforestation) and protection of biodiversity (through helping detect traffic contravening CITES), connected with Goal 15.

The proposal is fully consistent with the ***do no significant harm*** principle. It will improve the enforcement of environmental policies and will streamline and make more efficient the conduct of international trade operations and their supervision by economic operators and public authorities respectively. The pooling of resources and tools in the central environment will in particular reduce duplication of systems development and administrative activities, reducing the overall time spent on customs processes and accordingly the consumption of resources.

The proposal is driven by the ***digital by default and privacy by default*** principle**s**. It aligns with flagship Commission initiatives such as the AI act, Data Governance Act, GDPR and EUDPR. It provides for user-centric processes ready for automation, enabling all operational exchanges

with customs to be carried out electronically through a single multipurpose EU interface. It supports the once-only principle, the reuse of data and the data minimization principles by providing for data, once submitted, to be integrated in other processes, and by embedding the EU Single Window Environment for Customs approach connecting customs and non-customs formalities (Regulation (EU) 2022/2399)**;** also enabling a Data driven policy. It provides for a paradigm shift from multiple peer-process national systems towards a flexible central set of **services and systems** which will enable processes to be developed and changed **in a cheaper, more consistent, agile and flexible manner**. It will support innovation and digital technologies by enabling the use of advanced analytical techniques in customs operations, and EU-wide and pooling of resources and open-source development of components which can be used by all Member States in that context. Drafting is "digital-ready", with provision for empowerments and delegations to address technical aspects such as data elements and rules.

- **Regulatory fitness and simplification**

The reduction and simplification of customs processes, and the introduction of a single EU portal for interacting with customs (the EU Customs Data Hub), is expected to significantly reduce the administrative burden compared with the Union Customs Code currently in force.

In the impact assessment, it was estimated that total savings for economic operators, in the preferred option could amount to EUR 26 billion over 15 years (taking account of the increased customs duty charge to businesses arising from the removal of the EUR 150 threshold on business-to-consumer e-commerce traffic, estimated in the region of EUR 1 billion annually).

- **Fundamental rights**

Customs has a long experience in collecting and processing data that contains business sensitive information, financial and personal data. The revision of the customs code fully respects the fundamental right of protection of personal data. The reform even improves the protection of this right, as demonstrated in the impact assessment for option 4. The Data Hub would integrate personal data protection tools and controls, enabling each data controller to ensure data protection rights. This will have a positive impact also for data subjects that would be able to exercise their rights in a very similar manner across all Member States.

## 4. BUDGETARY IMPLICATIONS

The reform strengthens customs in addressing the collection of unpaid duties, undervaluation and fraud. Furthermore, removing the duty exemption on goods below EUR 150 closes a loophole and brings additional revenue to the Union budget estimated at EUR 750 million per year at current prices.

Gradually, the collection of duties will shift from the place of declaring the goods, towards the place where the importer or exporter is established in the Union. This facilitates the audit and collection of duties and simplifies the interaction for the importer or exporter, in particular for SMEs. While this change has no direct impact on the overall EU budget or the national contributions to the EU budget, it can gradually change the distribution of the share of customs duties retained by Member States as a collection cost.

The EU Customs Authority and the development of the EU Customs Data Hub will not require a budgetary increase within the 2021-2027 period, as the costs of approximately €60 million during the first 2 years will be financed under the Customs Programme 2021-2027. Post 2027

the total costs of the Reform for the EU budget are estimated in the region of EUR 1.855 billion. This covers the cost of the tasks entrusted upon the EU Customs Authority with this proposal as well as the EU Customs Data Hub, without pre-empting the agreement on the post 2027 MFF and programmes.

## 5. OTHER ELEMENTS

### • Implementation plans and monitoring, evaluation and reporting arrangements

The *Customs Union Performance (CUP)* project run by the Commission annually collects and analyses aggregated information provided by the Member States about customs activity, trends, and performance in the EU to support evidence-based policy. One main outcome of the analysis is the Customs Union Performance Annual Report addressed to the Member States only, provides conclusions and recommendations on the main developments in the Customs Union, based on the analysis of Key Performance Indicators linked to the EU strategic objectives: protection, competitiveness, facilitation, control, and cooperation. The CUP indicators address several types of activities, ranging from the amount of customs duties collected, the use of simplifications, the role of the AEOs in customs processes, to actions in the field of customs controls and detection of illicit trade.

The collection of CUP data is currently voluntary, which raises questions about data quality, completeness, and consistency, as well as issues regarding data ownership and confidentiality. This initiative aims at further developing the CUP measurement by introducing a legal basis for a structured framework for the provision and analysis of relevant information on customs performance to produce the annual report. In addition, the legal basis for CUP will finally offer a tool for the monitoring and evaluation of the present initiative, improving indicators in the area of risk analysis and control inputs and outputs, and protection, collection, and simplification outcomes. This will address the lack of effective tools for supervision at the Commission's disposal, as indicated in the UCC evaluation.

### • Detailed explanation of the specific provisions of the proposal

This reform strengthens the capacity of customs to supervise and control which goods enter and leave the Customs Union. Customs will take a new strategic approach, driven by data analysis of supply chain information, to have targeted and coordinated customs action. The cooperation framework of customs authorities, market surveillance authorities, law-enforcement authorities and bodies, tax authorities and other partners is strengthened. In a new partnership with trade operators, the administrative burden is reduced and customs processes are streamlined. A new EU Customs Data Hub facilitates the exchange and combination of information in a single central environment. A new EU Customs Authority runs a central risk analysis and supports national administrations, leading to coordinated customs action. These measures prepare the Customs Union for the future, with growing volumes of e-commerce and with increasing complexity of prohibitions and restrictions.

The new Union Customs Code has a simple and intuitive structure. The role and responsibility of customs authorities, importer, exporter and carrier are defined. Information is collected in the new EU Customs Data Hub and processed for risk analysis. This is followed by a single title for entry, and for exit respectively. New titles introduce a crisis mechanism, the EU Customs Authority and the common minimum harmonisation of customs infringements and non-criminal sanctions.

Title I introduces the new Union Customs Code, that builds on many elements of the previous Code. The mission of customs authorities is strengthened, to reflect the wide range of services customs, starting with the collection of duties, to the protection of citizens, the environment and other public interests, the fight against unfair, non-compliant and illegal trade, as well as the support of legitimate trade flows. The title contains relevant definitions for the revised customs processes, most importantly the importer and exporter, the deemed importer in case of distance sales and the prohibitions and restrictions.

The reform strives for transparency and accountability of the responsible actors and offers simplifications of the customs processes in return. Title II establishes the responsibilities of the importer, deemed importer and exporter towards customs. As regards **roles**, a weakness in the current system is that the persons currently accountable to customs, such as the declarant and the carrier have greater difficulty in fulfilling their responsibility for financial and non-financial compliance. Against this background, the most appropriate change at the level of roles is to attribute compliance responsibility to importers and exporters. Customs requires them to be established in the territory of the Union (which was already the case for the declarant in Article 170 (2) of the previous Code) and to register with the Member State of establishment, with listed exceptions. Online sellers and e-commerce platforms were so far not involved in the customs formalities at import. Acting as deemed importers, they will be obliged to provide to the customs authorities not only the data necessary for the release for free circulation of the goods sold to consumers in the EU, but also the information that they must collect for VAT purposes. The role of the carrier bringing goods into the customs territory, and the information required to that end, is clarified. The authorised economic operator scheme continues the successful cooperation of business and customs. This partnership is taken to the next level, with the introduction of a new status of Trust and Check trader. These trusted and transparent traders grant the customs authorities access to their electronic systems keeping record of their compliance and the movement of their goods. In return, they got certain benefits, notably the possibility to release the goods on behalf of customs and to defer the payment of the customs debt.

Title III presents a new data paradigm that gradually integrates and replaces the current customs IT systems: moving from 27 IT environments with many systems in each Member State, towards a centralised set of systems and services. The EU Customs Data Hub is a centrally developed environment set of systems and services whose use is mandatory**.** It redefines how customs and other data is collected, used for customs supervision, and shared with partner authorities. It is also the new 'engine' that processes, connects and stores the information and runs EU level risk analysis. Together, this gives customs a better supply chain vision for its risk assessment and enables Customs action to become more targeted and strategic. Moreover, it allows applying data protection rules, rules for accessing information, IT security and confidentiality in a horizontal, coordinated and consistent manner.

Title IV retains essential concepts regarding the scope of customs supervision for goods to be brought into or to be taken out of the customs territory of the Union, to be placed under the end-use procedure or to be placed in internal transit. It adjusts the identification of competent customs offices to provide for the role of the customs office responsible for the place of establishment of the importer or exporter. Customs supervision, controls and mitigation measures will be based on risk management of the whole supply chain in real time, with an EU perspective. The improved risk management on both financial and non-financial risks is at the core of the reform. Title IV provides a clear description of the risk management process, both for financial and non-financial risks and the roles and responsibilities of the Commission, the EU Customs Authority and the customs authorities in this area. It addresses the use of the EU

Customs Data Hub in supporting customs risk management and provides for a comprehensive exchange and use of information relevant for risk management and controls. National customs authorities remain in the driving seat for national risk management and conducting the necessary customs controls. Based on a new EU-level risk analysis the EU Customs Authority will issue EU control recommendations to customs authorities. These recommendations for controls will have to be implemented, or reasons provided as to why the control recommendation was not applied. The Commission will establish common risk criteria and standards and common priority control areas by implementing acts and may identify specific areas in the domain of other legislation which warrant priority treatment for customs risk management and controls. Title IV also provides for systematic evaluation of the implementation of risk management to support continuous improvement.

Title V contains the different customs procedures that allow a trader to temporarily store the goods, or to release them for free circulation on the EU Single Market. In principle, the customs authorities continue to be responsible for releasing the goods and for placing the goods in a customs procedure. Authorised Trust and Check traders will be able to release their goods without active customs intervention, where the information is available in advance and where the goods have not been selected for controls. The title also includes clear rules on the process and legal consequences when customs authorities need to consult other competent authorities before releasing the goods, including the possibility to require importers to continue informing about the distribution of the goods after they are in free circulation. In every scenario, customs can stop the movement of goods, refuse the release of goods, and ultimately has the possibility to seize the goods. Title V equally contains transitional provisions, allowing the current customs processes to continue with legal certainty throughout the transition period and until the new data management systems are operational.

Title VI presents the new simplified process for bringing goods into the Customs Union, a significant reduction in complexity and administrative burden. Customs collects information for risk analysis, including advance cargo and pre-departure information and intervene where necessary. The focus of customs administrations shifts from the individual consignment towards the supply chain supervision to identify risks. Customs maintains the capacity to intervene on every individual consignment, based on the information in the EU Customs Data Hub. Depending on the type of the customs procedures there is a minimum set of information, which has to be provided or made available to customs. Where customs has the relevant information in advance and sees no risk or problem to address, the goods can move in line with the principle to assess in advance and intervene only when and where necessary. The multiple customs declarations are gradually replaced by using business data, following a transition period to develop the necessary systems. Information can be provided earlier to strengthen the supply chain supervisions of customs. Building on the positive experience with 'multiple filing' in the import control system 2 (ICS2), different actors in the supply chain can provide their part of the relevant information. For example, the importer can provide the relevant information about the product and the transaction, while the carrier can provide the information about the routing and arrival separately.

Rules on export in title VII mirror the processes for entry. The exporter is established in the Union and registered. Customs collects the relevant information and conducts a risk analysis. Legitimate trade flows are facilitated and, at the same time, customs capacity to supervise and enforce the rules is strengthened.

Title VIII maintains the special procedures of the previous Code. Relevant information is collected on special procedures, such as transit, inward and outward processing, temporary

admission, end use or customs free zones. In line with the general approach, the transparency and accountability of the responsible economic operator are improved.

Title IX lays down detailed rules in respect of the three elements, which need to be determined to apply import and export duties as well as other measures applicable to trade in goods, such as anti-dumping duties: classification, value and origin. The proposal does not modify these factors, which are largely determined by international rules in the World Trade Organisation and World Customs Organisation, as well as EU bilateral trade agreements. However, as these rules have been identified as being particularly complex for e-commerce, the title will provide two simplifications that the importer may choose to apply when determining the customs duty applicable to business-to-consumer transactions.

The first simplification concerns the proof of non-preferential origin that can be waived for e-commerce goods if the importer opted for the use of the simplified tariff treatment. This is necessary, since the administrative burden to obtain such proof is usually disproportionate compared to the value of the goods. Secondly, and also under the condition that the importer uses the simplified tariff treatment, the transport costs up to the final destination of the goods are to be included in the customs value. This approach ensures full alignment of the tax base for import duty and VAT as regards business-to-consumer e-commerce transactions where transport costs are typically determined up-to the final consumer's address.

In accordance with Title X the customs debt incurs at the time of release for free circulation. Since the work of customs authorities is shifting from a focus on the consignment towards the supply chain, their work also focuses more on the established importer and exporter. After a transition, the customs debt arises at the place where the importer is registered, as opposed to arising where the customs declaration is lodged. This is an important simplification for economic operators and in particular SMEs, under the new partnership with trade. In turn, customs authorities are in a better position to control and audit established importers. Customs duties are a traditional own resource of the EU budget. Member States retain a share of the duties as collection cost, the distribution of which might gradually change with the new provisions. Furthermore, the amount of duties is determined by the importer or the exporter, and by the responsible customs authority only where the importer has not done so. In e-commerce, the deemed importer incurs the customs debt already at the moment of payment of the sale, similar to the provisions on VAT. However, as this might happen well before the goods physically arrive to the Union, the e-commerce intermediaries can be authorised to notify the real duty incurred and have periodical payments, collected by the Member state of establishment and registration.

In recent years, customs administrations have demonstrated resilience and reactivity in dealing with crises. Crisis situations require specific responses – that can be stricter, or more flexible allowing for exceptions – but must be applied similarly across the EU. Title XI includes crisis provisions directly in the Union Customs Code. For different crisis scenarios the EU Customs Authority will develop protocols and procedures, such as application of common risk criteria, appropriate mitigation measures and collaboration framework, and ensure their application and implementation, upon a decision to be taken by the Commission via an implementing act.

Up to now, the EU was lacking a clear structure to operationally manage the Customs Union that is ready for the challenges of our time. In title XII, the regulation establishes the EU Customs Authority, its tasks, responsibilities and governance. The Commission my entrust the Authority to develop and operate the EU Customs Data Hub. It will conduct the EU level risk management and will issue control recommendations to the national customs authorities. Both functions are fundamental for increasing customs capabilities across the Union, and to take the

Customs Union to the next level. The EU Customs Authority will also actively coordinate customs action across the EU and implement political priorities for the functioning of the Customs Union. The EU Customs Authority will cooperate at EU level with other agencies, bodies and networks such as EUROPOL, FRONTEX or ECHA. It will also facilitate the cooperation between administrations, including the work of expert groups, training and the exchange of staff between countries.

In accordance with recent case law of the Court of Justice[38], the competence to determine the location of the seat of an EU agency lies with the EU legislature, which must act to that end in accordance with the procedures laid down by the substantively relevant provisions of the Treaties. The Commission considered it appropriate to leave open the name of the hosting city in its proposal. Criteria to be taken into account in order to contribute to the decision-making process and based on the Common Approach are provided in a recital stating the reasons for the relevant Article. The seat selection should be based on a transparent application process to be concluded before the end of the legislative procedure. Applications should be submitted by Member States given that hosting an EU decentralised agency requires a clear commitment by the Member State in question. The Commission is ready to assist in the evaluation of these criteria and will actively cooperate with the co-legislators on the selection of the seat, in light of the ECJ judgment of 14 July 2022 and in compliance with its institutional responsibility.

To fulfil its mission, customs authorities cooperate closely and regularly with market surveillance authorities, sanitary and phytosanitary control authorities, law-enforcement authorities and bodies, border management authorities, environmental protection bodies, experts on cultural goods, and many other authorities in charge of sectoral policies. Title XIII provides for a new cooperation framework for structured collaboration between customs and those authorities covering four areas: the rules and legislation, data exchange, strategy building and coordinated action. Such cooperation will develop common supervision and control strategies to address the specific problems. The actions customs can take supporting other policy areas are better defined, allowing sectoral legislation to refer to the Customs Code. International cooperation and customs diplomacy are more important, and the cooperation with partners is strengthened and can include the exchange of customs data.

National practices on customs infringements and their sanctions differ significantly between Member States, leading to divergences in treatment and distortions of goods. In title XIV, the reform introduces a minimum common core of acts or omissions that constitute customs infringements and a minimum common core of non-criminal sanctions, as well as common principles, without changing the procedural legal order of Member States, and allowing them to provide for additional customs infringements and to add national sanctions. Customs infringements that concern more than one Member State require the cooperation of the authorities. The EU Customs Data Hub will collect all decisions linked to customs infringements and their sanctions for transparency purposes.

The final provisions in title XV include a timeline for the continuation of the current practice with customs declarations to the national systems, and the transition towards the new system. The EU Customs Data Hub will be developed gradually, starting with the new approach for e-commerce. Traders can start using the EU Customs Data Hub as of January 2032, and would be obliged to do so by 2037, when it will be fully operational. The EU Customs Authority will be gradually established and shall assume its tasks from 2028.

[38] Judgement of the Court of 14.7.2022 C-743/19, European Parliament v Council of the European Union, paras. 66 and 74.

2023/0156 (COD)

Proposal for a

# REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

## establishing the Union Customs Code and the European Union Customs Authority, and repealing Regulation (EU) No 952/2013

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 33, 114 and 207 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[1],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) The Union and the functioning of the internal market are based upon the customs union. In the interests both of economic operators and of the customs authorities in the Union, Regulation (EU) No 952/2013 of the European Parliament and of the Council[2] laying down the Union Customs Code ('the Code') assembled in a single act customs legislation that was contained in several different pieces of legislation, containing the general rules and procedures, for ensuring the implementation of the tariff and other measures introduced at Union level in connection with trade in goods between the Union and countries or territories outside the customs territory of the Union, and the provisions relating to the collection of import charges. Member States customs authorities are responsible for implementing these rules by way of operational tasks like applying customs procedures, carrying out risk analysis and controls and applying sanctions in the case of customs infringements.

(2) The implementation of Regulation (EU) No 952/2013 has disclosed weaknesses in several areas. These include: the insufficient/ineffective action in ensuring the protection of the Union and its citizens against non-financial risks applicable to goods established by Union policies other than customs legislation; the capacity of customs authorities to effectively handle the increasing volume of goods imported from third

[1] OJ C [...], [...], p. [...]

[2] Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast) (OJ L 269, 10.10.2013, p. 1).

country via distance sales (e-commerce transactions); the capacity of the IT systems architecture created by Regulation (EU) No 952/2013 to digitalise customs processes to keep up with the pace of technological progress, namely with technologies based on the exploitation of data; the lack of effective governance structures of the customs union, resulting in divergent practices and non-uniform implementation of the rules in the Member States. Those weaknesses lead to the emergence of obstacles to the proper functioning of the customs union and therefore of the internal market, due to the internal and external risks and threats.

(3) It is appropriate that customs legislation takes account of the rapid development of global trade patterns, technology, business models and the needs of stakeholders, including citizens. Therefore, a great number of amendments are required to be made to Regulation (EU) No 952/2013. In the interests of clarity, that Regulation should be repealed and replaced.

(4) In order to provide for effective means of achieving the objectives of the customs union, a number of rules and procedures regulating how goods are brought into or taken out of the customs territory of the Union should be revised and simplified. A modern, integrated set of interoperable electronic services should be provided for collecting, processing and exchanging information relevant for implementing customs legislation (European Union Customs Data Hub, 'EU Customs Data Hub'). A European Union Customs Authority ('EU Customs Authority') should be established as a central, operational capacity for the coordinated governance of the customs union in specific areas.

(5) Since the adoption of Regulation (EU) No 952/2013, the role of customs authorities has evolved to increasingly cover the application of Union and national legislation laying down requirements on goods subject to customs supervision, in particular the non-financial requirements on goods that are necessary for these goods to enter and circulate in the internal market. Such non-financial tasks have increased exponentially over the years in line with growing expectations of Union businesses and citizens regarding safety, security, accessibility for persons with disabilities, sustainability, human, animal and plant health and life, the environment, the protection of human rights and Union values. New tools, such as the Digital Product Passport, are to be introduced to ensure that other legislation applied by the customs authorities related to products continues to respond to these expectations. It is therefore necessary to reflect the increasing number and complexity of non-financial risks by including in the mission of customs authorities a specific reference to protecting all these public interests and, where applicable, national legislation, in close cooperation with other authorities.

(6) In light of the evolution of their role and of the business models in which they operate and in order for customs authorities to 'act as one' and to contribute to the smooth functioning of the internal market, it is necessary to describe more precisely the mission customs authorities have to perform by indicating more accurately their objectives and tasks.

(7) Certain definitions set out in Regulation (EU) No 952/2013 should be adapted to take account of the broader scope of this Regulation, to align them with those set out in other Union acts, and to clarify terminology having different meanings in different sectors. New definitions should be included in customs legislation to clarify the roles and responsibilities of certain actors in the customs processes. In the case of the importer

and the exporter, new definitions should make those persons liable for compliance of the goods, including for financial and non-financial risks, in order to strengthen customs supervision. In the case of the new concept of deemed importer, new definitions should ensure that in some cases, in the context of an online sale from outside the Union, an economic operator, as opposed to the consumer, is considered the importer and assumes the corresponding responsibilities. New definitions should also be introduced in relation to the broader scope of the provisions of customs supervision, risk management and customs controls.

(8) Beyond their traditional role of collecting customs duties, VAT and excise and applying customs legislation, customs authorities also play a critical role in enforcing other Union and, where applicable, other national legislation on customs matters. A definition of this 'other legislation applied by the customs authorities' should be introduced in order to build an effective framework for regulating the application and supervision of these particular requirements on goods. Such prohibitions and restrictions can be justified on grounds of, *inter alia*, public morality, public policy or public security, the protection of the health and life of humans, animals or plants, the protection of the environment, the protection of national treasures possessing artistic, historic or archaeological value and the protection of industrial or commercial property and other public interests, including controls on drug precursors, goods infringing certain intellectual property rights and cash. The notion of other legislation applied by the customs authorities should also include commercial policy measures and fishery conservation and management measures, as well as restrictive measures adopted on the basis of Article 215 TFEU.

(9) In order to increase legal clarity, certain rules regarding customs decisions should be amended. First, it is appropriate to clarify that the competent customs authority for taking a customs decision is the one of the place where the applicant is established, because the establishment becomes the main principle according to which certain economic operators, at certain conditions and in a pre-determined time frame, subject to review, can benefit from the simplifications introduced by this Regulation and pay customs duties where they are established. Second, the time limit of maximum 30 days by which an applicant is to provide additional information to customs authorities in cases the latter considers that the application for a decision does not contain all the information required, should also be included for the sake of completeness and legal clarity.

(10) The consequence of the failure of a customs authority to take a decision upon application within the established time-limits should be clarified. The principle that in such case the application is deemed to be subject to a negative decision and that the applicant may lodge an appeal, in accordance with the general rule on customs decisions should also be established.

(11) As highlighted by the European Court of Auditors[3] and in the evaluation of the implementation of Regulation (EU) No 952/2013, it is also desirable to address the lack of uniform monitoring of compliance of the criteria and obligations set out in customs decisions, by reinforcing the relevant provisions. On one side, the holders of decisions should not only comply with obligations set out in the relevant decision but also monitor on a constant basis their compliance and provide for an internal organisation where such

[3] European Court of Auditors, Special Report No 4/2021: Customs controls: insufficient harmonisation hampers EU financial interests.

[self-]monitoring activities can prevent, mitigate or remedy any possible errors in their customs processes. On the other side, customs authorities should regularly monitor the implementation of customs decisions by the holders of such decisions, in particular when these are established for less than 3 years and are therefore potentially more prone to pose risks, in order to ensure that that person complies with the obligations established by the customs decisions. This is particularly relevant when those persons benefit from specific status such as that of Authorised Economic Operator (AEO) or Trust and Check trader, who enjoy several facilitations in customs processes. In addition, in order to strengthen risk management at Union level, customs authorities should notify the EU Customs Authority of all decisions taken upon application and inform that Authority about the monitoring activities, so that this information can be taken into account for risk management purposes.

(12) In addition to the decisions relating to binding tariff information (BTI decisions), or decisions relating to binding origin information (BOI decisions) adopted by customs authorities upon application and subject to certain conditions, decisions relating to binding valuation information (BVI decisions) have been introduced in customs legislation through Commission Delegated Regulation (EU) …/….[4]. In the interest of the users of customs legislation, it is appropriate to lay down the rules regarding those three types of decisions relating to binding information in the same legal act.

(13) The rights and obligation of the persons having responsibility over the goods entering into and exiting from the customs territory of the Union should be more clearly defined. The first obligation for persons having regular customs operations should continue to be registered with the customs authorities responsible for the place where they are established. A single registration should be valid for the whole customs union but should be up to date. Economic operators should therefore have the obligation to inform the customs authorities about any change in their registration data. The persons having responsibility over the goods entering and exiting from the customs territory of the Union are liable for any risks presented by the goods for the safety and security of citizens, as well as any risks to human, animal or plant health and life, the environment or consumers. The obligations of the importer should also be defined, in particular the obligation to be established in the customs territory of the Union and the exceptions to that obligation. These should follow the existing rules for the declarant to be established in the Union. Similarly, the obligations of the exporter should be defined.

(14) The obligations of the deemed importers, which are different from the obligations applicable to [the rest of] importers, should also be clarified. In particular, it should be provided that the deemed importer should provide to the customs authorities not only the data necessary for the release for free circulation of the sold goods but also the information that the deemed importer must collect for VAT purposes. This information is detailed in Council Implementing Regulation (EU) No 282/2011[5].

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4 [OJ: Please insert in the text the number of] Commission Delegated Regulation (EU) 2023/... of dd MM 2023 amending Delegated Regulation (EU) 2015/2446 as regards decisions relating to binding information in the field of customs valuation and decisions relating to binding origin information ) [and insert the number, date, title and OJ reference of that Delegated Regulation in this footnote].

5 Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJ L 077 23.3.2011, p. 1).

(15) Economic operators meeting certain criteria and conditions to be considered compliant and trustworthy traders by customs authorities can be granted the status of AEO and thereby benefit from facilitations in customs processes. While ensuring that the traders dealing with most of Union trade are trustworthy, the AEO scheme suffers from certain weaknesses highlighted in the evaluation of Regulation (EU) No 952/2013 and in the findings of the European Court of Auditors. To deal with those concerns, in particular about the divergent national practices and challenges regarding AEO compliance monitoring, the rules should be amended to introduce the customs authorities' obligation to monitor compliance at least every 3 years.

(16) The changes in the customs processes and the way of operating the customs authorities requires a new partnership with economic operators, that is the Trust and Check traders scheme. The criteria and conditions to become a Trust and Check trader should build on the AEO criteria but should also ensure that the trader is considered transparent for the customs authorities. It is therefore appropriate to require Trust and Check operators to grant the customs authorities access to their electronic systems keeping record of their compliance and the movement of their goods. The transparency should be accompanied by certain benefits, notably the possibility to release the goods on behalf of customs without the necessity for their active intervention, except where a pre-release approval is required by other legislation applied by the customs authorities and to defer the payment of the customs debt. As this mode of working should progressively replace the one based on customs declarations, it is appropriate to establish the customs authorities' obligation to reassess the existing authorisations for AEO for customs simplifications until the end of the transition period.

(17) The changes in the customs processes also require clarifying the role of customs representatives. Both direct and indirect representation should continue to be possible but it should be clarified that the indirect representative of an importer or an exporter assumes all the obligations of importers or exporters, not only the obligation to pay or guarantee the customs debt but also the respect of other legislation applied by the customs authorities. For that reason, customs representatives must be resident in the customs territory of the Union where they represent importers or exporters, to ensure proper accountability for financial and non-financial aspects. The use of an indirect customs representative established in the Union is therefore an available and proportionate alternative for importers and exporters who do not have a commercial presence in the Union. Moreover, customs representatives established in third countries can continue providing their services in the Union where they represent persons who are not required to be established within the customs territory of the Union.

(18) In order to ensure a uniform level of digitalisation and to create a level playing field for economic operators in all Member States, an EU Customs Data Hub should be established as a set of centralised, secure and cyber-resilient electronic services and systems for customs purposes. The EU Customs Data Hub should ensure the quality, integrity, traceability and non-repudiation of data processed therein, so neither sender nor recipient can later dispute the existence of the exchange of data. The EU Customs Data Hub and should comply with the relevant regulations for the processing of personal data and cybersecurity. The Commission and the Member States should jointly design the EU Customs Data Hub. The Commission should also be tasked with governing, implementing and maintaining the EU Customs Data Hub, which may delegate to another Union body.

(19) In line with recent case-law of the European Court of Justice[6], it is appropriate to clarify that the automated exchange of information between economic operators and customs authorities through and by the EU Customs Data Hub does not exclude the responsibility of those authorities or of those operators in relation to the customs processes concerned. Even where the customs authorities' involvement is limited to that electronic communication via the EU Customs Data Hub, it should be considered that a measure is adopted by those authorities, as if the EU Customs data Hub acted on behalf of the said authorities.

(20) The EU Customs Data Hub should enable the exchange of data with other systems, platforms, or environments for the purpose of increasing the quality of data used by customs in fulfilling their tasks, as well as for sharing relevant customs data with other authorities, for the purpose of increasing the effectiveness of controls in the internal market. In line with the approach set out in Regulation (EU) .../… of the European Parliament and of the Council[7] and the European Interoperability Framework[8], the EU Customs Data Hub should foster cross-border and cross-sector interoperability in Europe. It should exploit the potential of existing sources of risk information available at Union level, such as the rapid alert systems for food and feed (RASFF) and for non-food products (Safety Gate), the Information and Communication System for Market Surveillance (ICSMS), the IP Enforcement Portal. It should underpin the development of strategic and operational cooperation, including information exchange and interoperability, between customs and other authorities, bodies and services, within their respective competences. Moreover, the EU Customs Data Hub should provide a wide range of advanced data analytics, also including through the use of artificial intelligence. That data analysis should be an enabler for risk analysis, economic analysis, and predictive analysis to anticipate possible risks with consignments coming to or moving from, the Union. To ensure better supervision of trade flows and a streamlined way of collaboration with authorities other than customs, the EU Customs Data Hub should be capable of making use of the framework of collaboration of the EU Single Window Environment for Customs and, where that framework cannot be used, offer those authorities a specific service through they can obtain the relevant data, provide and share information to the customs authorities and make sure that the sectorial requirements are complied with. This would be necessary in case the other authorities would not have an electronic system that could be federated with the EU Customs Data Hub.

(21) Alongside the EU Customs Data Hub, Member States may develop their own applications to use data from the EU Customs Data Hub. For that purpose, and to decrease the time to market, Member States may entrust the EU Customs Authority with the finances and the mandate to develop such applications. In that case, the EU Customs Authority should develop the applications for the benefit of all Member States. This could be done by creating open-source code applications following the Share and Reuse Framework.

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6 Case T-81/22 (OJ C 148, 4.4.2022).

7 [OJ: Please insert in the text the number of the Regulation contained in document COM/2022/720 final – 2022/0379 (COD) and insert the number, date, title and OJ reference in this footnote.] Regulation (EU) ../…. of the European Parliament and of the Council laying down measures for a high level of public sector interoperability across the Union (Interoperable Europe Act) [COM/2022/720 final – 2022/0379 (COD)] (OJ L ..,…..2023, p. .).

8 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the committee of the regions European Interoperability Framework – Implementation Strategy (COM/2017/0134 final).

(22) The EU Customs Data Hub should enable the following flow of data. Economic operators should be able to submit to or make available in it all relevant data required to fulfil customs legislation. That data should be processed at Union level and be enriched with Union-wide risk analysis. The resulting data should be made available for Member State's customs authorities, which would use the data to fulfil their obligations. Finally, the outcome of the controls performed following the retrieval of data from the EU Customs Data Hub should be reported back to that Data Hub.

(23) The data submitted to the EU Custom Data Hub is to a large extent non-personal data submitted by economic operators of the goods they are trading with. Nevertheless, the data will also include personal data, in particular names of individuals acting for an economic operator or an authority. To ensure that personal data and commercial information are equally protected, it is appropriate that specific access rules, rules for confidentiality and conditions for the use of the EU Customs Data Hub are established by this Regulation. In particular, it should be established which entities may access or process data stored or otherwise available in the EU Customs Data Hub, in addition to the persons, the Commission, the customs authorities and the EU Customs Authority, balancing the needs of these entities with the need ensure that the personal and confidential data collected for customs purposes are used for additional purposes only to the minimum extent necessary.

(24) To ensure that the European Anti-Fraud Office ('OLAF') can exercise its investigations powers in relation to fraudulent activities that are affecting the interests of the Union, it is appropriate that it has access to data from the EU Customs Data Hub that is very similar to the access by the Commission. OLAF should therefore be entitled to process the data in accordance with the conditions relating to data protection in the relevant Union legislation, including Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council[9] and Council Regulation (EC) No 515/97[10]. To ensure that EPPO can conduct its investigations on customs-related matters, it should be entitled to request access to the data in the EU Customs Data Hub. To preserve the functions that are performed in Member States' national IT systems, the tax authorities of the Member States should either obtain the possibility to process data directly within the EU Customs Data Hub or to extract data from the EU Customs Data Hub and process it through different means. As such, authorities responsible for food safety in accordance with Regulation Regulation (EU) 2017/625 of the European Parliament and of the Council[11] and the authorities responsible for market surveillance in accordance with

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9 Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

10 Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 82, 22.3.1997, p. 1).

11 Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation)(OJ L 95, 7.4.2017, p. 1).

Regulation (EU) 2019/1020 should be provided with the right services and tools in the EU Customs Data Hub so that they can use the relevant customs data to contribute to enforcing the relevant Union legislation and for cooperating with customs authorities to minimise the risks that non-compliant products enter the Union. It is appropriate that Europol has access upon request to data in the EU Customs Data Hub to be able to perform its tasks as specified in Regulation (EU) 2016/794 of the European Parliament and of the Council[12]. All other Union and national bodies and authorities, including the European Border and Coast Guard Agency (Frontex), should have access to non-personal data contained in the EU Customs Data Hub.

(25) The rules and provisions regarding access to EU Customs Data Hub and exchange of information should not affect the Customs Information System ('CIS') established by Council Regulation (EC) No 515/97 and reporting obligations under Article 24 of Regulation (EU) 2019/1896 of the European Parliament and of the Council on the European Border and Coast Guard.

(26) The Commission should lay down the modalities for access of all these authorities in implementing rules, after assessing the existing safeguards that each authority or category of authorities has in place for ensuring the correct treatment of personal and commercially sensitive data.

(27) It is appropriate that the EU Customs Data Hubs stores personal data for a maximum period of 10 years. This period is justified in light of the possibility for customs authorities to notify the customs debt up to 10 years after having received the necessary information about a consignment, as well as to ensure that the Commission, the EU Customs Authority, OLAF, customs and authorities other than customs can cross-check the information in the EU Customs Data Hub against the information stored in and exchanged with other systems. Moreover, this period of time should be aligned with the storage period required by other legislation applied by the customs authorities, where such legislation is relevant for customs controls. It is also appropriate that whenever personal data is required for the purposes of judicial and administrative proceedings, investigations and during post-clearance controls, the retention period is suspended to avoid that personal data is erased and cannot be used for those purposes.

(28) The protection of personal and other data in the EU Customs Data Hub should also include rules on the restriction of rights of data subjects. It is therefore appropriate that the customs authorities, the Commission or the EU Customs Authority could restrict the right of data subjects where necessary to ensure that enforcement activities, risk analysis and customs controls are not jeopardised. Moreover, such restrictions could also be applied where necessary for the purpose of protecting judicial or administrative proceedings following enforcement activities. The restrictions should be duly justified against the activities and prerogatives of customs and limited to the time necessary to preserve those prerogatives.

(29) Any processing of personal data under this Regulation should be carried out in compliance with the provisions of Regulation (EU) 2016/679, Regulation (EU) 2018/1725 of the European Parliament and of the Council, or Directive (EU) 2016/680

[12] Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

of the European Parliament and of the Council, within their respective scope of application.

(30) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 and delivered an opinion on [...].

(31) A Union-level customs risk management layer is fundamental for ensuring a harmonised application of customs controls in Member States. There is currently a common risk management framework comprising the possibility of identifying common priority controls areas and common risk criteria and standards in the financial risk arena for carrying out customs controls, but it has significant shortcomings. In order to address the lack of harmonised application of customs controls and of harmonised risk management harming the financial and non-financial interests of the Union and of the Member States, it is appropriate to revise the rules to establish a more solid risk management approach addressing both financial and non-financial risks. This includes tackling the structural challenges on the risk management of financial risks identified by the European Court of Auditors. In particular, it is appropriate to describe which activities are comprised in customs risk management, in a cyclical approach. It is also important to identify the roles and responsibilities of the Commission, the EU Customs Authority and the customs authorities of the Member States. It is also essential to provide that the Commission may establish common priority controls areas and common risk criteria and standards, and may identify specific areas in the domain of other legislation applied by the customs authorities that deserve priority for common risk management and controls, without compromising security.

(32) It is therefore appropriate to introduce Union-level risk management activities and provisions to ensure the collection at Union level of comprehensive data relevant for risk management including results and evaluation of all controls. It provides for common risk analysis and the issue of corresponding Union control recommendations to customs authorities. Those control recommendations should be implemented, or reasons provided as to why they were not applied. The possibility to issue an instruction that goods destined for the Union may not be loaded or transported should also be provided for. The analysis of Union-level risks and threats should be based on constantly updated Union-level data and should identify the measures and controls to be performed at the border crossing points of entry and exit of the Union territory. In the context of cooperation with law enforcement and security authorities in particular, Union-level risk management should, where possible, contribute to and benefit from strategic analyses and threat assessments conducted at Union level, including those carried out by the European Union Agency for Law Enforcement Cooperation (Europol) and the European Border and Coast Guard Agency (Frontex) to contribute to the efficient and effective prevention of, and the fight against, crime.

(33) The process of placing goods in a customs procedure needs to be revisited to reflect the new roles and responsibilities of the persons involved in the procedure. Thus, the responsibility for providing the information to the customs authorities is to be assumed by the person responsible for the goods: the importer, the exporter or the holder of the transit procedure, as opposed to the declarant. They should provide or make available the data to customs as soon as this is available and in any case before the release of the goods for a customs procedure, in order to allow the customs authorities to carry out a risk analysis and to take appropriate measures. As the deemed importers in e-commerce have a higher volume of transactions and the obligation to calculate the customs debt at

the moment of the sale, as opposed to the moment in which goods are released, it is appropriate to adapt the timing of their reporting obligation. Deemed importers should therefore provide data on their sales of goods to be imported at the latest on the day after the acceptance of the payment. By contrast, in duly justified circumstances, the customs authorities should be able to authorise Trust and Check traders to complete the data on their released goods at a later stage, as these traders constantly share data on their transactions with customs and should be considered reliable. Such circumstances could be the impossibility of determining the final customs value of the goods at the moment of release because it is linked to a futures contract, or the need to obtain the relevant supporting documents without these having an impact on the calculation of the customs debt.

(34) To simplify the customs process for the entry of goods into the customs territory of the Union while ensuring that there is a single person responsible for those goods, different actors in the supply chain should provide their part of the relevant information on the goods concerned and link it to a specific consignment. Goods should enter only if there is an importer established in the Union that takes the responsibility for those goods. The importer should provide information on the goods to customs and the customs procedure to which they should be placed, at the earliest possible stage, if possible before the goods physically arrive. A service provider or customs agent should be able to provide the information on the importer's name and behalf, but the importer remains responsible for ensuring compliance of the goods with the financial and non-financial risks. The carriers effectively bringing the goods should also provide some information on the goods before loading or arrival ('advance cargo information') and should link their information to the importer's information where this has been previously submitted, without necessarily having access to all the data that the importer has provided. In addition, to cater for the more complex supply chains and transport networks, other persons may be required to complete the information on the goods to be brought to the customs territory of the Union. The importer, the carrier or any other person submitting information to customs should be obliged to amend it where they know that the information is no longer correct but before the customs authorities have detected irregularities that they would like to control.

(35) The customs authorities responsible for the place of first entry of the goods should carry out a risk analysis of the available information on those goods and be entitled to take a wide range of mitigation measures if they detect a risk, including requesting controls before loading or upon arrival of the goods to the customs territory of the Union, by another customs authority or by other authorities. The carrier is generally in the best position to know when the goods have arrived so they should notify customs of such arrival. However, to cater for the more complex supply chains and transport networks, other persons may be required to notify the arrival of the goods to the customs authorities for their risk analysis. In order to ensure that the customs authorities have advance cargo information on all goods brought to the customs territory of the Union, the carrier should be prevented from unloading goods for which there is no information, unless the customs authorities have requested the carrier to present the goods or there is an emergency situation requiring the unloading of the goods. By contrast, to smoothen the process of entry of goods for which the customs authorities have the appropriate advance cargo information, the carrier should not be required to present the goods to customs in all cases but only where the customs authorities so request or where other legislation applied by the customs authorities so requires.

(36) The non-Union goods that are brought to the customs territory of the Union should be considered to be in temporary storage from the moment the carrier notifies their arrival until their placement under a customs procedure unless they are already placed in transit. To ensure appropriate customs supervision, this situation should be limited in time. It should not last more than 10 days, except in exceptional cases. If the importer needs to store the goods for a longer period, the goods should be in a customs warehouse, where the goods can be stored without time limit. The existing authorisations for temporary storage locations should therefore be converted into customs warehouse authorisations if the relevant requirements are met.

(37) It is necessary to maintain the rules that determine whether the goods are Union or non-Union goods and whether the status of Union goods can be presumed or needs to be proven, particularly where the goods temporarily leave the customs territory of the Union.

(38) Once the customs authorities have the information necessary for the relevant procedure, based on risk analysis, they should decide whether to perform further controls on the goods, to release them, to refuse or suspend their release or to let the time pass so the goods are considered released. The customs authorities should do so in cooperation with other authorities, where necessary. Accordingly, the customs authorities should refuse the release of the goods where they have evidence that the goods do not comply with applicable legal requirements. Where the customs authorities need to consult other authorities to determine whether or not the goods comply, they should suspend the release at least until the consultation takes place. In these cases, the customs authorities' subsequent decision on the goods should depend on the other authorities' reply. To avoid blocking both traders and authorities in the cases in which concluding on compliance requires some time, the customs authorities should have the possibility to release the goods on the condition that the trader continues informing about the location of the goods for a maximum of 15 days. Finally, in order to provide legal certainty to the traders that have provided the information on time without obliging the customs authorities to react to every consignment, the goods that have not been selected for a control after a reasonable period of time should be considered released. The Commission should be entitled to define this period of time in delegated rules, adapting it, where necessary, to the type of traffic or type of border crossing points.

(39) To the extent that Trust and Check traders provide customs full access to their systems, records and operations and are considered reliable, they should be able to release their goods under the supervision of the customs authorities but without waiting for their intervention. Accordingly, Trust and Check traders should be able to release goods for any entry procedure at receipt at final destination of the goods or for any exit procedure at the place of delivery of the goods. As the Trust and Check traders are considered transparent, the arrival and/or the delivery should be properly recorded in the EU Customs Data Hub. These operators should be obliged to inform the customs authorities where a problem arises so that those authorities can take a final decision on the release. Where the internal controls systems of the Trust and Check traders are robust enough, the customs authorities should be able, in cooperation with other authorities, to authorise the traders to perform certain checks on their own. However, the customs authorities should retain the possibility to control the goods at any time.

(40) It is appropriate to provide measures to regulate the transition from a system based on customs declarations to a system based on the provision of information to the central

EU Customs Data Hub. Operators should have the possibility to lodge customs declarations to declare their intention to place goods under customs procedure during the transition period. However, as soon as the capabilities of the EU Customs Data Hub are available, operators should also be given the possibility to provide or make available information to the customs authorities through the EU Customs Data Hub, and the customs authorities should no longer authorise any operator to apply for simplifications in relation to the customs declaration. At the end of the transition period, all the authorisations should cease to be valid, as customs declarations will no longer exist.

(41) Article 29 of the Treaty on the Functioning of the European Union (TFEU) requires that products coming from third countries are to be considered in free circulation if the import formalities have been complied with and customs duties or charges having equivalent effect have been levied. However, the release for free circulation should not be understood as a proof of compliance with other legislation applied by the customs authorities when the latter imposes specific requirements for goods to be sold or consumed in the internal market.

(42) The process of taking goods outside the customs territory of the Union should be streamlined and simplified, in line with the entry process. Thus, it is appropriate to require that there a person established in the Union should be responsible for the goods, that is the exporter. The exporter should provide or make available to customs the relevant information prior to taking the goods out of the Union, indicating whether these are Union or non-Union goods to be exported, and adapting the information necessary. In order to simplify the process and avoid potential loopholes, the concept of export should include the exit of non-Union goods, thereby encompassing also the concept of 're-export', which was previously regulated as a separate concept.

(43) To ensure that there is proper risk management of the goods taken out of the customs territory of the Union, the customs office responsible of export should be required to carry out a risk analysis of the information on the goods and to take or request the appropriate measures before the goods exit. Those measures should include requesting controls to be carried out by the customs office responsible for the place of dispatch of the goods and the customs office of exit and, if necessary, by other authorities, in addition to the measures provided under the release for a customs procedure, which are also applicable where the goods are to be placed under export.

(44) To ensure that the duty-suspensive procedures are also transparent, it is appropriate to streamline the requirements provisions for the authorisations for special procedures. In particular, for the sake of clarity and legal certainty, the conditions for determining whether an opinion at Union level is necessary to assess if granting an authorisation could adversely affect the interests of Union producers, the so-called examination of the economic conditions, should be codified rather than being regulated in delegated rules. Moreover, as the effect on the Union producers' interests may depend on the quantity of goods that are placed under the special procedure, the EU Customs Authority should be entitled to propose a certain threshold under which it is estimated that there is no negative effect on the Union producers' interests.

(45) Article 9 of the Revised Convention for the Navigation of the Rhine refers to an Annex (Rhine Manifest) that facilitated the movement of goods on the Rhine river and its associated tributaries by considering them as a customs transit procedure across national

frontiers of five Member States.[13] According to information from customs administrations, the Rhine Manifest is not used in practice anymore as a customs transit procedure in the states bordering the Rhine. Instead, goods on the Rhine and its tributaries are now transported using the Union transit procedure established by the Code, through the New Computerised Transit System (NCTS). It is therefore appropriate to remove the reference to the Rhine Manifest from the cases where a movement of goods is considered as external transit or as Union transit.

(46) In order to increase transparency about the person responsible for complying with the obligations of the Union transit procedure and with the content and risks related to the consignment, it is appropriate to require that the holder of the transit procedure disclose at least information regarding the importer or the exporter motivating the movement, the means of transport, and the identification of the goods placed under that procedure. Such information would enable the customs authorities to supervise more effectively the Union transit procedure concerned and to carry out a risk analysis. The Union transit procedure should be compulsory unless goods are put under another customs regime immediately upon entry into or exit out of the customs territory of the Union. In the case that the importer or the exporter is not yet known, the holder of the goods should be considered as being the importer or the exporter of the goods and should be liable for the payment of customs duties and other taxes and charges. The Union transit procedure should be replaced by customs supervision if goods are imported or exported by a Trust and Check trader.

(47) An amendment to Annex 6 to the Customs Convention on the International Transport of Goods under Cover of TIR Carnets ('TIR Convention')[14] that entered into force on 1 June 2021 modified the Explanatory Note 0.49 in order to grant to economic operators meeting certain requirements the possibility to become an 'authorised consignor', mirroring the existing facilitations granted to the economic operators recognised as an 'authorised consignee'. It is therefore necessary to include the new possibility established by the TIR Convention in order to align the Union customs legislation with that international agreement.

(48) Applying the standard rules for duty calculation in e-commerce transactions would, in many cases, result in a disproportionate administrative burden both for the customs administrations and economic operators in particular in respect of the collection of revenues. In the interest of developing a robust and effective fiscal and customs treatment for goods imported from third countries via e-commerce transactions ('distance sales of imported goods'), Union legislation is to be amended in order to remove the threshold under which goods of negligible value not exceeding EUR 150 per consignment are exempted from customs duties at import in accordance with Council Regulation (EC) No 1186/2009[15], and to introduce a simplified tariff treatment

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13 The procedure is based on the Mannheim Rhine Navigation Act of 17 October 1868 and the protocol that was adopted by the Central Commission for Navigation on the Rhine on November 22, 1963. The Mannheim Convention on the Navigation of the Rhine affects Belgium, Germany, France, the Netherlands and Switzerland as countries bordering the Rhine, which are considered to be a single area for the purposes of the Act.

14 Amendments to the Customs Convention on the International Transport of goods under cover of TIR carnets (TIR Convention 1975) According to UN Depositary Notification C.N.85.2021.TREATIES-XI.A.16 the following amendments to the TIR Convention enter into force on 1 June 2021 for all Contracting Parties, OJ L 193/1, 1.6.2021, p.1.

15 Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty (OJ L 324, 10.12.2009, p. 23).

for distance sales of imported goods from third countries in accordance with Council Regulation (EEC) No 2658/87[16] (Combined Nomenclature). In light of these proposed amendments, certain rules of the Code on tariff classification, origin and customs value should be amended to provide for the simplifications applicable on a voluntary basis by the deemed importer when determining the customs duty in a business-to-consumer transaction qualifying as distance sales for VAT purposes. The simplifications should consist in the possibility to calculate the customs duty due by applying one of the new bucket tariffs in the Combined Nomenclature to a value calculated in a simpler way. Under the simplified rules for business-to-consumer e-commerce transactions, the net purchase price without VAT but including the total transport costs until the final destination of the product should be considered as the customs value and no origin should be required. However, if the deemed importer wishes to benefit from preferential tariff rates by proving the originating status of the goods, that person can do so by applying the standard procedures.

(49) Currently, customs debts are collected by the Member State where the customs declaration is lodged. It is the choice of the trader whether to do this in the country of first entry, or to use a transit procedure and pay duties in another Member State. In 2025, this system is due to change with the roll-out of a centralised clearance IT system, which will allow Authorised Economic Operators to lodge the customs declaration in the Member State where they are established. In view of this development, it is appropriate to amend the rules defining the place where the customs debt occurs so that the import duties are paid to the Member State where the importer is established because this is the place where the customs authority can have the most complete knowledge about the records, operations and commercial behaviours of economic operators, in particular where those economic operators are granted the status of Trust and Check traders. However, it is appropriate that the customs debt of operators that are not Trust and Check traders is incurred at the place where the goods are physically located, at least until the supervision model is evaluated.

(50) In the case of e-commerce transactions, it is essential to ensure that a customs debt is paid correctly by the online intermediaries, such as internet platforms, that manage the online sale of goods to private consumers. It is therefore appropriate to clarify that the deemed importer is the person responsible for the customs debt, which would be incurred at the moment the buyer pays the e-commerce operator, in most cases, an internet platform. To simplify the burden related to such obligation, the deemed importer may be authorised to determine the import duty due and to pay its customs debts periodically, and the customs authorities should be able to have a single entry in the accounts for the purposes of the Union budget.

(51) It is appropriate to enhance the mechanism aimed at supervising more efficiently the implementation of the restrictive measures on the flow of goods that can be adopted by the Council in accordance with Article 215 TFEU. In such a case, the EU Customs Authority should provide support to the Commission and Member States to ensure that those measures are not circumvented. Customs authorities should ensure that they take all the necessary steps to comply with the measures and should inform the Commission and the EU Customs Authority accordingly.

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[16] Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

(52) A crisis management mechanism should be put in place to address potential crises in the customs union. The lack of such a mechanism at Union level was highlighted in the Customs Action Plan[17]. A mechanism should therefore be established that involves the EU Customs Authority as a pivotal actor in preparing, coordinating and monitoring the implementation of the practical measures and arrangements that the Commission decides to put in place when a crisis occurs. The EU Customs Authority should maintain the crisis response readiness on a permanent basis during the whole duration of the crisis.

(53) The existing governance framework of the customs union lacks a clear operational management structure and does not reflect the evolution of customs since its creation in 1968. Under Regulation (EU) No 952/2013, the activities related to the management of risks in trade flows, such as implementation and decisions on controls on the ground, are the responsibility of national customs authorities. Despite the cooperation between national customs administrations that has existed since the creation of the customs union and that has led to the exchange of best practices, expertise, and the development of common guidelines, it has not resulted in the development of a harmonised approach and operational framework. Currently, divergent practices exist in Member States that weaken the customs union. There is no central risk analysis capacity, no common view on risk prioritisation, limited coordinated customs action and controls, and no cooperation framework of various authorities serving the single market. A central operational Union layer to pool expertise, resources and take decisions together should address such weaknesses in areas such as data management, risk management and training to make the customs union 'act as one'. Therefore, it is appropriate that an EU Customs Authority is established. The creation of this new Authority is crucial to ensure the efficient and adequate functioning of the customs union, to centrally coordinate customs action and support the customs authorities' activities.

(54) The EU Customs Authority should be governed and operated on the basis of the principles of the Joint Statement and common approach of the European Parliament, the Council and the Commission on decentralised agencies of 19 July 2012.[18]

(55) Criteria to be taken into account in order to contribute to the decision making process for choosing the EU Customs Authority seat should be the assurance that Authority can be set up on site upon the entry into force of this Regulation, the accessibility of the location and the existence of adequate education facilities for the children of staff members as well as appropriate access to the labour market, social security and medical care for both children and spouses of staff members. In view of the cooperative nature of most of the EU Customs Authority activities, and in particular the close connection that will exist between the IT systems that the Commission will maintain during the transitional period, while the EU Customs authority will build and operate the EU Customs Data Hub, it should be in a place that allows such close cooperation with the Commission, the authorities of the Union regions most relevant for international trade, and relevant Union and international bodies (for example the World Customs Organisation for facilitating practical cross fertilisation on specific subjects). Considering these criteria, the EU Customs Authority should be located at […].

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17 Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee Taking the Customs union to the Next Level: a Plan for Action, 28.9.2020 (COM/2020/581 final).

18 joint_statement_on_decentralised_agencies_en.pdf (europa.eu)

(56) The Member States and the Commission should be represented on a Management Board, in order to ensure the effective functioning of the EU Customs Authority. The composition of the Management Board, including the selection of its Chairperson and Deputy-Chairperson, should respect the principles of gender balance, experience and qualification. Given the Union's exclusive competence on the customs union, and the close link between customs and other policy fields, it is appropriate that its chairperson is elected from among those Commission representatives. In view of the effective and efficient functioning of the EU Customs Authority, the Management Board should, in particular, adopt a Single Programming Document including annual and multiannual programming, carry out its functions relating to the Authority's budget, adopt the financial rules applicable to the Authority, appoint an Executive Director, and establish procedures for taking decisions relating to the operational tasks of the Authority by the Executive Director. The Management Board should be assisted by an Executive Board.

(57) To guarantee its effective functioning, the EU Customs Authority should be granted an autonomous budget, with revenue coming from the general budget of the Union and any voluntary financial contribution from the Member States. In exceptional and duly justified circumstances, the EU Customs Authority should also be in the position to receive additional revenues through contribution agreements or grant agreements, and charges for publications and any other service provided by the EU Customs Authority.

(58) To fulfil their mission, customs authorities cooperate closely and regularly with market surveillance authorities, sanitary and phytosanitary control authorities, law-enforcement bodies, border management authorities, environmental protection bodies, experts on cultural goods, and many other authorities in charge of sectoral policies. Considering the evolution of the single market and the evolving role of customs, the increase in prohibitions and restrictions and e-commerce, it is necessary to structure and reinforce this cooperation at national, Union and international level. Instead of a cooperation focused on individual consignments or specific events along the supply chain, a structured cooperation framework between customs authorities and other authorities responsible for relevant policy areas should be established. Such cooperation framework should include the following aspects: the development of legislation and of policy needs in a specific area, the exchange and analysis of information, the building of overall cooperation strategy in the form of joint supervision strategies and, finally, cooperation on operational implementation, monitoring and controls. The Commission should also facilitate the application of part of the other legislation applied by the customs authorities by drawing a list of Union legislation imposing requirements on goods subject to customs controls aimed at protecting public interests such as human, animal or plants health and life, the consumers and the environment.

(59) In order to increase clarity and make the cooperation framework between customs and other partner authorities more efficient, a list of services offered by customs authorities should define clearly the possible role of customs in the application of other relevant policies at the borders of the Union. In addition, the application of the cooperation framework should be monitored by the EU Customs Authority. The EU Customs Authority should work closely and cooperate with the Commission, OLAF, other relevant Union agencies and bodies, such as Europol and Frontex as well as specialised agencies and networks in the respective policy fields, such as the EU Product Compliance Network.

(60) In an increasingly connected world, customs diplomacy and international cooperation are important aspects in the work of customs authorities around the world. International cooperation should envisage the possibility of exchange of customs data, on the basis of international agreements or autonomous legislation of the Union, through appropriate and secure means of communication, subject to the respect of confidential information and the protection of personal data, such as through the EU Customs Data Hub.

(61) Despite the fact that customs legislation is harmonised through the Code, Regulation (EU) No 952/2013 only included the obligation for Member States to provide for penalties for failure to comply with the customs legislation and required such penalties to be effective, proportionate and dissuasive. Member States have, therefore, the choice of customs penalties, which vary greatly across Member States and are subject to evolution over time. A common framework establishing a minimum core of customs infringements and of non-criminal sanctions should be laid down. Such framework is necessary to address the lack of uniform application and the significant divergences between Member States in the application of sanctions against breaches of customs legislation that can lead to a distortion of competition, loopholes and 'customs shopping'. The framework should be composed of a common list of acts or omissions that should constitute customs infringements in all Member States. In determining the sanction applicable, customs authorities should define if these acts or omissions are committed intentionally or by obvious negligence.

(62) It is necessary to establish common provisions for extenuating or mitigating factors, as well as for aggravating circumstances, with regard to the customs infringements. The limitation period for initiating the customs infringement proceedings should be established in accordance with national law and should be between 5 and 10 years, so as to provide for a common rule based on the time limitation for the notification of customs debt. The competent jurisdiction should be the one where the infringement was committed. Cooperation between Member States is necessary in cases where the customs infringement has been committed in more than one Member State; in such cases the Member State that first initiates the proceedings should cooperate with the other customs authorities concerned by the same customs infringement.

(63) It is necessary to establish a minimum common core of customs infringements by defining them, based on the obligations laid down in this Regulation and to identical obligations provided for in other parts of the customs legislation.

(64) It is also necessary to establish a common minimum core of non-criminal sanctions providing for minimum amounts of pecuniary charges, the possibility of revocation, suspension or amendment of customs authorisations, including for Authorised Economic Operators and Trust and Check traders, as well as the confiscation of the goods. The minimum amounts of pecuniary charges should depend on whether the customs infringement has been committed intentionally or not and whether or not it has an impact on the amount of customs duties and other charges and on prohibitions or restrictions. This minimum common core of non-criminal sanctions should apply without prejudice to the national legal order of Member States, which can instead provide for criminal sanctions.

(65) The performance of the customs union should be evaluated at least on an annual basis to allow the Commission, with the help of the Member States, to take the appropriate policy orientations. The collection of information from customs authorities should be

formalised and deepened, as more comprehensive reporting would improve benchmarking and could help to homogenise practices and assess the impact of customs policy decisions. It is, therefore, appropriate to introduce a legal framework for the evaluation of the performance of the customs union. To allow sufficient granularity of analysis, the performance measurement should be done not only at national level but also at border crossing point level. The EU Customs Authority should support the Commission in the evaluation process by gathering and analysing the data in the EU Customs Data Hub and identifying how customs activities and operations support the achievement of the strategic objectives and priorities of the customs union and contribute to the mission of customs authorities. In particular, the EU Customs Authority should identify key trends, strengths, weaknesses, gaps, and potential risks, and provide recommendations for improvement to the Commission. In the context of cooperation with law enforcement and security authorities in particular, the EU Customs Authority should also participate, from the operational perspective, in strategic analyses and threat assessments conducted at Union level, including those carried out by Europol and Frontex.

(66) In accordance with the principle of proportionality, it is necessary and appropriate, for the achievement of the basic objectives of enabling the customs union to function effectively and implementing the common commercial policy, to lay down the rules and procedures applicable to goods brought into or taken out of the customs territory of the Union. This Regulation does not go beyond what is necessary to achieve the objectives pursued, in accordance with Article 5(4) of the Treaty on European Union.

(67) In order to supplement or amend certain non-essential elements of this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the following:

- in relation to the special fiscal territories, more detailed provisions of customs legislation to address particular circumstances pertaining to the trade in Union goods involving only one Member State;
- in relation to customs decisions, the conditions, time limits, exceptions, modalities for monitoring, suspension, annulment and revocation relating to the application, issuance and management of such decisions, including those relating to binding information;
- the minimum data requirements and specific cases for the registration of economic operators with the customs authorities responsible for the place where they are established;
- the type and frequency of the monitoring activities, the simplifications and the facilitations provided for the Authorised Economic Operator;
- the type and frequency of the monitoring activities of the Trust and Check trader;
- in relation to the customs representative, the conditions under which such person may provide services in the customs territory of the Union, the cases in which the requirement of being established therein is waived and in which the evidence of empowerment is not required by the customs authorities;

– the categories of data subjects and the categories of personal data that may be processed in the EU Customs Data Hub;

– more detailed rules in relation to the customs status of goods;

– the type of data and time limits for providing such data for placing goods under a customs procedure;

– the reasonable period of time after which the customs authorities shall be deemed to have released the goods where they have not selected them for any control w;

– in relation to customs declarations: the cases where a customs declaration may be lodged using means other than electronic data-processing techniques; the conditions for granting the authorisation to lodge simplified declarations; the time limits for lodging supplementary declarations and the cases in which the obligation to lodge such declarations are waived; the cases of invalidation of the customs declaration by customs authorities; the conditions for granting the authorisations for centralised clearance and entry into the declarant's records;

– the conditions and the procedure for confiscating goods;

– in relation to the advance cargo information: the additional data to be provided, the time limits, the case where the obligation to provide such data is waived, the specific cases in which data can be provided by multiple persons, the conditions under which a person who provides or makes available information may restrict the visibility of its identification to one or more other persons which also lodge particulars;

– in relation to the entry of the goods into the customs territory of the Union: the time-limits within which the risk analysis is to be carried out and the necessary measures are to be taken; the specific cases and the other persons who may be required to notify the arrival of the consignments to the actual customs of first entry, in case of diversion; the conditions for designating and approving the places other than the designated customs office for presenting the goods; the conditions for designating or approving the places other than customs warehouses for placing the goods in temporary storage;

– the data to be provided or to be made available to the customs authorities for placing goods under a release for free circulation;

– the cases in which goods are considered to be returned in the state in which they were exported and in which goods which have benefited from measures laid down under the common agricultural policy can be granted relief from import duty;

– in relation to the pre-departure information at exit from the customs territory of the Union: the minimum pre-departure information and the time limits within which the pre-departure information is to be provided or made available before the goods are taken out, the specific cases in which the obligation to provide or make available pre-departure information is waived and the information to be notified on the exit of the goods;

– in relation to the exit of goods, the time-limits within which risk analysis is to be carried out and the necessary measures are to be taken; the data to be provided or made available to the customs authorities for placing goods under the export procedure;

– in relation to special procedures: the data to be provided or made available to the customs authorities for placing goods under such procedures; the exceptions to the conditions for granting an authorisation for special procedures; the cases in which the economic nature of the processing justifies that the customs authorities assess whether granting an authorisation for an inward processing procedure adversely affects the essential interest of the Union producers without the opinion of the EU Customs Authority; the list of goods considered as sensitive; the time limit for discharging a special procedure; the cases and conditions under which importers and exporters may move goods placed under a special procedure other than transit or in a free zone; the usual forms of handling for goods placed under customs warehousing or a processing procedure; the more detailed rules related to equivalent goods;

– in relation to transit: the specific cases where Union goods are to be placed under the external transit procedure; the conditions for the granting of the authorisations for authorised consignor and authorised consignee for TIR purposes; the additional data requirements to be provided by the holder of the Union transit procedure;

– in relation to storage: the minimum data to be provided by the operator of a customs warehouse or a free zone; the conditions for granting the authorisation for the operation of customs warehouses;

– in relation to temporary admission: the requirements for total or partial duty relief laid down in the customs legislation that are to be met for using the temporary admission procedure;

– the rules for the determination of non-preferential origin and the rules on preferential origin;

– the conditions for granting the authorisation for simplifications in the determination of the customs value in specific cases;

– in relation to customs debt: more detailed rules for the calculation of the amount of import or export duty applicable to goods for which a customs debt is incurred in the context of a special procedure; the specific time-limit within which the place where the customs debt is incurred cannot be determined if the goods have been placed under a customs procedure which has not been discharged or when a temporary storage did not end properly; more detailed rules related to the notification of customs debt; rules for

– the suspension of the time-limit for payment of the amount of import or export duty corresponding to a customs debt and for determining the period of suspension; the rules with which the Commission has to comply when taking a decision on repayment and remission of customs debt; the list of failures with no significant effect on the correct operation of the temporary storage or of the customs procedure concerned, for the extinguishment of the customs debt;

– in relation to guarantees: the specific cases in which no guarantee is required for goods placed under the temporary admission procedure, the rules for determining the form of the guarantee other than any means of payment recognised by the customs authorities and an undertaking given by a guarantor; the rules concerning the forms for the provision of a guarantee and the rules applicable to the guarantor; the conditions for the granting of an authorisation to use a comprehensive guarantee with a reduced amount or to have a guarantee waiver; the time-limits for the release of a guarantee;

– in relation to customs cooperation, any other complementary measure to be taken by the customs authorities to ensure compliance with legislation other than customs; the conditions and procedures according to which a Member State can be empowered to enter into negotiations with third countries on exchange of data for the purpose of customs cooperation;

– to delete or modify the derogations for the identification of the customs office competent for supervising the placement of the goods under a customs procedure and of the place for the incurrence of the customs debt, in light of the assessment to be made by the Commission on the effectiveness of the customs supervision as established by this Regulation.

(68) It is of particular importance that the Commission carry out appropriate consultations during the preparatory work for the adoption of delegated acts, including at expert level and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[19].

(69) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission in order to: to adopt the procedural rules on the use of a decision relating to binding information after it ceases to be valid or is revoked; to adopt the procedural rules on the notification to the customs authorities that the taking of such decisions is suspended and on the withdrawal of such suspension; to adopt decisions requesting Member States to revoke decisions relating to binding information; to adopt the modalities for the application of the criteria for granting the status of Authorised Economic Operator and of Trust and Check trader; to determine the electronic systems, platforms or environments with which the EU Customs Data Hub federates; to determine the rules for the access to specific services and systems of the EU Customs Data Hub, including the specific rules and conditions for the protection, safety and security of personal data and where that access is limited; measures on the management of the surveillance by customs; to adopt the procedural rules regarding the responsibilities of the joint controllers for the data processing taking place by means of a service or system of the EU Customs Data Hub; to adopt the procedural rules for determining the competent customs offices other than the customs office responsible for the place where the importer or the exporter is established; to adopt measures on the verification of information, examination and sampling of goods, results of the verification and on identification; to adopt measures on the application of post-release controls in respect of operations taking place in more than one Member State; to determine the ports or airports where customs controls and formalities are to be carried out on cabin and hold baggage; to adopt measures to ensure the harmonised application of customs controls and risk management, including the exchange of

[19] OJ L 123, 12.5.2016, p. 1.

information, the establishment of common risk criteria and standards and common priority control areas and the evaluation activities in these areas; to specify the procedural rules for the provision and verification of the proof of the customs status of Union goods; to specify the procedural rules for amending and for invalidating the information for placing goods under a customs procedure; to adopt the procedural rules on the determination of competent customs offices and on the lodging of the customs declaration where other means than electronic data processing techniques are used; the procedural rules on the lodging of a standard customs declaration and on the making available of supporting documents; the procedural rules on the lodging of a simplified declaration and a supplementary declaration; the procedural rules on the lodging of a customs declaration prior to the presentation of goods to customs, the acceptance of the customs declaration and the amendment of the customs declaration after the release of the goods; to specify the procedural rules on centralised clearance and on the waiver from the obligation for goods to be presented in that context; the procedural rules on entry in the declarant's records; the procedural rules on the disposal of goods; the procedural rules on the provision of information establishing that the conditions for relief from import duty for returned goods are fulfilled and on the provision of evidence that the conditions for relief from import duty for products of sea-fishing and other products taken from the sea are fulfilled; to specify the procedural rules on the exit of goods; to adopt the procedural rules for providing, amending and invalidating the pre-departure information and for lodging, amending and invalidating the exit summary declaration; to adopt procedural rules for refunding the VAT to natural persons not established in the Union; to specify the procedural rules on the notification of arrival of sea-going vessels and aircraft and on the conveyance of goods to the appropriate place; the procedural rules on the lodging, amendment and invalidation of the temporary storage declaration and on the movement of goods in temporary storage; to adopt the procedural rules for granting the authorisation for special procedures, for the examination of the economic conditions and for issuing the opinion of the EU Customs Authority assessing whether granting an authorisation for an inward or outward processing procedure adversely affects the essential interests of Union producers; to adopt the procedural rules on the discharge of a special procedure; the procedural rules on the transfer of rights and obligations and the movement of goods in the context of special procedures; the procedural rules on the use of equivalent goods in the context of special procedures; the procedural rules for the application of the provisions of international transit instruments in the customs territory of the Union; the procedural rules on the placing of goods under the Union transit procedure and on the discharge of that procedure, on the operation of the simplifications of that procedure and on the customs supervision of goods passing through the territory of a third country under the external Union transit procedure; the procedural rules on the placing of goods under the customs warehousing or free zone procedure and for the movement of goods placed in customs warehouse; to adopt measures on the uniform management of tariff quota and tariff ceilings and the management of the customs surveillance of the release for free circulation or export of goods; to adopt measures to determine the tariff classification of goods; to specify the procedural rules on the provision and the verification of the proof of non-preferential origin; to adopt the procedural rules to facilitate the establishment in the Union of the preferential origin of goods; to adopt measures to determine the origin of specific goods; to grant temporary derogation from the rules on preferential origin of goods benefiting from preferential measures adopted unilaterally by the Union; to specify the procedural rules on the determination of the customs value of goods; to specify the procedural rules on the provision, determination of the amount, the monitoring and release of guarantees, as well as on the revocation and cancellation

of an undertaking given by a guarantor; to specify the procedural rules regarding temporary prohibitions of the use of comprehensive guarantees; to adopt measures to ensure mutual assistance between the customs authorities in the event of the incurrence of a customs debt; to specify the procedural rules for the repayment and remission of an amount of import or export duty, on the information to be provided to the Commission, and on the decisions to be adopted by the Commission on repayment or remission; to adopt measures for the identification of a crisis and the activation of the crisis management mechanism; to adopt the procedural rules for granting and managing the authorisation for a Member State to enter into negotiations with a third country with a view to concluding a bilateral agreement or arrangement on exchange of information; to adopt decisions on an application by a Member State for the authorisation on entering into negotiations with a third country with a view to concluding a bilateral agreement or arrangement on exchange of information; to specify the design of the measurement framework of the performance of the customs union and the information that Member States should provide to the EU Customs Authority for the purpose of performance measurement; to lay down the rules on currency conversion. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[20].

(70) The advisory procedure should be used for the adoption of: implementing acts requesting Member States to revoke decisions relating to binding information, given that those decisions affect only one Member State and aim at ensuring compliance with the customs legislation; implementing acts to determine the specific details for the access of authorities other than customs to specific services and systems of the EU Customs Data Hub; implementing acts on an application by a Member State for the authorisation on entering into negotiations with a third country with a view to concluding a bilateral agreement or arrangement on exchange of information, as they affect only one Member State; implementing acts on repayment or remission of an amount of import or export duty given that those decisions directly affect the applicant for that repayment or remission.

(71) In duly justified cases, where imperative grounds of urgency so require, the Commission should adopt immediately applicable implementing acts relating to: measures to ensure uniform application of customs controls, including the exchange of risk information and analysis, common risk criteria and standards, control measures and common priority control areas; decisions on an application by a Member State for the authorisation on entering into negotiations with a third country with a view to concluding a bilateral agreement or arrangement on exchange of information; measures to determine the tariff classification of goods; measures to determine the origin of specific goods; measures establishing the appropriate method of customs valuation or criteria to be used for determining the customs value of goods in specific situations; measures temporarily prohibiting the use of comprehensive guarantees; the identification of a crisis situation and the adoption of the appropriate to address it or to mitigate its negative effects; decisions to empower a Member State to negotiate and conclude a bilateral agreement with a third country on exchange of information.

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[20] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

(72) The Commission should make every effort to ensure that the delegated and implementing acts provided for in this Regulation enter into force sufficiently in advance of the application date of the Code to allow its timely implementation by Member States.

(73) The provisions referring to the EU Customs Authority, except Article 238, should apply from 1 January 2028. Until that date, the EU Customs Authority should perform its tasks using the existing electronic systems for exchange of customs information developed by the Commission. The provisions on the simplified tariff treatment for distance sales and deemed importer should apply from 1 January 2028.

(74) In 2032, economic operators may start using, on a voluntary basis, the capabilities of the EU Customs Data Hub. By the end of 2037, the EU Customs Data Hub should be fully developed, and all economic operators shall use it. Trust and Check traders and deemed importers will be supervised by the Member State of their establishment. By derogation and subject to review, operators that are neither Trust and Check traders nor deemed importers will remain under the supervision of the customs authority of the Member State where the goods are physically located. By 31 December 2035, the Commission should evaluate the two supervision models, including as regards their effectiveness for detecting and preventing fraud. The evaluation should also consider indirect taxation aspects. Based on this evaluation, the Commission should be entitled to decide by delegated act whether the two models should continue or whether, in all cases, the customs authority responsible for the place of establishment of the trader should release the goods. The place of incurrence of customs debt should also be regulated in accordance with the determination of the responsible customs authority,

HAVE ADOPTED THIS REGULATION:

# Title I
# GENERAL PROVISIONS

## Chapter 1
## Scope of customs legislation and mission of customs

*Article 1*

**Subject matter and scope**

1. This Regulation establishes the Union Customs Code (‘the Code’). It lays down the general rules and procedures applicable to goods brought into or taken out of the customs territory of the Union.

   This Regulation also establishes the European Union Customs Authority (‘the EU Customs Authority’) and the rules, common standards and a governance framework for the establishment of the European Union Customs Data Hub (‘EU Customs Data Hub’).

2. Without prejudice to international law and conventions, and Union legislation in other fields, the Code shall apply uniformly throughout the customs territory of the Union.

3. Certain provisions of the customs legislation may apply outside the customs territory of the Union within the framework of legislation governing specific fields or of international conventions.

4. Certain provisions of the customs legislation, including the simplifications for which it provides, shall apply to the trade in Union goods between parts of the customs territory of the Union to which the provisions of Council Directive 2006/112/EC[21] or of Council Directive (EU) 2020/262[22] apply and parts of that territory where those provisions do not apply, or to trade between parts of that territory where those provisions do not apply.

*Article 2*

**Mission of customs authorities**

With a view to achieving a harmonised application of customs controls, for making the customs union act as one and for contributing to the smooth functioning of the internal market, customs authorities shall be responsible for protecting the financial and economic interests of the Union and its Member States, for ensuring security and safety and contributing to the other Union policies protecting citizens and residents, consumers, the environment and the overall supply chains, for protecting the Union from illegal trade, for facilitating legitimate business activity, and for supervising the Union's international trade in order to contribute to fair and open trade and to the common commercial policy.

Customs authorities shall put in place measures aimed, in particular, at the following:

(a) ensuring the proper collection of customs duties and other charges;

(b) ensuring that goods presenting a risk for the safety or the security of citizens and residents do not enter the customs territory of the Union, by putting in place the appropriate measures for controls of goods and supply chains;

(c) contributing to protecting human, animal or plant health and life, environment, consumers and other public interests protected by other legislation applied by the customs authorities, in close cooperation with other authorities by ensuring that goods presenting related risks do not enter or leave the customs territory of the Union;

(d) protecting the Union from unfair, non-compliant and illegal trade, including through a close monitoring of economic operators and supply chains and a minimum core of customs infringements and penalties;

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21 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

22 Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (recast) (OJ L 58, 27.2.2020, p. 4).

(e) supporting legitimate business activity, by maintaining a proper balance between customs controls and facilitation of legitimate trade and simplifying customs processes and procedures.

*Article 3*

**Customs territory**

1. The customs territory of the Union shall comprise the following territories, including their territorial waters, internal waters and airspace:

(a) the territory of the Kingdom of Belgium,

(b) the territory of the Republic of Bulgaria,

(c) the territory of the Czech Republic,

(d) the territory of the Kingdom of Denmark, except the Faroe Islands and Greenland,

(e) the territory of the Federal Republic of Germany, except the Island of Heligoland and the territory of Büsingen (Treaty of 23 November 1964 between the Federal Republic of Germany and the Swiss Confederation),

(f) the territory of the Republic of Estonia,

(g) the territory of Ireland,

(h) the territory of the Hellenic Republic,

(i) the territory of the Kingdom of Spain, except Ceuta and Melilla,

(j) the territory of the French Republic, except the French overseas countries and territories to which the provisions of Part Four of the TFEU apply,

(k) the territory of the Republic of Croatia,

(l) the territory of the Italian Republic, except the municipality of Livigno,

(m) the territory of the Republic of Cyprus, in accordance with the provisions of the 2003 Act of Accession,

(n) the territory of the Republic of Latvia,

(o) the territory of the Republic of Lithuania,

(p) the territory of the Grand Duchy of Luxembourg,

(q) the territory of Hungary,

(r) the territory of the Republic of Malta,

(s) the territory of the Kingdom of the Netherlands in Europe,

(t) the territory of the Republic of Austria,

(u) the territory of the Republic of Poland,

(v) the territory of the Portuguese Republic,

(w) the territory of Romania,

(x) the territory of the Republic of Slovenia,

(y) the territory of the Slovak Republic,

(z) the territory of the Republic of Finland, and

(aa) the territory of the Kingdom of Sweden.

2. The following territories, including their territorial waters, internal waters and airspace, situated outside the territory of the Member States shall, taking into account the conventions and treaties applicable to them, be considered to be part of the customs territory of the Union:

(a) FRANCE

The territory of Monaco as defined in the Customs Convention signed in Paris on 18 May 1963 (Journal officiel de la République française (Official Journal of the French Republic) of 27 September 1963, p. 8679);

(b) CYPRUS

The territory of the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia as defined in the Treaty concerning the Establishment of the Republic of Cyprus, signed in Nicosia on 16 August 1960 (United Kingdom Treaty Series No 4 (1961) Cmnd. 1252).

*Article 4*

**Delegation of powers**

The Commission is empowered to adopt delegated acts in accordance with Article 261 supplementing and amending this Regulation by specifying the provisions of the customs legislation that apply to the trade in Union goods referred to in Article 1(4). Those acts may address particular circumstances pertaining to the trade in Union goods involving only one Member State.

# Chapter 2
# Definitions

*Article 5*

**Definitions**

For the purposes of this Regulation, the following definitions shall apply:

(1) ‘customs authorities’ means the customs administrations of the Member States responsible for applying the customs legislation and any other authorities empowered under national law to apply certain customs legislation;

(2) ‘customs legislation’ means the body of legislation made up of all of the following:

(a) the Code and the provisions supplementing or implementing it adopted at Union or national level;

(b) the Common Customs Tariff;

(c) the legislation setting up a Union system of reliefs from customs duty;

(d) customs provisions contained in international agreements, insofar as they are applicable in the Union;

(e) Regulation (EU) 2022/2399 of the European Parliament and of the Council[23] and the provisions amending, supplementing or implementing it;

(3) ‘other legislation applied by the customs authorities’ means legislation other than customs legislation applicable to the goods entering, exiting, passing through the customs territory of the Union, or to be placed in the Union market, in the implementation of which the customs authorities are involved;

(4) ‘commercial policy measures’ means, as part of other legislation applied by the customs authorities, measures adopted pursuant to Article 207 TFEU, other than provisional or definitive anti-dumping duties, countervailing duties or safeguard measures in the form of increased tariffs on specific goods, and including in particular special surveillance measures and safeguard measures in the form or import or export authorisations;

(5) ‘person’ means a natural person, a legal person, and any association of persons which is not a legal person, but which is recognised under Union or national law as having the capacity to perform legal acts;

(6) ‘economic operator’ means a person who, in the course of that person’s business, is involved in activities covered by the customs legislation;

(7) ‘established in the customs territory of the Union’ means:

(a) in the case of a natural person, having his or her habitual residence in the customs territory of the Union;

(b) in the case of a legal person or an association of persons, having its registered office, central headquarters or a permanent business establishment, in the customs territory of the Union;

[23] Regulation (EU) 2022/2399 of the European Parliament and of the Council of 23 November 2022 establishing the European Union Single Window Environment for Customs and amending Regulation (EU) No 952/2013 (OJ L 317, 9.12.2022, p. 1).

(8) ‘permanent business establishment’ means a fixed place of business, where both the necessary human and technical resources are permanently present and through which a person’s customs-related operations are wholly or partly carried out;

(9) ‘customs decision’ means any act by the customs authorities pertaining to the customs legislation giving a ruling on a particular case, and having legal effects on the person or persons concerned;

(10) ‘customs procedure’ means any of the following procedures under which goods may be placed in accordance with the Code:

(a) release for free circulation;

(b) special procedures;

(c) export;

(11) ‘customs formalities’ means all the operations which must be carried out by a person and by the customs authorities in order to comply with the customs legislation;

(12) ‘importer’ means any person who has the power to determine and has determined that goods from a third country are to be brought into the customs territory of the Union or, except otherwise provided, any person who is considered a deemed importer;

(13) ‘deemed importer’ means any person involved in the distance sales of goods to be imported from third countries into the customs territory of the Union who is authorised to use the special scheme laid down in Title XII, Chapter 6, Section 4 of Directive 2006/112/EC;

(14) ‘exporter’ means any person who has the power to determine and has determined that the goods are to be taken out of the customs territory of the Union;

(15) ‘customs representative’ means any person appointed by another person to carry out the acts and formalities required under the customs legislation in that person’s dealings with customs authorities;

(16) ‘data’ means any digital and non-digital representation of acts, facts or information and any compilation of such acts, facts or information, including in the form of document, sound, visual or audio-visual recording;

(17) ‘customs surveillance’ means collecting and analysing information, in relation to goods entering, exiting or passing through the customs territory of the Union in order to monitor these movements at Union level and ensure the uniform application of customs controls, the compliance with customs legislation and other legislation applied by the customs authorities and to contribute to risk analysis and management;

(18) ‘risk’ means the likelihood and the impact of an event occurring, with regard to goods moved between the customs territory of the Union and countries outside that territory and to the presence within the customs territory of the Union of non-Union goods, which would:

(a) compromise the financial or economic interests of the Union and its Member States;

(b) pose a threat to the security and safety of the Union and its citizens and residents; or

(c) prevent the correct application of Union or national measures;

(19) 'economic analysis' means the evaluation or quantification of a policy or an economic phenomenon, to understand how economic factors affect the functioning of a policy, a geographical area, or any group of persons with a view to making better decisions for the future;

(20) 'risk management' means the systematic identification of risk, including identifying profiles of risky economic operators, and the implementation of all measures necessary for limiting exposure to risk;

(21) 'customs supervision' means action taken in general by the customs authorities with a view to ensuring that customs legislation and, where appropriate, other legislation applied by the customs authorities is observed, or to otherwise contribute to the management of risks related to those goods and their supply chains;

(22) 'customs controls' means specific acts performed by the customs authorities in order to ensure compliance with the customs legislation and other legislation applied by the customs authorities, or in order to otherwise contribute to the management of risks related to goods and their supply chains;

(23) 'random controls' means customs controls based on principles of random sampling, with regard to a population of interest;

(24) 'holder of the goods' means the person who has physical control of the goods;

(25) 'carrier' means:

(a) in the context of entry, the person who brings the goods, or who assumes responsibility for the carriage of the goods, into the customs territory of the Union. However,

(i) in the case of combined transportation, 'carrier' means the person who operates the means of transport which, once brought into the customs territory of the Union, moves by itself as an active means of transport;

(ii) in the case of maritime or air traffic under a vessel-sharing or contracting arrangement, 'carrier' means the person who concludes a contract and issues a bill of lading or air waybill for the actual carriage of the goods into the customs territory of the Union;

(b) in the context of exit, the person who takes the goods, or who assumes responsibility for the carriage of the goods, out of the customs territory of the Union. However:

(i) in the case of combined transportation, where the active means of transport leaving the customs territory of the Union is only transporting another means of transport which, after the arrival of the active means of transport at its destination, will move by itself as an active means of transport, 'carrier' means the person who will operate the means of transport which will move by itself once the means of transport leaving the customs territory of the Union has arrived at its destination;

(ii) in the case of maritime or air traffic under a vessel-sharing or contracting arrangement, 'carrier' means the person who concludes a contract, and issues a bill of lading or air waybill, for the actual carriage of the goods out of the customs territory of the Union;

(26) 'risk analysis' means the processing of data, information or documents, including personal data, with a view to the identification or quantification of possible risks, using where relevant analytical methods and artificial intelligence as defined Article 3, point (1), of Regulation (EU) /…/… of the European Parliament and of the Council[24];

(27) 'risk signal' means the indication of a possible risk based on automated processing operations implementing risk analysis on data, information or documents;

(28) 'risk analysis result' means, the determination, in the case of a signal, that a risk is or is not considered present, based on an automatic process or from further human assessment of the risk signal;

(29) 'control recommendation' means the opinion of a customs authority or of the EU Customs Authority, as regards whether and if so when, where and by which customs authority a customs control is to be carried out, including the identification of possible additional actions other than customs controls;

(30) 'control decision' means the individual act by which the customs authorities decide a control shall or shall not take place;

(31) 'control result' means the preliminary and final outcome of a control, including the further action indicated, if any, and the competent authorities concerned with the outcome or action, if any;

(32) 'common priority control area' means a selection of particular customs procedures, types of goods, traffic routes, modes of transport or economic operators with a view to subjecting them to increased levels of risk analysis and mitigation measures and customs controls during a certain period, without prejudice to other controls usually carried out by the customs authorities;

(33) 'common risk criteria and standards' means parameters for risk analysis for a risk area and accompanying standards regarding the practical application of the criteria;

[24] Regulation of the European Parliament and of the Council (EU) …/20.. laying down harmonised rules on artificial intelligence (artificial intelligence act) and amending certain Union legislative acts [COM(2021)206 final] [(2021/0106(COD)].

(34) ‘supervision strategy’ means an approach to handling a specific risk, which aims to balance operational customs supervision efforts and mitigation measures across the supply chain in a proportionate and effective manner;

(35) ‘consignment’ means goods, conveyed by one consignor to one consignee, by the same means of transport including multimodal, and coming from the same territory or third country, being of the same type, class or description or being packed together, under the same transport contract;

(36) ‘customs status’ means the status of goods as Union or non-Union goods;

(37) ‘Union goods’ means goods which fall into any of the following categories:

(a) goods wholly obtained in the customs territory of the Union and not incorporating goods imported from third countries;

(b) goods brought into the customs territory of the Union from third countries and released for free circulation;

(c) goods obtained or produced in the customs territory of the Union, either solely from goods referred to in point (b) or from goods referred to in points (a) and (b);

(38) ‘non-Union goods’ means goods other than those referred to in point (46) or which have lost their customs status as Union goods;

(39) ‘release of goods’ means the act whereby the customs authorities, or other persons on their behalf, make goods available for the purposes specified for the customs procedure under which they are intended to be placed;

(40) ‘entry summary declaration’ means the act whereby a person informs the customs authorities, in the prescribed form and manner and within a specific time-limit, that goods are to be brought into the customs territory of the Union;

(41) ‘exit summary declaration’ means the act whereby a person informs the customs authorities, in the prescribed form and manner and within a specific time-limit, that goods are to be taken out of the customs territory of the Union;

(42) ‘temporary storage declaration’ means the act whereby a person indicates, in the prescribed form and manner, that goods are in temporary storage;

(43) ‘customs declaration’ means the act whereby a person indicates, in the prescribed form and manner, a wish to place goods under a given customs procedure, with an indication, where appropriate, of any specific arrangements to be applied;

(44) ‘declarant’ means the person lodging a customs declaration, a temporary storage declaration, an entry summary declaration, an exit summary declaration, a re-export declaration or a re-export notification in that person’s own name or the person in whose name such a declaration or notification is lodged;

(45) ‘re-export declaration’ means the act whereby a person indicates, in the prescribed form and manner, a wish to take non-Union goods, with the exception of those under

the free zone procedure or in temporary storage, out of the customs territory of the Union;

(46) ‘re-export notification’ means the act whereby a person indicates, in the prescribed form and manner, a wish to take non-Union goods which are under the free zone procedure or in temporary storage out of the customs territory of the Union;

(47) ‘distance sales of goods imported from third countries’ means distance sales of goods imported from third countries or third territories as defined in Article 14(4), point (2), of Directive 2006/112/EC;

(48) ‘manufacturer’ means:

(a) the manufacturer of the product pursuant to the other legislation applicable to that product; or

(b) the producer with respect to agricultural products as defined in Article 38(1) TFEU or to raw materials; or

(c) if there is no manufacturer or producer as referred to in points (a) and (b), the natural or legal person or association of persons who manufactured the product or had the product manufactured, and markets that product under that person’s name or trademark;

(49) ‘product supplier’ means any natural or legal person or association of person in the supply chain who manufactures a product in whole or in part, whether as manufacturer or in any other circumstance;

(50) ‘temporary storage’ means the situation of non-Union goods temporarily stored under customs supervision in the period between the moment in which the carrier notifies their arrival to the customs territory and their placement under a customs procedure;

(51) ‘processed products’ means goods placed under a processing procedure which have undergone processing operations;

(52) ‘processing operations’ means any of the following:

(a) the working of goods, including erecting, assembling or fitting those goods to other goods;

(b) the processing of goods;

(c) the destruction of goods;

(d) the repair of goods, including restoring and putting those goods in order;

(e) the use of goods which are not to be found in the processed products, but which allow or facilitate the production of those products, even if they are entirely or partially used up in the process (production accessories);

(53) ‘holder of the transit procedure’ means the person who lodges the transit declaration or provides the information required for placing goods under that procedure, or on whose behalf that declaration is lodged or that information provided.

(54) ‘rate of yield’ means the quantity or percentage of processed products obtained from the processing of a given quantity of goods placed under a processing procedure;

(55) ‘third country’ means a country or a territory outside the customs territory of the Union;

(56) ‘simplified tariff treatment for distance sales’ means the simplified tariff treatment for distance sales set out in Article 1, paragraphs 4 and 5, and Part One, Section II, point G of Annex I to Regulation (EEC) No 2658/87;

(57) ‘customs debt’ means the obligation on a person to pay the amount of import or export duty which applies to specific goods under the customs legislation in force;

(58) ‘debtor’ means any person liable for a customs debt;

(59) ‘import duty’ means customs duty payable on the import of goods;

(60) ‘export duty’ means customs duty payable on the export of goods;

(61) ‘repayment’ means the refunding of an amount of import or export duty that has been paid;

(62) ‘remission’ means the waiving of the obligation to pay an amount of import or export duty which has not been paid;

(63) ‘buying commission’ means a fee paid by an importer to an agent for representing him or her in the purchase of goods being valued;

(64) ‘crisis’ means an event or a situation that suddenly endangers the safety, the security, the health and life of the citizens, economic operators and personnel of customs authorities and requires urgent measures as regards the entry, exit or transit of goods.

# Chapter 3
# Decisions relating to the application of the customs legislation

## SECTION 1
## GENERAL PRINCIPLES

*Article 6*

**Decisions taken upon application**

1. Where a person applies for a decision relating to the application of the customs legislation, that person shall provide all the information required by the competent customs authorities in order to enable them to take that decision.

A decision may also be applied for by, and taken with regard to, several persons, in accordance with the conditions laid down in the customs legislation.

Except where otherwise provided, the competent customs authority shall be that of the place of establishment of the applicant.

2. Customs authorities shall, without delay and at the latest within 30 calendar days of receipt of the application for a decision, verify whether the conditions for the acceptance of that application are fulfilled.

Where the customs authorities establish that the application contains all the information required in order for them to be able to take the decision, they shall communicate its acceptance to the applicant within the period specified in the first subparagraph.

Where the customs authorities establish that the application does not contain all the information required, they shall ask the applicant to provide the relevant additional information within a reasonable time limit which shall not exceed 30 calendar days. Even where the customs authorities have requested additional information to the applicant, they shall decide whether the application is complete and can be accepted or whether it is incomplete and shall be refused in a period that shall not exceed 60 calendar days from the date of the first application. If the customs authorities do not expressly inform the applicant within that period whether the application has been accepted, the application shall be considered as accepted at the end of the 60 calendar days.

3. Except where otherwise provided, the competent customs authority shall take a decision as referred to in paragraph 1 at the latest within 120 calendar days of the date of acceptance of the application and shall notify the applicant without delay.

Where the customs authorities are unable to comply with the time-limit for taking a decision, they shall inform the applicant of that fact before the expiry of that time-limit, stating the reasons and indicating the further period of time which they consider necessary in order to take a decision. Except where otherwise provided, that further period of time shall not exceed 30 calendar days.

Without prejudice to the second subparagraph, the customs authorities may extend the time limit for taking a decision, as laid down in the customs legislation, where the applicant requests an extension to carry out adjustments in order to ensure the fulfilment of the conditions and criteria required for granting the decision. Those adjustments and the further period of time necessary to carry them out shall be communicated to the customs authorities, which shall decide on the extension.

Where the customs authorities fail to take a decision within the time-limits established in the first, second and third subparagraphs, the applicant may consider the request to have been denied and may appeal such a negative decision. The applicant may also inform the EU Customs Authority that the customs authorities did not take a decision within the relevant time limits.

4. Except where otherwise specified in the decision or in the customs legislation, the decision shall take effect from the date on which the applicant receives it, or is deemed to have received it. Except in the cases provided for in Article 17(2), decisions adopted shall be enforceable by the customs authorities from that date.

5. Except where otherwise provided in the customs legislation, the decision shall be valid without limitation of time.

6. Before taking a decision which would adversely affect the applicant, the customs authorities shall communicate the grounds on which they intend to base their decision to the applicant, who shall be given the opportunity to express his or her point of view within a period prescribed from the date on which he or she receives that communication or is deemed to have received it ('right to be heard'). Following the expiry of that period, the applicant shall be notified, in the appropriate form, of the decision.

The first subparagraph shall not apply in any of the following cases:

(a) where it concerns a decision relating to binding information referred to in Article 13(1);

(b) in the event of refusal of the benefit of a tariff quota where the specified tariff quota volume is reached, as referred to in Article 145(4), first subparagraph;

(c) where the nature or the level of a threat to the security and safety of the Union and its residents, to human, animal or plant health, to the environment or to consumers so requires;

(d) where the decision aims at securing the implementation of another decision on which the applicant has been given the opportunity to express his or her point of view, without prejudice to the law of the Member State concerned;

(e) where it would prejudice investigations initiated for the purpose of combating fraud;

(f) in other specific cases.

7. A decision which adversely affects the applicant shall set out the grounds on which it is based and shall refer to the right of appeal provided for in Article 16.

8. The Commission is empowered to adopt delegated acts in accordance with Article 261, to supplement this Regulation by determining:

(a) the exceptions for designating the competent customs office referred to in paragraph 1, third subparagraph, of this Article;

(b) the conditions for the acceptance of an application, referred to in paragraph 2 of this Article;

(c) the cases where the time limit to take a specific decision, including the possible extension of that time-limit, differs from the time limits referred to in paragraph 3 of this Article;

(d) the cases, referred to in paragraph 4 of this Article, where the decision takes effect from a date which is different from the date on which the applicant receives it or is deemed to have received it;

(e) the cases, referred to in paragraph 5 of this Article, where the decision is not valid without limitation of time;

(f) the duration of the period referred to in paragraph 6, first subparagraph, of this Article;

(g) the specific cases, referred to in paragraph 6, second subparagraph, point (f) of this Article.

9. The Commission shall specify, by means of implementing acts, the procedure for:

(a) the submission and the acceptance of the application for a decision, referred to in paragraphs 1 and 2;

(b) taking the decision referred to in this Article, including, where appropriate, as regards the right to be heard and the consultation of other Member States concerned.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 7*

**Management of decisions taken upon application**

1. The holder of the decision shall comply with the obligations resulting from that decision.

2. The holder of the decision shall continuously monitor the fulfilment of the conditions and criteria, and compliance with the obligations, resulting from the decisions and, where applicable, establish internal controls capable of preventing, detecting and correcting illegal or irregular transactions.

3. The holder of the decision shall inform the customs authorities without delay of any factor arising after the decision was taken, which may influence the continuation or content of that decision.

4. Customs authorities shall regularly monitor whether the holder of the decision continues to fulfil the relevant criteria and comply with the relevant obligations, in particular the ability of the holder of the decision to prevent, react to and remedy errors through appropriate internal controls. Based on such monitoring activity, customs shall assess the risk profile of the holder of the decision, where relevant. Where the holder of the decision has been established in the customs territory of the Union for less than 3 years, the customs authorities shall closely monitor it during the first year after the decision is taken.

5. The customs authorities shall communicate to the EU Customs Authority the decisions taken upon application and all monitoring activities that they carry out in accordance with paragraph 4. The EU Customs Authority shall take this information into account for risk management purposes.

6. Until the date set out in Article 265(3), the customs authorities shall record their decisions in the existing electronic systems for the exchange of information developed by the Member States and the Commission. The Member States and the Commission shall have access to those decisions and underlying information in those systems.

7. Without prejudice to provisions laid down in other fields which specify the cases in which decisions are invalid or become null and void, the customs authorities which took a decision may at any time annul, revoke or amend it where it does not conform to the customs legislation. Customs authorities shall inform the EU Customs Authority about such annulment, revocation and amendment of customs decisions.

8. In specific cases the customs authorities shall carry out the following:

   (a) re-assess a decision;

   (b) suspend a decision which is not to be annulled, revoked or amended.

9. The customs authority competent to take the decision shall suspend the decision instead of annulling, revoking or amending it where:

   (a) that customs authority considers that there may be sufficient grounds for annulling, revoking or amending the decision, but does not yet have all necessary elements to decide on the annulment, revocation or amendment;

   (b) that customs authority considers that the conditions for the decision are not fulfilled or that the holder of the decision does not comply with the obligations imposed under that decision, and it is appropriate to allow the holder of the decision time to take measures to ensure the fulfilment of the conditions or the compliance with the obligations;

   (c) the holder of the decision requests such suspension because that person is temporarily unable to fulfil the conditions laid down for the decision or to comply with the obligations imposed under that decision.

   In cases referred to in paragraph 1, points (b) and (c), the holder of the decision shall notify the customs authority competent to take the decision of the measures that person will take to ensure the fulfilment of the conditions or compliance with the obligations, as well as the period of time he needs to take those measures.

10. The Commission is empowered to adopt delegated acts in accordance with Article 261, to supplement this Regulation by determining:

   (a) detailed rules for monitoring a decision referred to in paragraphs 2 to 4 of this Article;

   (b) the specific cases and the rules for re-assessing decisions as referred to in paragraph 8 of this Article.

*Article 8*

**Union-wide validity of decisions**

Except where the decision provides that its effect is limited to one or several Member States, decisions relating to the application of the customs legislation shall be valid throughout the customs territory of the Union.

*Article 9*

**Annulment of favourable decisions**

1. The customs authorities shall annul a decision favourable to the holder of the decision if all the following conditions are fulfilled:

   (a) the decision was taken on the basis of incorrect or incomplete information;

   (b) the holder of the decision knew or ought reasonably to have known that the information was incorrect or incomplete;

   (c) if the information had been correct and complete, the decision would have been different.

2. The holder of the decision shall be notified of its annulment.

3. Annulment shall take effect from the date on which the initial decision took effect, unless otherwise specified in the decision in accordance with the customs legislation.

4. The Commission shall specify, by means of implementing acts, the rules for annulling favourable decisions. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 10*

**Revocation and amendment of favourable decisions**

1. A favourable decision shall be revoked or amended where, in cases other than those referred to in Article 9:

   (a) one or more of the conditions for taking that decision were not or are no longer fulfilled; or

   (b) upon application by the holder of the decision.

2. Except where otherwise provided, a favourable decision addressed to several persons may be revoked only in respect of a person who fails to comply with an obligation imposed under that decision.

3. The holder of the decision shall be notified of its revocation or amendment.

4. Article 6(4) shall apply to the revocation or amendment of the decision.

   However, in exceptional cases where the legitimate interests of the holder of the decision so require, the customs authorities may defer the date on which revocation or

amendment takes effect by up to one year. That date shall be indicated in the revoking or amending decision.

5. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining:

(a) the cases, referred to in paragraph 2, where a favourable decision addressed to several persons may be revoked also in respect of persons other than the person who fails to comply with an obligation imposed under that decision

(b) the exceptional cases, in which the customs authorities may defer the date on which revocation or amendment takes effect in accordance with the second subparagraph of paragraph 4.

6. The Commission shall specify, by means of implementing acts, the procedural rules for revoking or amending favourable decisions. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 11*

**Decisions taken without prior application**

Except when a customs authority acts as a judicial authority, Article 6(4), (5), (6), (7), Article 7(7) and Articles 8, 9 and 10 shall also apply to decisions taken by the customs authorities without prior application by the person concerned.

*Article 12*

**Limitations applicable to decisions on goods placed under a customs procedure or in temporary storage**

Except where the person concerned so requests, the revocation, amendment or suspension of a favourable decision shall not affect goods which, at the moment where the revocation, amendment or suspension takes effect, have already been placed and are still under a customs procedure or in temporary storage by virtue of the revoked, amended or suspended decision.

## SECTION 2
## BINDING INFORMATION

*Article 13*

**Decisions relating to binding information**

1. The customs authorities shall, upon application, take decisions relating to binding tariff information ('BTI decisions'), decisions relating to binding origin information ('BOI decisions') and decisions relating to binding valuation information ('BVI decisions').

Such an application shall not be accepted in any of the following cases:

(a) where the application is made, or has already been made, at the same or another customs office, by or on behalf of the holder of a decision:

(i) for BTI decisions, in respect of the same goods;

(ii) for BOI decisions, in respect of the same goods and under the same circumstances determining the acquisition of origin;

(iii) for BVI decisions, in respect of goods under the same circumstances determining the customs value;

(b) where the application does not relate to any intended use of decision relating to binding information or any intended use of a customs procedure.

2. Decisions relating to binding information shall be binding, only in respect of the tariff classification or determination of the origin or the customs value of goods, on:

(a) the customs authorities, as against the holder of the decision, only in respect of goods for which customs formalities are completed after the date on which the decision takes effect;

(b) the holder of the decision, as against the customs authorities, only with effect from the date on which he or she receives, or is deemed to have received, notification of the decision.

3. Decisions relating to binding information shall be valid for a period of 3 years from the date on which the decision takes effect.

4. For the application of a decision relating to binding information in the context of a particular customs procedure, the holder of the decision shall be able to prove that:

(a) in the case of a BTI decision, the goods in question correspond in every respect to those described in the decision;

(b) in the case of a BOI decision, the goods in question and the circumstances determining the acquisition of origin correspond in every respect to the goods and the circumstances described in the decision;

(c) in the case of a BVI decision, the circumstances determining the customs value for the goods in question correspond in every respect to the circumstances described in the decision.

*Article 14*

**Management of decisions relating to binding information**

1. A BTI decision shall cease to be valid before the end of the period referred to in Article 13(3) where it no longer conforms to the law, as a result of either of the following:

(a) the adoption of an amendment to the nomenclatures referred to in Article 145(2), points (a) and (b);

(b) the adoption of measures referred to in Article 146(4);

In such cases, the BTI decision shall cease to be valid with effect from the date of application of such amendment or measures.

2. A BOI decision shall cease to be valid before the end of the period referred to in Article 13(3) in any of the following cases:

(a) where a legally binding act of the Union is adopted or an agreement is concluded by, and becomes applicable in, the Union, and the BOI decision no longer conforms to the law thereby laid down, with effect from the date of application of that act or agreement;

(b) where the BOI decision is no longer compatible with the Agreement on Rules of Origin established in the World Trade Organisation (WTO) or with the advisory opinions, information, advice and similar acts, concerning the determination of the origin of goods to secure uniformity in the interpretation and application of that Agreement, with effect from the date of their publication in the Official Journal of the European Union.

3. A BVI decision shall cease to be valid before the end of the period referred to in Article 13(3) in the following cases:

(a) where the adoption of a legally binding act of the Union renders the BVI decision non-compliant with that act, from the date of application of that act;

(b) where the BVI decision is no longer compatible with the Article VII of the General Agreement on Tariffs and Trade, or the 1994 Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade (WTO Agreement on Customs Valuation), or with the decisions adopted for the interpretation of that Agreement by the Committee on Customs Valuation, with effect from the date of publication in the Official Journal of the European Union.

4. Decisions relating to binding information shall not cease to be valid with retroactive effect.

5. By way of derogation from Article 7(7) and Article 9, the customs authorities shall annul decisions relating to binding information only where they are based on inaccurate or incomplete information from the applicants.

6. The customs authorities shall revoke decisions relating to binding information in accordance with Article 7(7) and Article 10. However, such decisions shall not be revoked upon application by the holder of the decision.

7. Decisions relating to binding information may not be amended.

8. The customs authorities shall revoke BTI decisions where they are no longer compatible with the interpretation of any of the nomenclatures referred to in Article 145(2), points (a) and (b) resulting from any of the following:

(a) explanatory notes referred to in Article 9(1), point (a), second indent of Regulation (EEC) No 2658/87, with effect from the date of their publication in the Official Journal of the European Union;

(b) a judgment of the Court of Justice of the European Union, with effect from the date of publication of the operative part of the judgment in the Official Journal of the European Union;

(c) classification decisions, classification opinions or amendments of the explanatory notes to the Nomenclature of the Harmonised Commodity Description and Coding System, adopted by the Organization set-up by the Convention establishing a Customs Co-operation Council, done at Brussels on 15 December 1950, with effect from the date of publication of the Commission Communication in the 'C' series of the Official Journal of the European Union.

9. BOI and BVI decisions shall be revoked where they are no longer compatible with a judgment of the Court of Justice of the European Union, with effect from the date of publication of the operative part of the judgment in the Official Journal of the European Union.

10. Where a decision relating to binding information ceases to be valid in accordance with paragraph 1, point (b), or with paragraphs 2 or 3, or is revoked in accordance with paragraphs 6, 8 or 9, the decision may still be used in respect of binding contracts which were based upon that decision and were concluded before it ceased to be valid or was revoked. That extended use shall not apply where a BOI decision is taken for goods to be exported.

The extended use referred to in the first subparagraph shall not exceed 6 months from the date on which the decision relating to binding information ceases to be valid or is revoked. However, a measure referred to in Article 146(4), a measure referred to in Article 151 or a measure referred to in Article 158 may exclude that extended use or lay down a shorter period of time. In the case of products for which an import or export certificate is submitted when customs formalities are carried out, the period of 6 months shall be replaced by the period of validity of the certificate.

In order to benefit from the extended use of a decision relating to binding information, the holder of that decision shall lodge an application to the customs authority that took the decision within 30 days of the date on which it ceases to be valid or is revoked, indicating the quantities for which a period of extended use is requested and the Member State or Member States in which goods will be cleared under the period of extended use. That customs authority shall take a decision on the extended use and notify the holder, without delay, and at the latest within 30 days of the date on which it receives all the information required in order to enable it to take that decision.

11. The Commission shall notify the customs authorities where:

(a) the taking of decisions relating to binding information, for goods whose correct and uniform tariff classification or determination of origin or determination of the customs value is not ensured, is suspended; or

(b) the suspension referred to in point (a) is withdrawn.

12. The Commission may adopt decisions requesting Member States to revoke a BTI, BOI or BVI decision to ensure a correct and uniform tariff classification or determination of the origin of goods, or determination of the customs value. Before adopting such a decision, the Commission shall communicate the grounds on which it intends to base its decision to the holder of the BTI, BOI or BVI decision, who shall be given the opportunity to express that person's point of view within a period prescribed from the date on which that person receives that communication or is deemed to have received it.

13. The Commission is empowered to adopt delegated acts, in accordance Article 261, to supplement this Regulation by determining the rules for taking the decisions referred to in paragraph 12 of this Article, in particular as regards the communication to the persons concerned of the grounds on which the Commission intends to base its decision and the time-limit within which those persons may express their point of view.

14. The Commission shall adopt, by means of implementing acts, the procedural rules for:

(a) using a decision relating to binding information after it ceases to be valid or is revoked, in accordance with paragraph 10;

(b) the Commission to notify the customs authorities in accordance with paragraph 11, points (a) and (b).

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

15. The Commission shall adopt, by means of implementing acts the decisions requesting Member States to revoke the decisions referred to in paragraph 12. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 262(2).

## SECTION 3
## APPEALS

*Article 15*

**Decisions taken by a judicial authority**

Articles 16 and 17 shall not apply to appeals lodged with a view to the annulment, revocation or amendment of a decision relating to the application of the customs legislation taken by a judicial authority, or by customs authorities acting as judicial authorities.

*Article 16*

**Right of appeal**

1. Any person shall have the right to appeal against any decision taken by the customs authorities relating to the application of the customs legislation which concerns him or her directly and individually.

Any person who has applied to the customs authorities for a decision and has not obtained a decision on that application within the time-limits referred to in Article 6(3) shall also be entitled to exercise the right of appeal.

2. The right of appeal may be exercised in at least two steps:

(a) initially, before the customs authorities or a judicial authority or other body designated for that purpose by the Member States;

(b) subsequently, before a higher independent body, which may be a judicial authority or an equivalent specialised body, according to the provisions in force in the Member States.

3. The appeal shall be lodged in the Member State where the decision was taken or was applied for.

4. Member States shall ensure that the appeals procedure enables the prompt confirmation or correction of decisions taken by the customs authorities.

*Article 17*

**Suspension of implementation**

1. The submission of an appeal shall not cause implementation of the disputed decision to be suspended.

2. The customs authorities shall, however, suspend implementation of such a decision in whole or in part where they have good reason to believe that the disputed decision is inconsistent with the customs legislation or that irreparable damage is to be feared for the person concerned.

3. In the cases referred to in paragraph 2, where the disputed decision has the effect of causing import or export duty to be payable, suspension of implementation of that decision shall be conditional upon the provision of a guarantee, unless it is established, on the basis of a documented assessment, that such a guarantee would be likely to cause the debtor serious economic difficulties.

## SECTION 4
## CHARGES AND COSTS

*Article 18*

**Prohibition of charges and costs**

1. Customs authorities shall not impose charges for the performance of customs controls or any other application of the customs legislation during the official opening hours of their competent customs offices.

2. Customs authorities may impose charges or recover costs where specific services are rendered, in particular the following:

(a) attendance, where requested, by customs staff outside official office hours or at premises other than customs premises;

(b) analyses or expert reports on goods and postal fees for the return of goods to an applicant, particularly in respect of decisions taken pursuant to Article 13 or the provision of information in accordance with Article 39;

(c) the examination or sampling of goods for verification purposes, or the destruction of goods, where costs other than the cost of using customs staff are involved;

(d) exceptional control measures, where these are necessary due to the nature of the goods or to a potential risk.

# Title II
# OBLIGATIONS AND RIGHTS OF PERSONS WITH REGARD TO CUSTOMS LEGISLATION

## Chapter 1
## Registration

*Article 19*

**Registration**

1. Economic operators established in the customs territory of the Union shall register with the customs authorities responsible for the place where they are established in order to obtain an Economic Operator Registration and Identification (EORI) number. Where possible, that registration shall also include the electronic identification of the operator in the national electronic identification schemes referred to in Regulation (EU) No 910/2014.

2. Registered economic operators shall inform the customs authorities about any modification in their registration data, in particular where this entails a modification of their place of establishment.

3. In specific cases, economic operators which are not established in the customs territory of the Union shall register with the customs authorities responsible for the place where they first lodge a declaration or apply for a decision.

4. Persons other than economic operators shall not be required to register with the customs authorities unless otherwise provided.

Where persons referred to in the first subparagraph are required to register, the following shall apply:

(a) where they are established in the customs territory of the Union, they shall register with the customs authorities responsible for the place where they are established;

(b) where they are not established in the customs territory of the Union, they shall register with the customs authorities responsible for the place where they first lodge a declaration or apply for a decision.

5. In specific cases, the customs authorities shall invalidate the registration.

6. The Commission is empowered to adopt delegated acts in accordance with Article 261, to supplement this Regulation by determining:

(a) the minimum data requirements for the registration referred to in paragraph 1;

(b) the specific cases referred to in paragraph 3;

(c) the cases referred to in the first subparagraph of paragraph 4, where persons other than economic operators are required to register with the customs authorities;

(d) the specific cases referred to in paragraph 5 where the customs authorities invalidate a registration;

(e) the customs authority responsible for the registration.

7. The Commission shall specify, by means of implementing acts, the customs authority responsible for the registration referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 262(2).

# Chapter 2
# Importer and deemed importer

*Article 20*

**Importers**

1. The importer shall comply with the following obligations:

(a) providing, keeping and making available to customs authorities, as soon as it is available and in any event prior to the release of the goods, all the information required in respect of the storage or the customs procedure under which the goods are to be placed in accordance with Articles 88, 118, 132 and 135, or to discharge the outward processing procedure;

(b) ensuring the correct calculation and payment of customs duties and any other charges applicable;

(c) ensuring that the goods entering or exiting the customs territory of the Union comply with the relevant other legislation applied by the customs authorities and

providing, keeping and making available appropriate records of such compliance;

(d) any other obligation on the importer established in customs legislation.

2. The importer shall be established in the customs territory of the Union.

3. By way of derogation from paragraph 2 the following importers or persons shall not be required to be established in the customs territory of the Union:

(a) an importer who places goods in transit or temporary admission;

(b) an importer bringing goods that remain in temporary storage;

(c) persons, who occasionally place goods under customs procedures, provided that the customs authorities consider such placing to be justified;

(d) persons who are established in a country the territory of which is adjacent to the customs territory of the Union, and who present the goods at a Union border customs office adjacent to that country, provided that the country in which the persons are established grants reciprocal benefits to persons established in the customs territory of the Union;

(e) a deemed importer who is represented by an indirect representative established in the customs territory of the Union.

*Article 21*

**Deemed importers**

1. By way of derogation from Article 20(1), point (a), deemed importers shall provide or make available the information on distance sales of goods to be imported in the customs territory of the Union at the latest on the day following the date when the payment was accepted and in any event prior to the release of the goods.

2. Without prejudice to the information required to release the goods for free circulation in accordance with Article 88(3), point (a), the information referred to in paragraph 1 of this Article shall contain at least the requirements set out in Article 63c(2) of Implementing Regulation (EU) No 282/2011.

3. Where goods previously imported by a deemed importer under distance sales are returned to the original consignor's address or to another address outside the customs territory of the Union, the deemed importer shall invalidate the information on release for free circulation of those goods and provide or make available the proof of exit of the goods out of the customs territory of the Union.

# Chapter 3
# Exporter

*Article 22*

**Exporters**

1. The exporter shall comply with the following obligations:

   (a) providing, keeping and making available to customs authorities, as soon as it is available and in any event prior to the release of the goods, all the information required in respect of the customs procedure under which the goods are placed in accordance with Article 99 and Article 140 or to discharge the temporary admission procedure;

   (b) ensuring the correct calculation and collection of customs duties and any other charges, if applicable;

   (c) ensuring that the goods entering or exiting the customs territory of the Union comply with the relevant other legislation applied by the customs authorities and providing, keeping and making available appropriate records of such compliance;

   (d) any other obligation established in customs legislation.

2. The exporter shall be established in the customs territory of the Union.

3. By way of derogation from paragraph 2, the following exporters shall not be required to be established in the customs territory of the Union:

   (a) an exporter who places goods in transit, discharges the temporary admission procedure or exports goods that were in temporary storage;

   (b) persons, who occasionally place goods under customs procedures, provided that the customs authorities consider this to be justified;

   (c) persons who are established in a country the territory of which is adjacent to the customs territory of the Union, and who present the goods at a Union border customs office adjacent to that country, provided that the country in which the persons are established grants reciprocal benefits to persons established in the customs territory of the Union.

# Chapter 4
# Authorised economic operator and Trust and Check traders

*Article 23*

**Application and authorisation for authorised economic operator**

1. A person who is resident, incorporated or registered in the customs territory of the Union and who meets the criteria set out in Article 24 may apply for the status of authorised economic operator.

The customs authorities shall, following consultation with other authorities, if necessary, grant one or both of the following types of authorisations:

(a) that of an authorised economic operator for customs simplifications, which shall enable the holder to benefit from the simplifications in accordance with the customs legislation; or

(b) that of an authorised economic operator for security and safety that shall entitle the holder to facilitations relating to security and safety.

2. Both types of authorisations referred to in paragraph 1, second subparagraph, may be held at the same time.

3. The persons referred to in paragraph 1 shall comply with the obligations set out in Article 7(2) and (3). The customs authorities shall monitor the operator's continuous compliance with the criteria and conditions for the status of authorised economic operator in accordance with Article 7(4).

The customs authorities shall at least every 3 years perform an in-depth monitoring of the authorised economic operator's activities and internal records.

4. The status of authorised economic operator shall, subject to paragraph 5 of this Article and to Article 24, be recognised by the customs authorities in all Member States.

5. Customs authorities shall, on the basis of the recognition of the status and provided that the requirements related to a specific type of simplification provided for in the customs legislation are fulfilled, authorise the operator to benefit from that simplification. Customs authorities shall not re-examine those criteria which have already been examined when granting the status.

6. The authorised economic operator referred to in paragraph 1 shall enjoy more facilitations than other economic operators in respect of customs controls according to the type of authorisation granted, including fewer physical and document-based controls. The status of authorised economic operator shall be taken into account favourably for customs risk management purposes.

7. The customs authorities shall grant benefits resulting from the status of authorised economic operator to persons established in third countries, who fulfil conditions and comply with obligations defined by the relevant legislation of those countries or territories, insofar as those conditions and obligations are recognised by the Union as equivalent to those imposed on authorised economic operators established in the customs territory of the Union. Such a granting of benefits shall be based on the principle of reciprocity unless otherwise decided by the Union, and shall be supported by an international agreement of the Union, or Union legislation in the area of the common commercial policy.

8. A joint business continuity mechanism to respond to disruptions in trade flows due to increases in security alert levels, border closures and/or natural disasters, hazardous

emergencies or other major incidents shall be established providing that the customs authorities may facilitate and expedite to the extent possible priority cargos related to authorised economic operators.

9. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining:

(a) the type and frequency of the monitoring activities by both the persons referred to in paragraph 1 and the customs authorities referred to in paragraph 3;

(b) the simplifications for authorised economic operators referred to in paragraph 5;

(c) the facilitations referred to in paragraph 6.

10. The Commission shall specify, by means of implementing acts, the procedural rules for the consultations in respect of the determination of the status of authorised economic operators referred to in paragraph 1, second subparagraph, including the deadlines for replying. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 24*

**Granting of the status of authorised economic operator**

1. The criteria for the granting of the status of authorised economic operator shall be the following:

(a) the absence of any serious infringement or repeated infringements of customs legislation and taxation rules and no record of serious criminal offences; the infringements and offences to be considered are those relating to economic or business activities;

(b) the demonstration by the applicant of a high level of control of his or her operations and of the flow of goods, by means of a system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls and evidence that non-compliance has been effectively remedied; the applicant ensures that relevant employees are instructed to inform the customs authorities whenever compliance difficulties are discovered and establishes procedures for informing the customs authorities of such difficulties;

(c) financial solvency, which shall be deemed to be proven where the applicant has good financial standing, which enables him or her to fulfil his or her commitments, with due regard to the characteristics of the type of business activity concerned;

(d) with regard to the authorisation referred to in Article 23(1), point (a), practical standards of competence or professional qualifications directly related to the activity carried out;

(e) with regard to the authorisation referred to in Article 23(1), point (b), appropriate security, safety and compliance standards, adapted to the activity carried out.

The standards shall be considered as fulfilled where the applicant demonstrates that he or she maintains appropriate measures to ensure the security and safety of the international supply chain, including in the areas of physical integrity and access controls, logistical processes and handling of specific types of goods, personnel and identification of his or her business partners.

2. The Commission shall adopt, by means of implementing acts, the modalities for the application of the criteria referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 25*

**Granting the status of Trust and Check trader**

1. An importer or exporter, who is resident or registered in the customs territory of the Union, meets the criteria set out in paragraph 3 and has conducted regular customs operations in the course of that person's business for at least 3 years, may apply for the status of Trust and Check trader to the customs authority of the Member State where that person is established.

2. The customs authorities shall grant the status following consultation with other authorities, if necessary, and after having had access to the relevant data of the applicant for the last 3 years in order to assess compliance with the criteria in paragraph 3.

3. The customs authorities shall grant the status of Trust and Check trader to a person who meets all the following criteria:

(a) the absence of any serious infringement or repeated infringements of customs legislation and taxation rules and no record of serious criminal offences; the infringements and offences to be considered are those relating to economic or business activities;

(b) the demonstration by the applicant of a high level of control of his or her operations and of the flow of goods, by means of a system of managing commercial and transport records, which allows appropriate customs controls and evidence that non-compliance has been effectively remedied; the applicant shall ensure that relevant employees inform the customs authorities whenever compliance difficulties are discovered and establishes procedures for informing the customs authorities of such difficulties;

(c) financial solvency, which shall be deemed to be proven where the applicant has good financial standing, which enables him or her to fulfil his or her commitments, with due regard to the characteristics of the type of business activity concerned. In particular, during the last 3 years preceding the submission of the application, the applicant shall have fulfilled his financial obligations regarding payments of customs duties and all other duties, taxes or charges which are collected on or in connection with the import or export of goods, including on VAT and excise duties due in relation to intra-Union operations;

(d) practical standards of competence or professional qualifications directly related to the type and size of activity carried out, including that relevant employees are instructed on how to interact with customs authorities through the EU Customs Data Hub;

(e) appropriate security, safety and compliance standards, adapted to the type and size of the activity carried out. The standards shall be considered as fulfilled where the applicant demonstrates that he or she maintains appropriate measures to ensure the security and safety of the international supply chain, including in the areas of physical integrity and access controls, logistical processes and handling of specific types of goods, personnel and identification of his or her business partners;

(f) having an electronic system providing or making available to the customs authorities real-time all data on the movement of the goods and the compliance of the person referred to in paragraph 1 with all requirements applicable on those goods, including relating to safety and security and including where relevant sharing in the EU Customs Data Hub:

(i) customs records;

(ii) accounting system;

(iii) commercial and transport records;

(iv) their tracking and logistics systems, which identifies goods as Union or non-Union goods and indicates, where appropriate, their location;

(v) licences and authorisations granted in accordance with other legislation applied by the customs authorities;

(vi) complete records needed to check the correctness of the establishment of the customs debts.

4. The persons referred to in paragraph 1 shall comply with the obligations set out in Article 7(2) and (3). The customs authorities shall monitor the operator's continuous compliance with the criteria and conditions for the status of authorised economic operator in accordance with Article 7(4).

The customs authorities at least every 3 years shall perform and in-depth monitoring of the Trust and Check trader's activities and internal records. The Trust and Check trader shall inform the customs authorities of any changes in its corporate structure, ownership, solvency situation, trading models or any other significant changes in its situation and activities. The customs authorities shall re-assess the status of the Trust and Check trader if any of these changes have a significant impact on the Trust and Check status. The customs authorities may suspend this authorisation until a decision on the reassessment is taken.

5. Where a Trust and Check trader changes its Member State of establishment, the customs authorities of the receiving Member State may reassess the Trust and Check authorisation, after consultation with the Member State that initially granted the status and having received the previous records on the operators. During the reassessment,

the customs authority of the Member State that granted the initial authorisation may suspend it.

The Trust and Check trader shall inform the customs authorities of the receiving Member State of any changes in its corporate structure, ownership, solvency situation, trading models or any other significant changes in its situation and activities if any of these changes have an impact on the Trust and Check status.

6. Where a Trust and Check trader is suspected of involvement in fraudulent activity in relation to its economic or business activity, its status shall be suspended.

Where the customs authorities have suspended, annulled or revoked a Trust and Check trader authorisation in accordance with Articles 7, 9 and 10 they shall take the measures necessary to ensure that the authorisations referred to in paragraph 7 of this Article and the facilitations referred to in paragraph 8 of this Article are also suspended, annulled or revoked.

7. Customs authorities may authorise Trust and Check traders:

(a) to provide part of the data on his or her goods after the release of those goods, in accordance with Article 59(3);

(b) to perform certain controls and to release the goods upon receipt of those goods at the place of business of the importer, owner or consignee and/or upon delivery from the place of business of the exporter, owner or consignor, in accordance with Article 61;

(c) to consider that it provides the necessary assurance of the proper conduct of the operations for the purposes of obtaining authorisations for special procedures in accordance with Articles 102, 103, 109 and 123;

(d) to periodically determine the customs debt corresponding to the total amount of import or export duty relating to all the goods released by that trader, in accordance with Article 181(4);

(e) to defer the payment of the customs debt in accordance with Article 188.

8. The Trust and Check traders shall enjoy more facilitations than other economic operators in respect of customs controls according to the authorisation granted, including fewer physical and document-based controls. The status of Trust and Check trader shall be taken into account favourably for customs risk management purposes.

9. By way of derogation from Article 110, where the importer or the exporter of the goods entering or exiting the customs territory has the status of Trust and Check trader, the goods shall be considered under a duty suspensive regime and remain under customs supervision until their final destination without the obligation to place them in transit. The Trust and Check trader shall be liable for the payment of customs duties, other taxes and other charges in the Member State of establishment and where the authorisation was granted.

10. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining the type and frequency of the monitoring activities referred to in paragraph 4 of this Article.

11. The Commission shall adopt, by means of implementing acts:

(a) the rules to consult other authorities for the determination of the status of Trust and Check trader referred to in paragraph 2;

(b) the modalities for the application of the criteria referred to in paragraph 3;

(c) the rules to consult the customs authorities as referred to in paragraph 5.

Those implementing acts shall be adopted in accordance with the examination procedure referred to Article 262(4).

*Article 26*

**Transitional provisions for authorised economic operators for customs simplifications**

1. Until the date established in Article 265(4), the customs authorities may grant persons meeting the criteria the status of authorised economic operator for customs simplifications and authorise them to benefit from certain simplifications and facilitations in accordance with the customs legislation.

2. By the date established in Article 265(3), the customs authorities shall assess the valid authorised economic operators' authorisations for customs simplifications to check whether their holders may be granted the status of Trust and Check traders. If they may not, the status of authorised economic operators for customs simplifications and the simplifications referred to in Article 23(5) shall be revoked.

3. Until the authorisation is reassessed or until the date established in Article 265(3), whichever is the earlier, the recognition of status of authorized economic operator for customs simplifications shall remain valid, unless Articles 9 and 10 on annulment, revocation or amendment of decisions apply.

# Chapter 5
# Custom representation

*Article 27*

**Customs representatives**

1. Any person may appoint a customs representative.

Such representation may be either direct, in which case the customs representative shall act in the name of and on behalf of another person, or indirect, in which case the customs representative shall act in his or her own name but on behalf of another person.

An indirect customs representative acting in its own name but on behalf of an importer or an exporter shall be considered the importer or the exporter for the purposes of Articles 20 and 22, respectively.

2. A customs representative shall be established in the customs territory of the Union.

Except where otherwise provided, that requirement shall be waived where the customs representative acts on behalf of persons who are not required to be established within the customs territory of the Union.

3. A customs representative having the status of Trust and Check trader shall only be recognised as such when acting as indirect representative. When acting as a direct representative, the customs representative may be recognised as Trust and Check trader if the person in whose name and on whose behalf that representative is acting has been granted such status.

4. The Commission shall determine, in accordance with Union law, the conditions under which a customs representative may provide services in the customs territory of the Union.

5. Member States shall apply the conditions determined in accordance with paragraph 4 to customs representatives not established within the customs territory of the Union.

6. The Commission is empowered to adopt delegated acts, in accordance with Article 261 to supplement this Regulation by determining:

(a) the cases in which the waiver referred to in paragraph 2, second subparagraph, does not apply;

(b) the conditions under which a customs representative may provide services in the customs territory of the Union referred to in paragraph 4.

*Article 28*

**Representatives' empowerment**

1. When dealing with the customs authorities, a customs representative shall state that he or she is acting on behalf of the person represented and shall specify whether the representation is direct or indirect.

Persons who fail to state that they are acting as a customs representative or who state that they are acting as a customs representative without being empowered to do so shall be deemed to be acting in their own name and on their own behalf.

2. The customs authorities may require persons stating that they are acting as a customs representative to provide evidence of their empowerment by the person represented.

In specific cases, the customs authorities shall not require such evidence to be provided.

3. The customs authorities shall not require a person acting as a customs representative, carrying out acts and formalities on a regular basis, to produce on every occasion

evidence of empowerment, provided that such person is in a position to produce such evidence on request by the customs authorities.

4. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining the cases in which the evidence of empowerment is not required by the customs authorities referred to in paragraph 2 of this Article.

5. The Commissions shall adopt, by means of implementing acts, the rules on the conferral and proving of the entitlement referred to in paragraph 3. Those implementing acts shall be adopted in accordance with the examination procedure referred to Article 262(4).

# Title III
# EU CUSTOMS DATA HUB

*Article 29*

**Functionalities and purpose of the EU Customs Data Hub**

1. The EU Customs Data Hub shall provide a secure and cyber resilient set of electronic services and systems to use data including personal data for customs purposes. It shall provide the following functionalities:

   (a) allow for the electronic implementation of customs legislation;

   (b) ensure the quality, integrity, traceability and non-repudiation of data processed therein, including the amendment of such data;

   (c) ensure compliance with the provisions of Regulation (EU) 2016/679, Regulation (EU) 2018/1725 of the European Parliament and of the Council[25] and Directive (EU) 2016/680 of the European Parliament and of the Council[26] relating to the processing of personal data;

   (d) enable risk analysis, economic analysis and data analysis, including through the use of artificial intelligence systems in accordance with [the Artificial Intelligence Act 2021/0106 (COD)][27];

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25 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

26 Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision (OJ L 119, 4.5.2016, p. 89).

27 Regulation (EU) …./.. of the European Parliament and of the Council (OJ L…,../../…., p..). [OJ: Please insert in the text the number of the Regulation contained in document COM(2021) 206 final, 2021/0106(COD)) and insert the number, date, title and OJ reference of that Directive in the footnote.]

(e) enable the interoperability of those services and systems with other electronic systems, platforms or environments for the purpose of cooperation in accordance with Title XIII;

(f) integrate the European Union Single Window Certificates Exchange System established by Article 4 of Regulation (EU) 2022/2399;

(g) enable the exchange of information with third countries;

(h) enable the customs surveillance of goods.

2. The acts that the persons, the Commission, the customs authorities, the EU Customs Authority or other authorities perform through the functionalities listed in paragraph 1 shall remain acts of those persons, of the Commission, of the customs authorities, the EU Customs Authority, or of other authorities, even if they have been automated.

3. The Commission shall develop, implement and maintain the EU Customs Data Hub, including making publicly available the technical specifications to process data within it, and shall establish a data quality framework.

4. The Commission is empowered to adopt delegated acts in accordance with Article 261 to amend the functionalities referred to in paragraph 1 to take account of new tasks conferred on the authorities referred to in Article 31 of this Regulation by Union legislation or to adapt those functionalities to the evolving needs of those authorities in implementing the customs legislation or other legislation applied by customs authorities.

5. The Commission shall lay down, by means of implementing acts:

(a) the technical arrangements for maintaining and employing the electronic systems that the Member States and the Commission have developed pursuant to Article 16(1) of Regulation (EU) No 952/2013;

(b) a work programme for the progressive phase out of those systems.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 30*

**National applications to use data from the EU Customs Data Hub**

1. Member States may develop applications necessary to connect to the EU Customs Data Hub in order to provide data to and process data from the EU Customs Data Hub.

2. Member States may request the EU Customs Authority to develop the applications referred to in paragraph 1. In that case, those Member States shall finance the development.

3. Where the EU Customs Authority develops an application in accordance with paragraph 2, it shall make it available to all Member States.

*Article 31*

**Purposes of the processing of personal data and other data in the EU Customs Data Hub**

1. Persons may have access to the data, including personal and commercially sensitive data, stored or otherwise available in the EU Customs Data Hub, that was transmitted by or on behalf of that person, or that has been addressed to or intended for that person. Such access shall take place exclusively to:

   (a) fulfil that person's reporting obligations under customs legislation or other legislation applied by customs authorities, including determining the liability of any person for duty, fees and taxes that may be due in the Union; and

   (b) demonstrate that person's compliance with customs legislation and other legislation applied by customs authorities.

2. A customs authority may process data, including personal and commercially sensitive data, stored or otherwise available in the EU Customs Data Hub, exclusively and to the extent necessary for the following purposes:

   (a) to carry out its tasks in relation to the implementation of customs legislation or other legislation applied by the customs authorities, including determining the liability of any person for duty, fees and taxes that may be due in the Union and verifying compliance with that legislation;

   (b) to carry out its tasks in relation to controls and risk management as provided for in Title IV;

   (c) to carry out the tasks necessary for the cooperation under the conditions provided for in Title XIII.

   To ensure the effectiveness of customs controls, all customs authorities may receive and process the data resulting from a customs control where non-compliant goods have been detected.

3. The EU Customs Authority may process data, including personal and commercially sensitive data, stored or otherwise available in the EU Customs Data Hub exclusively and to the extent necessary for the following purposes:

   (a) to carry out its tasks on customs risk management as provided for in Title IV, Chapter 3;

   (b) to carry out its tasks as provided for in Title XII, Chapter 2;

   (c) to carry out the tasks relevant for the cooperation as provided for in Title XIII.

4. The Commission may process data, including personal and commercially sensitive data, stored or otherwise available in the EU Customs Data Hub exclusively and to the extent necessary for the following purposes:

   (a) to carry out its tasks in relation to risk management as provided for in Title IV, Chapter 3;

(b) to carry out its tasks in relation to the tariff classification of goods, their origin and value and their customs surveillance in accordance with Titles I and IX;

(c) to carry out its tasks in relation to restrictive measures and crisis management in accordance with Title XI;

(d) to carry out its tasks in relation to the EU Customs Authority in accordance with Title XII;

(e) to carry out the tasks necessary for the cooperation under the conditions provided for in Title XIII;

(f) to assess and evaluate the performance of the customs union in accordance with Title XV, Chapter 1;

(g) to monitor the implementation and ensure the uniform application of customs legislation or other legislation applied by the customs authorities, including determining the liability of any person for duty, fees and taxes that may be due in the Union;

(h) to produce statistics and other analyses as provided for in Union legislation for which the data in the EU Customs Data Hub is necessary.

5. The European Anti-Fraud Office ('OLAF') may process data, including personal and commercially sensitive data, stored or otherwise available in the EU Customs Data Hub, exclusively and to the extent necessary for carrying out its activities concerning customs matters pursuant to Article 1 of Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council, and Council Regulation (EC) No 515/97, under the conditions relating to data protection laid down in the aforementioned Regulations.

6. The European Public Prosecutor's Office ('EPPO') may, upon request, access data, including personal and commercially sensitive data, stored or otherwise available in the EU Customs Data Hub, exclusively and to the extent necessary for carrying out its tasks pursuant to Article 4 of Council Regulation (EU) 2017/1939[28], insofar as the conduct investigated by EPPO concerns customs and under the conditions determined in an implementing act adopted pursuant to paragraph 14 of this Article.

7. The tax authorities of the Member States may process data, including personal and commercially sensitive data, stored or otherwise available in the EU Customs Data Hub, exclusively and to the extent necessary to determine the liability of any person for duty, fees and taxes that may be due in the Union in connection with the relevant goods and under the conditions determined in an implementing act adopted pursuant to paragraph 14 of this Article.

8. The competent authorities as defined in Article 3, point (3), of Regulation (EU) 2017/625 of the European Parliament and of the Council[29] may access data, including

[28] Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

[29] Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on

personal and commercially sensitive data, store or otherwise available in the EU Customs Data Hub exclusively and to the extent necessary for enforcing Union legislation governing the placing on the market or the safety of food, feed and plants and for cooperating with customs authorities to minimise the risks that non-compliant products enter the Union and under the conditions determined in an implementing act adopted pursuant to paragraph 14 of this Article.

9. The market surveillance authorities designated by Member States in accordance with Article 10 of Regulation (EU) 2019/1020 may process data, including personal and commercially sensitive data, stored or otherwise available in the EU Customs Data Hub, exclusively and to the extent necessary for enforcing Union legislation governing the placing on the market or the safety of products and for cooperating with customs authorities to minimise the risks that non-compliant goods enter the Union, and under the conditions determined in an implementing act adopted pursuant to paragraph 14 of this Article.

10. The European Union Agency for Law Enforcement Cooperation (Europol) may, upon request, access data, including personal and commercially sensitive data, stored or otherwise available in the EU Customs Data Hub, exclusively and to the extent necessary to perform its tasks in accordance with Article 4 of Regulation (EU) 2016/794 of the European Parliament and of the Council as long as those tasks concern customs-related matters and under the conditions determined in an implementing act adopted pursuant to paragraph 14 of this Article.

11. Other national authorities and Union bodies, including the European Border and Coast Guard Agency (Frontex), may process non-personal data stored or otherwise available in the EU Customs Data Hub under the conditions determined in an implementing act adopted pursuant to paragraph 14 of this Article:

    (a) carry out their tasks relevant for the fulfilment of customs formalities;

    (b) carry out the tasks entrusted to those authorities by Union legislation;

    (c) carry out their tasks relevant for the performance of the Union-level risk management activities referred to in Article 52.

12. Until the date set out in Article 265(3), the Commission, OLAF and the EU Customs Authority once it is established shall, exclusively for the purposes stated in paragraphs 4, 5 and 6, be able to process data, including personal data, from the existing electronic systems for the exchange of information developed by the Commission pursuant to Regulation (EU) No 952/2013.

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animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation)(OJ L 95, 7.4.2017, p. 1).

13. The Commission is empowered to adopt delegated acts in accordance with Article 261 to amend paragraphs 2 to 4 to clarify and complement the purposes laid down therein in light of the evolving needs in implementing customs legislation or other legislation.

14. The Commission shall lay down, by means of implementing acts, rules and modalities for accessing or processing data, including personal and commercially sensitive data, stored or otherwise available in the EU Customs Data Hub by the authorities referred to in paragraphs 6 to 11. In determining those rules and modalities, the Commission shall, for each authority or category of authorities:

(a) assess the existing safeguards applied by the authority concerned to ensure that the data is processed in accordance to the purpose;

(b) ensure the proportionality and the necessity of the processing in relation to the purpose;

(c) determine the specific categories of data, which the authority may have access to or process;

(d) consider the need for the authority concerned to designate a specific contact point, person or persons or to provide additional safeguards;

(e) assess the need to restrict the subsequent sharing of the data;

(f) determine the conditions and modalities for requests for access to data, including personal or commercially sensitive data and which of the joint controllers will grant the access to the EU Customs Data Hub.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 32*

**Personal data in the EU Customs Data Hub**

1. The personal data of the following categories of data subjects may be processed in the EU Customs Data Hub exclusively and to the extent necessary for the purposes laid down in Article 31:

(a) data subjects registered or applying for registration as economic operators in accordance with Article 19;

(b) data subjects who are occasionally involved in activities covered by the customs legislation or by other legislation applied by the customs authorities;

(c) data subjects whose personal information is contained in the supporting documents referred to in Article 40, or in any additional evidence required for the fulfilment of the obligations imposed by customs legislation and other legislation applied by the customs authorities;

(d) data subjects whose personal data is contained in the data collected for risk management purposes pursuant to Article 50(3), point (a);

(e) authorised staff of customs authorities, of authorities other than customs or any other relevant authority or authorised body, whose personal information is necessary to ensure appropriate control and supervision of the access to the information in the EU Customs Data Hub;

(f) staff or authorised third parties working on behalf of the Commission, the EU Customs Authority or other Union bodies authorised to access the EU Customs Data Hub.

2. The following categories of personal data may be processed in the EU Customs Data Hub in accordance with Article 31:

(a) personal data in the EU Customs Data model referred to in Article 36;

(b) personal data included in the data collected for risk management purposes pursuant to Article 50(3), point (a);

(c) personal data required to ensure a proper identification of the staff authorised to process data in the EU Customs Data Hub referred to in paragraph 1, points (e) and (f);

3. The Commission is empowered to adopt delegated acts in accordance with Article 261 to amend or supplement the categories of data subjects and the categories of personal data referred to in paragraphs 1 and 2 of this Article to take account of developments in information technology and in the light of the state of progress in the information society.

*Article 33*

**Retention period of personal data in the EU Customs Data Hub**

1. Personal data in the EU Customs Data Hub may be stored by means of a specific service for a maximum period of 10 years, starting from the date on which that data is recorded in the service. The cases provided for in Article 48 and investigations launched by OLAF, EPPO or by Member States' authorities, infringement procedures launched by the Commission and administrative and judicial proceedings involving personal data shall have a suspensive effect on the retention period with regard to that data.

2. After the period of time provided for in paragraph 1, personal data shall be erased or anonymised, according to the circumstances.

3. The Commission shall lay down, by means of implementing acts, the rules for anonymising the personal data after the expiry of the retention period.

*Article 34*

**Roles and responsibilities for personal data processed in the EU Customs Data Hub**

1. The customs authorities of the Member States, the Commission and the EU Customs Authority shall be considered joint controllers for the personal data processing in the

EU Customs Data Hub for the purposes of risk management and cooperation, as referred to in Article 31(2), points (b) and (c), Article 31(3), points (a) and (c), and Article 31(4), points (a) and (e).

2. Each customs authority alone shall be considered controller in relation to the personal data it processes for the purposes referred to in Article 31(2),point (a).

3. The Commission shall be considered sole controller in relation to the personal data it processes for the purposes referred to in Article 31(4), points (c), (d) and (f) to (g).

4. Until the date set out in Article 265(3), the Commission, OLAF, EPPO and the EU Customs Authority shall be considered sole controllers in relation to the data processing referred to in Article 31(12).

5. The joint controllers referred to in paragraph 1 shall:

(a) work together to process the request(s) made by the data subject(s) in a timely manner and to facilitate the exercise of the rights of data subjects;

(b) assist each other in matters involving the identification and handling of any data breach related to the joint processing;

(c) exchange the relevant information necessary to inform data subjects pursuant to Chapter III, Section 2 of Regulation (EU) 2016/679, Chapter III, Section 2 of Regulation (EU) 2018/1725, and Chapter III of Directive (EU) 2016/680, where applicable;

(d) ensure and protect the security, integrity, availability and confidentiality of the personal data processed jointly pursuant to Article 32 of Regulation (EU) 2016/679, Article 33 of Regulation (EU) 2018/1725, and Article 25 of Directive (EU) 2016/680, where applicable.

6. The Commission shall lay down, by means of implementing acts, the respective roles and relationships of the joint controllers vis-à-vis the data subjects, in compliance with Article 26 of Regulation (EU) 2016/679 and Article 28 of Regulation (EU) 2018/1725. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 35*

**Restriction of data subject's rights**

1. Where the exercise by a data subject of the right of access and right to restriction of processing referred to in Articles 15 and 18 of Regulation (EU) 2016/679 and Articles 17 and 20 of Regulation (EU) 2018/1725, or the communication of a data breach referred to in Article 34(1) of Regulation (EU) 2016/679 and Article 35(1) of Regulation (EU) 2018/1725, would jeopardise an ongoing investigation concerning a natural person in the field of customs, the performance of customs controls or the management of a specific risk identified in relation to a natural person in the field of customs, the customs authorities, the EU Customs Authority and the Commission may, in accordance with Article 23(1), points (c), (e), (f) and (h), of Regulation (EU)

2016/679, and the Commission and the EU Customs Authority may, in accordance with Article 25(1), points (a), (c), (e), and (g), of Regulation (EU) 2018/1725, restrict wholly or partly those rights as long as the restriction is necessary and proportionate.

2. The customs authorities, the Commission and the EU Customs Authority shall assess the necessity and proportionality of the restrictions referred to in paragraph 1 on a case-by-case basis before they are applied, considering the potential risks to the rights and freedoms of the data subject.

3. When processing personal data received from other organisations in the context of its tasks, the customs authorities, the EU Customs Authority or the Commission, when acting as a controller or a joint controller, shall consult those organisations on potential grounds for imposing the restrictions as referred to in paragraph 1, and the necessity and proportionality of such restrictions before applying a restriction referred to in paragraph 1.

4. Where the customs authorities, the Commission or the EU Customs Authority restrict, wholly or partly, the rights referred to in paragraph 1, they shall take the following steps:

(a) inform the data subject concerned, in its reply to the request, of the restriction applied and of the principal reasons therefore, and of the possibility of lodging a complaint with the national data protection authorities or the European Data Protection Supervisor or of seeking a judicial remedy in a national court or the Court of Justice of the European Union; and

(b) record the reasons for the restriction, including an assessment of the necessity for and proportionality of the restriction, and the reasons why providing access would jeopardise risk management and customs controls.

The provision of information referred to in point (a) of the first subparagraph may be deferred, omitted or denied in accordance with Article 25(8) of Regulation (EU) 2018/1725, or where the provision of that information would be prejudicial to the purposes of the restriction.

5. The customs authorities, the Commission or the EU Customs Authority shall include a section in the data protection notices published on its website/intranet providing general information to data subjects on the potential for restriction of data subjects' rights.

6. The Commission shall lay down, by means of implementing acts, the safeguards to prevent the abuse and unlawful access or transmission of the personal data in respect of which restrictions apply or could be applied. Such safeguards shall include the definition of roles, responsibilities and procedural steps, and due monitoring of restrictions and a periodic review of their application, which shall take place at least every 6 months. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 36*

**EU Customs Data Model**

The Commission is empowered to adopt delegated acts in accordance with Article 261 to supplement this Regulation in order to determine the data required for the fulfilment of the purposes referred to in Article 31(1) to (4). Those data requirements shall constitute the EU Customs Data Model.

*Article 37*

**Technical means for cooperation**

1. The Commission, the EU Customs Authority and the customs authorities shall use the EU Customs Data Hub when exchanging with the authorities and Union bodies referred to in Article 31(6) to (11) in accordance with this Regulation.

2. For the Union other formalities and systems listed in the Annex to Regulation (EU) 2022/2399, the EU Customs Data Hub shall ensure interoperability through the EU Single Window Environment for Customs established by that Regulation.

3. Where authorities other than customs authorities or Union bodies make use of electronic means established by, used to achieve the objectives of, or referred to in Union legislation, the cooperation may take place by means of interoperability of those electronic means with the EU Customs Data Hub.

4. Where authorities other than customs authorities do not make use of electronic means established by, used to achieve the objectives of, or referred to in, Union legislation, those authorities may use the specific services and systems of the EU Customs Data Hub in accordance with Article 31.

5. The Commission shall adopt, by means of implementing acts, the rules for technical modalities for interoperability and connection referred to in paragraphs 3 and 4. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 262(4).

*Article 38*

**Exchange of additional information between customs authorities and economic operators**

1. Customs authorities and economic operators may exchange any information not specifically required under the customs legislation, in particular for the purpose of mutual cooperation in the identification and counteraction of risk. That exchange may take place under a written agreement and may include access to the electronic systems of economic operators by the customs authorities.

2. Any information provided by one party to the other in the course of the cooperation referred to in paragraph 1 shall be confidential unless both parties agree otherwise or unless the provisions in force provide otherwise.

*Article 39*

**Provision of information by the customs authorities**

1. Any person may request information concerning the application of the customs legislation from the customs authorities. The customs authorities may refuse such a request where it does not relate to an activity pertaining to international trade in goods that is actually envisaged.

2. Customs authorities shall maintain a regular dialogue with economic operators and other authorities involved in international trade in goods. They shall promote transparency by making the customs legislation, general administrative rulings and application forms freely available, wherever practical without charge, and through the internet.

*Article 40*

**Information and supporting documents**

1. When providing or making available the data and information required for the specific customs procedure under which goods are placed or intended to be placed, persons shall provide or make available digital copies of original paper documents, where such paper originals exist, used to obtain that data and information.

2. Until the date set out in Article 266(3), when a customs declaration is lodged, the supporting documents required for the application of the provisions governing the customs procedure for which the goods are declared shall be in the declarant's possession and at the disposal of the customs authorities at the time of lodgement.

3. The supporting documents for the applicable Union non-customs formalities listed in the Annex to Regulation (EU) 2022/2399 shall be deemed to have been provided or made available or to be in the possession of the declarant if the customs authorities are able to obtain the necessary data from the corresponding Union non-customs systems through the European Union Customs Single Window Certificates Exchange System in accordance with Article 10(1), points (a) and (c), of that Regulation.

4. Supporting documents shall also be provided by persons where necessary for customs risk management and controls.

5. Without prejudice to other legislation applied by the customs authorities, customs authorities may authorise economic operators to draw up the supporting documents referred to in paragraph 3.

6. Unless otherwise stated for specific documents, the person concerned shall, for the purposes of customs controls, keep the documents and information for at least 3 years, by any means accessible by and acceptable to the customs authorities. That period shall run:

   (a) from the end of the year in which the goods are released;

   (b) from the end of the year in which they cease to be subject to customs supervision, in the case of goods released for free circulation duty-free or at a reduced rate of import duty on account of their end-use;

(c) from the end of the year in which the customs procedure concerned has been discharged or temporary storage has ended, in the case of goods placed under another customs procedure or of goods in temporary storage.

7. Without prejudice to Article 182(4), where a customs control in respect of a customs debt shows that the relevant entry in the accounts has to be corrected and the person concerned has been notified of this, the documents and information shall be kept for 3 years beyond the time limit provided for in paragraph 6 of this Article.

8. Where an appeal has been lodged or where administrative or judicial proceedings have begun, the documents and information shall be kept for the period provided for in paragraph 1 or until the appeals procedure or the administrative or judicial proceedings are terminated, whichever is the latest.

# Title IV
# CUSTOMS SUPERVISION, CUSTOMS CONTROLS AND RISK MANAGEMENT

## Chapter 1
## Customs supervision

*Article 41*

**Customs supervision**

1. Goods to be brought into or to be taken out of the customs territory of the Union shall be under customs supervision and may be subject to customs controls.

2. Goods brought into the customs territory of the Union shall remain under such supervision for as long as is necessary to determine their customs status.

3. Non-Union goods shall remain under customs supervision until their customs status is changed, or they are taken out of the customs territory of the Union or they are destroyed.

4. Upon entry into the customs territory of the Union, Union goods shall be subject to customs supervision until their customs status is confirmed, unless they are placed under the end-use procedure.

5. Union goods placed under the end-use procedure shall be subject to customs supervision in the following cases:

(a) where the goods are suitable for repeated use, for a period not exceeding 2 years after the date of their first use for the purposes laid down for applying the duty exemption or reduced rate of duty;

(b) until the goods have been used for the purposes laid down for the application of the duty exemption or reduced rate of duty;

(c) until the goods have been taken out of the customs territory of the Union, destroyed or abandoned to the State;

(d) until the goods have been used for purposes other than those laid down for the application of the duty exemption or reduced duty rate and the applicable import duty has been paid.

6. Union goods released for export or placed under outward processing shall be subject to customs supervision until they are taken out of the customs territory of the Union, are abandoned to the State or destroyed or the customs declaration or relevant data on the export is invalidated.

7. Union goods placed under internal transit shall be subject to customs supervision until they arrive to their destination in the customs territory of the Union.

8. The holder of goods under customs supervision may, with the permission of the customs authorities, at any time examine the goods or take samples, in particular in order to determine their tariff classification, customs value or customs status.

*Article 42*

**Competent customs offices**

1. Except where other legislation applied by the customs authorities provides otherwise, Member States shall determine the location and competence of their customs offices.

2. Member States shall ensure that official opening hours of those offices are reasonable and appropriate, taking into account the nature of the traffic and of the goods and the customs procedures under which they are to be placed, so that the flow of international traffic is neither hindered nor distorted.

3. The competent customs office for supervising the placement of the goods under a customs procedure shall be the customs office responsible for the place where the importer or the exporter is established.

By way of derogation from the first subparagraph, the competent customs office for supervising the placement of the goods under a customs procedure in relation to importers and exporters other than Trust and Check traders and deemed importers shall be the customs office responsible for the place where the customs declaration has been lodged or would have been lodged in accordance with Article 63(4) but for the modification concerning the method of providing information laid down in Article 63(2).

4. The customs office responsible for the place of establishment of the Trust and Check trader or the deemed importer shall:

(a) supervise the placing of the goods under the customs procedure concerned;

(b) carry out the customs controls for the verification of the information provided, and request additional supporting documents if needed;

(c) where justified, request the customs office responsible for the place of dispatch or final destination of the goods to carry out a customs control;

(d) where there is a risk that requires action as soon as the goods arrive to the customs territory of the Union or before they leave the customs territory of the Union, request the customs office responsible for the place where the goods enter or exit to perform customs controls;

(e) carry out the customs formalities for the recovery of the amount of import or export duty corresponding to any customs debt.

5. The customs office responsible for the place of dispatch or final destination of the goods, or, pursuant to paragraph 4, point (d) for the place where the goods enter or exit the customs territory of the Union, shall carry out the customs controls requested by the customs office responsible for the place of establishment of the importer and provide that customs office with the results of these controls, without prejudice to its own controls pertaining to goods brought into or taken out of the customs territory of the Union.

6. The competent customs offices shall have access to the information necessary for ensuring the correct application of the legislation.

8. The Commission shall specify, by means of implementing acts, the procedural rules for determining the competent customs offices other than the one referred to in paragraph 3, including customs offices of entry and customs offices of exit and the procedural rules for cooperation between customs offices as referred to in paragraph 5. These implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

# Chapter 2
# Customs controls

*Article 43*

**Customs controls**

1. Without prejudice to the provisions in Chapter 3 of this Title, the customs authorities may carry out any customs controls they deem necessary, including random controls.

2. Customs controls may in particular consist of examining goods, taking samples, verifying the authenticity, integrity, accuracy and completeness of the data provided by any person and the existence, authenticity, accuracy and validity of documents, examining the accounts and commercial records and data sources of economic operators, inspecting means of transport, inspecting luggage and other goods carried by or on persons and carrying out official enquiries and other similar acts. When necessary, customs controls include processing of the electronic data, including data source of the data provided to the EU Customs Data Hub.

3. Where, in respect of the same goods, controls other than customs controls are to be performed by other authorities, customs authorities shall, in close cooperation with

those other authorities, endeavour to have those controls performed, wherever possible, at the same time and place as customs controls (one-stop-shop), with customs authorities having the coordinating role.

*Article 44*

**Verification of the data provided**

1. The customs authorities may, for the purpose of verifying the accuracy of the data provided by persons to the customs authorities:

   (a) examine the data and the supporting documents, including accessing data sources held by the economic operators or stored on their behalf by service providers;

   (b) require the provision of other documents or data, including data held by the economic operators or stored on their behalf by service providers;

   (c) require access to the electronic records of the person;

   (d) examine the goods;

   (e) take samples for analysis or for detailed examination of the goods.

2. The customs authorities may at any time require goods to be unloaded and unpacked for the purpose of examining them, taking samples or examining the means of transport carrying them.

3. The Commission shall specify, by means of implementing acts, the measures on the verification of information referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 45*

**Examination and sampling of goods**

1. Transport of the goods to the places where they are to be examined and where samples are to be taken, and all the handling necessitated by such examination or taking of samples, shall be carried out by or under the responsibility of the importer, exporter or carrier. The costs incurred shall be borne by the importer or exporter.

2. The importer, exporter or carrier shall have the right to be present or represented when the goods are examined and when samples are taken. Where the customs authorities have reasonable grounds for so doing, they may require the importer, exporter or carrier to be present or represented when the goods are examined or samples are taken or to provide them with the assistance necessary to facilitate such examination or taking of samples.

3. Provided that samples are taken in accordance with the provisions in force, the customs authorities shall not be liable for payment of any compensation in respect thereof but shall bear the costs of their analysis or examination.

4. Where only part of the goods is examined, or samples are taken, the results of the partial examination, or of the analysis or examination of the samples, shall be taken to apply to all the goods in the same consignment.

However, the importer or the exporter may request a further examination or sampling of the goods if he or she considers that the results of the partial examination, or of the analysis or examination of the samples taken, are not valid as regards the remainder of the goods concerned. The request shall be granted provided that the goods have not been released or, if they have been released, that the importer or the exporter proves that they have not been altered in any way.

5. The Commission shall specify, by means of implementing acts, measures on the examination and sampling of goods referred to in this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 46*

**Results of the verification**

1. The results of verifying the data provided by the importer, exporter or carrier shall be used for the application of the provisions governing the customs procedure under which the goods are placed.

2. Where the data provided is not verified, paragraph 1 shall apply on the basis of the data provided by the importer or the exporter.

3. The results of the verification made by the customs authorities shall have the same conclusive force throughout the customs territory of the Union.

4. The Commission shall specify, by means of implementing acts, measures on the results of the verification referred to in this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 47*

**Identification measures**

1. The customs authorities or, where appropriate, economic operators authorised to do so by the customs authorities, shall take the measures necessary to identify the goods where identification is required in order to ensure compliance with the provisions governing the relevant customs procedure under which the goods are intended to be placed.

Those identification measures shall have the same legal effect throughout the customs territory of the Union.

2. Means of identification affixed to the goods, packaging or means of transport shall be removed or destroyed only by the customs authorities or, where they are authorised to do so by the customs authorities, by other persons, unless, as a result of unforeseeable

circumstances or force majeure, their removal or destruction is essential to ensure the protection of the goods or the means of transport.

3. The Commission shall specify, by means of implementing acts, which measures constitute the identification measures referred to in this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 48*

**Post-release controls**

1. For the purpose of customs controls, the customs authorities may, after the release of the goods:

   (a) verify the accuracy and completeness of the data provided and the existence, authenticity, accuracy and validity of any supporting document;

   (b) examine the accounts of the economic operator and other records relating to the operations in respect of the goods in question and prior or subsequent commercial operations involving those goods;

   (c) examine such goods and take samples where it is still possible for them to do so;

   (d) access operators' systems to verify compliance with the obligation to provide or make available data to the EU Customs Data Hub.

2. Such controls may be carried out at the premises of the importer or exporter, or of the holder of the goods, or of any other person directly or indirectly involved in those operations in a business capacity or of any other person in possession of those documents and data for business purposes.

3. The Commission shall specify, by means of implementing acts, the measures that shall apply to the controls referred to in paragraph 1, including in cases where operations take place in more than one Member State, and on the application of audit and other appropriate methodologies in the context of such controls. Those implementing acts shall be adopted in accordance with Article 262(4).

*Article 49*

**Intra-Union flights and sea crossings**

1. Customs controls or formalities shall be carried out in respect of the cabin and hold baggage of persons either taking an intra-Union flight, or making an intra-Union sea crossing, only where the customs legislation provides for such controls or formalities.

2. Paragraph 1 shall apply without prejudice to:

   (a) security and safety;

   (b) controls linked to other legislation applied by the customs authorities.

3. The Commission shall determine, by means of implementing acts, the ports or airports where customs controls and formalities are applied to the following:

(a) the cabin and hold baggage of persons:

(i) taking a flight in an aircraft which comes from a non-Union airport and which, after a stopover at a Union airport, continues to another Union airport;

(ii) taking a flight in an aircraft which stops over at a Union airport before continuing to a non-Union airport;

(iii) using a maritime service provided by the same vessel and comprising successive legs departing from, calling at or terminating in a non-Union port;

(iv) on board pleasure craft and tourist or business aircraft;

(b) cabin and hold baggage:

(i) arriving at a Union airport on board an aircraft coming from a non-Union airport and transferred at that Union airport to another aircraft proceeding on an intra-Union flight;

(ii) loaded at a Union airport onto an aircraft proceeding on an intra-Union flight for transfer at another Union airport to an aircraft whose destination is a non-Union airport.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

# Chapter 3
# Customs risk management

*Article 50*

**General principles**

1. The customs authorities shall determine, based on risk management and primarily on automated risk analysis, whether goods, economic operators and supply chains will be subject to customs controls or other mitigation measures, and if so, where and when those controls and other mitigation measures will take place,

2. The Commission, the EU Customs Authority and the customs authorities shall use customs risk management to differentiate between the levels of all risks associated with goods, economic operators and supply chains in accordance with the provisions in this chapter.

3. Customs risk management shall include at least the following activities, where appropriate organised on a cyclical basis:

(a) collecting, processing, exchanging and analysing relevant data available in the EU Customs Data Hub and from other sources, including relevant data from authorities other than customs authorities;

(b) identifying, analysing, assessing, or predicting risks, including based on statistical and predictive methods and random controls;

(c) developing the necessary measures to manage the risks, including establishing common priority control areas, common risk criteria and standards, and supervision strategies;

(d) prescribing and taking action, including selecting appropriate mitigation measures and customs controls;

(e) gathering feedback on the implementation of risk management and control activities;

(f) monitoring and reviewing risk management and control activities with a view to improving them.

4. Mitigation measures may include the following:

(a) instructing the carrier or exporter that the goods shall not be loaded or transported;

(b) requesting additional information or action;

(c) identifying situations where action by another customs authority may be appropriate;

(d) recommending the most appropriate place and measures to carry out a control;

(e) determining the route to be used, and the time-limit to be respected when goods are to be taken out of the customs territory of the Union.

*Article 51*

**Roles and responsibilities**

1. The Commission may establish common priority control areas and common risk criteria and standards for any type of risk, including but not limited to risks relating to financial interests.

2. Without prejudice to paragraph 6, point (f), of this Article and to Article 43, the Commission may identify specific areas in the domain of other legislation applied by the customs authorities that warrant priority treatment for customs risk management and controls.

3. The Commission may:

(a) provide policy orientations to the EU Customs Authority on risk management projects and supervision strategies;

(b) request the EU Customs Authority to carry out a periodic or ad-hoc evaluation of the implementation of any risk management activities;

(c) request the EU Customs Authority to prepare a supervision strategy for any risk and to conduct threat assessments.

4. For the purposes referred to in paragraphs 1 to 3, the Commission may collect, process and analyse data available in the EU Customs Data Hub and from other sources, including from authorities other than customs authorities.

5. The EU Customs Authority shall perform Union-level risk management activities on the basis of the customs policy orientations as referred to in paragraph 3, point (a) and of the priorities as referred to in paragraph 2. It shall:

(a) collect, process and analyse data available in the EU Customs Data Hub and from other sources, including from authorities other than customs authorities;

(b) assist the Commission in defining common priority controls areas and common risk criteria and standards, based on operational knowledge and technical expertise in risk management;

(c) where requested in accordance with paragraph 3, develop supervision strategies, where appropriate with authorities other than customs, and conduct threat assessments;

(d) exchange relevant data with the customs authorities and with other authorities for the purposes of this Title, where possible through the EU Customs Data Hub, in accordance with Article 53;

(e) develop and implement common risk analysis to generate risk signals, risk analysis results and where appropriate, issue control recommendations and other appropriate mitigation measures to the customs authorities, including for the application of the common priority control areas and the common risk criteria and standards established by the Commission and for dealing with crisis situations;

(f) inform OLAF where it identifies or suspects cases of fraud and provide it with all the necessary information related to these cases.

6. The customs authorities shall, using data available in the EU Customs Data Hub and from other sources:

(a) collect, process and analyse data available in the EU Customs Data Hub and from other sources, including from authorities other than customs authorities;

(b) perform national risk management activities, including risk analysis, cooperation, and exchange of information on risk management with relevant national authorities, and taking mitigation measures;

(c) implement national processes necessary for the implementation of common risk criteria and standards and common priority control areas;

(d) implement the risk signals, risk analysis results and control recommendations generated by the EU Customs Authority;

(e) issue control recommendations and indicate other appropriate mitigation measures to the customs authorities of other Member States;

(f) take control decisions;

(g) perform controls in accordance with Chapter 2 of this Title and with any applicable common risk criteria and standards;

(h) provide a justification to the EU Customs Authority in the event that a control recommendation was not executed.

7. The EU Customs Authority shall inform the Commission about its risk management activities and their outcome on a quarterly and, where necessary or requested by the Commission, ad hoc basis. It shall provide all necessary information to the Commission in this regard.

8. Until the date set out in Article 265(1), the Commission may carry out the risk management tasks of the EU Customs Authority referred to in this Article.

*Article 52*

**Common risk criteria and standards**

1. The common risk criteria and standards shall include all of the following:

(a) a description of the risks;

(b) the factors or indicators of risk to be used to select goods or economic operators for customs controls;

(c) the nature of customs controls to be undertaken by the customs authorities;

(d) the application of risk analysis and mitigation measures in the supply chain, including requests for information or action and instruction not to load or transport;

(e) the duration of the application of the customs controls referred to in point (c).

2. In the establishment of common risk criteria and standards, account shall be taken of all of the following:

(a) the proportionality to the risk;

(b) the urgency of the necessary application of the controls;

(c) the reasonably expected impact on trade flow and on individual Member States control resources.

*Article 53*

**Information relevant for risk management and controls**

1. All risk information, signals, risk analysis results, control recommendations, control decisions and control results, shall be recorded in the operational process to which they relate and in the EU Customs Data Hub, irrespective of whether they were based on national or common risk analysis, or whether they were based on random selection. Customs authorities shall share risk information with each other, with the EU Customs Authority and with the Commission.

2. The customs authorities, the EU Customs Authority and the Commission shall have the right to process the elements referred to in paragraph 1 of this Article according to their roles and responsibilities as referred to in Articles 51 and 54.

3. The EU Customs Authority shall use the EU Customs Data Hub where possible to collect, or interoperate with, any other sources of data, documents or information identified as relevant for risk management by the EU Customs Authority, by the Commission or by a customs authority.

4. Until the date set out in Article 265(1), the Commission shall carry out the tasks of the EU Customs Authority referred to in this Article.

*Article 54*

**Evaluation of customs risk management**

1. The Commission, in cooperation with the EU Customs Authority and the customs authorities, shall evaluate the implementation of risk management in order to continuously improve its operational and strategic effectiveness and efficiency at least once every 2 years; the Commission may in addition arrange evaluation activities to be carried out where it considers necessary, and on an ongoing basis.

2. For this purpose, the EU Customs Authority shall collect and analyse relevant information and carry out all necessary activities. The EU Customs Authority may request periodic or ad-hoc reports from one or more Member States in this regard.

3. For this purpose, and for the purpose of fulfilling its role and responsibilities under this Title, the Commission may process any relevant information available through the EU Customs Data Hub and may request further information from the EU Customs Authority and from national authorities.

4. In the establishment of common risk criteria and common priority control areas, the Commission shall take account, where relevant, of evaluations carried out under this Article.

*Article 55*

**Conferral of implementing powers**

1. The Commission shall adopt, by means of implementing acts, measures to ensure the harmonised application of customs controls and risk management, including the exchange of information, the establishment of common risk criteria and standards and common priority control areas referred to in this Title. Such measures shall address at least the following elements:

(a) the information to be recorded in the EU Customs Data Hub in relation to risk management and controls, including in respect of risk information, risk analysis results, control recommendations, control decisions and control results, and the rights to access and process such information;

(b) procedural measures for the transitional use or access to existing customs information systems procedural measures for the management of interoperability between the EU Customs Data Hub and other systems;

(c) procedural measures in relation to the application of the reporting requirement in the context of post-release controls and random controls;

(d) arrangements for cooperation, including exchange of information, between the EU Customs Authority and specific other Union institutes, bodies and offices, and other national competent authorities;

(e) the identification of the responsible customs authority in the case of specific risk management processes, which may concern more than one Member State;

(f) procedural aspects of controls, including post-release controls, which concern more than one Member State, and the availability of results of samples and other controls between the customs authorities concerned;

(g) arrangements for the sharing of risk information between customs authorities, the EU Customs Authority and with the Commission;

(h) common priority control areas and common risk criteria and standards as referred to in Article 51(1) and (2) and Article 52, including the modalities for their application on an urgent basis where this is necessary.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

2. On imperative grounds of urgency relating to such measures, including the modalities for their application on an urgent basis to respond effectively to crisis or incidents which may pose an imminent safety or security risk, and duly justified by the need to rapidly update common risk management and adapt the exchange of information, common risk criteria and standards, and common priority control areas to the evolution of risks, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 262(5).

# Title V
# PLACING GOODS UNDER A CUSTOMS PROCEDURE

## Chapter 1
## Customs status of goods

*Article 56*

**Presumption of customs status of Union goods**

1. All goods in the customs territory of the Union shall be presumed to have the customs status of Union goods, unless it is established that they are not Union goods.

2. In specific cases, where the presumption laid down in paragraph 1 does not apply, the customs status of Union goods shall need to be proven.

3. In specific cases, goods wholly obtained in the customs territory of the Union do not have the customs status of Union goods if they are obtained from goods in temporary storage or placed under the external transit procedure, a storage procedure, the temporary admission procedure or the inward processing procedure.

4. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining:

   (a) the specific cases where the presumption laid down in paragraph 1 does not apply;

   (b) the conditions for granting facilitation in the establishment of the proof of customs status of Union goods;

   (c) the specific cases where the goods referred to in paragraph 3 do not have the customs status of Union goods.

5. The Commission shall specify, by means of implementing acts, the procedural rules for the provision and verification of the proof of the customs status of Union goods. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 57*

**Loss of customs status of Union goods**

Union goods shall become non-Union goods in the following cases:

   (a) where they are taken out of the customs territory of the Union, insofar as the rules on internal transit do not apply;

(b) where they have been placed under the external transit procedure, a storage procedure or the inward processing procedure, insofar as the customs legislation so allows;

(c) where they have been placed under the end-use procedure and are either subsequently abandoned to the State, or are destroyed and waste remains;

(d) where the declaration for release for free circulation is invalidated after release of the goods.

*Article 58*

**Union goods leaving the customs territory of the Union temporarily**

1. In the cases referred to in Article 112(2), points (b), (c), (d) and (e), goods shall keep their customs status as Union goods only if that status is established under the conditions and by the means laid down in the customs legislation.

2. In specific cases, Union goods may move, without being subject to a customs procedure, from one point to another within the customs territory of the Union and temporarily out of that territory without alteration of their customs status.

3. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining the specific cases where the customs status of goods referred to in paragraph 2 of this Article is not altered.

# Chapter 2
# Placement and release

*Article 59*

**Placement of goods under a customs procedure**

1. Importers, exporters and holders of the procedure intending to place goods under a customs procedure shall provide or make available the data necessary for the concerned procedure as soon as it is available and in any event prior to the release of the goods.

2. Deemed importers shall provide or make available the information on distance sales of goods to be imported in the customs territory of the Union at the latest on the day following the date when the payment was accepted and in any event prior to the release of the goods.

3. By way of derogation from paragraph 1, in duly justified circumstances linked to the supporting documentation or the determination of the final value of the goods, the customs authorities may authorise Trust and Check traders to provide part of the data other than advance cargo information after the release of the goods. The importer or the exporter shall provide the omitted information within a specific time-limit.

4. The goods shall be placed under the customs procedure upon their release. The date of the release shall, except where otherwise provided, be the date to be used for the application of the provisions governing the customs procedure in which the goods are placed and for all other import or export formalities.

5. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining the data and information referred to in paragraphs 1 and 2 of this Article, and the specific data that can be provided after release of the goods and the time-limits for providing such data as referred to in paragraph 3 of this Article.

*Article 60*

**Release of the goods**

1. The customs authorities responsible for placing the goods in a customs procedure in accordance with Article 42(3) shall decide on the release of the goods taking into account the result of the risk analysis of the data provided by the importer or exporter and, where applicable, the results of any control.

2. Goods shall be released if the following conditions are met:

   (a) an importer or exporter is responsible for the goods;

   (b) any information requested by customs authorities and the minimum information necessary for the particular procedure has been provided or made available to customs authorities;

   (c) the conditions for placing the goods under the procedure concerned pursuant to Articles 88, 118, 132 and 135 are fulfilled;

   (d) the goods have not been selected for any control.

3. The customs authorities shall refuse the release in any of the following cases:

   (a) where the conditions for placing the goods under the procedure concerned are not fulfilled, including any Union non-customs formalities as defined in point 11 of Article 2 of Regulation (EU) 2022/2399 relevant for the goods;

   (b) where they have any evidence that the goods do not comply with the relevant other legislation applied by the customs authorities, unless that legislation requires consulting other authorities beforehand;

   (c) where they have evidence that the data provided is not accurate.

4. The customs authorities shall suspend the release in any of the following cases:

   (a) where they have a reason to believe that the goods do not comply with the relevant other legislation applied by the customs authorities or that they present a serious risk to human, animal or plant health and life, or to the environment, or any other public interest, including financial interest; or

(b) where the other authorities have so requested according to other legislation applied by the customs authorities.

5. Where the release has been suspended in accordance with paragraph 4, the customs authorities shall consult the other authorities if the relevant other legislation applied by the customs authorities so requires, and:

(a) refuse the release if the other authorities have so requested according to other legislation applied by the customs authorities; or

(b) release the goods if there are no reasons to believe that other requirements and formalities required by the other legislation applied by the customs authorities relating to such a release have not been fulfilled and:

(i) the other authorities have approved the release, or

(ii) the other authorities have not replied within the time limit determined in the relevant other legislation applied by the customs authorities, or

(iii) the other authorities notify the customs authorities that more time is needed to assess whether the goods comply with the relevant other legislation applied by the customs authorities, on the condition that they have not requested to maintain the suspension, and the importer or the exporter provides to the customs authorities full traceability of those goods for 15 days starting from the notification of the other authorities or until the other authorities have assessed and communicated the outcome of their controls to the importer or the exporter, whichever comes first. The customs authorities shall make the traceability available to the other authorities.

6. Without prejudice to the relevant other legislation applied by the customs authorities, the customs authorities shall be deemed to have released the goods where they have not selected them for any control within a reasonable period of time after:

(a) the goods of deemed importers have arrived to the customs territory of the Union; or

(b) the goods of importers have arrived to their final destination; or

(c) the exporter has sent the pre-departure information.

7. Where the customs authorities have suspended the release of the goods according to paragraph 4, or refused the release of the goods according to paragraph 3 or paragraph 5, point (a), they shall record their decision and any other information, if applicable, required by the Union law in the EU Customs Data Hub. This information shall be made available to the other customs authorities.

8. Where the customs authorities have refused the release of the goods according to paragraph 3 or 5:

(a) if the other authorities have not objected, the goods can be subsequently placed in another customs procedure with an indication that the goods had been previously refused for another customs procedure;

(b) if the other authorities have objected to place the goods for one or more customs procedures, the customs authorities shall record that information in the EU Customs Data Hub and act accordingly.

9. The Commission is empowered to adopt delegated acts in accordance with Article 261, to supplement this Regulation by determining the reasonable periods of time referred to in paragraph 6 of this Article.

*Article 61*

**Release of the goods on behalf of the customs authorities by Trust and Check traders**

1. By way of derogation from Article 60(1), the customs authorities may authorise Trust and Check traders to release the goods on their behalf upon receipt of those goods at the place of business of the importer, owner or consignee or upon dispatch from the place of business of the exporter, owner or consignor, provided that the necessary data for the relevant procedure and real-time information on the arrival or dispatch of the goods is provided or made available to the customs authorities.

2. Without prejudice to Article 43, the customs authorities may authorise Trust and Check traders to perform certain controls on goods under customs supervision. In those cases, where the goods are subject to other legislation applied by the customs authorities, customs authorities shall consult the other authorities before granting such an authorisation and may agree with them a control plan.

3. Where the Trust and Check trader referred to in paragraph 2 has reason to believe that the goods do not comply with the relevant other legislation applied by the customs authorities, it shall immediately notify the customs authorities and, where applicable, the other authorities. In that case, the customs authorities shall decide on the release.

4. The customs authorities may at any time require Trust and Check trader to present the goods for a control in a customs office or where the goods were meant to be released.

5. Where the customs authorities have identified a new serious financial risk or another specific situation in relation to an authorisation for release on their behalf, they may suspend the capacity to release on their behalf for a specific period of time and inform the Trust and Check trader. In such cases, the customs authorities shall decide on the release of the goods.

*Article 62*

**Modification and invalidation of information for placing goods under a customs procedure**

1. The importer and the exporter shall amend one or more particulars of the data provided for placing the goods under a customs procedure where it comes to their knowledge that relevant information has changed in their records, or when customs authority instructs them to do so or notifies them of a data accuracy, completeness or quality issue, unless the customs authorities have informed that they intend to examine the

goods or that they have established that the data provided is incorrect, or the goods have already been presented to customs.

2. The importer and the exporter shall invalidate the data provided for placing goods under a customs procedure as soon as it comes to their knowledge that the goods will not be brought into or will not be taken out of the customs territory of the Union. The customs authorities shall invalidate the data provided for placing goods under a customs procedure, if after 200 days from the date in which the information was provided or made available, the goods have not been brought into or have not been taken out of the customs territory of the Union.

3. The Commission shall specify, by means of implementing acts, the procedural rules for amending and for invalidating the information referred to in paragraphs 1 and 2 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

# Chapter 3
# Transitional provisions

*Article 63*

**Customs declaration of goods**

1. Until the date set out in Article 265(4), all goods intended to be placed under a customs procedure shall be covered by a customs declaration appropriate for the particular procedure.

2. From the date set out in Article 265(4), importers, exporters and holders of the transit procedure may, for placing goods under a customs procedure, lodge a customs declaration or provide or make available the relevant information appropriate for the relevant procedure using the EU Customs Data Hub. From the date set out in Article 265(3), importers, exporters and holders of the transit procedure shall, for placing goods under a customs procedure, provide or make available the information appropriate for the relevant procedure using the EU Customs Data Hub.

3. In specific cases, a customs declaration may be lodged using means other than electronic data-processing techniques.

4. The customs declaration shall be lodged at one of the following, depending on the circumstances:

   (a) the customs office responsible for the place of first arrival of the goods to the customs territory of the Union; or

   (b) the customs office responsible for the place of unloading of the goods arriving by sea or air;

   (c) the customs office of destination of the transit procedure if the goods have entered the customs territory of the Union placed under a transit procedure;

(d) the customs office responsible for the place where the goods to be placed under a transit procedure are located;

(e) the customs office responsible for the place of establishment of the authorised economic operator for customs simplifications that is authorised to apply centralised clearance;

(f) the customs office responsible for the place where the goods intended to be taken out of the customs territory of the Union are located.

5. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining the specific cases where a customs declaration may be lodged using means other than electronic data-processing techniques in accordance with paragraph 2 of this Article.

6. The Commission shall specify, by means of implementing acts:

(a) the procedure for lodging the customs declaration in the cases referred to in paragraph 3;

(b) the rules for determining the competent customs offices other than the one referred to in paragraph 4, including customs offices of entry and customs offices of exit.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 64*

**Standard customs declaration**

1. Standard customs declarations shall contain all the particulars necessary for application of the provisions governing the customs procedure for which the goods are declared.

2. The Commission shall specify, by means of implementing acts, the procedure for lodging the standard customs declaration referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 65*

**Simplified declaration**

1. Until the date set out in Article 265(3), the customs authorities may accept that a person has goods placed under a customs procedure on the basis of a simplified declaration which may omit certain of the particulars or the supporting documents referred to in Article 40.

2. Until the date set out in Article 265(4), the customs authorities may authorise the regular use of a simplified declaration.

3. The Commission is empowered to adopt delegated acts in accordance with Article 261, to supplement this Regulation by determining the conditions for granting the authorisation referred to in paragraph 2 of this Article.

4. The Commission shall specify, by means of implementing acts, the procedure for lodging the simplified declaration. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 66*

**Supplementary declaration**

1. In the case of a simplified declaration pursuant to Article 65 or of an entry in the declarant's records pursuant to Article 73, the declarant shall lodge a supplementary declaration containing the particulars necessary for the customs procedure concerned at the competent customs office within a specific time-limit.

   In the case of a simplified declaration pursuant to Article 65, the necessary supporting documents shall be in the declarant's possession and at the disposal of the customs authorities within a specific time-limit.

   The supplementary declaration may be of a general, periodic or recapitulative nature.

2. The obligation to lodge a supplementary declaration shall be waived in the following cases:

   (a) where the goods are placed under a customs warehousing procedure;

   (b) in other specific cases.

3. The customs authorities may waive the requirement to lodge a supplementary declaration where the following conditions apply:

   (a) the simplified declaration concerns goods the value and quantity of which is below the statistical threshold;

   (b) the simplified declaration already contains all the information needed for the customs procedure concerned;

   (c) the simplified declaration is not made by entry in the declarant's records.

4. The simplified declaration referred to in Article 65 or the entry in the declarant's records referred to in to Article 73, and the supplementary declaration shall be deemed to constitute a single, indivisible instrument taking effect, respectively, on the date on which the simplified declaration is accepted in accordance with Article 69 and on the date on which the goods are entered in the declarant's records.

5. The place where the supplementary declaration is to be lodged shall be deemed, for the purposes of Article 169, to be the place where the customs declaration has been lodged.

6. The Commission is empowered to adopt delegated acts in accordance with Article 261, to supplement this Regulation by determining:

(a) the specific time-limit referred to in paragraph 1, first subparagraph, within which the supplementary declaration is to be lodged;

(b) the specific time-limit referred to in paragraph 1, second subparagraph, within which supporting documents are to be in the possession of the declarant and at the disposal of the customs authorities;

(c) the specific cases where the obligation to lodge a supplementary declaration is waived in accordance with paragraph 2, point (b).

7. The Commission shall specify, by means of implementing acts, the procedural rules for lodging the supplementary declaration. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 67*

**Lodging a customs declaration**

1. Until the date set out in Article 265(3), without prejudice to Article 66(1), a customs declaration may be lodged by any person who is able to provide all of the information which is required for the application of the provisions governing the customs procedure in respect of which the goods are declared. That person shall also be able to present the goods in question or to have them presented to customs.

However, where acceptance of a customs declaration imposes particular obligations on a specific person, that declaration shall be lodged by that person or by his or her representative.

2. By way of derogation from paragraph 1, first subparagraph, the customs declaration for release for free circulation for goods to be imported in the customs territory of the Union under the special scheme for distance sales set out in Title XII, Chapter 6, Section 4 of Directive 2006/112/EC for distance sales shall be lodged by or on behalf of the deemed importer.

3. The declarant shall be established in the customs territory of the Union.

4. By way of derogation from paragraph 3, the following declarants shall not be required to be established in the customs territory of the Union:

(a) persons who lodge a customs declaration for transit or temporary admission;

(b) persons, who occasionally lodge a customs declaration, including for end-use or inward processing, provided that the customs authorities consider this to be justified;

(c) persons who are established in a country the territory of which is adjacent to the customs territory of the Union, and who present the goods to which the customs declaration refers at a Union border customs office adjacent to that country,

provided that the country in which the persons are established grants reciprocal benefits to persons established in the customs territory of the Union;

(d) deemed importers involved in the distance sale of goods under the special scheme set out in Title XII, Chapter 6, Section 4 of Directive 2006/112/EC which are to be imported in the customs territory of the Union provided that they appoint an indirect representative.

5. Customs declarations shall be authenticated.

*Article 68*

**Lodging a customs declaration prior to the presentation of the goods**

1. A customs declaration may be lodged prior to the expected presentation of the goods to customs. If the goods are not presented within 30 days of the date of the lodging of the customs declaration, the customs declaration shall be deemed not to have been lodged.

2. The Commission shall specify, by means of implementing acts, the procedural rules for lodging a customs declaration as referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 69*

**Acceptance of a customs declaration**

1. Customs declarations which comply with the conditions laid down in this Chapter and with Article 40 shall be accepted by the customs authorities immediately, provided that the goods to which they refer have been presented to customs.

2. The date of acceptance of the customs declaration by the customs authorities shall, except where otherwise provided, be the date to be used for the application of the provisions governing the customs procedure for which the goods are declared and for all other import or export formalities.

3. The Commission shall specify, by means of implementing acts, the procedural rules for accepting a customs declaration, including the application of those rules in the cases referred to in Article 72. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 70*

**Amendment of a customs declaration**

1. The declarant shall, upon application, be permitted to amend one or more of the particulars of the customs declaration after that declaration has been accepted by customs. The amendment shall not render the customs declaration applicable to goods other than those which it originally covered.

2. No such amendment shall be permitted where it is applied for after any of the following events:

(a) the customs authorities have informed the declarant that they intend to examine the goods;

(b) the customs authorities have established that the particulars of the customs declaration are incorrect;

(c) the customs authorities have released the goods.

3. Upon application by the declarant, within 3 years of the date of acceptance of the customs declaration, the amendment of the customs declaration may be permitted after release of the goods in order for the declarant to comply with his or her obligations relating to the placing of the goods under the customs procedure concerned.

4. The Commission shall specify, by means of implementing acts, the procedure for amending the customs declaration after the release of the goods in accordance with paragraph 3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 71*

**Invalidation of a customs declaration**

1. The customs authorities shall, upon application by the declarant, invalidate a customs declaration already accepted in either of the following cases:

(a) where they are satisfied that the goods are immediately to be placed under a customs procedure;

(b) where they are satisfied that, as a result of special circumstances, the placing of the goods under the customs procedure for which they were declared is no longer justified.

However, where the customs authorities have informed the declarant of their intention to examine the goods, an application for invalidation of the customs declaration shall not be accepted before the examination has taken place.

2. By way of derogation from paragraph 1, in specific cases the customs declaration may be invalidated by the customs authorities without prior application by the declarant.

3. The customs declaration shall not be invalidated after the goods have been released unless where otherwise provided.

4. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining the specific cases where the customs declaration is invalidated by customs authorities as referred to in paragraph 2 of this Article and after the release of the goods as referred to in paragraph 3 of this Article.

5. The Commission shall specify, by means of implementing acts, the procedure for invalidating the customs declaration after the release of the goods referred to in paragraph 3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 72*

**Centralised clearance**

1. Until the date set out in Article 265(4), the customs authorities may, upon application, authorise a person to lodge at a customs office responsible for the place where such person is established, a customs declaration for goods which are presented to customs at another customs office.

   The requirement for the authorisation referred to in the first subparagraph may be waived where the customs declaration is lodged, and the goods presented to customs offices under the responsibility of one customs authority.

2. The applicant for the authorisation referred to in paragraph 1 shall be an authorised economic operator for customs simplifications as referred to in Article 23(1), point (a).

3. The customs office at which the customs declaration is lodged shall:

   (a) supervise the placing of the goods under the customs procedure concerned;

   (b) carry out the customs controls for the verification of the customs declaration;

   (c) where justified, request that the customs office at which the goods are presented carry out certain customs controls for the verification of the customs declaration; and

   (d) carry out the customs formalities for the recovery of the amount of import or export duty corresponding to any customs debt.

4. The customs office at which the customs declaration is lodged and the customs office at which the goods are presented shall exchange the information necessary for the verification of the customs declaration and for the release of the goods.

5. The customs office at which the goods are presented shall, without prejudice to its own controls pertaining to goods brought into or taken out of the customs territory of the Union, carry out the customs controls referred to in point (c) of paragraph 3 and provide the customs office at which the customs declaration is lodged with the results of these controls.

6. The customs office at which the customs declaration is lodged shall release the goods, taking into account:

   (a) the results of its own controls for the verification of the customs declaration;

   (b) the results of the controls carried out by the customs office at which the goods are presented for the verification of the customs declaration and the controls

pertaining to goods brought into or taken out of the customs territory of the Union.

7. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining the conditions for granting the authorisation referred to in of paragraph 1, first subparagraph, of this Article.

8. The Commission shall specify, by means of implementing acts, the procedure for the centralised clearance referred to in this Article, including the relevant customs formalities and controls. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 73*

**Entry in the declarant's records**

1. Until the date set out in Article 265(4), the customs authorities may, upon application, authorise a person to lodge a customs declaration, including a simplified declaration, in the form of an entry in the declarant's records, provided that the particulars of that declaration are at the disposal of the customs authorities in the declarant's electronic system at the time when the customs declaration in the form of an entry in the declarant's records is lodged.

2. The customs declaration shall be deemed to have been accepted at the moment at which the goods are entered in the records.

3. The customs authorities may, upon application, waive the obligation for the goods to be presented. In that case, the goods shall be deemed to have been released at the moment of entry in the declarant's records.

That waiver may be granted where all of the following conditions are fulfilled:

(a) the declarant is an authorised economic operator for customs simplification as referred to in Article 23(1), point (a);

(b) the nature and flow of the goods concerned so warrant and are known by the customs authority;

(c) the supervising customs office has access to all the information it considers necessary to enable it to exercise its right to examine the goods should the need arise;

(d) at the time of the entry into the records, the goods are no longer subject to the other legislation applied by the customs authorities, except where otherwise provided in the authorisation.

However, the supervising customs office may, in specific situations, request that the goods be presented.

4. The conditions under which the release of the goods is allowed shall be set out in the authorisation.

5. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining the conditions for granting the authorisation referred to in paragraph 1 of this Article.

6. The Commission shall specify, by means of implementing acts, the procedural rules on the entry in the declarant's records, including the relevant customs formalities and controls, and the waiver from the obligation of presenting the goods referred to paragraph 3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 74*

**Cessation of validity**

The authorisations for simplified declarations, centralised clearance and entry into the declarant's records shall expire on the date set out in Article 265(3).

# Chapter 4
# Disposal of goods

*Article 75*

**Disposal of goods**

Where, for any reason, goods cannot be maintained in temporary storage, the customs authorities shall without delay take all measures necessary to dispose of the goods in accordance with Articles 76, 77 and 78.

*Article 76*

**Destruction of goods**

1. Where the customs authorities have reasonable grounds for so doing, they may require goods which have been presented to them to be destroyed and shall inform the importer, exporter and the holder of the goods accordingly. The costs of the destruction shall be borne by the importer or the exporter.

2. Where the destruction is to be conducted under the responsibility of a holder of a decision of an intellectual property right, as defined in Article 2, point (13), of Regulation (EU) No 608/2013 of the European Parliament and the Council Regulation[30], it has to be carried out by, or under supervision of the customs authorities.

3. If they consider it is necessary and proportionate to do so, the customs authorities may seize and destroy or otherwise render inoperable a product that has not been presented

[30] Regulation (EU) No 608/2013 of the European Parliament and the Council Regulation (EU) No 608/2013 of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003 (OJ L 181, 29.6.2013, p. 15–34).

them and that presents a risk to the health and safety of end users. The cost of such measure shall be borne by the importer or the exporter.

4. The Commission shall specify, by means of implementing acts, the procedure for the destruction of goods. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 77*

**Measures to be taken by the customs authorities**

1. The customs authorities shall take any necessary measures, including confiscation, sale, donation for humanitarian purpose or destruction, to dispose of goods in the following cases:

   (a) where one of the obligations laid down in the customs legislation concerning the introduction of non-Union goods into the customs territory of the Union has not been fulfilled, or the goods have been withheld from customs supervision;

   (b) where the goods cannot be released for any of the following reasons:

      (i) it has not been possible, for reasons attributable to the operator, to undertake or continue examination of the goods within the period prescribed by the customs authorities;

      (ii) the documents which must be provided before the goods can be placed under, or released for, the customs procedure requested have not been provided;

      (iii) payments or a guarantee which should have been made or provided in respect of import or export duty, as the case may be, have not been made or provided within the prescribed period;

      (iv) the goods do not fulfil the conditions for release laid down in Article 60;

   (c) where the goods have not been removed within a reasonable period after their release;

   (d) where after their release, the goods are found not to have fulfilled the conditions for that release; or

   (e) where goods are abandoned to the State in accordance with Article 78.

2. Non-Union goods which have been abandoned to the State, seized or confiscated shall be deemed to be placed under the customs warehousing procedure. They shall be entered in the records of the customs warehousing operator, or, where they are held by the customs authorities, by the latter.

   Where customs authorities have already received data on the goods to be destroyed, abandoned to the State, seized or confiscated, the records shall include a reference to that data.

3. The costs of the measures referred to in paragraph 1 shall be borne:

(a) in the case referred to in point (a) of paragraph 1, by the carrier, the importer or the holder of the transit procedure or who withheld the goods from customs supervision;

(b) in the cases referred to in points (b), (c) and (d) of paragraph 1, by the importer, exporter or the holder of the transit procedure;

(c) in the case referred to in point (e) of paragraph 1, by the person who abandons the goods to the State.

4. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining the conditions and the procedure for confiscating goods.

5. The Commission shall specify, by means of implementing acts, the procedure for selling the goods by the customs authorities referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 78*

**Abandonment**

1. Non-Union goods and goods placed under the end-use procedure may with prior permission of the customs authorities be abandoned to the State by the holder of the procedure or, where applicable, the holder of the goods.

2. The Commission shall specify, by means of implementing acts, the procedure on abandonment of goods to the State. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

# Title VI
# GOODS BROUGHT INTO THE CUSTOMS TERRITORY OF THE UNION

## Chapter 1
## Advance cargo information

*Article 79*

**Entry of goods**

Goods may enter the customs territory of the Union only if the carrier or other persons have provided or made available to the competent customs authorities the advance cargo information referred to in Article 80.

*Article 80*

**Advance cargo information**

1. Carriers bringing goods into the customs territory of the Union shall provide or make available advance cargo information on each consignment to the expected customs office of first entry within specified time limits.

2. The advance cargo information shall include at least the importer responsible for the goods, the unique reference for the consignment, the consignor, the consignee, a description of the goods, the tariff classification, the value, the data on the route and the nature and identification of the means of transport bringing the goods and the transportation cost. The advance cargo information shall be provided before the goods arrive to the customs territory of the Union.

3. The importer may provide part of the advance cargo information within the time limits specified in accordance with paragraph 1. Where the importer has already provided or made available part of the required advance cargo information, the carrier shall link its own additional information to the importer's information.

4. The importer shall be notified where a carrier links information on a consignment to his or her previous information.

5. In specific cases, where all the advance cargo information referred to in paragraphs 1 and 2 cannot be obtained from the carrier or the importer, other persons holding that information and the appropriate rights to provide it may be required to provide it.

6. The obligation laid down in paragraph 1 shall be waived:

   (a) for means of transport and the goods carried thereon only passing through the territorial waters or the airspace of the customs territory of the Union without a stop within that territory;

   (b) for goods that are brought into the customs territory of the Union after having temporarily left that territory by sea or by air and having been carried by direct route without a stop outside the customs territory of the Union; and

   (c) in other cases, where duly justified by the type of goods or traffic, or where required by international agreements.

7. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining:

   (a) the expected office of first entry referred to in paragraph 1;

   (b) the additional data to be provided as advance cargo information referred to in paragraph 2;

   (c) the time limits referred to in paragraphs 1 and 3;

   (d) the specific cases and the other persons who may be required to provide advance cargo information as referred to in paragraph 5;

(e) the cases where the obligation to provide or make available advance cargo information is waived for the reason that such waiver is duly justified by the type of goods or traffic, as referred to in paragraph 6, point (c);

(f) the conditions under which a person which provides or makes available information may restrict the visibility of its identification to one or more other persons which also lodge particulars, without prejudice to the use of all particulars for customs supervision.

8. The Commission shall specify, by means of implementing acts, the procedure for providing and receiving the advance cargo information as referred to in paragraphs 1 to 5. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

9. Until the date in Article 265(3), the entry summary declaration shall be considered the advance cargo information.

*Article 81*

**Risk analysis of advance cargo information**

1. Without prejudice to the activities of the EU Customs Authority set out in Title XII, the customs office of first entry shall, within specific time-limits, ensure that a risk analysis is carried out, primarily for security and safety purposes and, where possible, for other purposes, on the basis of the advance cargo information and other information provided or made available through the EU Customs Data Hub and shall take the necessary measures based on the results of that risk analysis.

2. The customs office of first entry may take appropriate mitigation measures, including:

(a) instructing the carrier that the goods shall not be loaded or transported;

(b) requesting additional information or action;

(c) identifying situations where action by another customs authority may be appropriate;

(d) recommending the most appropriate place and measures to carry out a control.

3. The Commission is empowered to adopt delegated acts in accordance with Article 261, to supplement this Regulation by determining the time-limits within which the risk analysis is to be carried out and the necessary measures are to be taken, as referred to in paragraph 1 of this Article, and the mitigation measures referred to in paragraph 2 of this Article.

4. Until the date set in Article 265(3), the risk analysis shall be carried out based on the entry summary declaration.

*Article 82*

**Modification and invalidation of advance cargo information**

1. The carrier shall inform the customs authorities concerned of diversions affecting the route of the cargo as notified in the advance cargo information.

2. The importer and carrier shall amend one or more particulars of the advance cargo information where it comes to their knowledge that relevant information has changed in their records, or when a customs authority requests or instructs them to do so due to a data accuracy, completeness or quality issue, unless the customs authorities have informed the carrier that they intend to examine the goods or that they have established that the advance cargo information is incorrect, or the goods have already been presented to customs.

3. The carrier shall invalidate the advance cargo information on goods that are not brought into the customs territory of the Union as soon as possible. The customs authorities shall invalidate advance cargo information on those goods after 200 days from the date in which the information was provided or made available.

4. The Commission shall specify, by means of implementing acts, the procedure for amending the advance cargo information referred to in paragraph 2 and for and invalidating the advance cargo information referred to in paragraph 3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 83*

**Notification of arrival**

1. The carrier shall notify the arrival of the means of transport entering the customs territory of the Union and of the consignments therein to the actual customs office of first entry.

2. In specific cases, where not all the data on the consignments can be obtained from the carrier, a subsequent carrier or other persons having that data and the appropriate rights to provide them may be required to notify the arrival of the consignments to the actual customs office of first entry.

3. The information on arrival of the means of transport and of the consignments may be provided or made available to the customs authorities through means other than the EU Customs Data Hub. In such cases, the information provided or made available through these other means shall be transferred to the EU Customs Data Hub.

4. Where the arrival of the means of transport and of the consignments therein is not covered by the notification referred to in paragraph 1, the carrier shall notify the arrival of the goods brought into the customs territory of the Union by sea or air at the port or airport where they are unloaded or transhipped.

5. By derogation from paragraph 4, the carrier shall not notify goods brought into the customs territory of the Union which are unloaded and reloaded onto the same means of transport during its voyage in order to enable the unloading or loading of other goods at the same port or airport.

6. The carrier shall not unload, in the customs territory of the Union, the goods for which a minimum advance cargo information has not been provided or made available to customs, unless the customs authorities have requested the carrier to present them in accordance with Article 85.

7. By derogation from paragraph 6, in the event of an imminent danger necessitating the immediate unloading of all or part of the goods, the customs authorities may allow the carrier to unload the goods.

8. The Commission is empowered to adopt delegated acts in accordance with Article 261, to supplement this Regulation by determining the specific cases referred to in paragraph 2 and the other persons who may be required to notify the arrival of the consignments to the actual customs of first entry.

9. The Commission shall specify, by means of implementing acts, the procedure on the notification of arrival referred to in this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 84*

**Conveyance to the appropriate place**

1. The carrier bringing goods into the customs territory of the Union shall convey them without delay, by the route specified by the customs authorities and in accordance with their instructions, if any, to the customs office designated by the customs authorities, or to any other place designated or approved by those authorities.

2. Where, by reason of unforeseeable circumstances or force majeure, the carriers cannot comply with the obligation in paragraph 1, they shall without delay inform the customs authorities of the situation and of the precise location of the goods.

3. The customs authorities shall determine the measures to be taken in order to permit customs supervision of the goods referred to in paragraph 1, or of the vessel or aircraft and any goods thereon in the circumstances specified in paragraph 2, and to ensure, where appropriate, that they are subsequently conveyed to a customs office or other place designated or approved by the authorities or into a free zone.

4. Goods brought into a free zone shall be brought into that free zone directly, either by sea or air or, if by land, without passing through another part of the customs territory of the Union, where the free zone adjoins the land frontier between a Member State and a third country.

5. The customs authority may subject to customs controls goods that are still outside the customs territory of the Union, as a result of an agreement concluded with the relevant third country. The customs authorities shall treat those goods in the same way as goods brought into the customs territory of the Union.

6. By way of derogation from paragraphs 1 and 2, special rules may apply to goods transported within frontier zones or in pipelines and wires, to traffic of negligible economic importance or to goods carried by travellers, provided that the customs supervision and customs control possibilities are not thereby jeopardised.

7. Paragraph 1 shall not apply to means of transport and goods carried thereon only passing through the territorial waters or the airspace of the customs territory of the Union without a stop within that territory.

8. Articles 83 and 85 shall not apply in cases where Union goods which move without alteration of their customs status in accordance with Article 58(2) are brought into the customs territory of the Union after having temporarily left that territory by sea or air and having been carried by direct route without a stop outside the customs territory of the Union.

*Article 85*

**Presentation to customs**

1. Where the customs authorities or the other legislation applied by the customs authorities so requires, the carrier shall present the goods brought into the customs territory of the Union to customs upon their arrival at the designated customs office or any other place designated or approved by the customs authorities or in the free zone.

2. The customs authorities shall require the carrier to present the goods and provide the advance cargo information referred to in Article 80, where this information has not been provided at an earlier stage.

3. Goods presented to customs shall not be removed from the place where they have been presented without the permission of the customs authorities.

3. The Commission is empowered to adopt delegated acts in accordance with Article 261, to supplement this Regulation by determining the conditions for designating and approving the places other than the designated customs office, as referred to paragraph 1.

4. The Commission shall adopt, by means of implementing acts, the procedure regarding the presentation of the goods to customs as referred to in this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 86*

**Temporary storage of goods**

1. Non-Union goods shall be in temporary storage from the moment the carrier notifies their arrival to the customs territory of the Union, until they are placed under a customs procedure, or the customs authorities regularise their situation in accordance with paragraph 6.

2. Goods arriving to the customs territory in transit shall be in temporary storage after they have been presented to the customs office of destination in the customs territory of the Union in accordance with the rules governing the transit procedure in Title VIII, Chapter 2, until they are placed under another customs procedure or the customs authorities regularise their situation in accordance with paragraph 6.

3. Goods in temporary storage shall be stored only in customs warehouses or, where justified, in other places designated or approved by the customs authorities.

4. The temporary storage or customs warehouse operator shall preserve the goods in temporary storage but shall not alter them or modify their appearance or technical characteristics.

5. Non-Union goods in temporary storage shall be placed under a customs procedure no later than 3 days after the notification of their arrival or no later than 6 days after the notification of their arrival in the case of an authorised consignee as referred to in Article 116(4), point (b), unless the customs authorities require the goods to be presented. In exceptional cases, that time limit may be extended.

6. Where, for a duly justified reason, goods cannot be maintained in temporary storage, the customs authorities shall without delay take all measures necessary to dispose of the goods in accordance with Chapter 4 of this Title.

7. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining the conditions for designating or approving the places referred to in paragraph 3 of this Article and the cases where the time limit referred to in paragraph 5 of this Article may be extended.

*Article 87*

**Transitional provision in relation to authorisations for the operation of temporary storage facilities**

By the date established in Article 265(3), the customs authorities shall reassess the authorisations for the operation of temporary storage facilities to check whether their holders may be granted an authorisation for customs warehousing. If they may not, the authorisations for the operation of temporary storage facilities shall be revoked.

# Chapter 2
# Release for free circulation

*Article 88*

**Scope and effect**

1. Non-Union goods intended to be placed on the Union market or intended for private use or consumption within the customs territory of the Union shall be placed under release for free circulation.

2. The release for free circulation shall not be considered a proof of conformity with the relevant other legislation applied by the customs authorities.

3. The conditions for placing goods under release for free circulation shall be the following:

(a) the required data has been provided or made available to customs authorities, which must include at least the importer responsible for the goods, the seller, the buyer, the manufacturer, the product supplier where this is different from the manufacturer, the responsible economic operator in the Union pursuant to Article 4 of Regulation (EU) 2019/1020 and Art. 16 of Regulation of the European Parliament and of the Council (EU) 2023/XXXX[31], the value, the origin, the tariff classification and a description of the goods, the unique reference of the consignment and its location, and the list of relevant other legislation applied by the customs authorities;

(b) any import duty or other charges due, including anti-dumping duties, countervailing duties or safeguard measures shall be paid or guaranteed, unless the goods are the subject of a drawing request on a tariff quota, or the importer is a Trust and Check trader;

(c) the goods have arrived to the customs territory of the Union; and

(d) the goods comply with the relevant other legislation applied by the customs authorities.

4. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement and amend this Regulation by determining the data provided or made available to the customs authorities for placing goods under release for free circulation as referred to in paragraph 3, point (a), of this Article.

*Article 89*

**Application of commercial policy measures to inward and outward processing**

1. Where processed products obtained under inward processing are released for free circulation and the calculation of the amount of import duty is made in accordance with Article 168(3), the commercial policy measures to be applied shall be those applicable to the release for free circulation of the goods which were placed under inward processing.

2. Paragraph 1 shall not apply to waste and scrap.

3. Where processed products obtained under inward processing are released for free circulation and the calculation of the amount of import duty is made in accordance with Article 167(1), the commercial policy measures applicable to those goods shall be applied only where the goods which were placed under inward processing are subject to such measures.

4. Commercial policy measures shall not apply to processed products released for free circulation following outward processing where:

[31] Regulation of the European Parliament and of the Council (EU) No 2023/… of ../../2023 on general product safety, amending Regulation (EU) No 1025/2012 of the European Parliament and of the Council, and repealing Council Directive 87/357/EEC and Directive 2001/95/EC of the European Parliament and of the Council (OJ L… ).

(a) the processed products retain their Union origin within the meaning of Article 148;

(b) the outward processing involves repair, including the standard exchange system referred to in Article 143; or

(c) the outward processing follows further processing operations in accordance with Article 139.

# Chapter 3
# Relief from import duty

*Article 90*

**Scope and effect**

1. Non-Union goods which, having originally been exported as Union goods from the customs territory of the Union, are returned to that territory within a period of 3 years and declared for release for free circulation shall, upon application by the person concerned, be granted relief from import duty.

   The first subparagraph shall apply even where the returned goods represent only a part of the goods previously exported from the customs territory of the Union.

2. The 3-year period referred to in paragraph 1 may be exceeded in order to take account of special circumstances.

3. Where, prior to their export from the customs territory of the Union, the returned goods had been released for free circulation duty-free or at a reduced rate of import duty because of a particular end-use, relief from duty under paragraph 1 shall be granted only if they are to be released for free circulation for the same end-use.

   Where the end-use for which the goods in question are to be released for free circulation is no longer the same, the amount of import duty shall be reduced by any amount collected on the goods when they were first released for free circulation. Should the latter amount exceed that levied on the release for free circulation of the returned goods, no repayment shall be granted.

4. Where Union goods have lost their customs status pursuant to Article 57 and are subsequently released for free circulation, paragraphs 1, 2 and 3 of this Article shall apply.

5. The relief from import duty shall be granted only if goods are returned in the state in which they were exported.

6. The relief from import duty shall be supported by information establishing that the conditions for the relief are fulfilled.

7. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining the cases where goods are

considered to be returned in the state in which they were exported as referred to in paragraph 5 of this Article.

8. The Commission shall specify, by means of implementing acts, the procedure for the provision of information referred to in paragraph 6 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 91*

**Goods which benefited from measures laid down under the common agricultural policy**

1. Relief from import duty provided for in Article 90 shall not be granted to goods which have benefited from measures laid down under the common agricultural policy involving their export out of the customs territory of the Union, except where otherwise provided in specific cases.

2. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining the specific cases referred to in paragraph 1 of this Article.

*Article 92*

**Goods previously placed under the inward processing procedure**

1. Article 90 shall apply to processed products which were originally re-exported from the customs territory of the Union subsequent to an inward processing procedure.

2. Upon application by the importer and provision of the necessary information, the amount of import duty on the goods covered by paragraph 1 shall be determined in accordance with Article 168(3). The date of re-export shall be regarded as the date of release for free circulation.

3. The relief from import duty provided for in Article 90 shall not be granted for processed products which were exported in accordance with Article 109(2), point (c), unless it is ensured that no goods will be placed under the inward processing procedure.

*Article 93*

**Products of sea-fishing and other products taken from the sea**

1. Without prejudice to Article 148(1), the following shall be granted relief from import duty when they are released for free circulation:

(a) products of sea-fishing and other products taken from the territorial sea of a third country by vessels solely registered or recorded in a Member State and flying the flag of that State;

(b) products obtained from products referred to in point (a) on board factory-ships fulfilling the conditions laid down in that point.

2. The relief from import duty referred to in paragraph 1 shall be supported by evidence that the conditions laid down in that paragraph are fulfilled.

3. The Commission shall specify, by means of implementing acts, the procedure for the provision of the evidence referred to in paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

# Title VII
# GOODS TAKEN OUT OF THE CUSTOMS TERRITORY OF THE UNION

## Chapter 1
## Exit of goods and export procedure

*Article 94*

**Exit of goods**

1. Goods may exit the customs territory of the Union only if the exporter or other persons have provided or made available to the competent customs authorities the pre-departure information referred to in Article 95.

2. The Commission shall specify, by means of implementing acts, the rules on the formalities to be carried out prior to and on the exit of goods. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 95*

**Pre-departure information**

1. Exporters wishing to take goods out of the customs territory of the Union shall provide minimum pre-departure information within a specific time-limit before the goods are taken out of the customs territory of the Union.

2. The obligation referred to in paragraph 1 shall be waived in one of the following cases:

   (a) for means of transport and the goods carried thereon only passing through the territorial waters or the airspace of the customs territory of the Union without a stop within that territory;

   (b) in other specific cases, where duly justified by the type of goods or traffic or where required by international agreements;

   (c) for goods moved temporarily out of the customs territory of the Union in accordance with Article 58.

3. The minimum pre-departure information referred to in paragraph 1 shall indicate if the goods are:

(a) Union goods to be placed under the export procedure;

(b) Union goods to be placed under the outward processing procedure;

(c) Union goods to be taken out of the customs territory of the Union after having been placed under the end-use procedure;

(d) Union goods to be delivered, VAT or excise duty exempted, as aircraft or ship supplies, regardless of the destination of the aircraft or ship, for which a proof of such supply is required;

(e) Union goods to be placed under the internal transit procedure; or

(f) non-Union goods to be exported after having been in temporary storage or having been placed under a customs procedure.

4. The carrier may load, in the customs territory of the Union, only the goods for which a minimum pre-departure information has been provided or made available to the customs office of exit.

5. The carrier shall take out of the customs territory of the Union goods in the same condition as when the pre-departure information was provided or made available.

6. Where the exporter has not provided the pre-departure information or the pre-departure information provided does not correspond to the relevant goods, the carrier shall provide it at the customs office of exit within a specific time-limit, before the goods are taken out of the customs territory of the Union.

7. The necessary particulars of the pre-departure information shall be immediately provided or made available to the customs office of exit.

9. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement or amend this Regulation by determining:

(a) the minimum pre-departure information to be provided taking into account the procedure under which the goods are to be placed and whether the goods are Union or non-Union goods;

(b) the specific time-limit referred to in paragraphs 1 and 6, within which the pre-departure information is to be provided or made available before the goods are taken out of the customs territory of the Union taking into account the type of traffic and the means of transport;

(c) the specific cases where the obligation to provide or make available pre-departure information is waived as referred to in paragraph 2, point (b);

(d) the information to be notified on the exit of the goods referred to in paragraph 8.

10. The Commission shall specify, by means of implementing acts, the procedure for providing and receiving the pre-departure information and the exit confirmation

referred to in this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

11. Until the end date established in Article 265(3), the exit summary declaration, the export declaration, the re-export declaration and the re-export notification shall be considered to be the pre-departure information.

*Article 96*

**Amendment and invalidation of the pre-departure information**

1. The exporter or the carrier may amend one or more particulars of the pre-departure information after it has been provided or made available.

   No amendment shall be possible after any of the following:

   (a) the customs authorities have informed that they intend to examine the goods;

   (b) the customs authorities have established that one or more particulars of the information are inaccurate or incomplete;

   (c) the customs authorities have already granted the release of the goods for exit.

2. The exporter or the carrier shall invalidate the pre-departure information for goods that are not taken out from the customs territory of the Union as soon as possible. The customs authorities shall invalidate pre-departure information on those goods after 150 days have elapsed from the date in which the information was provided or made available.

3. The Commission shall specify, by means of implementing acts, the procedure for amending the pre-departure information as referred to in paragraph 1, first subparagraph and for invalidating the pre-departure information as referred to in paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 97*

**Risk analysis of the pre-departure information**

1. Without prejudice to the activities of the EU Customs Authority set out in Title IV, the customs office of export shall, within a specific time-limit, ensure that a risk analysis is carried out, primarily for security and safety purposes and, where possible, for other purposes, on the basis of the pre-departure information and other information provided or made available through the EU Customs Data Hub and shall take the necessary measures based on the results of that risk analysis.

2. The customs office responsible for the place where the exporter is established may take appropriate mitigation measures, including:

   (a) instructing the exporter or the carrier that the goods shall not be loaded or transported;

(b) requesting additional information or action;

(c) identifying situations where action by another authority may be appropriate;

(d) recommending the most appropriate place and measures to carry out a control;

(e) determining the route to be used, and the time-limit to be respected when goods are to be taken out of the customs territory of the Union.

3. The customs office of exit shall also carry out a risk analysis where the carrier provides the information on the goods therein pursuant to Article 95(6).

4. The Commission is empowered to adopt delegated acts in accordance with Article 261, to supplement this Regulation by determining the time-limits within which risk analysis is to be carried out and the necessary measures based on the results of the risk analysis to be taken, as referred to in paragraph 1 of this Article, and the mitigation measures referred to in paragraph 2 of this Article.

*Article 98*

**Presentation and exit confirmation**

1. Where the pre-departure information has not been provided within the specific time-limit or where the customs authorities or the other legislation applied by the customs authorities so requires, the carrier shall present the goods to be taken out of the customs territory of the Union to the customs office of exit before their departure.

2. The carrier shall confirm to the customs authorities the exit of the goods from the customs territory of the Union.

*Article 99*

**Export procedure**

1. Union and non-Union goods intended to be taken out of the customs territory of the Union shall be placed under the export procedure.

2. The conditions for placing goods under the export procedure shall be the following:

(a) the minimum information has been provided or made available to customs authorities, which must include at least the exporter responsible for the goods, the seller, the buyer, the value, the origin, the tariff classification, the description of the goods and their location;

(b) any export duty or other charges due are paid or guaranteed; and

(c) the goods comply with the relevant other legislation applied by the customs authorities.

3. Goods to be taken out of the customs territory of the Union shall be subject, as appropriate, to the following:

(a) the repayment or remission of import duty;

(b) the payment of export refunds;

(c) the formalities required under provisions in force with regard to other charges.

4. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement and amend this Regulation by determining the data provided or made available to the customs authorities for placing goods under export as referred to in paragraph 2, point (a).

5. The Commission shall specify by means of implementing acts, the procedure for refunding the VAT to natural persons not established in the Union as referred to in paragraph 3, point (b). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 100*

**Relief from export duty for Union goods temporarily exported**

Without prejudice to Article 140, Union goods which are temporarily exported from the customs territory of the Union shall benefit from export duty relief, conditional upon their re-import.

# Title VIII
# SPECIAL PROCEDURES

## Chapter 1
## General provisions

*Article 101*

**Scope**

1. Goods may be placed under any of the following categories of special procedures:

(a) transit, which shall comprise external and internal transit;

(b) storage, which shall comprise customs warehousing and free zones;

(c) specific use, which shall comprise temporary admission and end-use;

(d) processing, which shall comprise inward and outward processing.

2. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement and amend this Regulation by determining the data provided or made available to the customs authorities for placing goods under special procedures.

*Article 102*

**Authorisation**

1. Importers or exporters intending to place goods under a special customs procedure shall have an authorisation from the customs authorities for the following:

   (a) the use of the inward or outward processing procedure, the temporary admission procedure or the end-use procedure;

   (b) the operation of storage facilities for the customs warehousing of goods, except where the storage facility operator is the customs authority itself.

   The authorisation shall set out the conditions for the use of those procedures or the operation of those storage facilities.

2. Except where otherwise provided, the customs authorities shall grant the authorisation referred to in paragraph 1 only where the following conditions are met:

   (a) the holder of the authorisation is established in the customs territory of the Union, except where otherwise provided for temporary admission or, in exceptional cases, for the end-use or inward processing procedures;

   (b) the holder of the authorisation provides the necessary assurance of the proper conduct of the operations; a Trust and Check trader shall be deemed to fulfil this condition, insofar as the activity pertaining to the special procedure concerned is taken into account in the authorisation referred to in Article 25;

   (c) the customs authorities deemed it necessary where the holder of the authorisation is not a Trust and Check trader, a guarantee is provided for the potential customs debt or other charges related to the goods placed under the special procedure;

   (d) the customs authorities are able to exercise customs supervision without having to introduce administrative arrangements which are disproportionate to the economic needs involved;

   (e) if the authorisation concerns temporary admission, the holder of the authorisation uses the goods or arranges for their use;

   (f) if the authorisation concerns the processing procedure, the holder of the authorisation carries out processing operations on the goods or arranges for them to be carried out;

   (g) the essential interests of Union producers would not be adversely affected by the authorisation for a processing procedure (‘examination of the economic conditions’).

3. Unless otherwise justified by the economic nature of the processing, for assessing whether granting an authorisation for an inward processing procedure adversely affects the essential interest of the Union producers, the customs authorities issuing the authorisation shall, before adopting its decision on the authorisation, request the opinion of the EU Customs Authority if:

(a) the import duty applicable upon release for free circulation of the processed products is determined on the basis of the tariff classification, customs value, quantity, nature and origin of the goods placed under the inward processing procedure in accordance with Article 168(3) and (4); and

(b) evidence exists that the essential interests of Union producers are likely to be adversely affected. Such evidence shall be deemed to exist where the goods to be placed under inward processing would be subject to an agricultural policy measure, a provisional or definitive anti-dumping duty, a countervailing duty, a safeguard measure or an additional duty resulting from a suspension of concessions if they were released for free circulation.

4. For assessing whether granting an authorisation for an outward processing procedure adversely affects the essential interest of the Union producers, the customs authorities shall, before adopting its decision on the authorisation, request the opinion of the EU Customs Authority where evidence exists that the essential interests of Union producers of goods that are considered as sensitive are likely to be adversely affected, and the goods are not intended to be repaired.

5. When requested in accordance with paragraphs 3 and 4, the EU Customs Authority may reach one of the following opinions:

(a) granting the authorisation does not adversely affect the essential interests of Union producers;

(b) granting the authorisation adversely affects the essential interests of Union producers;

(c) granting the authorisation for a duly substantiated and monitored quantity of goods that is defined in the opinion does not adversely affect the essential interests of Union producers.

The opinion of the EU Customs Authority shall be taken into account by the customs authorities issuing the authorisations as well as by any other customs authorities dealing with similar authorisations. The customs authorities issuing the authorisation may disregard the opinion adopted by the EU Customs Authority provided that they give reasons for their decision in that respect.

6. The customs authorities granting the authorisation shall provide or make available the authorisations in the EU Customs Data Hub. Where the authorisations for special procedures contain commercially sensitive information, access to their particulars shall be restricted.

7. The Commission is empowered to adopt delegated acts in accordance with Article 261, supplementing this Regulation in order to determine:

(a) the exceptions to the conditions referred to paragraph 2;

(b) the cases referred to in paragraph 3 where the economic nature of the processing justifies that the customs authorities assess whether granting an authorisation for an inward processing procedure adversely affects the essential interest of the Union producers without the opinion of the EU Customs Authority;

(c) the list of goods considered as sensitive referred to in paragraph 4.

8. The Commission shall specify, by means of implementing acts:

(a) the procedural rules for granting the authorisation for the procedures referred to in paragraph 1;

(b) the procedural rules for the EU Customs Authority to provide its opinion; and

(c) the quantity and the rules for monitoring the threshold referred to in paragraph 5.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

9. Until the date set out in Article 265(1), an examination of the economic conditions referred to in paragraph 2, point (f), shall take place at Union level hosted by the Commission. Until that date, where reference is made to the opinion of the EU Customs Authority under this Chapter, it is meant to refer to the examination at Union level as provided under paragraph 5 of this Article.

*Article 103*

**Authorisations with retroactive effect**

1. The customs authorities shall grant an authorisation with retroactive effect, where all of the following conditions are fulfilled:

(a) there is a proven economic need;

(b) the application is not related to attempted deception;

(c) the applicant has proven on the basis of accounts or records that:

(i) all the requirements of the procedure are met;

(ii) where appropriate, the goods can be identified for the period involved;

(iii) such accounts or records allow the procedure to be controlled;

(d) all the formalities necessary to regularise the situation of the goods can be carried out, including, where necessary, the invalidation of the previous records concerned;

(e) no authorisation with retroactive effect has been granted to the applicant within 3 years of the date on which the application was accepted;

(f) the opinion of the EU Customs Authority is not required to assess whether the granting of the authorisation would adversely affect the essential interests of Union producers, except where an application concerns renewal of an authorisation for the same kind of operation and goods;

(g) the application does not concern the operation of storage facilities for the customs warehousing of goods;

(h) where an application concerns renewal of an authorisation for the same kind of operation and goods, the application is submitted within 3 years of expiry of the original authorisation.

2. Customs authorities may grant an authorisation with retroactive effect also where the goods which were placed under a customs procedure are no longer available at the time when the application for such authorisation was accepted.

*Article 104*

**Records**

1. The holder of the authorisation, the importer or exporter, and all persons carrying on an activity involving the storage, working or processing of goods, or the sale or purchase of goods in free zones, shall keep appropriate records in a form approved by the customs authorities and provide them or make available those records in the EU Customs Data Hub.

The records shall contain the information and the particulars which enable the customs authorities to supervise the procedure concerned, in particular with regard to identification of the goods placed under that procedure, their customs status and their movements.

2. A Trust and Check trader shall be deemed to comply with the obligation laid down in paragraph 1.

*Article 105*

**Discharge of a special procedure**

1. In cases other than the transit procedure and without prejudice to the customs supervision in relation to end-use provided for in Article 135, a special procedure shall be discharged when the goods placed under the procedure, or the processed products, are placed under a subsequent customs procedure, have been taken out of the customs territory of the Union, or have been destroyed with no waste remaining, or are abandoned to the State in accordance with Article 78.

2. The customs authorities shall discharge the transit procedure when they are in a position to establish, on the basis of a comparison of the data provided or made available to the customs office of departure and those provided or made available to the customs office of destination, that the procedure has ended correctly.

3. The customs authorities shall take all the measures necessary to regularise the situation of the goods in respect of which a procedure has not been discharged under the conditions prescribed.

4. The discharge of the procedure shall take place within a certain time-limit, unless otherwise provided.

5. The Commission is empowered to adopt delegated acts, in accordance with Article 261 to supplement this Regulation by determining the time limit referred to in paragraph 4.

6. The Commission shall specify, by means of implementing acts the procedural rules for the discharge of a special procedure referred to in this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 106*

**Transfer of rights and obligations**

1. The customs authorities may authorise the holder of an authorisation for a special procedure other than transit to fully or partially transfer his or her rights and obligations with regard to goods that have been placed under that special procedure to an importer or exporter that also meets the conditions for the procedure concerned.

2. The holder of the authorisation that is transferring his or her rights and obligations shall inform the customs authorities about the transfer and about the discharge of the procedure, unless the customs authorities have also authorised the importer or exporter to which the rights and obligations are transferred.

3. Where the transfer of rights and obligations involves more than one Member State, the customs authorities authorising the transfer shall consult the other Member States concerned.

4. The Commission shall specify, by means of implementing acts the procedural rules for transferring the rights and obligations of the holder of the authorisation with regard to goods which have been placed under a special procedure other than transit. Those implementing acts shall be adopted in accordance with the examination procedure in Article 262(4).

*Article 107*

**Movement of goods**

1. In specific cases, importers and exporters may move goods placed under a special procedure other than transit or in a free zone between different places in the customs territory of the Union.

2. The Commission is empowered to adopt delegated acts in accordance with Article 261 to supplement this Regulation by determining the cases and the conditions under which importers and exporters may move goods as referred to in paragraph 1 of this Article.

3. The Commission shall specify, by means of implementing acts the procedural rules for the movement of goods placed under a special procedure other than transit or in a free

zone as referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 108*

**Usual forms of handling**

1. Goods placed under customs warehousing or a processing procedure or in a free zone may undergo usual forms of handling intended to preserve them, improve their appearance or marketable quality or prepare them for distribution or resale.

2. The Commission is empowered to adopt delegated acts in accordance with Article 261 to supplement this Regulation by determining the usual forms of handling for goods referred to in paragraph 1 of this Article.

*Article 109*

**Equivalent goods**

1. Equivalent goods shall consist in Union goods which are stored, used or processed instead of the goods placed under a special procedure.

   Under the outward processing procedure, equivalent goods shall consist in non-Union goods which are processed instead of Union goods placed under the outward processing procedure.

   Except where otherwise provided, equivalent goods shall have the same eight-digit Combined Nomenclature code, the same commercial quality and the same technical characteristics as the goods which they are replacing.

2. The customs authorities shall, upon application, authorise the following, provided that the proper conduct of the procedure, in particular as regards customs supervision, is ensured:

   (a) the use of equivalent goods under customs warehousing, free zones, end-use and a processing procedure;

   (b) the use of equivalent goods under the temporary admission procedure, in specific cases;

   (c) in the case of the inward processing procedure, the export of processed products obtained from equivalent goods before the import of the goods they are replacing;

   (d) in the case of the outward processing procedure, the import of processed products obtained from equivalent goods before the export of the goods they are replacing.

   A Trust and Check trader shall be deemed to fulfil the condition that the proper conduct of the procedure is ensured, insofar as the activity pertaining to the use of equivalent

goods for the procedure concerned is taken into account in the authorisation referred to in Article 25.

3. The use of equivalent goods shall not be authorised in any of the following cases:

(a) where only usual forms of handling as defined in Article 108 are carried out under the inward processing procedure;

(b) where a prohibition of drawback of, or exemption from, import duty applies to non-originating goods used in the manufacture of processed products under the inward processing procedure, for which a proof of origin is issued or made out in the framework of a preferential arrangement between the Union and certain third countries or groups of such countries;

(c) where it would lead to an unjustified import duty advantage or where provided for in Union legislation.

4. In the case referred to in paragraph 2, point (c), and where the processed products would be liable to export duty if they were not being exported in the context of the inward processing procedure, the holder of the authorisation shall provide a guarantee to ensure payment of the export duty should the non-Union goods not be imported within the period referred to Article 138(3).

5. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation in order to determine:

(a) the exceptions referred to in paragraph 1, third subparagraph;

(b) the conditions under which equivalent goods are used in accordance with paragraph 2;

(c) the specific cases where equivalent goods are used under the temporary admission procedure, referred to in paragraph 2, point (b);

(d) the cases where the use of equivalent goods is not authorised in accordance with paragraph 3, point (c).

6. The Commission shall specify, by means of implementing acts, the procedural rules for the use of equivalent goods authorised in accordance with paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

# Chapter 2
# Transit

## SECTION 1
## GENERAL RULES

*Article 110*

**Scope**

1. Goods shall be placed under a transit procedure upon their entry into the customs territory, unless they have already been placed under a transit procedure specified in Articles 111 and 112 or are placed under another customs procedure within the time-limit set out in Article 86(4).

2. The holder of the goods shall be considered as being the importer or the exporter of the goods and shall be liable for the payment of customs duties and other taxes and charges unless the customs authorities have data on another importer or exporter.

3. Goods placed under the union transit procedure shall stay under that procedure, until they are placed under another customs procedure.

*Article 111*

**External transit**

1. Under the external transit procedure, non-Union goods may be moved from one point to another within the customs territory of the Union without being subject to any of the following:

   (a) import duty or other charges, including anti-dumping duties, countervailing duties or safeguard measures;

   (b) commercial policy measures, insofar as they do not prohibit the entry or exit of goods into or from the customs territory of the Union.

2. In specific cases, Union goods shall be placed under the external transit procedure.

3. Movement as referred to in paragraph 1 shall take place in one of the following ways:

   (a) under the external Union transit procedure;

   (b) in accordance with the TIR Convention, provided that such movement;

      (i) began or is to end outside the customs territory of the Union;

      (ii) is effected between two points in the customs territory of the Union through the territory of a third country;

(c) in accordance with the ATA or Istanbul Conventions, where a transit movement takes place;

(d) under cover of form 302 provided for in the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces, signed in London on 19 June 1951 and EU form 302;

(e) under the postal system in accordance with the acts of the Universal Postal Union, when the goods are carried by or for holders of rights and obligations under such acts.

4. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining the specific cases where Union goods are to be placed under the external transit procedure.

5. The Commission shall specify, by means of implementing acts, the procedural rules to apply paragraph 3, points (b) to (e), in the customs territory of the Union, taking into account the needs of the Union. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 112*

**Internal transit**

1. Under the internal transit procedure, and under the conditions laid down in paragraph 2, Union goods may be moved from one point to another within the customs territory of the Union, and pass through a third country, without any change in their customs status.

2. The movement referred to in paragraph 1 shall take place in one of the following ways:

(a) under the internal Union transit procedure provided that such a possibility is provided for in an international agreement;

(b) in accordance with the TIR Convention;

(c) in accordance with the ATA or Istanbul Conventions, where a transit movement takes place;

(d) under cover of form 302 as provided for in the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces, signed in London on 19 June 1951 and EU form 302;

(e) under the postal system in accordance with the acts of the Universal Postal Union, when the goods are carried by or for holders of rights and obligations under such acts.

3. The Commission shall specify, by means of implementing acts the procedural rules to apply paragraph 2, points (b) to (e), in the customs territory of the Union, taking into account the needs of the Union. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 113*

**Single territory for transit purposes**

Where goods are moved from one point in the customs territory of the Union to another in accordance with the TIR Convention, the ATA or Istanbul Conventions, under cover of forms 302, EU form 302 or under the postal system, the customs territory of the Union shall, for the purposes of such transport, be considered to form a single territory.

*Article 114*

**Exclusion of persons from TIR operations**

1. Where the customs authorities of a Member State decide to exclude a person from TIR operations under Article 38 of the TIR Convention, that decision shall apply throughout the customs territory of the Union and TIR carnets lodged by that person shall not be accepted by any customs office.

2. A Member State shall communicate its decision referred to in paragraph 1, together with the date of its application, to the other Member States and to the Commission and the EU Customs Authority.

*Article 115*

**Authorised consignor and authorised consignee for TIR purposes**

1. The customs authorities may, upon application, authorise a person, referred to as an 'authorised consignee' to receive goods moved in accordance with the TIR Convention at an authorised place, so that the procedure is terminated in accordance with Article 1, point (d), of the TIR Convention.

2. The customs authorities may, upon application, authorise a person, referred to as an 'authorised consignor' to send goods to be moved in accordance with the TIR Convention at an authorised place, so that the procedure is started in accordance with Article 1, point (c) of the TIR Convention.

   For the purpose of the first subparagraph, the authorised consignor shall be authorised to use seals of a special type in accordance with Article 116(4), point (c).

3. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining the conditions for the granting of the authorisations referred to in paragraphs 1 and 2.

## SECTION 3
## UNION TRANSIT

*Article 116*

**Obligations of the holder of the Union transit procedure and of the carrier and recipient of goods moving under the Union transit procedure**

1. The holder of the Union transit procedure shall be responsible for all of the following obligations:

   (a) provision of data enabling the customs authorities to supervise the goods, including at least the identification of the goods placed under that procedure, the means of transport, the importer or the exporter, the customs status and the movements;

   (b) presentation of the goods intact and the required data, at the customs office of destination, within the prescribed time limit and in compliance with the measures taken by the customs authorities to ensure their identification;

   (c) observance of the customs provisions relating to the procedure;

   (d) unless otherwise provided for in the customs legislation, provision of a guarantee in order to ensure payment of the amount of import or export duty corresponding to any customs debt or other charges, which may be incurred in respect of the goods.

2. The obligation of the holder of the procedure shall be met and the transit procedure shall end when the goods placed under the procedure and the required information are available at the customs office of destination in accordance with the customs legislation.

3. A carrier or recipient of goods who accepts goods knowing that they are moving under the Union transit procedure shall also be responsible for presentation of the goods intact at the customs office of destination within the prescribed time-limit and in compliance with the measures taken by the customs authorities to ensure their identification.

4. Upon application, the customs authorities may authorise any of the following simplifications regarding the placing of goods under the Union transit procedure or the discharge of that procedure:

   (a) the status of authorised consignor, allowing the holder of the authorisation to place goods under the Union transit procedure without presenting them to customs;

   (b) the status of authorised consignee, allowing the holder of the authorisation to receive goods moved under the Union transit procedure at an authorised place, to discharge the procedure in accordance with paragraph 2;

(c) the use of seals of a special type, where sealing is required to ensure the identification of the goods placed under the Union transit procedure;

(d) the use of an electronic transport document to place goods under the Union transit procedure, provided it contains the necessary information, and this is available to the customs authorities at departure and at destination to allow the customs supervision of the goods and the discharge of the procedure.

5. The customs authorities at least every 3 years shall perform an in-depth monitoring of the activities of authorised consignors and consignees in order to assess their compliance with the authorisation requirements.

6. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by further specifying the data requirements laid down in paragraph 1, points (a) and (b) and the conditions for granting the authorisations referred to in paragraph 4.

7. The Commission shall specify, by means of implementing acts, the procedural rules on:

(a) the placing of goods under the Union transit procedure and the discharge of that procedure;

(b) the operation of the simplifications referred to in paragraph 4.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 117*

**Goods passing through the territory of a third country under the external Union transit procedure**

1. The external Union transit procedure shall apply to goods passing through a third country if one of the following conditions is fulfilled:

(a) provision is made to that effect under an international agreement;

(b) carriage through that third country is effected under cover of a single transport document drawn up in the customs territory of the Union.

2. In the case referred to in paragraph 1, point (b), the operation of the external Union transit procedure shall be suspended while the goods are outside the customs territory of the Union.

3. The Commission shall specify, by means of implementing acts, the procedural rules on the customs supervision of goods passing through the territory of a third country under the external Union transit procedure. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

# Chapter 3
# Storage

## SECTION 1
## COMMON PROVISIONS

*Article 118*

**Scope**

1. Under a storage procedure, non-Union goods may be stored in the customs territory of the Union without being subject to any of the following:

   (a) import duty;

   (b) other charges as provided for under other relevant provisions in force;

   (c) commercial policy measures, insofar as they do not prohibit the entry or exit of goods into or from the customs territory of the Union.

2. The conditions for placing goods under storage shall be the following:

   (a) the minimum data has been provided or made available to customs, which must include at least the importer responsible for the goods, the manufacturer, the value, the origin, the tariff classification and description of the goods and the list of relevant other legislation applied by the customs authorities on those goods, unless otherwise provided; and

   (b) the goods comply with the other legislation applied by the customs authorities.

3. Union goods may be placed under the customs warehousing or free zone procedure in accordance with the other legislation applied by the customs authorities or in order to benefit from a decision granting repayment or remission of import duty. Union goods may be entered, stored, moved, used, processed or consumed in a customs warehouse or in a free zone. In such cases the goods shall not be regarded as being under a storage procedure.

4. The importer shall place non-Union goods brought into a customs warehouse or a free zone under the appropriate storage procedure.

5. The Commission shall specify, by means of implementing acts, the procedure for the placing of Union goods under the customs warehousing or free zone procedure as referred to in paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 119*

**Storage information**

1. The operator of a customs warehouse or a free zone shall provide or make available to the customs authorities the minimum data necessary for the application of the provisions governing the storage of the goods located therein, in particular the data referred to in Article 118(2), point (a), the customs status of the goods placed under the storage procedure and the subsequent movements of those goods.

2. Where the importer or the carrier has already provided or made available all or part of the information referred to in paragraph 1, the customs warehouse or free zone operator shall link its own additional information to the importer's or carrier's information.

3. The operator must not accept goods for which the minimum information has not been provided or made available to customs.

4. The Commission is empowered to adopt delegated acts in accordance with Article 261, to supplement this Regulation by determining the minimum information referred to in paragraph 1 of this Article.

*Article 120*

**Amendment and invalidation of storage information**

1. The operator of a customs warehouse or a free zone may amend one or more particulars of the information on the goods in its facility after it has been provided or made available, unless the customs authorities have informed the operator that they intend to examine the goods or that they have established that the information on the goods is incorrect.

2. The importer, the carrier or the operator of the warehouse of free zone shall invalidate the information on goods that are not brought into the customs territory of the Union as soon as possible. The customs authorities shall invalidate the information on those goods after 30 days from the date in which the information was provided or made available.

*Article 121*

**Duration of a storage procedure**

1. There shall be no limit to the length of time goods may remain under a storage procedure.

2. In exceptional circumstances, the customs authorities may set a time limit by which a storage procedure must be discharged in particular where the type and nature of the goods may, in the case of long-term storage, pose a threat to human, animal or plant health and life or to the environment.

## SECTION 2
## CUSTOMS WAREHOUSING

*Article 122*

**Storage in customs warehouses**

1. Under the customs warehousing procedure non-Union goods may be stored in premises or any other location authorised for that procedure by the customs authorities and under customs supervision ('customs warehouses').

2. Customs warehouses may be available for use by any importer for the customs warehousing of goods ('public customs warehouse'), or for the storage of goods imported by the holder of an authorisation for customs warehousing ('private customs warehouse').

*Article 123*

**Authorisation for the operation of customs warehouses**

1. The operation of a customs warehouse requires an authorisation from the customs authorities, unless the operator of the customs warehouse is the customs authority itself. The authorisation shall set out the conditions for the operation of the customs warehouse.

2. The authorisation referred to in paragraph 1 shall be granted only to persons who satisfy the following conditions:

   (a) they are established in the customs territory of the Union;

   (b) they provide the necessary assurance of the proper conduct of the operations;

   (c) a Trust and Check trader shall be deemed to fulfil this condition insofar as the operation of customs warehouse is taken into account in the authorisation referred to in Article 25;

   (d) they provide a guarantee for the potential customs debt.

3. The authorisation referred to in paragraph 1 shall be granted only where the customs authorities are able to exercise customs supervision without having to introduce administrative arrangements which are disproportionate to the economic needs involved.

4. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining the conditions for granting the authorisation referred to in paragraph 1 of this Article.

*Article 124*

**Movement of goods in customs warehouse**

1. The customs authorities may authorise an operator of a customs warehouse to move goods under the following conditions:

   (a) the possibility to move the goods is provided for in the customs warehouse authorisation;

   (b) the operator of the customs warehouse is an authorised economic operator trust and check;

   (c) information on the movements is recorded in the operator's records and provided or made available to the customs authorities of departure and arrival of the goods.

2. The Commission shall specify, by means of implementing acts, the procedure for the movement of goods in customs warehouse referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 125*

**Processing in a customs warehouse**

The customs authorities may, where an economic need exists and customs supervision is not adversely affected, authorise that goods in customs warehousing are subsequently placed under the inward processing or end-use procedure to be processed in the customs warehouse, subject to the conditions provided for by those procedures.

*Article 126*

**Customs supervision**

The holder of the authorisation shall be responsible for ensuring that goods under the customs warehousing procedure are not removed from customs supervision.

## SECTION 3
## FREE ZONES

*Article 127*

**Designation of free zones**

1. Member States may designate parts of the customs territory of the Union as free zones.

   For each free zone the Member State shall determine the area covered and define the entry and exit points.

2. Member States shall communicate to the Commission information on their free zones which are in operation.

3. Free zones shall be enclosed.

The perimeter and the entry and exit points of the area of free zones shall be subject to customs supervision.

4. Persons, goods and means of transport entering or leaving free zones may be subject to customs controls.

*Article 128*

**Buildings and activities in free zones**

1. The construction of any building in a free zone shall require the prior approval of the customs authorities.

2. Subject to the customs legislation, any industrial, commercial or service activity shall be permitted in a free zone. The carrying on of such activities shall be subject to notification, in advance, to the customs authorities.

3. The customs authorities may prohibit or restrict the activities referred to in paragraph 2, having regard to the nature of the goods in question, or the requirements of customs supervision, or security and safety requirements.

4. The customs authorities may prohibit persons who do not provide the necessary assurance of compliance with the customs provisions from carrying on an activity in a free zone.

*Article 129*

**Non-Union goods in free zones**

1. Non-Union goods may, while they remain in a free zone, be released for free circulation or be placed under the inward processing, temporary admission or end-use procedure, under the conditions laid down for those procedures.

In such cases the goods shall not be regarded as being under the free zone procedure.

2. Without prejudice to the provisions applicable to supplies or to victualling storage, where the procedure concerned so provides, paragraph 1 shall not preclude the use or consumption of goods of which the release for free circulation or temporary admission would not entail application of import duty measures laid down under the common agricultural or commercial policies or measures prohibiting the use of those goods in the Union.

Such use or consumption requires that the appropriate information shall be provided or made available to customs.

*Article 130*

**Taking goods out of a free zone**

Goods may be taken out of a free zone only if they have been placed under another customs procedure.

*Article 131*

**Customs status**

1. Upon application by the person concerned, the customs authorities shall establish the customs status as Union goods of the following goods:

   (a) Union goods which enter a free zone;

   (b) Union goods which have undergone processing operations within a free zone;

   (c) goods released for free circulation within a free zone.

2. Where goods are taken out of a free zone into another part of the customs territory of the Union or placed under a customs procedure, they shall be regarded as non-Union goods unless their customs status as Union goods has been proven.

3. However, for the purposes of applying export duty and export licences or export control measures laid down under the common agricultural or commercial policies, such goods shall be regarded as Union goods, unless it is established that they do not have the customs status of Union goods.

# Chapter 4
# Specific use

## SECTION 1
## TEMPORARY ADMISSION

*Article 132*

**Scope**

1. Under the temporary admission procedure non-Union goods intended for export may be subject to specific use in the customs territory of the Union, with total or partial relief from import duty, and without being subject to any of the following:

   (a) other charges as provided for under other relevant provisions in force;

   (b) commercial policy measures, insofar as they do not prohibit the entry or exit of goods into or from the customs territory of the Union.

2. The temporary admission procedure may only be used provided that the following conditions are met:

(a) the goods are not intended to undergo any change, except normal depreciation due to the use made of them;

(b) it is possible to ensure that the goods placed under the procedure can be identified, except where, in view of the nature of the goods or of the intended use, the absence of identification measures is not liable to give rise to any abuse of the procedure or, in the case referred to in Article 109, where compliance with the conditions laid down in respect of equivalent goods can be verified;

(c) where required, an authorisation has been granted in accordance with Article 102 and the minimum data has been provided or made available to customs prior to the release of the goods, which must include at least the importer responsible for the goods, the value, the origin, the tariff classification and a description of and the intended use of the goods;

(d) the requirements for total or partial duty relief laid down in the customs legislation are met;

(e) the goods have arrived to the customs territory of the Union;

(f) the goods comply with the relevant other legislation applied by the customs authorities.

3. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining:

(a) the specific use referred to in paragraph 1 of this Article;

(b) the requirements for total relief from import duty referred to in paragraph 2, point (d), of this Article.

*Article 133*

**Period during which goods may remain under the temporary admission procedure**

1. The customs authorities shall determine the period within which goods placed under the temporary admission procedure must be placed under a subsequent customs procedure. Such period shall be long enough for the objective of authorised use to be achieved.

2. The maximum period during which goods may remain under the temporary admission procedure for the same purpose and under the responsibility of the same authorisation holder shall be 24 months, even where the procedure was discharged by placing the goods under another special procedure and subsequently placing them under the temporary admission procedure again.

3. Where, in exceptional circumstances, the authorised use cannot be achieved within the period referred to in paragraphs 1 and 2, the customs authorities may grant an extension of reasonable duration of that period, upon justified application by the importer.

4. The overall period during which goods may remain under the temporary admission procedure shall not exceed 10 years, except in the case of an unforeseeable event.

*Article 134*

**Amount of import duty in case of temporary admission with partial relief from import duty**

1. The amount of import duty in respect of goods placed under the temporary admission procedure with partial relief from import duty shall be set at 3 % of the amount of import duty which would have been payable on those goods had they been released for free circulation on the date on which they were placed under the temporary admission procedure.

   That amount shall be payable for every month or fraction of a month during which the goods have been placed under the temporary admission procedure with partial relief from import duty.

2. The amount of import duty shall not exceed that which would have been payable if the goods in question had been released for free circulation on the date on which they were placed under the temporary admission procedure.

## SECTION 2
## END-USE

*Article 135*

**End-use procedure**

1. Under the end-use procedure, goods may be released for free circulation under a duty exemption or at a reduced rate of duty that is provided in Union legislation on condition that the importer assigns the goods to a specific use.

2. The conditions for placing goods under the end-use procedure shall be the following:

   (a) where required, an authorisation has been granted in accordance with Article 102;

   (b) the minimum data has been provided or made available to customs, which must include at least the importer responsible for the goods, the seller, the buyer, the manufacturer, the product supplier where this is different from the manufacturer, the responsible economic operator in the Union pursuant to Article 4 of Regulation (EU) 2019/1020 and Art. 16 of Regulation (EU) 2023/XXXX[32] the

[32] [OP : please insert final reference in the text – see footnote 19]

value, the origin, the tariff classification and a description of the goods, the unique reference of the consignment and its location, and the list of relevant other legislation applied by the customs authorities on those goods;

(c) any import duty or other charges due, including anti-dumping duties, countervailing duties or safeguard measures, shall be paid or guaranteed, unless the goods are the subject of a drawing request on a tariff quota;

(d) the goods have arrived to the customs territory of the Union;

(e) the goods comply with the relevant the other legislation applied by the customs authorities.

3. Where the goods are at a production stage, which would allow economically the prescribed end-use only, the customs authorities may establish in the authorisation the conditions under which the goods shall be deemed to have been used for the purposes laid down in the Union legislation providing the duty exemption or reduced rate of duty.

4. Where goods are suitable for repeated use and the customs authorities consider it appropriate in order to avoid abuse, customs supervision shall continue for a period not exceeding 2 years after the date of their first use for the purposes laid down in the Union legislation providing the duty exemption or reduced rate of duty.

5. Customs supervision under the end-use procedure shall end in any of the following cases:

(a) where the goods have been used for the purposes laid down in the Union legislation providing the duty exemption or reduced rate of duty;

(b) where the goods have been taken out of the customs territory of the Union, destroyed or abandoned to the State;

(c) where the goods have been used for purposes other than those laid down in the Union legislation providing the duty exemption or reduced duty rate and the applicable import duty has been paid.

6. Where a rate of yield is required, Article 136 shall apply to the end-use procedure.

7. Waste and scrap which result from the working or processing of goods according to the prescribed end-use and losses due to natural wastage shall be considered as goods assigned to the prescribed end-use.

8. Waste and scrap resulting from the destruction of goods placed under the end-use procedure shall be deemed to be placed under the customs warehousing procedure.

# Chapter 5
# Processing

## SECTION 1
## GENERAL PROVISIONS

*Article 136*

**Rate of yield**

Except where a rate of yield has been specified in Union legislation governing specific fields, the customs authorities shall set either the rate of yield or average rate of yield of the processing operation or where appropriate, the method of determining such rate.

The rate of yield or average rate of yield shall be determined on the basis of the actual circumstances in which processing operations are, or are to be, carried out. That rate may be adjusted, where appropriate, in accordance with Article 10.

## SECTION 2
## INWARD PROCESSING

*Article 137*

**Scope**

1. Without prejudice to Article 109, under the inward processing procedure non-Union goods may be used in the customs territory of the Union in one or more processing operations without such goods being subject to any of the following:

   (a) import duty or other charges including anti-dumping duties, countervailing duties or safeguard measures;

   (b) commercial policy measures, insofar as they do not prohibit the entry or exit of goods into or from the customs territory of the Union.

2. The conditions for placing goods under the inward processing procedure shall be the following:

   (a) where required, an authorisation has been granted in accordance with Article 102, for one of the uses referred to in paragraph 3 of this Article;

   (b) the minimum data has been provided or made available to customs, which must include at least the importer responsible for the goods, the seller, the buyer, the manufacturer, the value, the origin, the tariff classification and a description of the goods and their location, and the list of relevant other legislation applied by the customs authorities;

(c) the goods have arrived to the customs territory of the Union.

3. Importers may use the inward processing procedure for any of the following:

(a) repairing the goods that are intended to be placed under inward processing;

(b) destroying the goods that are intended to be placed under inward processing;

(c) producing processed products in which the goods placed under inward processing can be identified, without prejudice to the use of production accessories;

(d) undergoing operations on the goods placed under inward processing to ensure their compliance with technical requirements for their release for free circulation;

(e) subjecting the goods placed under the inwards processing to usual forms of handling in accordance with Article 108;

(f) producing processed products with goods equivalent to the goods placed under the inward processing procedure, in accordance with Article 109.

*Article 138*

**Period for discharge**

1. The customs authorities shall specify the period within which the inward processing procedure is to be discharged, in accordance with Article 105.

That period shall run from the date on which the non-Union goods are placed under the procedure and shall take account of the time required to carry out the processing operations and to discharge the procedure.

2. The customs authorities may grant an extension, of reasonable duration, of the period specified pursuant to paragraph 1, upon justified application by the holder of the authorisation.

The authorisation may specify that a period which commences in the course of a month, quarter or semester shall end on the last day of a subsequent month, quarter or semester respectively.

3. In the case of prior export in accordance with Article 109(2), point (c), the authorisation shall specify the period within which the non-Union goods shall be declared for the inward processing procedure, taking account of the time required for procurement and transport to the customs territory of the Union.

The period referred to in the first subparagraph shall be set in months and shall not exceed 6 months. It shall run from the date of acceptance of the export declaration relating to the processed products obtained from the corresponding equivalent goods.

4. At the request of the holder of the authorisation, the period of 6 months referred to in paragraph 3 may be extended, even after its expiry, provided that the total period does not exceed 12 months.

*Article 139*

**Temporary export for further processing**

Upon application, the customs authorities may authorise some or all of the goods placed under the inward processing procedure, or the processed products, to be temporarily exported for the purpose of further processing outside the customs territory of the Union, in accordance with the conditions laid down for the outward processing procedure.

## SECTION 3
## OUTWARD PROCESSING

*Article 140*

**Scope**

1. Under the outward processing procedure Union goods may be temporarily exported from the customs territory of the Union in order to undergo processing operations. The processed products resulting from those goods may be released for free circulation with total or partial relief from import duty upon application by the holder of the authorisation or by any other person established in the customs territory of the Union, provided that that person has obtained the consent of the holder of the authorisation and the conditions of the authorisation are fulfilled.

2. The conditions for placing goods under outward processing shall be the following:

   (a) where required, an authorisation has been granted in accordance with Article 102 and this Article;

   (b) the minimum data has been provided or made available to customs, which must include at least the exporter responsible for the goods, the seller, the buyer, the value, the origin, the tariff classification and a description of the goods;

   (c) any export duty or other charges due are paid or guaranteed;

   (d) the goods comply with the relevant other legislation applied by the customs authorities;

3. The customs authorities shall not grant an authorization for an outward processing procedure for any of the following Union goods:

   (a) goods the export of which gives rise to repayment or remission of import duty;

   (b) goods which, prior to export, were released for free circulation under a duty exemption or at a reduced rate of duty by virtue of their end-use, for as long as

the purposes of such end-use have not been fulfilled, unless those goods have to undergo repair operations;

(c) goods the export of which gives rise to the granting of export refunds;

(d) goods in respect of which a financial advantage other than refunds as referred to in point (c) is granted under the common agricultural policy by virtue of the export of those goods.

4. The customs authorities shall specify the period within which goods temporarily exported must be re-imported into the customs territory of the Union in the form of processed products, and released for free circulation, in order to be able to benefit from total or partial relief from import duty. They may grant an extension, of reasonable duration, of that period, upon justified application by the holder of the authorisation.

*Article 141*

**Goods repaired or replaced free of charge**

1. Where it is established to the satisfaction of the customs authorities that goods have been repaired or replaced free of charge, either because of a contractual or statutory obligation arising from a guarantee or because of a manufacturing or material defect, or because the goods did not meet the specifications requested by the buyer to the seller of the goods, they shall be granted total relief from import duty.

2. Paragraph 1 shall not apply where account was taken of the manufacturing or material defect at the time when the goods in question were first released for free circulation.

*Article 142*

**Goods repaired or altered in the context of international agreements**

1. Total relief from import duty shall be granted to processed products resulting from goods placed under the outward processing procedure where it is established to the satisfaction of the customs authorities that:

(a) those goods have been repaired or altered in a third country with which the Union has concluded an international agreement providing for such relief; and

(b) the conditions for the relief from import duty laid down in the agreement referred to in point (a) are fulfilled.

2. Paragraph 1 shall not apply to processed products resulting from equivalent goods as referred to in Article 109 and to replacement products as referred to in Articles 143 and 144.

*Article 143*

**Standard exchange system**

1. Under the standard exchange system an imported product ('replacement product') may, in accordance with paragraphs 2 to 5, replace a processed product.

2. The customs authorities shall, upon application, authorise the standard exchange system to be used where the processing operation involves the repair of defective Union goods other than those subject to measures laid down under the common agricultural policy or to the specific arrangements applicable to certain goods resulting from the processing of agricultural products.

3. Replacement products shall have the same eight-digit Combined Nomenclature code, the same commercial quality and the same technical characteristics as the defective goods had the latter undergone repair.

4. Where the defective goods have been used before export, the replacement products must also have been used.

   The customs authorities shall, however, waive the requirement set out in the first subparagraph if the replacement product has been supplied free of charge, either because of a contractual or statutory obligation arising from a guarantee or because of a material or manufacturing defect.

5. The provisions which would be applicable to the processed products shall apply to the replacement products.

*Article 144*

**Prior import of replacement products**

1. The customs authorities shall, under the conditions they lay down, upon application by the person concerned, authorise replacement products to be imported before the defective goods are exported.

   In the event of such prior import of a replacement product, a guarantee shall be provided, covering the amount of the import duty that would be payable should the defective goods not be exported in accordance with paragraph 2.

2. The defective goods shall be exported within a period of 2 months from the date of acceptance by the customs authorities of the declaration for the release for free circulation of the replacement products.

3. Where, in exceptional circumstances, the defective goods cannot be exported within the period referred to in paragraph 2, the customs authorities may grant an extension, of reasonable duration, of that period, upon justified application by the holder of the authorisation.

# Title IX
# TARIF CLASSIFICATION, ORIGIN AND VALUE OF GOODS

## Chapter 1
## Common Customs Tariff and tariff classification of goods

*Article 145*

**Common Customs Tariff and customs surveillance**

1. Import and export duty due shall be based on the Common Customs Tariff.

   Other measures prescribed by Union provisions governing specific fields relating to trade in goods shall, where appropriate, be applied in accordance with the tariff classification of those goods.

2. The Common Customs Tariff shall comprise all of the following:

   (a) the Combined Nomenclature of goods as laid down in Regulation (EEC) No 2658/87;

   (b) any other nomenclature which is wholly or partly based on the Combined Nomenclature, or which provides for further subdivisions to it, and which is established by Union provisions governing specific fields with a view to the application of tariff measures relating to trade in goods;

   (c) the conventional or normal autonomous customs duty applicable to goods covered by the Combined Nomenclature;

   (d) the preferential tariff measures contained in agreements which the Union has concluded with certain third countries or groups of third countries;

   (e) preferential tariff measures adopted unilaterally by the Union in respect of certain third countries or groups of third countries;

   (f) autonomous measures providing for a reduction in, or exemption from, customs duty on certain goods;

   (g) favourable tariff treatment specified for certain goods, by reason of their nature or end-use, in the framework of measures referred to under points (c) to (f) or (h);

   (h) other measures provided for by agricultural or commercial or other Union legislation that are based on the tariff classification of the goods, in particular, a provisional or definitive anti-dumping duty, countervailing duty or safeguard measure.

3. Where the goods concerned fulfil the conditions included in the measures laid down in paragraph 2, points (d) to (g), these measures may apply instead of those provided

for in point (c) of that paragraph. Such measures may be applied retrospectively, provided that the time-limits and conditions laid down in the relevant measure or in this Regulation are complied with and that:

(a) insofar as the measures laid down in points (d) and (e) are concerned, they provide for such retrospective application;

(b) insofar as the measures laid down in point (d) are concerned, the third country or group of third countries also allow for such retrospective application.

4. Where application of the measures referred to in paragraph 2, points (d) to (g), or the exemption from measures referred to in point (h) thereof, is restricted to a certain volume of imports or exports, such application or exemption shall, in the case of tariff quotas, or other quotas, cease as soon as the specified volume of imports or exports is reached.

In the case of tariff ceilings such application shall cease by virtue of a legal act of the Union.

5. The customs authorities shall refuse the application of the simplified tariff for distance sales where they establish, based on relevant and objective data, that the distance sale of goods imported from third countries was intended for persons other than those referred to in Article 14(2)(a) VAT Directive.

6. The Commission may subject to customs surveillance the release for free circulation, the export and the placement under certain special procedures of goods, for the purposes referred to in Article 31(4).

7. The Commission shall adopt, by means of implementing acts, the measures on the uniform management of the tariff and other quotas and the tariff and other ceilings referred to in paragraph 4, and on the management of the customs surveillance referred to in paragraph 6. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 146*

**Tariff classification of goods**

1. For the application of the Common Customs Tariff, tariff classification of goods shall consist in the determination of one of the subheadings or further subdivisions of the Combined Nomenclature under which those goods are to be classified.

2. For the application of non-tariff measures, tariff classification of goods shall consist in the determination of one of the subheadings or further subdivisions of the Combined Nomenclature, or of any other nomenclature which is established by Union provisions and which is wholly or partly based on the Combined Nomenclature or which provides for further subdivisions to it, under which those goods are to be classified.

3. The subheading or further subdivision determined in accordance with paragraphs 1 and 2 shall be used for the purpose of applying the measures linked to that subheading.

4. The Commission may, by means of implementing acts, determine the tariff classification of goods in accordance with paragraphs 1 and 2.
Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

On duly justified imperative grounds of urgency related to the need to rapidly ensure the correct and uniform application of the Combined Nomenclature, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 262(5).

# Chapter 2
# Origin of goods

*Article 147*

**Non-preferential origin**

The rules for the determination of the non-preferential origin of goods in Articles 148 and 149 shall be used for applying the following:

(a) the Common Customs Tariff, except for the measures referred to in Article 145(2), points (d) and (e);

(b) measures, other than tariff measures, established by Union provisions governing specific fields relating to trade in goods; and

(c) other Union measures relating to the origin of goods.

*Article 148*

**Acquisition of origin**

1. Goods wholly obtained in a single country or territory shall be regarded as having their origin in that country or territory.

2. Goods the production of which involves more than one country or territory shall be deemed to originate in the country or territory where they underwent their last, substantial, economically justified processing or working, in an undertaking equipped for that purpose, resulting in the manufacture of a new product or representing an important stage of manufacture.

3. The Commission is empowered to adopt delegated acts in accordance with Article 261, to supplement this Regulation by laying down the rules under which goods, whose determination of non-preferential origin is required for the purposes of applying the Union measures referred to in Article 147, are considered as wholly obtained in a single country or territory or to have undergone their last, substantial, economically justified processing or working, in an undertaking equipped for that purpose, resulting in the manufacture of a new product or representing an important stage of manufacture in a country or territory, in accordance with paragraphs 1 and 2 of this Article.

*Article 149*

**Proof of non-preferential origin**

1. Where the importer has indicated an origin of the goods pursuant to the customs legislation, the customs authorities may require a proof of origin of the goods.

2. Where a proof of origin of goods is provided pursuant to the customs legislation or other Union legislation governing specific fields, the customs authorities may, in the event of reasonable doubt, require any additional evidence needed in order to ensure that the indication of origin complies with the rules laid down by the relevant Union legislation.

3. Where the exigencies of trade so require, a document proving origin may be issued in the Union in accordance with the rules of origin in force in the country or territory of destination or any other method identifying the country where the goods were wholly obtained or underwent their last substantial transformation.

4. Where the importer has opted to apply the simplified tariff treatment for distance sales as referred to in Article 156(2), the customs authorities shall not require the importer to prove the origin of the goods.

5. The Commission shall adopt, by means of implementing acts, the procedural rules for the provision and verification of a proof of origin. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 150*

**Preferential origin of goods**

1. In order to benefit from the measures referred to in Article 145(2), points (d) and (e), or from non-tariff preferential measures, goods shall comply with the rules on preferential origin referred to in paragraphs 2 to 5 of this Article.

2. In the case of goods benefiting from preferential measures contained in agreements, which the Union has concluded with certain third countries or with groups of such countries, the rules on preferential origin shall be laid down in those agreements.

3. In the case of goods benefiting from preferential measures adopted unilaterally by the Union in respect of certain third countries or groups of such countries, other than those referred to in paragraph 5, the Commission shall adopt delegated acts in accordance with Article 261 to supplement this Regulation by laying down rules on preferential origin. Those rules shall be based either on the criterion that goods are wholly obtained or on the criterion that goods result from sufficient processing or working

4. In the case of goods benefiting from preferential measures applicable in trade between the customs territory of the Union and Ceuta and Melilla, as contained in Protocol 2 to the 1985 Act of Accession, the rules on preferential origin shall be adopted in accordance with Article 9 of that Protocol.

5. In the case of goods benefiting from preferential measures contained in preferential arrangements in favour of the overseas countries and territories associated with the Union, the rules on preferential origin shall be adopted in accordance with Article 203 TFEU.

6. Upon its own initiative or at the request of a beneficiary country or territory, the Commission may, for certain goods, grant that country or territory a temporary derogation from the rules on preferential origin referred to in paragraph 3.

The temporary derogation shall be justified by one of the following reasons:

(a) internal or external factors temporarily deprive the beneficiary country or territory of the ability to comply with the rules on preferential origin;

(b) the beneficiary country or territory requires time to prepare itself to comply with those rules.

7. A request for derogation shall be made to the Commission by the beneficiary country or territory concerned. The request shall state the reasons, as indicated in the second subparagraph, why derogation is required and shall contain appropriate supporting documents.

8. The temporary derogation shall be limited to the duration of the effects of the internal or external factors giving rise to it or the length of time needed for the beneficiary country or territory to achieve compliance with the rules.

9. Where a derogation is granted, the beneficiary country or territory concerned shall comply with any requirements laid down as to information to be provided to the Commission concerning the use of the derogation and the management of the quantities for which the derogation is granted.

10. Where the importer has opted to apply the simplified tariff treatment for distance sales, the importer may not benefit from the measures referred to in Article 145(2), points (d) and (e), or from non-tariff preferential measures.

11. The Commission shall adopt by means of implementing acts:

(a) the procedural rules on the preferential origin of goods for the purposes of the measures referred to in paragraph 1;

(b) a measure granting a beneficiary country or territory the temporary derogation referred to in paragraph 6.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 151*

**Determination of origin of specific goods**

The Commission may, by means of implementing acts, adopt measures to determine the origin of specific goods in accordance with the rules of origin applicable to those goods. Those

implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

On imperative grounds of urgency relating to such measures, duly justified by the need to rapidly ensure the correct and uniform application of rules of origin, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 262(5).

# Chapter 3
# Value of goods for customs purposes

*Article 152*

**Scope**

The customs value of goods, for the purposes of applying the Common Customs Tariff and non-tariff measures laid down by Union provisions governing specific fields relating to trade in goods, shall be determined in accordance with Articles 153 and 157.

*Article 153*

**Method of customs valuation based on the transaction value**

1. The primary basis for the customs value of goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to the customs territory of the Union, adjusted in accordance with Articles 154 and 155.

2. The price actually paid or payable shall be the total payment made or to be made by the buyer to the seller or by the buyer to a third party for the benefit of the seller for the imported goods and include all payments made or to be made as a condition of sale of the imported goods.

3. The transaction value shall apply provided that all of the following conditions are fulfilled:

   (a) there are no restrictions as to the disposal or use of the goods by the buyer, other than any of the following:

      (i) restrictions imposed or required by a law or by the public authorities in the Union;

      (ii) limitations of the geographical area in which the goods may be resold;

      (iii) restrictions which do not substantially affect the customs value of the goods;

   (b) the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made;

(d) the buyer and seller are not related or the relationship did not influence the price.

4. The Commission shall specify, by means of implementing acts, the procedural rules for determining the customs value in accordance with paragraphs 1 and 2, including those for adjusting the price actually paid or payable, and for the application of the conditions referred to in paragraph 3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 154*

**Elements of the transaction value**

1. In determining the customs value under Article 153, the price actually paid or payable for the imported goods shall be supplemented by:

(a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:

(i) commissions and brokerage, except buying commissions;

(ii) the cost of containers which are treated as being one, for customs purposes, with the goods in question; and

(iii) the cost of packing, whether for labour or materials;

(b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:

(i) materials, components, parts and similar items incorporated into the imported goods;

(ii) tools, dies, moulds and similar items used in the production of the imported goods;

(iii) materials consumed in the production of the imported goods; and

(iv) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the Union and necessary for the production of the imported goods;

(c) royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

(d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller; and

(e) the following costs up to the place where goods are brought into the customs territory of the Union:

(i) the cost of transport and insurance of the imported goods; and

(ii) loading and handling charges associated with the transport of the imported goods.

2. Additions to the price actually paid or payable, pursuant to paragraph 1, shall be made only on the basis of objective and quantifiable data.

3. No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Article.

4. The Commission shall specify, by means of implementing acts, the procedural rules for determining the customs value in accordance with this Article, including those for adjusting the price actually paid or payable. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 155*

**Elements not to be included in the customs value**

1. In determining the customs value under Article 153, none of the following shall be included:

(a) the cost of transport of the imported goods after their entry into the customs territory of the Union;

(b) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after the entry into the customs territory of the Union of the imported goods such as industrial plants, machinery or equipment;

(c) charges for interest under a financing arrangement entered into by the buyer and relating to the purchase of the imported goods, irrespective of whether the finance is provided by the seller or another person, provided that the financing arrangement has been made in writing and, where required, the buyer can demonstrate that the following conditions are fulfilled:

(i) such goods are actually sold at the price declared as the price actually paid or payable;

(ii) the claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when, the finance was provided;

(d) charges for the right to reproduce the imported goods in the Union; buying commissions;

(e) import duties or other charges payable in the Union by reason of the import or sale of the goods;

(f) notwithstanding Article 154(1), point (c), payments made by the buyer for the right to distribute or resell the imported goods, if such payments are not a condition of the sale for export to the Union of the goods.

2. The Commission shall specify, by means of implementing acts, the procedural rules for determining the customs value in accordance with this Article, including those for adjusting the price actually paid or payable. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 156*

**Simplifications**

1. The customs authorities may, upon application, authorise that the following amounts be determined on the basis of specific criteria, where they are not quantifiable on the date on which the customs declaration is accepted:

(a) amounts which are to be included in the customs value in accordance with Article 153(2); and

(b) the amounts referred to in Articles 154 and 155.

2. Where the importer has opted to apply the simplified tariff treatment for distance sales, Article 155(1), point (a), shall not apply and both the costs of transport of the imported goods up to the place where goods are brought into the customs territory of the Union and the costs of transport after their entry into that territory, shall be included in the customs value.

3. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining the conditions for granting the authorisation referred to in paragraph 1.

*Article 157*

**Secondary methods of customs valuation**

1. Where the customs value of goods cannot be determined under Article 153, it shall be determined by proceeding sequentially from points (a) to (d) of paragraph 2, until the first point under which the customs value of goods can be determined.

The order of application of points (c) and (d) of paragraph 2 shall be reversed if the importer or the exporter or, where applicable, the declarant so requests.

2. The customs value, pursuant to paragraph 1, shall be:

(a) the transaction value of identical goods sold for export to the customs territory of the Union and exported at or about the same time as the goods being valued;

(b) the transaction value of similar goods sold for export to the customs territory of the Union and exported at or about the same time as the goods being valued;

(c) the value based on the unit price at which the imported goods, or identical or similar imported goods, are sold within the customs territory of the Union in the greatest aggregate quantity to persons not related to the sellers; or

(d) the computed value, consisting of the sum of:

(i) the cost or value of materials and fabrication or other processing employed in producing the imported goods;

(ii) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of export for export to the Union;

(iii) the cost or value of the elements referred to in Article 154(1), point (e).

3. Where the customs value cannot be determined under paragraph 1, it shall be determined on the basis of data available in the customs territory of the Union, using reasonable means consistent with the principles and general provisions of all of the following:

(a) the agreement on implementation of Article VII of the General Agreement on Tariffs and Trade;

(b) Article VII of the General Agreement on Tariffs and Trade;

(c) this Chapter.

4. The Commission shall specify, by means of implementing acts, the procedural rules for determining the customs value referred to in this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 158*

**Determination of the value of goods in specific situations**

The Commission may, by means of implementing acts, adopt measures establishing the appropriate method of customs valuation or criteria to be used for determining the customs value of goods in specific situations. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

On imperative grounds of urgency relating to such measures, duly justified by the need to rapidly ensure the correct and uniform application of rules for the determination of the customs value of goods, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 262(5).

# Title X
# CUSTOMS DEBTS AND GUARANTEES

## Chapter 1
## Incurrence of a customs debt

### SECTION 1
### CUSTOMS DEBT ON IMPORT

*Article 159*

**Release for free circulation and temporary admission**

1. The importer shall incur a customs debt at the time of release of the goods for free circulation procedure, for the end-use procedure, or for the temporary admission procedure with partial relief from import duty.

2. The importer shall be the debtor. In the event of indirect representation, the importer and the person on whose behalf the importer is acting shall both be the debtors and be jointly and severally liable for the customs debt.

   Where the information provided or made available for the purpose of the procedures referred to in paragraph 1 leads to all or part of the import duty not being collected, the person who provided that information and who knew, or who ought reasonably to have known, that such information was false shall also be a debtor.

3. Where Title XII, Chapter 6, Section 4 of Directive 2006/112/EC applies to the distance sales of goods to be imported from third countries or territories to a customer in the customs territory of the Union, the deemed importer shall incur a customs debt when the payment for the distance sale is accepted and shall be the debtor.

*Article 160*

**Special provisions relating to non-originating goods**

1. The exporter shall incur a customs debt at the moment of the release of the products for export where:

   (a) a preferential arrangement between the Union and certain third countries or groups of such countries provides that the preferential tariff treatment of products originating in the Union requires non-originating goods used in their manufacture be subject to payment of the import duties; and

   (b) a proof of origin for those products has been issued or made out.

2. The exporter shall calculate the amount of import duty corresponding to the debt as if the non-originating goods that were used in the manufacture of the products being exported were released for free circulation on the same date.

3. In the event of indirect representation, the exporter and the person on whose behalf the exporter is acting shall both become debtors and be jointly and severally liable for the customs debt.

*Article 161*

**Customs debt incurred through non-compliance**

1. For goods liable to import duty, a customs debt on import shall be incurred through non-compliance with any of the following:

   (a) one of the obligations laid down in the customs legislation concerning the introduction of non-Union goods into the customs territory of the Union, their removal from customs supervision, or the movement, processing, storage, temporary storage, temporary admission or disposal of such goods within that territory;

   (b) one of the obligations laid down in the customs legislation concerning the end-use of goods within the customs territory of the Union;

   (c) a condition governing the placing of non-Union goods under a customs procedure or the granting, by virtue of the end-use of the goods, of duty exemption or a reduced rate of import duty.

2. The time at which the customs debt is incurred shall be either of the following:

   (a) the moment when the obligation the non-fulfilment of which gives rise to the customs debt is not met or ceases to be met;

   (b) the time when goods are placed under a customs procedure where it is established subsequently that a condition governing the placing of the goods under that procedure or the granting of a duty exemption or a reduced rate of import duty by virtue of the end-use of the goods was not in fact fulfilled.

3. In cases referred to under paragraph 1, points (a) and (b), the debtor shall be any of the following:

   (a) any person who was required to fulfil the obligations concerned;

   (b) any person who was aware or should reasonably have been aware that an obligation under the customs legislation was not fulfilled and who acted on behalf of the person who was obliged to fulfil the obligation, or who participated in the act which led to the non-fulfilment of the obligation;

   (c) any person who acquired or held the goods in question and who was aware or should reasonably have been aware at the time of acquiring or receiving the goods that an obligation under the customs legislation was not fulfilled.

4. In cases referred to under paragraph 1, point (c), the debtor shall be the person who is required to comply with the conditions governing the placing of the goods under a customs procedure or the granting of a duty exemption or reduced rate of import duty by virtue of the end-use of the goods.

Where the information required under the customs legislation relating to the conditions governing the placing of the goods under that customs procedure is provided to the customs authorities, and such information leads to all or part of the import duty not being collected, the person who provided the information and who knew, or who ought reasonably to have known, that such information was false shall also be a debtor.

*Article 162*

**Deduction of an amount of import duty already paid**

1. Where a customs debt is incurred, pursuant to Article 161(1) in respect of goods released for free circulation at a reduced rate of import duty on account of their end-use, the amount of import duty paid when the goods were released for free circulation shall be deducted from the amount of import duty corresponding to the customs debt.

The first subparagraph shall apply where a customs debt is incurred in respect of scrap and waste resulting from the destruction of such goods.

2. Where a customs debt is incurred, pursuant to Article 159(1) or Article 161(1) in respect of goods placed under temporary admission with partial relief from import duty, the amount of import duty paid under partial relief shall be deducted from the amount of import duty corresponding to the customs debt.

## SECTION 2
## CUSTOMS DEBT ON EXPORT

*Article 163*

**Export and outward processing**

1. The exporter shall incur a customs debt at the time of release of goods liable to export duty under the export procedure or the outward processing procedure.

2. The exporter shall be the debtor. In the event of indirect representation, the exporter and the person on whose behalf the exporter is acting shall both become debtors and be jointly and severally liable for the customs debt.

3. Where the information provided for placing the goods under the export procedure leads to all or part of the export duty not being collected, the person who provided the information and who knew, or who should reasonably have known, that such information was false shall also be a debtor.

*Article 164*

**Customs debt incurred through non-compliance**

1. For goods liable to export duty, a customs debt on export shall be incurred through non-compliance with either of the following:

   (a) one of the obligations laid down in the customs legislation for the exit of the goods;

   (b) the conditions under which the goods were allowed to be taken out of the customs territory of the Union with total or partial relief from export duty.

2. The time at which the customs debt is incurred shall be one of the following:

   (a) the moment at which the goods are actually taken out of the customs territory of the Union without providing information to the customs authorities on such export;

   (b) the moment at which the goods reach a destination other than that for which they were allowed to be taken out of the customs territory of the Union with total or partial relief from export duty;

   (c) should the customs authorities be unable to determine the moment referred to in point (b), the expiry of the time-limit set for the production of evidence that the conditions entitling the goods to such relief have been fulfilled.

3. In cases referred to under paragraph 1, point (a), the debtor shall be any of the following:

   (a) any person who was required to fulfil the obligation concerned;

   (b) any person who was aware or should reasonably have been aware that the obligation concerned was not fulfilled and who acted on behalf of the person who was obliged to fulfil the obligation;

   (c) any person who participated in the act which led to the non-fulfilment of the obligation and who was aware or should reasonably have been aware that the required information had not been provided or, where applicable, a customs declaration had not been lodged, but should have been.

4. In cases referred to under paragraph 1, point (b), the debtor shall be any person who is required to comply with the conditions under which the goods were allowed to be taken out of the customs territory of the Union with total or partial relief from export duty.

## SECTION 3
## PROVISIONS COMMON TO CUSTOMS DEBT INCURRED ON IMPORT AND EXPORT

*Article 165*

**Customs debt in case of prohibitions and restrictions**

1. The customs debt on import or export shall be incurred even if it relates to goods which are subject to other legislation applied by the customs authorities on import or export of any kind.

2. However, no customs debt shall be incurred on either of the following:

   (a) the unlawful introduction into the customs territory of the Union of counterfeit currency;

   (b) the introduction into the customs territory of the Union of narcotic drugs and psychotropic substances other than where strictly supervised by the competent authorities with a view to their use for medical and scientific purposes.

3. For the purposes of sanctions as applicable to customs infringements, the customs debt shall nevertheless be deemed to have been incurred where, under this Regulation or under the law of a Member State, import or export duty or the existence of a customs debt provide the basis for determining sanctions.

*Article 166*

**Several debtors**

Where several persons are liable for payment of the amount of import or export duty corresponding to one customs debt, they shall be jointly and severally liable for payment of that amount.

*Article 167*

**General rules for calculating the amount of import or export duty**

1. The amount of import or export duty shall be determined based on the tariff classification, customs value, quantity, nature and origin of the goods. The rules for calculation of duty shall be those applicable to the goods concerned at the time at which the customs debt in respect of them was incurred.

2. Where it is not possible to determine precisely the time at which the customs debt is incurred, that time shall be deemed to be the time at which the customs authorities conclude that the goods are in a situation in which a customs debt has been incurred.

   However, where the information available to the customs authorities enables them to establish that the customs debt had been incurred prior to the time at which they reached that conclusion, the customs debt shall be deemed to have been incurred at the earliest time that such a situation can be established.

3. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining the rules referred to in this Article for the calculation of the amount of import or export duty applicable to goods for which a customs debt is incurred in the context of a special procedure.

*Article 168*

**Special rules for calculating the amount of import duty**

1. Where costs for storage or usual forms of handling have been incurred within the customs territory of the Union in respect of goods placed under a customs procedure or in temporary storage, such costs or the increase in value shall not be taken into account for the calculation of the amount of import duty where satisfactory proof of those costs is provided by the importer or by the exporter or, where applicable, by the declarant.

   However, the customs value, quantity, nature and origin of non-Union goods used in the operations shall be taken into account for the calculation of the amount of import duty.

2. Where the tariff classification of goods placed under a customs procedure changes as a result of usual forms of handling within the customs territory of the Union, the original tariff classification for the goods placed under the procedure shall be applied at the request of the importer or, where applicable, of the declarant.

3. Where a customs debt is incurred for processed products resulting from the inward processing procedure, the amount of import duty corresponding to such debt shall, at the request of the importer, be determined on the basis of the tariff classification, customs value, quantity, nature and origin of the goods placed under the inward processing procedure.

4. Where the processed products result from subsequent inward processing procedures, the importer may only request the debt to be determined on the basis of the tariff classification, customs value, quantity, nature and origin of the goods placed under the first inward processing procedure.

5. In specific cases, the amount of import duty shall be determined in accordance with paragraphs 2, 3 and 4 of this Article without a request of importer or the exporter or, where applicable, of the declarant in order to avoid the circumvention of tariff measures referred to in Article 145(2), point (h).

6. Where a customs debt is incurred for processed products resulting from the outward processing procedure or replacement products as referred to in Article 143(1), the amount of import duty shall be calculated on the basis of the cost of the processing operation undertaken outside the customs territory of the Union.

7. Where a customs debt is incurred pursuant to Article 161 or Article 164 of this Regulation, if the failure which led to the incurrence of a customs debt did not constitute an attempt at deception, the following shall also apply:

   (a) the favourable tariff treatment of goods pursuant to customs legislation; or

   (b) the relief or total or partial exemption from import or export duty pursuant to Article 145(2), points (d), (e), (f) and (g) or Articles 90, 91, 92 and 93 or Articles 140, 141, 142, 143 and 144; or

   (c) the relief pursuant to Regulation (EC) No 1186/2009.

8. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining the rules referred to in this Article for the calculation of the amount of import or export duty applicable to goods for which a customs debt is incurred in the context of a special procedure, and the specific cases referred to in paragraph 5.

*Article 169*

**Place where the customs debt is incurred**

1. A customs debt shall be incurred at the place where the importer or exporter is established.

   By way of derogation from the first subparagraph, in relation to importers and exporters other than Trust and Check traders and deemed importers, the customs debt shall be incurred at the place where the customs declaration has been lodged or would have been lodged in accordance with Article 63(4) but for the modification concerning the method of providing information laid down Article 63(2).

   In all other cases, the customs debt shall be incurred at the place where the events from which it arises occur.

   If it is not possible to determine that place, the customs debt shall be incurred at the place where the customs authorities conclude that the goods are in a situation in which a customs debt is incurred.

2. If the goods have been placed under a customs procedure which has not been discharged or when a temporary storage did not end properly, and the place where the customs debt is incurred cannot be determined pursuant to the second or third subparagraphs of paragraph 1 within a specific time-limit, the customs debt shall be incurred at the place where the goods were either placed under the procedure concerned or were introduced into the customs territory of the Union under that procedure or were in temporary storage.

3. Where the information available to the customs authorities enables them to establish that the customs debt may have been incurred in several places, the customs debt shall be deemed to have been incurred at the place where it was first incurred.

4. If a customs authority establishes that a customs debt has been incurred under Article 161 or Article 164 in another Member State and the amount of import or export duty corresponding to that debt is lower than EUR 10 000, the customs debt shall be deemed to have been incurred in the Member State where the finding was made.

5. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining the time limits referred to in paragraph 2.

# Chapter 2
# Guarantee for a potential or existing customs debt

*Article 170*

**General provisions**

1. Unless otherwise specified, this Chapter shall apply to guarantees for customs debts which have been incurred but whose payment is deferred ('existing customs debts') and to guarantees that are required in case a customs debt may be incurred ('potential customs debts').

2. Where customs authorities require a guarantee for a potential or existing customs debt to be provided, that guarantee shall cover the amount of import or export duty and the other charges due in connection with the import or export of the goods where:

   (a) the guarantee is used for the placing of goods under the Union transit procedure; or

   (b) the guarantee may be used in more than one Member State.

   A guarantee accepted or authorised by the customs authorities shall be valid throughout the customs territory of the Union, for the purposes for which it is given.

3. The guarantee shall be provided by the debtor or the person who may become the debtor or, if the customs authorities allow it, by any other person.

4. Without prejudice to Article 178, the customs authorities shall require only one guarantee to be provided in respect of specific goods.

   The guarantee provided for specific goods shall apply to the amount of import or export duty corresponding to the customs debt and other charges in respect of those goods, whether or not the information provided or made available on those goods is correct.

   If the guarantee has not been released, it may also be used, within the limits of the secured amount, for the recovery of amounts of import or export duty and other charges payable following post-release control of those goods.

5. Upon application by the person referred to in paragraph 3, the customs authorities may, in accordance with Article 176(1) and (2), authorise the provision of a comprehensive guarantee to cover the amount of import or export duty corresponding to the customs debt in respect of two or more operations or customs procedures.

6. The customs authorities shall monitor the guarantee.

7. No guarantee shall be required in any of the following situations:

(a) from States, regional and local government authorities or other bodies governed by public law, in respect of the activities in which they engage as public authorities;

(b) for goods carried on the Rhine, the Rhine waterways, the Danube or the Danube waterways;

(c) for goods carried by a fixed transport installation;

(d) in specific cases where goods are placed under the temporary admission procedure;

(e) for goods carried by sea or air between Union ports or between Union airports.

8. The customs authorities may waive the requirement for provision of a guarantee where the amount of import or export duty to be secured does not exceed the statistical value threshold of EUR 1 000 in value.

9. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining the specific cases where no guarantee is required for goods placed under the temporary admission procedure, as referred to in paragraph 7, point (d).

10. The Commission shall specify, by means of implementing acts, the procedural rules regarding the provision and the monitoring of the guarantee referred to in this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 171*

**Reference amount of a compulsory guarantee**

1. Where the customs authorities must require a guarantee and can establish the precise amount of import or export duty corresponding to the customs debt and of other charges at the time when the guarantee is required, the guarantee shall cover that precise amount.

Where it is not possible to establish the precise amount, the guarantee shall be fixed at the maximum amount, as estimated by the customs authorities, of import or export duty corresponding to the customs debt and of other charges which have been or may be incurred.

2. Without prejudice to Article 176, where a comprehensive guarantee is provided for the amount of import or export duty corresponding to customs debts and other charges which vary in amount over time, the amount of such guarantee shall be set at a level enabling the amount of import or export duty corresponding to customs debts and other charges to be covered at all times.

*Article 172*

**Reference amount of a precautionary guarantee**

Where providing a guarantee is not compulsory but the customs authorities are not certain that the amount of import or export duty corresponding to a customs debt and other charges will be paid within the prescribed period, they shall require a guarantee for an amount that may not exceed the level referred to in Article 171.

*Article 173*

**Provision of a guarantee**

1. A guarantee may be provided in one of the following forms:

   (a) by any means of payment recognised by the customs authorities, made in euro or in the currency of the Member State in which the guarantee is required;

   (b) by an undertaking given by a guarantor;

   (c) by another form of guarantee which provides equivalent assurance that the amount of import or export duty corresponding to the customs debt and other charges will be paid.

2. A guarantee in the form of a cash deposit or any other equivalent means of payment shall be given in accordance with the provisions in force in the Member State in which the guarantee is required.

   Where a guarantee is given by any means of payment recognised by the customs authorities, no interest thereon shall be payable by the customs authorities.

3. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining the form of the guarantee referred to in paragraph 1, point (c).

*Article 174*

**Choice of guarantee**

The person required to provide a guarantee may choose between the forms of guarantee laid down in Article 173(1).

However, the customs authorities may refuse to accept the form of guarantee chosen where it is incompatible with the proper functioning of the customs procedure concerned.

The customs authorities may require that the form of guarantee chosen be maintained for a specific period.

*Article 175*

**Guarantor**

1. The guarantor referred to in Article 173(1), point (b) shall be a third person resident, registered or established in the customs territory of the Union. The guarantor shall be

approved by the customs authorities requiring the guarantee, unless the guarantor is a credit institution, financial institution or insurance company accredited in the Union in accordance with Union provisions in force.

2. The guarantor shall undertake in writing to pay the secured amount of import or export duty corresponding to a customs debt and other charges.

3. The customs authorities may refuse to approve the guarantor or the type of guarantee proposed where either does not appear certain to ensure payment within the prescribed period of the amount of import or export duty corresponding to the customs debt and of other charges.

4. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining the rules concerning the forms for the provision of a guarantee and the rules applicable to the guarantor referred to in this Article.

5. The Commission shall specify, by means of implementing acts, the procedural rules regarding the revocation and cancellation of the undertaking given by the guarantor referred to in this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 176*

**Comprehensive guarantee**

1. The customs authorities may only grant the authorisation referred to in Article 170(5) to persons who satisfy the following conditions:

   (a) they are established in the customs territory of the Union;

   (b) they fulfil the criteria laid down in Article 24(1), point (a);

   (c) they are regular users of the customs procedures involved or operators of temporary storage facilities or they fulfil the criteria laid down in Article 24(1), point (d).

2. The customs authorities may authorise an economic operator fulfilling the criteria laid down in Article 24(1), points (b) and (c) and Trust and Check traders to provide a comprehensive guarantee for potential customs debts and other charges with a reduced amount or to have a guarantee waiver.

3. The customs authorities may authorise an authorised economic operator for customs simplifications and a Trust and Check trader to provide a comprehensive guarantee for existing customs debts and other charges, upon application, with a reduced amount.

4. The comprehensive guarantee with a reduced amount referred to in paragraph 3 shall be equivalent to the provision of a guarantee.

5. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining the conditions for the granting of

an authorisation to use a comprehensive guarantee with a reduced amount or to have a guarantee waiver referred to in paragraph 2.

6. The Commission shall specify, by means of implementing acts, the procedural rules for determining the amount of the guarantee, including the reduced amount referred to in paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 177*

**Temporary prohibitions relating to the use of comprehensive guarantees**

1. In the context of special procedures or temporary storage, the Commission may decide to temporarily prohibit recourse to any of the following:

(a) the comprehensive guarantee for a reduced amount or a guarantee waiver referred to in Article 176(2);

(b) the comprehensive guarantee referred to in Article 176, in respect of goods which have been identified as being subject to large-scale fraud.

2. Where point (a) or point (b) of paragraph 1 applies, recourse to the comprehensive guarantee for a reduced amount or a guarantee waiver or recourse to the comprehensive guarantee referred to in Article 176 may be authorised where the person concerned fulfils either of the following conditions:

(a) that person can show that no customs debt has arisen in respect of the goods in question in the course of operations which that person has undertaken in the 2 years preceding the decision referred to in paragraph 1;

(b) where customs debts have arisen in the 2 years preceding the decision referred to in paragraph 1, the person concerned can show that those debts were fully paid by the debtor or debtors or the guarantor within the prescribed time limit.

To obtain authorisation to use a temporarily prohibited comprehensive guarantee, the person concerned must also fulfil the criteria laid down in Article 24(1), points (b) and (c).

3. The Commission shall specify, by means of implementing acts, the rules regarding the temporary prohibitions relating to the use of comprehensive guarantees referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

On imperative grounds of urgency relating to such measures, duly justified by the need to rapidly enhance the protection of the financial interests of the Union and of its Member States, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 262(5).

*Article 178*

**Additional or replacement guarantee**

Where the customs authorities establish that the guarantee provided does not ensure, or is no longer certain or sufficient to ensure, payment within the prescribed period of the amount of import or export duty corresponding to the customs debt and other charges, they shall require any of the persons referred to in Article 170(3) either to provide an additional guarantee or to replace the original guarantee with a new guarantee, according to that person's choice.

*Article 179*

**Release of the guarantee**

1. The customs authorities shall release the guarantee immediately when the customs debt or liability for other charges is extinguished or can no longer arise.

2. Where the customs debt or liability for other charges has been extinguished in part, or may arise only in respect of part of the amount which has been secured, a corresponding part of the guarantee shall be released accordingly at the request of the person concerned, unless the amount involved does not justify such action.

3. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining the time limits for the release of a guarantee.

4. The Commission shall specify, by means of implementing acts, the procedural rules regarding the release of the guarantee referred to in this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

# Chapter 3
# Recovery, payment, repayment and remission of the amount of import or export duty

## SECTION 1
## DETERMINATION OF THE AMOUNT OF IMPORT OR EXPORT DUTY, NOTIFICATION OF THE CUSTOMS DEBT AND ENTRY INTO THE ACCOUNTS

*Article 180*

**Determination of the amount of import or export duty**

1. The importer and the exporter shall calculate the amount of import or export duty payable. Upon release of the goods, the customs authorities are deemed to accept the amount of import or export duty payable as calculated by the importer and the exporter, without prejudice to post-release controls. If that person does not calculate the amount or the customs authorities disagree with the amount calculated by that person, the customs authorities responsible for the place where the customs debt is incurred or is deemed to have been incurred in accordance with Article 169, shall determine the

amount of import or export duty payable as soon as they have the necessary information.

2. By way of derogation from paragraph 1, until the date set out in Article 265(3), where a customs declaration has been lodged, the customs authorities may accept the amount of import or export duty payable determined in the customs declaration, without prejudice to post-release controls. If the customs authorities disagree with that amount they shall determine the amount of import or export duty payable as soon as they have the necessary information.

3. Where the amount of import or export duty payable does not result in a whole number, that amount may be rounded.

Where the amount referred in the first subparagraph is expressed in euro, rounding may not be more than a rounding up or down to the nearest whole number.

Importers and exporters established in a Member State whose currency is not the euro may either apply mutatis mutandis the provisions of the second subparagraph or derogate from that subparagraph, provided that the rules applicable on rounding do not have a greater financial impact than the rule set out in the second subparagraph.

*Article 181*

**Notification of the customs debt**

1. Upon release of the goods, the customs authorities are deemed to have notified the customs debt to the importer or the exporter.

2. Where the customs authorities have determined the amount of import or export duty payable, they shall notify it to the debtor in the form prescribed at the place where the customs debt is incurred, or is deemed to have been incurred in accordance with Article 169.

The notification referred to in the first subparagraph shall not be made in any of the following cases:

(a) where, pending a final determination of the amount of import or export duty, a provisional anti-dumping duty or a provisional countervailing duty or a provisional safeguard measure has been imposed;

(b) where the amount of import or export duty payable exceeds that determined on the basis of a decision made in accordance with Article 13;

(c) where the original decision not to notify the customs debt or to notify it with an amount of import or export duty at a figure less than the amount of import or export duty payable was taken on the basis of general provisions invalidated at a later date by a court decision;

(d) where the customs authorities are exempted under the customs legislation from notification of the customs debt.

3. Where the customs authorities must notify the amount of import or export duty payable in accordance with paragraph 2, the customs authorities shall notify the customs debt to the debtor when they are in a position to determine that amount and take a decision thereon.

However, where the notification of the customs debt would prejudice a criminal investigation, the customs authorities may defer that notification until such time as it no longer prejudices the criminal investigation.

4. The customs authorities may allow a Trust and Check trader to calculate the customs debt corresponding to the total amount of import or export duty relating to all the goods that this operator has released on behalf of the customs authorities during a period that shall not exceed 31 calendar days, and communicate this to the customs authorities with a breakdown of amounts related to each specific consignments of goods. If the customs authorities disagree with the amount calculated and communicated, they shall determine the amount of import or export duty payable.

5. By way of derogation from paragraph 1, where Title XII, Chapter 6, Section 4 of Directive 2006/112/EC applies to the distance sales of goods to be imported from third countries to a customer in the customs territory of the Union, the customs authorities may authorise a deemed importer to calculate and communicate the customs debt corresponding to the total amount of import duty relating to all the goods released to that deemed importer during one month by the end of the following month, with breakdown of amounts related to each specific consignments of goods. This communication may amend or invalidate the information that the deemed importer had provided in accordance with Article 59(2). If the customs authorities disagree with the amount calculated and communicated, they shall determine the amount of import or export duty payable. The customs authorities shall be deemed to have notified the customs debt where they have not disagreed with the communication within a reasonable period of time after the trader has submitted it.

6. Until the date set out in Article 265(3), where a customs declaration is lodged, provided that payment has been guaranteed, the customs authorities may allow that the customs debt corresponding to the total amount of import or export duty relating to all the goods released to one and the same person during a fixed period be notified at the end of that period. The period fixed by the customs authorities shall not exceed 31 days.

7. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining:

(a) the cases referred to in paragraph 2, second subparagraph, point (d), where the customs authorities are exempted from notification of the customs debt;

(b) the reasonable time for considering lack of disagreement as referred to in paragraph 5;

(c) the information to be provided in the deemed importer's communication in paragraph 5.

*Article 182*

**Limitation of the customs debt**

1. The customs authorities shall not notify a customs debt to the debtor after the expiry of a period of 3 years from the date on which the customs debt was incurred.

2. Where the customs debt is incurred as the result of an act which, at the time it was committed, was liable to give rise to criminal court proceedings, the three-year period laid down in paragraph 1 shall be extended to a period of a minimum of 5 years and a maximum of 10 years in accordance with national law.

3. The periods laid down in paragraphs 1 and 2 shall be suspended where:

   (a) an appeal is lodged in accordance with Article 16;

   (b) such suspension shall apply from the date on which the appeal is lodged and shall last for the duration of the appeal proceedings; or

   (c) the customs authorities communicate to the debtor, in accordance with Article 6(6), the grounds on which they intend to notify the customs debt; such suspension shall apply from the date of that communication until the end of the period within which the debtor is given the opportunity to express his or her point of view.

4. Where a customs debt is reinstated pursuant to Article 193(7), the periods laid down in paragraphs 1 and 2 shall be considered as suspended from the date on which the application for repayment or remission was submitted in accordance with Article 198, until the date on which the decision on the repayment or remission was taken.

*Article 183*

**Entry in the accounts**

1. The customs authorities referred to in Article 180 shall enter in their accounts, in accordance with the national legislation, the amount of import or export duty payable as notified in accordance with Article 181.

   The obligation of customs authorities in the first subparagraph shall not apply in cases referred to in Article 181(2), second subparagraph.

2. The customs authorities do not need to enter in the accounts amounts of import or export duty that, pursuant to Article 182, correspond to a customs debt which could no longer be notified to the debtor.

3. Member States shall determine the practical procedures for the entry in the accounts of the amounts of import or export duty. Those procedures may differ according to whether, in view of the circumstances in which the customs debt was incurred, the customs authorities are satisfied that those amounts will be paid.

*Article 184*

**Time of entry in the accounts**

1. The customs authorities shall enter the amount of import or export duty payable in the accounts within 14 days of the release of the goods except where the goods are placed in temporary admission with partial relief from import duty.

2. By way of derogation from paragraph 1, the customs authorities may cover the total amount of import or export duty relating to all the goods released to a Trust and check trader during a fixed period, in accordance with Article 181(4), with a single entry in the accounts at the end of that period.

   Such entry in the accounts shall take place within 14 days of the expiry of the period concerned.

3. By way of derogation from paragraph 1, the total amount of import duty relating to all the goods released to a deemed importer during one month in accordance with Article 181(5) may be covered by a single entry in the accounts by the end of the following month containing the breakdown of amounts related to each specific consignments of goods.

4. Until the date set out in Article 265(3), where a customs declaration is lodged, provided that payment has been guaranteed, the customs authorities may allow that the customs debt corresponding to the total amount of import or export duty relating to all the goods released to one and the same person during a fixed period, which may not exceed 31 days, be notified at the end of that period.

   Such entry in the accounts shall take place within 14 days of the expiry of the period concerned.

5. Where goods may be released subject to certain conditions which govern either the determination of the amount of import or export duty payable or its collection, entry in the accounts shall take place within 14 days of the day on which the amount of import or export duty payable is determined or the obligation to pay that duty is fixed.

   However, where the customs debt relates to a provisional anti-dumping duty, a provisional countervailing duty or a provisional safeguard measure, the amount of import or export duty payable shall be entered in the accounts within two months of the date of publication in the Official Journal of the European Union of the Regulation establishing the definitive duty.

6. Where a customs debt is incurred in circumstances not covered by paragraph 1 , the amount of import or export duty payable shall be entered in the accounts within 14 days of the date on which the customs authorities are in a position to determine the amount of import or export duty in question and take a decision.

7. Paragraph 6 shall apply with regard to the amount of import or export duty to be recovered or which remains to be recovered where the amount of import or export duty payable has not been entered in the accounts in accordance with paragraphs 1 to 6 or has been determined and entered in the accounts at a level lower than the amount payable.

8. The time-limits for entry in the accounts laid down in paragraphs 1 to 6 shall not apply in unforeseeable circumstances or in cases of force majeure.

9. The entry in the accounts may be deferred in the case referred to in Article 181(3), second subparagraph, until such time as the notification of the customs debt no longer prejudices a criminal investigation.

*Article 185*

**Conferral of implementing powers**

The Commission shall adopt, by means of implementing acts, measures to ensure mutual assistance between the customs authorities in case of incurrence of a customs debt.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

## SECTION 2
## PAYMENT OF THE AMOUNT OF IMPORT OR EXPORT DUTY

*Article 186*

**General time-limits for payment and suspension of the time-limit for payment**

1. The debtor shall pay the amounts of import or export duty, corresponding to a customs debt notified in accordance with Article 181 within the period prescribed by the customs authorities.

   Without prejudice to Article 17(2), that period shall not exceed 10 days following notification to the debtor of the customs debt.

   The customs authorities may extend that period upon application by the debtor where the amount of import or export duty payable has been determined in the course of post-release controls as referred to in Article 48. Without prejudice to Article 190(2), such extensions shall not exceed the time necessary for the debtor to take the appropriate steps to discharge his or her obligation.

2. By way of derogation from paragraph 1, the amount of import duty corresponding to a customs debt notified in accordance with Article 181(5) shall be paid by the debtor at the latest at the expiry of the deadline by which the customs debt must be notified.

3. If the debtor is entitled to any of the payment facilities laid down in Article 188 to Article 190, payment shall be made within the period or periods specified in relation to those facilities.

4. The time-limit for payment of the amount of import or export duty corresponding to a customs debt shall be suspended in any of the following cases:

   (a) where an application for remission of duty is made in accordance with Article 198;

(b) where goods are to be confiscated, destroyed or abandoned to the State;

(c) where the customs debt was incurred pursuant to Article 161 and there is more than one debtor.

5. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by determining the rules for the suspension of the time-limit for payment of the amount of import or export duty corresponding to a customs debt referred to in paragraph 3, and by determining the period of suspension.

*Article 187*

**Payment**

1. Payment shall be made in cash or by any other means with similar discharging effect, including by adjustment of a credit balance, in accordance with national legislation.

2. Payment may be made by a third person instead of the debtor.

3. The debtor may in any case pay all or part of the amount of import or export duty without awaiting expiry of the period he or she has been granted for payment.

*Article 188*

**Deferment of payment**

The customs authorities shall, upon application by the person concerned and upon provision of a guarantee, authorise to defer the payment of the duty payable in any of the following ways:

(a) separately in respect of each amount of import or export duty entered in the accounts in accordance with Article 184(1), or Article 184(7);

(b) globally in respect of all amounts of import or export duty entered in the accounts in accordance with Article 184(1) during a period fixed by the customs authorities and not exceeding 31 days;

(c) globally in respect of all amounts of import or export duty forming a single entry in accordance with Article 184(2), (3) and (4).

*Article 189*

**Periods for which payment is deferred**

1. The period for which payment is deferred under Article 188 shall be 30 days.

2. Where payment is deferred in accordance with Article 188, point (a), the period shall begin on the day following that on which the customs debt is notified to the debtor.

3. Where payment is deferred in accordance with Article 188, point (b), the period shall begin on the day following that on which the aggregation period ends. It shall be

reduced by the number of days corresponding to half the number of days covered by the aggregation period.

4. Where payment is deferred in accordance with Article 188, point (c), the period shall begin on the day following the end of the period fixed for release of the goods in question. It shall be reduced by the number of days corresponding to half the number of days covered by the period concerned.

5. Where the number of days in the periods referred to in paragraphs 3 and 4 is an odd number, the number of days to be deducted from the 30-day period pursuant to those paragraphs shall be equal to half the next lowest even number.

6. Where the periods referred to in paragraphs 3 and 4 are weeks, Member States may provide that the amount of import or export duty in respect of which payment has been deferred is to be paid on the Friday of the fourth week following the week in question at the latest.

If those periods are months, Member States may provide that the amount of import or export duty in respect of which payment has been deferred is to be paid by the 16th day of the month following the month in question. Those periods may not be extended even if the end of the period falls on a public holiday.

*Article 190*

**Other payment facilities**

1. The customs authorities may grant the debtor payment facilities other than deferred payment on condition that a guarantee is provided.

2. Where facilities are granted pursuant to paragraph 1, credit interest shall be charged on the amount of import or export duty.

For a Member State whose currency is the euro, the rate of credit interest shall be equal to the interest rate as published in the Official Journal of the European Union, C series, which the European Central Bank applied to its main refinancing operations, on the first day of the month in which the due date fell, increased by one percentage point.

For a Member State whose currency is not the euro, the rate of credit interest shall be equal to the rate applied on the first day of the month in question by the National Central Bank for its main refinancing operations, increased by one percentage point, or, for a Member State for which the National Central Bank rate is not available, the most equivalent rate applied on the first day of the month in question on the Member State's money market, increased by one percentage point.

3. The customs authorities may refrain from requiring a guarantee or from charging credit interest where it is established, on the basis of a documented assessment of the situation of the debtor, that this would create serious economic or social difficulties.

4. The customs authorities shall refrain from charging credit interest where the amount for each recovery action is less than EUR 10.

*Article 191*

**Enforcement of payment**

Where the amount of import or export duty payable has not been paid within the prescribed period, the customs authorities shall secure payment of that amount by all means available to them under the law of the Member State concerned.

*Article 192*

**Interest on arrears**

1. Interest on arrears shall be charged on the amount of import or export duty from the date of expiry of the prescribed period until the date of payment.

   For a Member State whose currency is the euro, the rate of interest on arrears shall be equal to the interest rate as published in the Official Journal of the European Union, C series, which the European Central Bank applied to its main refinancing operations, on the first day of the month in which the due date fell, increased by two percentage points.

   For a Member State whose currency is not the euro, the rate of interest on arrears shall be equal to the rate applied on the first day of the month in question by the National Central Bank for its main refinancing operations, increased by two percentage points, or, for a Member State for which the National Central Bank rate is not available, the most equivalent rate applied on the first day of the month in question on the Member State's money market, increased by two percentage points.

2. Where the customs debt is incurred on the basis of Article 161 or Article 164, or where the notification of the customs debt results from a post-release control, interest on arrears shall be charged over and above the amount of import or export duty, from the date on which the customs debt was incurred until the date of its notification.

   The rate of interest on arrears shall be set in accordance with paragraph 1.

3. The customs authorities may refrain from charging interest on arrears where it is established, on the basis of a documented assessment of the situation of the debtor, that to charge it would create serious economic or social difficulties.

4. The customs authorities shall refrain from charging interest on arrears where the amount for each recovery action is less than EUR 10.

## SECTION 3
## REPAYMENT AND REMISSION

*Article 193*

**Repayment and remission**

1. Subject to the conditions laid down in this Section, the customs authorities shall repay or remit amounts of import or export duty on any of the following grounds:

(a) overcharged amounts of import or export duty;

(b) defective goods or goods not complying with the terms of the contract;

(c) error by the competent authorities;

(d) equity;

(e) invalidation of the data on the basis of which the customs debt was established for the corresponding goods or, where applicable, of the corresponding customs declaration.

2. The customs authorities shall repay or remit the amount of import or export duty referred to in paragraph 1 where it is EUR 10 or more, except where the person concerned requests the repayment or remission of a lower amount.

3. Where the customs authorities consider that repayment or remission should be granted on the basis of Articles 196 and 197, the Member State concerned shall transmit the file to the Commission for decision in any of the following cases:

(a) where the customs authorities consider that the special circumstances are the result of the Commission failing in its obligations;

(b) where the customs authorities consider that the Commission committed an error within the meaning of Article 196;

(c) where the circumstances of the case relate to the findings of a Union investigation carried out under Regulation (EC) No 515/97, or under any other Union legislation or any agreement concluded by the Union with countries or groups of countries in which provision is made for carrying out such Union investigations;

(d) where the amount for which the person concerned may be liable in respect of one or more import or export operations equals or exceeds EUR 500 000 as a result of an error or special circumstances.

Notwithstanding the first subparagraph, files shall not be transmitted in either of the following situations:

(a) where the Commission has already adopted a decision on a case involving comparable issues of fact and of law;

(b) where the Commission is already considering a case involving comparable issues of fact and of law.

4. Subject to the rules of competence for a decision, where the customs authorities themselves discover within the periods referred to in Article 198(1) that an amount of import or export duty is repayable or remissible pursuant to Articles 194, 196 and 197, they shall repay or remit on their own initiative.

5. No repayment or remission shall be granted when the situation which led to the notification of the customs debt results from deception by the debtor.

6. Repayment shall not give rise to the payment of interest by the customs authorities concerned, except in the cases referred to paragraph 1, points (a) and (c).

However, in those cases repayment shall not give rise to the payment of interest by the customs authorities concerned if the customs authorities repay an amount of import or export duty without undue delay after it has been discovered that the amount is repayable. In case the customs authorities fail to repay that amount without undue delay and the debtor initiates proceedings with the view to obtaining repayment, the interest shall be paid for the period from the date of payment of those duties to the date of their repayment.

In addition, interest shall be paid where a decision granting repayment is not implemented within three months of the date on which that decision was taken, unless the failure to meet the deadline was outside the control of the customs authorities.

In such cases, the interest shall be paid from the date of expiry of the three-month period until the date of repayment. The rate of interest shall be established in accordance with Article 190.

7. Where the customs authorities have granted repayment or remission in error, the original customs debt shall be reinstated insofar as it is not time-barred under Article 182.

In such cases, any interest paid under the second subparagraph of paragraph 6 shall be reimbursed.

8. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation by laying down the rules with which it has to comply when taking a decision referred to in paragraph 3 and in particular on the following:

(a) the conditions for the acceptance of the file;

(b) the time-limit to take a decision and the suspension of that time-limit;

(c) the communication of the grounds on which the Commission intends to base its decision, before taking a decision which would adversely affect the person concerned;

(d) the notification of the decision;

(e) the consequences of a failure to take a decision or to notify such decision.

9. The Commission shall specify, by means of implementing acts, the procedural rules for repayment and remission and for the decision referred to in paragraph 3. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 262(2).

Where the opinion of the committee referred to in Article 262(1) is to be obtained by written procedure, Article 262(6) shall apply.

*Article 194*

**Overcharged amounts of import or export duty**

1. An amount of import or export duty shall be repaid or remitted insofar as the amount corresponding to the customs debt initially notified exceeds the amount payable, or the customs debt was notified to the debtor contrary to Article 181(1), points (c) and (d).

2. Where the application for repayment or remission is based on the existence, at the time where the goods were released for free circulation, of a reduced or zero rate of import duty on the goods under a tariff quota, a tariff ceiling or other favourable tariff measures, repayment or remission shall be granted provided that, at the time of lodging, the application was accompanied by the necessary documents and either of the following conditions is fulfilled:

   (a) in the case of a tariff quota, its volume has not been exhausted;

   (b) in other cases, the rate of duty normally due has not been re-established.

*Article 195*

**Defective goods or goods not complying with the terms of the contract**

1. The customs authorities shall repay or remit an amount of import duty where the following conditions are met:

   (a) the notification of the customs debt relates to goods which the importer has rejected because, at the time of release, they were defective or did not comply with the terms of the contract on the basis of which they were imported;

   (b) the goods have not been used, except for such initial use as may have been necessary to establish that they were defective or did not comply with the terms of the contract;

   (c) the goods are taken out of the customs territory of the Union or, upon application by the person concerned, the customs authorities have authorised that the goods are placed under the inward processing procedure, including for destruction, or under the external transit, the customs warehousing or the free zone procedure.

2. The customs authorities shall not repay or remit an amount of import duty in any of the following cases:

   (a) the goods, before being released for free circulation, were placed under a special procedure for testing, unless it is established that the fact that the goods were defective or did not comply with the terms of the contract could not normally have been detected in the course of such tests;

(b) the defective nature of the goods was taken into consideration in drawing up the terms of the contract, in particular the price, before the goods were placed under a customs procedure involving the incurrence of a customs debt;

(c) the goods are sold by the applicant after it has been ascertained that they are defective or do not comply with the terms of the contract.

3. Defective goods shall be deemed to include goods damaged before their release.

*Article 196*

**Error by the customs authorities**

1. In cases other than those referred to in Article 193(1), point (e) and in Articles 194, 195 and 197, the customs authorities shall repay or remit an amount of import or export duty where, as a result of an error on their part, they have notified an amount corresponding to the customs debt lower than the amount payable, provided the following conditions are met:

(a) the debtor could not reasonably have detected that error;

(b) the debtor was acting in good faith.

2. Where the conditions laid down in Article 194(2) are not fulfilled, the customs authorities shall repay or remit where failure to apply the reduced or zero rate of duty was as a result of an error on their part and the data based on which the goods were released, or where applicable, the customs declaration for release for free circulation contained all the particulars and was accompanied by all the documents necessary for application of the reduced or zero rate.

3. Where the preferential treatment of the goods is granted on the basis of a system of administrative cooperation involving the authorities of a third country, the issue of a certificate by those authorities, should it prove to be incorrect, shall constitute an error which could not reasonably have been detected within the meaning of paragraph 1, point (a).

The issue of an incorrect certificate shall not, however, constitute an error where the certificate is based on an incorrect account of the facts provided by the exporter, except where it is evident that the issuing authorities were aware or should have been aware that the goods did not satisfy the conditions laid down for entitlement to the preferential treatment.

The debtor shall be considered to be in good faith if he or she can demonstrate that, during the period of the trading operations concerned, he or she has taken due care to ensure that all the conditions for the preferential treatment have been fulfilled.

The debtor may not rely on a plea of good faith if the Commission has published a notice in the Official Journal of the European Union stating that there are grounds for doubt concerning the proper application of the preferential arrangements by the beneficiary country or territory.

*Article 197*

**Equity**

1. In cases other than those referred to in Article 193(1), point (e) and in Articles 194, 195 and 196, the customs authorities shall repay or remit an amount of import or export duty in the interest of equity where a customs debt is incurred under special circumstances in which no deception or obvious negligence may be attributed to the debtor.

2. The special circumstances referred to in paragraph 1 shall be deemed to exist where it is clear from the circumstances of the case that the debtor is in an exceptional situation as compared with other operators engaged in the same business, and that, in the absence of such circumstances, he or she would not have suffered disadvantage by the collection of the amount of import or export duty.

*Article 198*

**Procedure for repayment and remission**

1. Applications for repayment or remission in accordance with Article 193 shall be submitted to the customs authorities within the following periods:

   (a) in the case of overcharged, amounts of import or export duty, error by the competent authorities or equity, within 3 years of the date of notification of the customs debt;

   (b) in the case of defective goods or goods not complying with the terms of the contract, within one year of the date of notification of the customs debt;

   (c) in the case of invalidation of the data or, where applicable, of a customs declaration, based on which the goods were released, within one year of the date of invalidation of that data or of that customs declaration unless otherwise specified in the rules applicable to invalidation.

   The period specified in the first subparagraph, points (a) and (b), shall be extended where the applicant provides evidence that he or she was prevented from submitting an application within the prescribed period as a result of unforeseeable circumstances or force majeure.

2. Where the customs authorities are not in a position, on the basis of the grounds adduced, to grant repayment or remission of an amount of import or export duty, it is required to examine the merits of an application for repayment or remission in the light of the other grounds for repayment or remission referred to in Article 193.

3. Where an appeal has been lodged under Article 16 against the notification of the customs debt, the relevant period specified in the first subparagraph of paragraph 1 as well as the examining of the remission and repayment applications and the related time-limits shall be suspended, from the date on which the appeal is lodged, for the duration of the appeal proceedings.

4. Where a customs authority grants repayment or remission in accordance with Articles 196 and 197, the Member State concerned shall inform the Commission thereof.

5. The Commission shall specify, by means of implementing acts, the procedural rules for informing the Commission pursuant to paragraph 4 and the information to be provided. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

# Chapter 4
# Extinguishment of a customs debt

*Article 199*

**Extinguishment**

1. Without prejudice to the provisions in force relating to non-recovery of the amount of import or export duty corresponding to a customs debt in the event of the judicially established insolvency of the debtor, a customs debt on import or export shall be extinguished in any of the following ways:

(a) where the debtor can no longer be notified of the customs debt in accordance with Article 181;

(b) by payment of the amount of import or export duty;

(c) subject to paragraph 5, by remission of the amount of import or export duty;

(d) where, in respect of goods released for a customs procedure entailing the obligation to pay import or export duty, the data on the basis of which the release was carried out or the customs declaration are invalidated;

(e) where goods liable to import or export duty are confiscated or seized and simultaneously or subsequently confiscated;

(f) where goods liable to import or export duty are destroyed under customs supervision or abandoned to the State;

(g) where the disappearance of the goods or the non-fulfilment of obligations arising from the customs legislation results from the total destruction or irretrievable loss of those goods as a result of the actual nature of the goods or unforeseeable circumstances or force majeure, or as a consequence of instruction by the customs authorities; for the purpose of this point, goods shall be considered as irretrievably lost when they have been rendered unusable by any person;

(h) where the customs debt was incurred pursuant to Article 161 or Article 164 and where the following conditions are fulfilled:

(i) the failure which led to the incurrence of a customs debt had no significant effect on the correct operation of the temporary storage or of the customs procedure concerned and did not constitute an attempt at deception;

(ii) all of the formalities necessary to regularise the situation of the goods are subsequently carried out;

(i) where goods released for free circulation duty-free, or at a reduced rate of import duty by virtue of their end-use, have been exported with the permission of the customs authorities;

(j) where it was incurred pursuant to Article 160 and where the formalities carried out in order to enable the preferential tariff treatment referred to in that Article to be granted are cancelled;

(k) where, subject to paragraph 6, the customs debt was incurred pursuant to Article 161 and evidence is provided to the satisfaction of the customs authorities that the goods have not been used or consumed and have been taken out of the customs territory of the Union.

2. In the cases referred to in paragraph 1, point (e), the customs debt shall, nevertheless, for the purposes of sanctions applicable to customs infringements, be deemed not to have been extinguished where, under this Regulation and under the law of a Member State, import or export duty or the existence of a customs debt provide the basis for determining sanctions.

3. Where, in accordance with paragraph 1, point (g), a customs debt is extinguished in respect of goods released for free circulation duty-free or at a reduced rate of import duty on account of their end-use, any scrap or waste resulting from their destruction shall be deemed to be non-Union goods.

4. The provisions in force pertaining to standard rates for irretrievable loss due to the nature of goods shall apply where the person concerned fails to show that the real loss exceeds that calculated by applying the standard rate for the goods in question.

5. Where several persons are liable for payment of the amount of import or export duty corresponding to the customs debt and remission is granted, the customs debt shall be extinguished only in respect of the person or persons to whom the remission is granted.

6. In the case referred to in paragraph 1, point (k), the customs debt shall not be extinguished in respect of any person or persons who attempted deception.

7. Where the customs debt was incurred pursuant to Article 161, it shall be extinguished with regard to the person whose behaviour did not involve any attempt at deception and who contributed to the fight against fraud.

8. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to supplement this Regulation, by determining the list of failures with no significant effect on the correct operation of the temporary storage or of the customs procedure concerned as referred to in paragraph 1, point (h)(i).

*Article 200*

**Application of sanctions**

Where the customs debt is extinguished on the basis of Article 199(1), point (h), Member States shall not be precluded from the application of sanctions for failure to comply with the customs legislation.

# Title XI
# RESTRICTIVE MEASURES AND CRISIS MANAGEMENT MECHANISM

## Chapter 1
## Restrictive measures

*Article 201*

**Role of the EU Customs Authority and of the customs authorities**

1. The EU Customs Authority shall contribute to the correct application of restrictive measures adopted in accordance with Article 215 TFEU by monitoring their implementation in the are falling under its competence and, subject to review and authorisation by the Commission, by providing appropriate guidance to the customs authorities.

2. Customs authorities shall take all necessary steps to comply with the restrictive measures, taking into account the guidance of the EU Customs Authority.

*Article 202*

**Reporting**

1. The EU Customs Authority shall regularly and whenever necessary report to the Commission on the implementation of the restrictive measures by the customs authorities and in the case of any breach thereof.

2. The customs authorities shall inform the EU Customs Authority, the Commission and the national authorities of the Member States competent for sanctions implementation of any suspicion and case of circumvention of restrictive measures and of their mitigation measures in that respect.

## Chapter 2
## Crisis management mechanism

*Article 203*

**Preparation of protocols and procedures**

1. The EU Customs Authority shall prepare procedures and protocols that can be activated in accordance with Article 204(1) in case of:

   (a) a crisis at the border of one or more Member States that has an impact on the customs processes;

   (b) a crisis in another sector that requires an action by the customs authorities in cooperation with relevant authorities,

   (c) with a view to ensuring a rapid, effective and proportionate response to the situation concerned.

2. Protocols and procedures may cover in particular:

   (a) the application of common risk criteria, common priority control areas and risk profiles, appropriate mitigation measures, and customs controls;

   (b) a collaboration framework enabling making temporarily available customs officials and customs control equipment from one to another Member State.

*Article 204*

**Activation of the crisis management mechanism**

1. The Commission, on its own initiative or based on the request of one or more Member States or the EU Customs Authority, may adopt an implementing act, in accordance with the examination procedure referred to in Articles 262 (4) and (5) of this Regulation, taking into account the protocols and procedures referred to in Article 203, the appropriate and necessary measures and arrangements that should apply to address a crisis situation or to mitigate its negative effects.

2. The EU Customs Authority shall coordinate and supervise the application and implementation of the appropriate measures and arrangements by the customs authorities and shall report back on the results of this implementation to the Commission.

3. The EU Customs Authority shall set up a crisis response cell that is permanently available throughout the crisis.

4. Customs authorities shall implement and apply the measures and arrangements adopted pursuant to this Article and shall report to the EU Customs Authority on their implementation and application.

# Title XII
# THE EUROPEAN UNION CUSTOMS AUTHORITY

## Chapter 1
## Principles

*Article 205*

**Legal status**

1. The EU Customs Authority shall be a body of the Union and shall have legal personality.

2. In each of the Member States, the EU Customs Authority shall enjoy the most extensive legal capacity accorded to legal persons under their national laws. It may, in particular, acquire or dispose of movable and immovable property and be a party to legal proceedings.

3. The EU Customs Authority shall be represented by its Executive Director.

*Article 206*

**Seat**

The seat of the EU Customs Authority shall be […].

*Article 207*

**Mission and objectives of the EU Customs Authority**

1. The EU Customs Authority shall contribute to achieving the mission of customs authorities as set out in Article 2.

2. Without prejudice to the respective responsibilities of the Commission, of OLAF and of the Member States, the EU Customs Authority shall pursue the following objectives:

   (a) the EU Customs Authority shall contribute to the operational management of the customs union, and thereby coordinate and supervise operational cooperation between customs authorities and pool and provide technical expertise to increase efficiency and delivery of results;

   (b) the EU Customs Authority shall develop, operate and maintain information technologies to implement the procedures laid down in this Regulation and contribute to making optimal use of the available data for customs supervision, control and risk management purposes;

(c) the EU Customs Authority shall support customs authorities in achieving a uniform implementation of customs legislation, notably with a view to ensuring that customs controls and risk management are carried out in a harmonised way;

(d) the EU Customs Authority shall contribute to the enforcement of Union other legislation applied by the customs authorities.

# Chapter 2
# Tasks

*Article 208*

**Core tasks**

1. The EU Customs Authority shall carry out risk management tasks, in accordance with Title IV, Chapter 3.

2. The EU Customs Authority shall carry out tasks in relation to restrictive measures and crisis management mechanism in accordance with Title XI.

3. The EU Customs Authority shall perform capacity building activities and provide operational support and coordination to customs authorities. In particular, it shall:

(a) carry out diagnostics and monitoring of border crossing points and other control locations, develop common standards and issue recommendations for best practices;

(b) carry out performance measurement for the customs union, and support the Commission in its evaluation of the performance of the customs union, in accordance with Title XV, Chapter 1;

(c) prepare the minimum common training content for customs officers in the Union and monitor its use by customs authorities;

(d) contribute to a Union recognition system for universities and other schools that offer training and education programmes in the customs field;

(e) coordinate and support the creation by the Member States of specialised centres of excellence for Union-wide purposes in relevant customs areas, in particular training and customs laboratories;

(f) facilitate and coordinate research and innovation activities in the customs field;

(g) elaborate and disseminate operational manuals for the practical application of customs processes and working methods and develop common standards in this regard;

(h) issue an opinion on whether granting an authorisation for special procedures would adversely affect the interest of the Union producers, in accordance with Article 102(3), (4) and (5);

(i) cooperate with Union bodies and national authorities other than customs in accordance with Article 240(9);

(j) coordinate and support the operational cooperation between customs authorities and between customs authorities and other authorities at national level in accordance with Title XIII;

(k) organise and coordinate the joint controls referred to in Article 241;

(l) provide support and expertise to the Commission for the resolution of complex classification, valuation, and origin cases, and monitoring of decisions and the application of the decisions in this regard.

4. The EU Customs Authority shall carry out data management and processing activities necessary for the fulfilment of its tasks and for developing the national applications referred to in Article 30 of this Regulation.

*Article 209*

**Other tasks**

The Commission may entrust to the EU Customs Authority the following tasks for the implementation of the customs-related funding programmes:

(a) activities related to the development, operation and maintenance of the information technology systems used for the implementation of the Customs Union, such as the EU Customs Data Hub, as laid down in Title III;

(b) providing support to the Commission for developing and implementing an operational strategy for activities relating to the allocation, funding and procurement of control equipment, including the assessment of needs, joint procurement and co-sharing of equipment.

*Article 210*

**Further tasks**

The EU Customs Authority may be assigned further tasks in the area of free movement, import and export of third country goods, if so provided by relevant Union legal acts. Where such tasks are assigned or entrusted to the EU Customs Authority, appropriate financial and human resources shall be ensured for their implementation.

# Chapter 3
# Organisation of the EU Customs Authority

*Article 211*

**Administrative and management structure**

The administrative and management structure of the EU Customs Authority shall comprise:

(a) a Management Board, which shall exercise the functions set out in Article 215;

(b) an Executive Board which shall exercise the functions set out in Article 217;

(c) an Executive Director, who shall exercise the responsibilities set out in Article 219;

(d) a Deputy Executive Director, who shall exercise the responsibilities set out in Article 221, if the Management Board decides to create such a function.

## SECTION 1
## THE MANAGEMENT BOARD

*Article 212*

### Composition of the Management Board

1. The Management Board shall be composed of one representative from each Member State and two representatives of the Commission, all with voting rights.

2. The Management Board shall also include one member designated by the European Parliament, without the right to vote.

3. Each member of the Management Board shall have an alternate. The alternate shall represent the member in his/her absence.

4. Members of the Management Board and their alternates shall be appointed in the light of their knowledge in the field of customs, taking into account relevant managerial, administrative and budgetary skills. All parties represented in the Management Board shall make efforts to limit turnover of their representatives, in order to ensure continuity of its work. All parties shall aim to achieve a gender-balanced representation on the Management Board.

5. The term of office for members and their alternates shall be 4 years. That term shall be extendable.

*Article 213*

### Chairperson of the Management Board

1. The Management Board shall elect a Chairperson from among the Commission representatives and a Deputy Chairperson from among its other members with voting rights.

2. The Deputy Chairperson shall automatically replace the Chairperson if he/she is prevented from attending to his/ her duties.

3. The term of office of the Chairperson and of the Deputy Chairperson shall be 4 years. Their term of office may be renewed once. If, however, their membership of the Management Board ends at any time during their term of office, their term of office shall automatically expire on that date.

*Article 214*

**Meetings of the Management Board**

1. The Chairperson shall convene the meetings of the Management Board.

2. The Executive Director shall take part in the deliberations, without the right to vote.

3. The Management Board shall hold at least two ordinary meetings a year. In addition, it shall meet on the initiative of its Chairperson, at the request of the Commission, or at the request of at least one third of its members.

4. The Management Board may invite any person whose opinion may be of interest to attend its meetings as an observer.

5. The members of the Management Board and their alternates may, subject to its rules of procedure, be assisted at the meetings by advisers or experts.

6. When a matter of confidentiality or conflict of interests is on the agenda, the Management Board shall discuss and decide on this matter without the presence of the member concerned. Detailed rules for the application of this provision may be laid down in the rules of procedure.

7. The EU Customs Authority shall provide the secretariat for the Management Board.

*Article 215*

**Functions of the Management Board**

1. The Management Board shall:

   (a) give the general orientations of the EU Customs Authority’s activities;

   (b) adopt, by a majority of two-thirds of members with voting rights, the annual budget of the EU Customs Authority and exercise other functions in respect of the EU Customs Authority's budget pursuant to Chapter 4;

   (c) assess and adopt the consolidated annual activity report on the EU Customs Authority's activities, including an overview of the fulfilment of its tasks and its overall performance in achieving customs policy objectives, and send both the report and its assessment by 1 July each year to the European Parliament, the Council, the Commission and the Court of Auditors. The consolidated annual activity report shall be made public;

   (d) adopt the financial rules applicable to the EU Customs Authority in accordance with Article 222;

(e) adopt an anti-fraud strategy, proportionate to risk of fraud taking into account the costs and benefits of the measures to be implemented;

(f) adopt rules for the prevention and management of conflicts of interests in respect of its members; and shall publish annually on its website the declaration of interests of the management board members;

(g) adopt and regularly update the communication and dissemination plans referred to in Article 232, based on an analysis of needs;

(h) adopt its rules of procedure;

(i) in accordance with paragraph (2), exercise, with respect to the staff of the EU Customs Authority, the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment of Other Servants on the Authority Empowered to Conclude a Contract of Employment[33] ('the appointing authority powers');

(j) adopt implementing rules for giving effect to the Staff Regulations of Officials and the Conditions of Employment of Other Servants in accordance with Article 110(2) of the Staff Regulations;

(k) establish, where appropriate, an internal audit capacity;

(l) adopt the EU Customs Authority's security rules within the meaning of Article 233;

(m) appoint the Executive Director and Deputy Executive Director, if such a post is created, and where relevant extend their terms of office or remove them from office in accordance with Article 217;

(n) appoint an Accounting Officer, who may be the Commission's Accounting Officer, who shall be subject to the Staff Regulations of Officials and the Conditions of Employment of other servants and who shall be totally independent in the performance of his/her duties;

(o) take all decisions on the establishment of the EU Customs Authority's internal structures and, where necessary, their modification taking into consideration the EU Customs Authority's activity needs and having regard to sound budgetary management.

(p) authorise the conclusion of working arrangements in accordance with Article 240(9).

(q) set up working groups and expert panels and adopt their rules of procedure;

[33] Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1).

(r) adopt the draft single programming document referred to in Article 223 before its submission to the Commission for its opinion;

(s) taking into account the opinion of the Commission, adopt the EU Customs Authority's single programming document by a majority of two-thirds of members with voting rights and in accordance with Article 216;

(t) adopt an efficiency gains and synergies strategy;

(u) adopt a strategy for cooperation with third countries and/or international organisations;

(v) adopt a strategy for the organisational management and internal control systems;

2. The Management Board shall adopt, in accordance with Article 110 of the Staff Regulations, a decision based on Article 2(1) of the Staff Regulations and Article 6 of the Conditions of Employment, delegating relevant appointing authority powers to the Executive Director and setting out the conditions under which this delegation of powers can be suspended. The Executive Director shall be authorised to sub-delegate those powers.

3. Where exceptional circumstances so require, the Management Board may, by way of decision, temporarily suspend the delegation of the appointing authority powers to the Executive Director and those sub-delegated by the Executive Director and exercise them itself or delegate them to one of its members or to a staff member other than the Executive Director.

*Article 216*

**Voting rules of the Management Board**

1. Without prejudice to Article 215(1), points (b), (m) and (s), the Management Board shall take decisions by absolute majority of its members with voting rights.

2. The decision referred to in Article 215(1), points (b), (c), (e), (f), (j), (m), (n), (o) and (s) may only be taken if the representatives of the Commission cast a positive vote. For the purposes of taking the decision referred to in Article 215(1), point (s), the consent of the representatives of the Commission shall only be required on the elements of the decision not related to the annual and multi-annual work programme of the EU Customs Authority.

3. Each member with voting rights shall have one vote. In the absence of a member with the right to vote, his/her alternate shall be entitled to exercise his/her right to vote.

4. The Chairperson shall take part in the voting.

5. The Executive Director shall not take part in the voting.

6. The Management Board's rules of procedure shall establish more detailed voting arrangements, in particular the circumstances in which a member may act on behalf of another member.

## SECTION 2
## THE EXECUTIVE BOARD

*Article 217*

**Executive Board**

1. The Management Board shall be assisted by an Executive Board.

2. The Executive Board shall:

   (a) supervise the preparatory work for decisions to be adopted by the Management Board;

   (b) ensure, together with the Management Board, adequate follow-up to the findings and recommendations stemming from the internal or external audit reports and evaluations, as well as from investigations of OLAF and of EPPO;

   (c) supervise the implementation of the decisions of the Management Board, with a view to reinforcing supervision of administrative and budgetary management.

3. When necessary, because of urgency, the Executive Board may take certain provisional decisions on behalf of the Management Board, in particular as regards the following matters:

   (a) on administrative management matters, including the suspension of the delegation of the appointing authority powers and budgetary matters.

   (b) where a crisis situation has been identified as laid down in Title XI, and requires immediate action or adjustment of the EU Customs Authority's activities.

5. The Executive Board shall be composed of the two representatives of the Commission to the Management Board and three other members appointed by the Management Board from among its members with the right to vote. The Chairperson of the Management Board shall also be the Chairperson of the Executive Board. The Executive Director shall take part in the meetings of the Executive Board, but shall not have the right to vote. The decisions of the Executive Board shall be taken by simple majority. Decisions with respect to paragraph (2), point (b) may only be taken if one representative of the Commission casts a positive vote.

6. The term of office of members of the Executive Board shall be 4 years, and shall be renewable. The term of office of members of the Executive Board shall end when their membership of the Management Board ends.

7. The Executive Board shall hold at least one ordinary meeting every three months. In addition, it shall meet on the initiative of its Chairperson or at the request of its members.

8. The Management Board shall lay down the rules of procedure of the Executive Board.

## SECTION 3
## THE EXECUTIVE DIRECTOR

*Article 218*

**Appointment, dismissal, and extension of the term of office**

1. The Executive Director shall be engaged as a temporary agent of the EU Customs Authority in accordance with Article 2(a) of the Conditions of Employment of other servants.

   The Executive Director shall be appointed by the Management Board on grounds of merit and documented administrative and managerial skills, as well as relevant competence and experience, from a list of at least three candidates proposed by the Commission, following an open and transparent selection procedure.

   For the purpose of concluding the contract of the Executive Director, the EU Customs Authority shall be represented by the Chairperson of the Management Board.

2. The term of office of the Executive Director shall be 5 years. In due time before the end of that period, the Commission shall carry out an assessment that takes into account an evaluation of the performance of the Executive Director and the EU Customs Authority's future tasks and challenges.

3. The Management Board, acting on a proposal from the Commission which takes into account the assessment referred to in paragraph 2, may extend the term of office of the Executive Director once for no more than 5 years.

4. An Executive Director whose term of office has been extended may not participate in another selection procedure for the same post at the end of the overall period.

5. The Executive Director may be removed from office only upon a decision of the Management Board acting on a proposal from the Commission.

6. The Management Board shall reach decisions on appointment, extension of the term of office or removal from office of the Executive Director and Deputy Executive Director on the basis of a two-thirds majority of its members with voting rights.

*Article 219*

**Tasks and responsibilities of the Executive Director**

1. The Executive Director shall manage the EU Customs Authority. The Executive Director shall be accountable to the Management Board.

2. Without prejudice to the powers of the Commission and the Management Board, the Executive Director shall be independent in the performance of his/her tasks and shall neither seek nor take instructions from any government nor from any other body.

3. The Executive Director shall report to the European Parliament and the Council on the performance of his or her duties and the overall performance of the EU Customs Authority when invited to do so.

4. The Executive Director shall be the legal representative of the EU Customs Authority.

5. The Executive Director shall be responsible for the implementation of the tasks assigned to the EU Customs Authority by this Regulation. In particular, the Executive Director shall:

(a) ensure the day-to-day administration of the EU Customs Authority;

(b) implement decisions adopted by the Management Board;

(c) prepare the draft single programming document referred to in Article 223 and submit it to the Management Board after consulting the Commission;

(d) implement the single programming document referred to in Article 223 and report to the Executive Board and the Management Board on its implementation;

(e) prepare the consolidated annual report on the EU Customs Authority's activities and present them to the Management Board for assessment and adoption;

(f) prepare an action plan following up on the conclusions of internal or external audit reports and evaluations, as well as on investigations by OLAF and by the EPPO, and report on progress twice a year to the Commission and regularly to the Executive Board and the Management Board;

(g) without prejudice to the investigative competence of the EPPO and of OLAF, protect the financial interests of the Union by applying internal preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by recovering amounts wrongly paid and, where appropriate, by imposing effective, proportionate and dissuasive administrative and financial penalties;

(h) prepare an internal anti-fraud strategy, an efficiency gains and synergies strategy, a strategy for cooperation with third countries and/or international organisations and a strategy for the organisational management and internal control systems, for the EU Customs Authority and present it to the Management Board for approval;

(i) prepare draft financial rules applicable to the EU Customs Authority and submitting them to the Management Board for adoption after consulting the Commission;

(j) prepare provisional draft statements of estimates of the EU Customs Authority's revenue and expenditure in accordance with Article 224, and implementing its budget;

(k) with regard to the EU Customs Authority's staff, exercise the powers of the appointing authority referred to in Article 215(1), point (i), to the extent that

those powers have been delegated to him or her in accordance with Article 215(2);

(l) taking decisions with regard to the EU Customs Authority's internal structures including, where necessary, deputising functions which may cover the day-to-day management of the EU Customs Authority and, where necessary, their amendment, taking into account the needs relating to the EU Customs Authority's activities and sound budgetary management;

(m) negotiating and, after approval by the Management Board, signing a Headquarters Agreement concerning the seat of the EU Customs Authority, and, where applicable, similar agreements with the host Member States where local offices are located;

(n) preparing the practical arrangements for the implementation of Regulation (EC) No 1049/2001 of the European Parliament and of the Council[34] and submitting them to the Management Board for adoption;

(o) promote diversity and aim at ensuring gender balance as regards the recruitment of the EU Customs Authority's staff;

(p) aiming at recruiting staff on the broadest possible geographical basis, bearing in mind that recruitment criteria must solely be based on merits.

*Article 220*

**Deputy Executive Director**

1. The Management Board may decide to create a function of a Deputy Executive Director to assist the Executive Director.

2. In the case the Management Board decides to create a function of a Deputy Executive Director, the provisions of Article 217 shall apply to the Deputy Executive Director accordingly.

*Article 221*

**Tasks and Responsibilities of the Deputy Executive Director**

If the function of the Deputy Executive Director is created, the Deputy Executive Director shall assist the Executive Director in the management of the Agency and in the performance of the tasks referred to in Article 218. If the Executive Director is absent or indisposed, or the post is vacant, the Deputy Executive Director shall take his or her place.

[34] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

# Chapter 4
# Establishment and structure of the budget of the EU Customs Authority

*Article 222*

**General provisions**

The financial rules applicable to the EU Customs Authority shall be adopted by the Management Board after consulting the Commission. They shall not depart from Commission Delegated Regulation (EU) 2019/715[35] unless such a departure is specifically required for the EU Customs Authority's operation and the Commission has given its prior consent.

*Article 223*

**Single programming document**

1. Each year, the Executive Director shall draw up a draft single programming document containing in particular multiannual and annual programming in accordance with the provisions laid down in Commission Delegated Regulation (EU) 2019/715, and with the relevant provision of the EU Customs Authority's financial rules adopted pursuant to Article 222 of this Regulation and taking into account guidelines set by the Commission. The annual and multiannual programming shall be in line with the customs policy and overall priorities of the customs union.

2. The Management Board shall transmit the draft single programming document to the Commission, the European Parliament and the Council and to the European Court of Auditors by 31 January of the year preceding the programming period.

3. By 30 November each year, the Management Board shall adopt the single programming document. It shall forward the single programming document to the European Parliament, the Council and the Commission, as well as any later updated version of that document. The single programming document shall become definitive after final adoption of the general budget of the Union and, if necessary shall be adjusted accordingly.

4. The annual work programme shall set out detailed objectives and expected results including performance indicators. It shall also contain a description of the actions to be financed and an indication of the financial and human resources allocated to each action. The annual work programme shall be consistent with the multiannual work programme referred to in paragraph 5. It shall clearly indicate tasks that have been added, changed or deleted in comparison with the previous financial year. The Management Board shall amend the adopted annual work programme when a new task is given to the EU Customs Authority within the scope of this Regulation. Any

[35] Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (OJ L 122, 10.5.2019, p. 1).

substantial amendment to the annual work programme shall be adopted in accordance with the same procedure as the initial annual work programme. The Management Board may delegate the power to make non-substantial amendments to the annual work programme to the Executive Director.

5. The multiannual work programme shall set out the overall strategic programming including objectives, expected results and performance indicators. It shall also show, for each activity, the indicative financial and human resources considered necessary to attain the objectives set. The strategic programming shall be updated where appropriate, and shall demonstrate the contribution of the EU Customs Authority to the achievement of the Union's political priorities.

*Article 224*

**Establishment of the budget**

1. Each year, the Executive Director shall draw up a provisional draft statement of estimates of the EU Customs Authority's revenue and expenditure for the following financial year, including the establishment plan, and send it to the Management Board. The information contained in the provisional draft statement of estimates shall be consistent with the draft single programming document referred to in Article 223(1).

2. The Management Board shall, on the basis of the provisional draft statement of estimates referred to in paragraph 1, adopt a draft statement of estimates of the EU Customs Authority's revenue and expenditure for the following financial year.

3. The Management Board shall send the draft statement of estimates of the EU Customs Authority's revenue and expenditure to the Commission by 31 January each year.

4. The Commission shall send the draft statement of estimates to the budgetary authority together with the draft general budget of the European Union.

5. On the basis of the draft statement of estimates, the Commission shall enter in the draft general budget of the Union the estimates it considers necessary for the establishment plan and the amount of the contribution to be charged to the general budget, which it shall place before the budgetary authority in accordance with Articles 313 and 314 TFEU.

6. The budgetary authority shall authorise the appropriations for the contribution from the general budget of the Union to the EU Customs Authority.

7. The budgetary authority shall adopt the EU Customs Authority's establishment plan.

8. The Management Board shall adopt the EU Customs Authority's budget. That budget shall become final following the final adoption of the general budget of the Union Where necessary, the EU Customs Authority's budget shall be adjusted accordingly.

*Article 225*

**Structure of the budget**

1. Estimates of all revenue and expenditure of the EU Customs Authority shall be prepared each financial year and shall be shown in the EU Customs Authority's budget. The financial year shall correspond to the calendar year.

2. The EU Customs Authority's budget shall be balanced in terms of revenue and of expenditure.

3. Without prejudice to other resources, the EU Customs Authority's revenue shall comprise:

   (a) a contribution from the Union entered in the general budget of the Union;

   (b) any voluntary financial contribution from the Member States;

   (c) possible Union funding in the form of contribution agreements or grants in accordance with the EU Customs Authority's financial rules referred to in Article 222 and with the provisions of the relevant instruments supporting the policies of the Union;

   (d) charges for publications and any service provided by the EU Customs Authority.

4. The expenditure of the EU Customs Authority shall include staff remuneration, administrative and infrastructure expenses and operational expenditure.

5. Budgetary commitments for actions relating to large-scale projects extending over more than one financial year may be broken down into several annual instalments.

*Article 226*

**Implementation of the EU Customs Authority's budget**

1. The Executive Director shall implement the EU Customs Authority's budget.

2. Each year, the Executive Director shall send to the budgetary authority all the information needed for the exercise of its evaluation duties.

*Article 227*

**Presentation of accounts and discharge**

1. The following financial year (year N+1) the EU Customs Authority's accounting officer shall send the provisional accounts for the financial year (year N) to the Commission's Accounting Officer and to the Court of Auditors by 1 March of the following financial year (year N+1).

2. By 31 March of year N+1, the EU Customs Authority shall send the report on the budgetary and financial management for year N to the European Parliament, the Council and the Court of Auditors.

3. By 31 March of year N+1, the Commission's accounting officer shall send the EU Customs Authority's provisional accounts, consolidated with the Commission's accounts, to the Court of Auditors.

4. On receipt of the Court of Auditors' observations on the EU Customs Authority's provisional accounts pursuant to Article 246 of Regulation (EU, Euratom) 2018/1046[36] of the European Parliament and of the Council, the EU Customs Authority's accounting officer shall draw up the EU Customs Authority's final accounts for that year. The Executive Director shall send them to the Executive Board for an opinion. That opinion shall be adopted by the Management Board.

5. The EU Customs Authority's accounting officer shall, by 1 July of year N+1, send the final accounts for year N to the European Parliament, the Council, the Commission and the Court of Auditors, together with the opinion adopted by the Management Board.

6. The final accounts for year N shall be published in the Official Journal of the European Union by 15 November of year N+1.

7. The Executive Director shall send a reply to the Court of Auditors' observations by 30 September of year N+1. The Executive Director shall also send that reply to the Management Board.

8. The Executive Director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year N, in accordance with Article 261(3) of Regulation (EU, Euratom) 2018/1046.

9. On a recommendation from the Council acting by a qualified majority, the European Parliament shall, before 15 May of year N+2, give a discharge to the Executive Director in respect of the implementation of the budget for year N.

*Article 228*

**Combating fraud**

1. In order to combat fraud, corruption and other unlawful activities within the EU Customs Authority, the provisions of Regulation (EU, Euratom) No 883/2013 shall apply without restriction.

2. The EU Customs Authority shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the

[36] Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

Commission of the European Communities concerning internal investigations by OLAF[37] within six months from [XXX] and shall adopt the appropriate provisions applicable to its staff using the template set out in the Annex to that Agreement.

3. The European Court of Auditors shall have the power of audit, on the basis of documents and on the spot, over all grant beneficiaries, contractors and subcontractors who have received Union funds from the EU Customs Authority.

4. OLAF may carry out investigations, including on-the-spot checks and inspections with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant or a contract funded by the EU Customs Authority, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 and Council Regulation (Euratom, EC) No 2185/96[38].

5. Without prejudice to paragraphs 1, 2, 3, and 4, contracts, grant agreements and grant decisions of the EU Customs Authority shall contain provisions expressly empowering the European Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences. Working arrangements with competent authorities of third countries and international organisations shall cover the assistance and cooperation of those authorities and international organisation in relation to audits and investigations carried out by the Court of Auditors and OLAF.

6. In accordance with Regulation (EU) 2017/1939, EPPO may investigate and prosecute fraud and other illegal activities affecting the financial interests of the Union as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council[39].

# Chapter 5
# Provisions on staff

*Article 229*

**General provision**

The Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union and the rules adopted by agreement between the Union institutions for giving effect to the Staff Regulations of Officials and the Conditions of Employment of Other Servants shall apply to the staff of the EU Customs Authority.

37 OJ L 136, 31.5.1999, p. 15.

38 Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

39 Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

*Article 230*

**Seconded national experts and other staff**

1. The EU Customs Authority may make use of seconded national experts or other staff not employed by the EU Customs Authority.

2. The Management Board shall adopt a decision laying down rules on the secondment of national experts to the EU Customs Authority.

*Article 231*

**Privileges and immunities**

Protocol No 7 on the Privileges and Immunities of the European Union annexed to the Treaty on the Functioning of the European Union shall apply to the EU Customs Authority and its staff.

# Chapter 6
# General and final provisions

*Article 232*

**Transparency and Communication**

1. Regulation (EC) No 1049/2001 shall apply to documents held by the EU Customs Authority. The Management Board shall, within six months of the date of its first meeting, adopt the detailed rules for applying Regulation (EC) No 1049/2001.

2. The processing of personal data by the EU Customs Authority shall be subject to Regulation (EU) 2018/1725. The Management Board shall, within six months of the date of its first meeting, establish measures for the application of Regulation (EU) 2018/1725 by the EU Customs Authority, including those concerning the appointment of a Data Protection Officer of the EU Customs Authority. Those measures shall be established after consultation of the European Data Protection Supervisor.

3. The EU Customs Authority may engage in communication activities on its own initiative within its field of competence. The allocation of resources to communication activities shall not be detrimental to the effective exercise of the tasks of the EU Customs Authority. Communication activities shall be carried out in accordance with relevant communication and dissemination plans adopted by the Management Board.

*Article 233*

**Security rules on the protection of classified and sensitive non-classified information**

1. The EU Customs Authority shall adopt its own security rules that shall be based on the principles and rules laid down in the Commission's security rules for protecting

European Union classified information (EUCI) and sensitive non-classified information including, inter alia, provisions for the exchange of such information with third countries, and processing and storage of such information as set out in Commission Decisions (EU, Euratom) 2015/443[40] and (EU, Euratom) 2015/444[41]. Any administrative arrangement on the exchange of classified information with the relevant authorities of a third country or, in the absence of such arrangement, any exceptional ad hoc release of EUCI to those authorities, shall be subject to the Commission's prior approval.

2. The management board shall adopt the EU Customs Authority's security rules following approval by the Commission. When assessing the proposed security rules, the Commission shall ensure that they are compatible with Decisions (EU, Euratom) 2015/443 and (EU, Euratom) 2015/444.

3. Members of the Management Board, the Executive Director, external experts participating in ad hoc working groups, and members of the staff of the EU Customs Authority shall comply with the confidentiality requirements under Article 339 TFEU, even after their duties have ceased.

4. The EU Customs Authority may take the necessary measures to facilitate the exchange of information relevant to its tasks with the Commission and the Member States and, where appropriate, the relevant Union institutions, bodies, offices and agencies. Any administrative arrangements concluded to that end with regard to the sharing of EU classified information (EUCI) or, in the absence of such arrangements, any exceptional ad hoc release of EUCI, shall have received the Commission's prior approval.

*Article 234*

**Language arrangements**

1. The provisions laid down in Council Regulation No 1[42] shall apply to the EU Customs Authority.

2. The Management Board shall decide on the internal language arrangements for the EU Customs Authority.

3. The translation services required for the functioning of the EU Customs Authority shall be provided by the Translation Centre for the Bodies of the European Union.

*Article 235*

**Evaluation**

[40] Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

[41] Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

[42] Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

1. Not later than [OP please insert the date = 5 years after the date of entry into force of this Regulation], and every 5 years thereafter, the Commission shall ensure that an evaluation in accordance with Commission guidelines of the EU Customs Authority's performance in relation to its objectives, mandate, tasks and governance and location(s) is carried out.

2. The evaluation shall, in particular, address the possible need to modify the mandate of the EU Customs Authority, and the financial implications of any such modification.

3. On the occasion of every second evaluation referred to in paragraph 1, the results achieved by the EU Customs Authority shall be assessed, having regard to its objectives, mandate, tasks and governance, including an assessment of whether the continuation of the EU Customs Authority is still justified with regard to those objectives, mandate, governance and tasks.

4. The Commission shall report to the European Parliament and the Council on the findings of the evaluation referred to in paragraph 2. The findings of the evaluation shall be made public.

*Article 236*

**Liability of the EU Customs Authority**

1. The contractual liability of the EU Customs Authority shall be governed by the law applicable to the contract in question.

2. The Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the EU Customs Authority.

3. In the event of non-contractual liability, the EU Customs Authority shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its staff in the performance of their duties.

4. The Court of Justice of the European Union shall have jurisdiction in disputes over compensation for the damage referred to in paragraph 3.

5. The personal liability of its staff towards the EU Customs Authority shall be governed by the provisions laid down in the Staff Regulations of Officials or Conditions of Employment of Other Servants applicable to them.

6. The financial liability of the Union and the Member States for the debts of the EU Customs Authority shall be limited to their contribution already made for the administrative costs.

*Article 237*

**Headquarters Agreement and operating conditions**

1. The necessary arrangements concerning the accommodation to be provided for the EU Customs Authority in the host Member State and the facilities to be made available by that Member State together with the specific rules applicable in the host Member State to the Executive Director, members of the Management Board, EU Customs Authority staff and members of their families shall be laid down in a Headquarters Agreement between the EU Customs Authority and Member State where the seat is located, concluded after obtaining the approval of the Management Board and no later than …[OP please insert the date = two years after the date of entry into force of this Regulation].

2. The EU Customs Authority's host Member State shall provide the best possible conditions to ensure the functioning of the EU Customs Authority, including multilingual, European-oriented schooling and appropriate transport connections.

3. Where exceptional circumstances so require, the Executive Director may decide to establish a local office in another Member State for the purposes of carrying out the EU Customs Authority's tasks in a more, efficient, effective and coherent manner.

   Before deciding to establish a local office, the Executive Director shall obtain the prior consent of the Commission, the Management Board and the Member State concerned. The decision shall be based on an appropriate cost-benefit analysis that demonstrates in particular the added value of such decision. The decision shall specify the scope of the activities to be carried out at the local office in a manner that avoids unnecessary costs and duplication of administrative functions of the EU Customs Authority.

*Article 238*

**Start of the EU Customs Authority's activities**

1. The EU Customs Authority is established as of 2026 and shall become fully operational by 2028.

2. The Commission shall be responsible for the establishment and initial operation of the EU Customs Authority until the EU Customs Authority has the operational capacity to implement its own budget. For that purpose:

   (a) until the Executive Director takes up his or her duties following his or her appointment by the Management Board in accordance with Article 218 the Commission may designate a Commission official to act as interim Executive Director and exercise the duties assigned to the Executive Director;

   (b) by derogation from Article 215(1), point (i) and until the adoption of a decision as referred to in Article 215(2), the interim Executive Director shall exercise the appointing authority powers;

   (c) the Commission may offer assistance to the EU Customs Authority, in particular by seconding Commission officials to carry out the activities of the EU Customs Authority under the responsibility of the interim Executive Director or the Executive Director;

(d) the interim Executive Director may authorise all payments covered by appropriations entered in the EU Customs Authority's budget and may conclude contracts, including staff contracts, following the adoption of the EU Customs Authority's establishment plan.

# Title XIII
# CUSTOMS COOPERATION

*Article 239*

**Internal customs cooperation**

1. Without prejudice to the provisions of Regulation (EC) No 515/97, customs authorities shall cooperate with each other, with the Commission and with the EU Customs Authority in accordance with the customs legislation and any other Union legislation providing for such cooperation, with a view to ensuring a correct and uniform application of those legislations and supporting the achievement of their mission, as set out in Article 2.

2. Customs authorities may temporarily make customs officers available to work in the customs authorities of another Member State. The EU Customs Authority shall be informed and may coordinate such assignments.

3. Customs authorities may carry out joint controls in addition to those provided for in Article 241. The customs authorities shall inform the EU Customs Authority of such joint controls.

4. The Commission, OLAF and the EU Customs Authority may exchange data relevant for the cooperation referred to in this Title, including risk information. The EU Customs Authority shall ensure the effective use of such information in its risk management activities in accordance with this Title and Title XII.

*Article 240*

**Framework for cooperation with other authorities**

1. Customs authorities shall cooperate with other authorities at national level, including, but not limited to, market surveillance authorities, sanitary and phytosanitary authorities, law enforcement authorities and tax authorities, in the field other legislation applied by the customs authorities, collection of duties and taxes and other relevant fields of cooperation. Where appropriate, customs authorities shall also cooperate with relevant bodies, expert groups, agencies, offices or networks coordinating the activities of other authorities at Union level. Where appropriate, customs authorities shall also cooperate with other relevant parties at EU level, as referred to in paragraph 9, and the involved customs authorities shall notify the EU Customs Authority.

2. The cooperation referred to in paragraph 1 shall take place regularly and in a structured way. It shall pursue, in particular, the following objectives:

(a) contributing to and following legislative developments in policy areas of relevance for customs;

(b) the exchange of data, in particular data relevant for risk management in accordance with Title IV, Chapter 3;

(c) the development of coherent and coordinated supervision strategies for risk management of goods under the areas of responsibilities of both customs authorities and other authorities, in accordance with Title IV, Chapter 3;

(d) the operational implementation, including performance of joint controls in accordance with Article 241.

3. The EU Customs Authority shall, without prejudice to the powers of the Commission and subject to its prior approval, conclude working arrangements to develop and update a framework for the cooperation referred to in paragraph 1, involving other relevant parties, as referred to in paragraph 9, providing orientations for its practical implementation, objectives and key areas of cooperation, in accordance with paragraph 2 of this Article and Title III of this Regulation.

4. Where a customs authority cooperates with another authority in a different Member State, it shall notify the customs authority of that Member State. Where the cooperation involves more than two Member States, the involved customs authorities shall notify the EU Customs Authority, who may provide operational and coordination support in accordance with Article 208.

5. The Member States shall report on an annual basis to the EU Customs Authority on the application of the framework for cooperation. The EU Customs Authority shall take into account the findings of this reporting in its monitoring activities referred to in Article 208(3), point (a), and its performance measurement tasks referred to in Article 208(3), point (b).

6. Until the date indicated in Article 238(1), the Commission may carry out the tasks of the EU Customs Authority, as referred to in paragraph 3.

7. The EU Customs Authority may cooperate with other authorities at national level, and with the Commission and other Union institutions, offices, agencies, networks and bodies, in order to contribute to the objectives referred to in paragraph 2, and to the framework for cooperation referred to in paragraph 3.

To that end, the EU Customs Authority may, subject to the authorisation of its Management Board and after the approval by the Commission, establish working arrangements with the Union bodies or other authorities at national level. Those administrative arrangements shall not create legal obligations and shall define the nature, extent and manner in which the intended cooperation shall take place.

8. The EU Customs Authority shall closely cooperate with OLAF where fraud or suspicion of fraud occurs in any of its cooperation activities.

9. The EU Customs Authority may develop a framework for operational cooperation with other EU bodies, including Europol and Frontex, in accordance with paragraphs 2, 4 and 5, and may participate in and contribute to strategic analyses and threat

assessments, policy cycles, innovation programmes, training activities, networks and other activities which are relevant for the implementation of its tasks and are organised by such other bodies.

*Article 241*

**Joint controls**

1. The EU Customs Authority shall plan, organise and coordinate joint controls that are carried out by customs authorities, where relevant in cooperation with other authorities, bodies and agencies in accordance with Article 240(9).

2. For this purpose, the EU Customs Authority shall follow the customs policy priorities and ensure the necessary links and coordination with anti-fraud activities by OLAF and EPPO and national customs investigations.

3. To allow the EU Customs Authority to draw up a report and perform an evaluation, the customs authorities shall provide feedback to the EU Customs Authority on the activities and controls they have carried out in the context of a joint control.

*Article 242*

**Actions to be taken by the customs authorities**

1. In accordance with the other legislation applied by the customs authorities, the customs authorities may take any of the following measures:

   (a) collecting specific data for all consignments, including automated checks of Union non-customs formalities, provided that they are stored in a Union central registry;

   (b) providing statistics, analytics and trends, in particular in the area of risks;

   (c) facilitating and coordinating the controls by other authorities;

   (d) carrying out controls on certain consignments, selected on the basis of risk management in accordance with Title IV and taking into account the analysis referred to in point (b);

   (e) consulting other authorities before release of the goods in accordance with Article 60;

   (f) taking any necessary measure on non-compliant goods, including confiscation, sale or destruction of those goods;

   (g) implementing the framework for cooperation referred to in Article 240;

   (h) alerting other authorities about risks relevant for their work;

   (i) following-up where the movement of goods is infringing other legislation applied by the customs authorities;

(j) any other complementary action.

2. A Member State may designate a specialised customs border crossing point, on certain other legislation applied by the customs authorities. The constraints resulting from such designation to pass through a specialised customs border crossing points must not be disproportionate, as far as economic operators are concerned, to the objective in question, having due regard to the circumstances which may justify that obligation.

3. The Member State shall notify the EU Customs Authority about the designation referred to in paragraph 2 and the EU Customs Authority shall keep up to date and publish a list of these specialised customs border crossing points .

4. In order to facilitate the identification, application and enforcement of other legislation applied by the customs authorities, the Commission shall draw up and regularly update an integrated list of Union legislation laying down requirements applicable to goods subject to customs controls aimed at protecting public interests and publish it on its website.

5. The Commission is empowered to adopt delegated acts in accordance with Article 261, to supplement this Regulation by determining any other complementary action as referred to in paragraph (1), point (j).

*Article 243*

**International customs cooperation**

The EU Customs Authority may, without prejudice to the powers of the Commission and subject to its prior approval, conclude working arrangements with the authorities of third countries and international organisations. These arrangements shall not create legal obligations incumbent on the Union.

*Article 244*

**Exchange of data with third countries**

1. The Commission, the customs authorities and the EU Customs Authority may exchange and share data with customs authorities and other authorities of third countries for the purpose of customs cooperation, where an international agreement of the Union, customs legislation, Union legislation in the area of the common commercial policy or common foreign and security policy, as well as Union other legislation applied by the customs authorities, provides for such an exchange and it is ensured that the transfer of personal data is in conformity with the provisions of Chapter V of Regulation (EU) 2018/1725 or Chapter V of Regulation (EU) 2016/679 respectively.

The Commission shall be informed about exchanges of data between customs authorities and the EU Customs Authority with customs authorities and other authorities of third countries.

2. The exchange referred to in paragraph 1 may concern, in particular, the following categories of data:

(a) data elements included in decisions taken by the customs authorities or similar decisions taken in third countries, relating to binding information, authorised economic operator status, customs valuation, customs status of goods or special procedures;

(b) data elements included in declarations, notifications and proof of the customs status of goods and in supporting documents, lodged either with the customs authorities of the Member States or the Commission, or with the authorities of third countries competent for customs matters, on the other, or issued by those authorities;

(c) data on risks identified, findings made and results obtained by the customs authorities of the Member States or the Commission, on the one hand, and the authorities of third countries competent for customs matters, on the other, in the course of performing their risk analysis and controls.

3. The exchange referred to in paragraph 1 shall take place through appropriate secure means of communication, either upon request or on own initiative, and is subject to the respect for confidential data and the protection of personal data in accordance with Articles 31, 35 and paragraph 1 of this Article.

4. The exchange referred to in paragraph 1 is without prejudice to exchanges of information conducted under the mutual administrative assistance provisions contained in agreements between the Union and third countries and to the provisions of Regulation (EC) 517/97.

5. A Member State may be empowered in accordance with the procedures and conditions laid down in a delegated act adopted in accordance with paragraph 6 to enter into negotiations with a third country with a view to concluding a bilateral agreement on the exchange referred to in paragraph 1 or to maintain an existing agreement. Such a bilateral agreement will cease to apply upon the entry into force of an agreement providing for exchange of customs information between the Union and the third country concerned.

6. The Commission is empowered to adopt a delegated act in accordance with Article 261, to supplement this Regulation by determining the conditions and procedures according to which a Member State can be empowered to enter into negotiations referred to in paragraph 5. These shall include a notification by the Member State concerned to the Commission and all other Member States of the possible content of the bilateral agreement and an assessment by the Commission of its impact on Union law and future negotiations at Union level, including whether its content is limited to implementation of Union or international law obligations. The delegated act shall also provide for the monitoring of the implementation of those agreements.

8. The Commission shall decide within 90 days from receipt of the notification, by means of an implementing act, whether to authorise the Member State to enter into the bilateral agreement. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 262(2).

On imperative grounds of urgency relating to such authorisation, duly justified by the need to rapidly allow for the requested exchange of information, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 262(5).

# Title XIV
# COMMON PROVISIONS ON CUSTOMS INFRINGEMENTS AND ON NON-CRIMINAL SANCTIONS

## Chapter 1
## General provisions

*Article 245*

**Subject matter**

This Title establishes a list of customs infringements and non-criminal sanctions for those infringements. It does not prevent Member States from taking more stringent measures by providing for administrative or criminal sanctions in accordance with their national law. Neither does it affect other infringements provided for under Union legislation.

*Article 246*

**General requirements**

1. Acts or omissions referred to in Article 252 constitute customs infringements.

2. Inciting or aiding and abetting an act or omission referred to in Article 252 constitutes a customs infringement.

   An attempt to commit an act or omission referred to in Article 252 constitutes a customs infringement.

3. Member States shall determine whether the infringements referred to in Article 252 are committed intentionally or by obvious negligence or manifest error.

4. Clerical or minor errors shall not constitute a customs infringement unless the customs authority can establish that they were committed intentionally, or as a result of obvious negligence or manifest error.

5. In case of an act or an omission resulting in a customs infringement referred to in Article 252 and committed as a reaction to abnormal and unforeseeable circumstances extraneous to the person concerned, the consequences of which, in spite of the exercise of all due care, could not have been avoided, the responsibility of the person that committed it is excluded.

*Article 247*

**Extenuating and mitigating circumstances**

1. When the person responsible for an act or an omission resulting in a customs infringement referred to in Article 252 provides the evidence that that person acted in good faith, it is taken into account in determining the sanction referred to in Article 254.

2. The following circumstances shall be taken into account for reducing the sanction to be applied for the customs infringement:

   (a) the goods involved are not subject to the other legislation applied by the customs authorities;

   (b) the customs infringement has no impact on the determination of the amount of customs duties and other taxes to be paid;

   (c) the person responsible for the customs infringement cooperates effectively with the customs authority.

*Article 248*

**Aggravating circumstances**

The following circumstances shall be taken into account for aggravating the sanction referred to in Article 254 to be applied for the customs infringements:

   (a) the person responsible for the customs infringement has been sanctioned previously for a customs infringement, or has committed continuous and repeated customs infringements;

   (b) the customs infringement has a significant impact on other legislation applied by the customs authorities ;

   (c) the customs infringement has a significant financial impact on collecting customs duties or other charges;

   (d) the customs infringement poses a threat to the security and safety of the Union and its residents.

*Article 249*

**Limitation**

1. Member States shall establish the limitation period for initiating proceedings concerning a customs infringement referred to in Article 252 between 5 and 10 years from the date on which the act or omission was committed.

2. Member States shall ensure that, in the case of continuous or repeated customs infringements, the limitation period starts to run on the day on which the act or omission constituting the customs infringement ceases.

3. Member States shall ensure that the limitation period is interrupted by any act of the competent authority, notified to the person in question, relating to an investigation or legal proceedings concerning the same customs infringement. The limitation period shall start to run on the day of the interrupting act.

4. Member States shall ensure that the initiation or continuation of any proceedings concerning a customs infringement referred to in Article 252 is precluded after the expiry of a period of eight years from the day referred to in paragraph 1 or 2.

5. Member States shall ensure that the limitation period for the enforcement of a decision imposing a sanction is three years. That period shall start to run on the day on which that decision becomes final.

6. Member States shall lay down the cases where the limitation periods set out in paragraphs 1, 4 and 5 are suspended.

*Article 250*

**Jurisdiction**

Member States shall exercise jurisdiction over the customs infringements referred to in Article 252 in accordance with national law and where that infringement is committed in whole or part within the territory of that Member State.

*Article 251*

**Cooperation between Member States**

1. Where customs infringements referred to in Article 252 are committed in more than one Member States and a competent authority of a Member State first initiates proceedings concerning that infringement, that competent authority shall cooperate with the competent authorities of the Member States concerned by the same customs infringement against the same person for the same facts.

2. The Commission shall monitor the cooperation between Member States in accordance with paragraph 1.

# Chapter 2
# Union customs infringements and non-criminal sanctions

*Article 252*

**Union customs infringements**

1. The following acts or omissions shall constitute customs infringements:

(a) failure of the holder of a decision relating to the application of customs legislation to comply with the obligations resulting from that decision and to inform the customs authorities without delay of any factor arising after the taking of a decision by those authorities which influences its continuation or content, in accordance with Titles I and II;

(b) failure to comply with the obligation to provide information to customs in accordance with this Regulation, including the failure to lodge a customs declaration;

(c) provision of incomplete, inaccurate, invalid, inauthentic, false or falsified information or documents to customs;

(d) failure of the person responsible to keep the documents and information related to the accomplishment of customs formalities;

(e) removal of goods from customs supervision;

(f) failure of the person responsible to comply with the obligations related to customs procedures;

(g) non-payment of import or export duties by the person liable to pay within the period prescribed in accordance with Title X, Chapter 3.

2. Without prejudice to paragraph 1, Member States may provide for further acts and omissions that constitute customs infringements.

3. Members States shall notify the Commission within 180 days from the date of application of this Article, of the national provisions in force, as envisaged in paragraph 2 of this Article, and shall notify it without delay of any subsequent amendment affecting those provisions.

*Article 253*

**General requirements for sanctions**

1. Without prejudice to the sanctions laid down in Article 254, Member States may provide for additional sanctions for customs infringements referred to in Article 252 and for all measures necessary to ensure that such sanctions are implemented. Such sanctions shall be effective, proportionate and dissuasive.

2. Members States shall notify the Commission within 180 days from the date of application of this Article, of the national provisions in force, as envisaged in paragraph 1 of this Article, and shall notify it without delay of any subsequent amendment affecting those provisions.

*Article 254*

**Minimum non-criminal sanctions**

Where sanctions to customs infringements referred to in Article 252 are applied, they shall take at least one or several of the following forms, while ensuring that sanctions are effective, proportionate and dissuasive and taking into account extenuating and mitigating circumstances referred to in Article 247 and aggravating circumstances referred to in Article 248:

(a) a pecuniary charge by the customs authorities, including, where appropriate, a settlement applied in place of a criminal penalty and calculated on the following minimum amounts or percentages:

(i) where the customs infringement has an impact on customs duties and other charges, the pecuniary charge shall be calculated based on the amount of customs duties and other charges eluded, as follows:

(1) where the customs infringement has been committed intentionally, the pecuniary charge shall comprise an amount equal to between 100% and 200% of the amount of customs duties and other charges eluded;

(2) in other cases, the pecuniary charge shall comprise an amount equal to between 30% and 100% of the amount of customs duties and other charges eluded;

(ii) where it is not possible to calculate the pecuniary charge in accordance with point (i), the pecuniary charge shall be calculated based on the customs value of the goods, as follows:

(1) where the customs infringement has been committed intentionally, the pecuniary charge shall comprise an amount equal to between 100% and 200% of the amount of the customs value of the goods;

(2) in other cases, the pecuniary charge shall comprise an amount equal to between 30% and 100% of the amount of the customs value of the goods;

(iii) where the customs infringement is not related to specific goods, the pecuniary charge shall comprise an amount equal to between EUR 150 and EUR 150 000;

(b) the revocation, suspension or amendment of customs decisions held by the person concerned, when such decision is affected by the infringement;

(c) the confiscation of the goods and means of transport.

The acts or decisions on sanctions applied for any customs infringement shall be recorded in the EU Customs Data Hub alongside the outcome of the customs controls.

# Title XV
# FINAL PROVISIONS

## Chapter 1
## Performance measurement of the customs union

*Article 255*

**Scope and objectives**

1. The Commission shall assess and evaluate the performance of the customs union at least on an annual basis. This includes the measurement of customs activities performed by the customs authorities of the Member States and where possible candidate countries at national and border crossing points levels. Such measurement may build on existing tools developed by the Commission and Member States for this purpose.

2. The EU Customs Authority shall assist the Commission with that task. To support the Commission in its evaluation of the performance of the custom union, the EU Customs Authority shall identify how customs activities and operations support the achievement of the strategic objectives and priorities of the customs union and contribute to the mission of customs authorities laid down in Article 2. In particular, the EU Customs Authority shall identify key trends, strengths, weaknesses, gaps, and potential risks, and provide recommendations for improvement to the Commission.

*Article 256*

**Framework definition and annual reporting**

1. The EU Customs Authority shall, in cooperation with the customs authorities, produce reports and other types of documents to deliver on the objectives set in Article 255.

2. Member States shall provide data to the EU Customs Authority containing information both at national and border crossing point levels. Based on the data received from the customs authorities, the EU Customs Authority shall produce an annual report, containing facts and figures on the elapsed year for each customs authority at national and border crossing point level.

3. The EU Customs Authority shall transmit the draft annual report to the Commission for approval.

4. The Commission shall verify the report and transmit it afterwards to the Member States for information.

5. The Commission shall specify, by means of implementing acts, the data referred to in paragraph 2 as well as their level of confidentiality, and the design of the performance

measurement framework. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

# Chapter 2
# Monitoring, evaluation and reporting

*Article 257*

**Monitoring**

The Commission shall regularly monitor the implementation of this Regulation, taking into account, inter alia, information and analysis relevant for monitoring purposes that are provided or made available by customs authorities and the EU Customs Authority in the EU Customs Data Hub.

*Article 258*

**Evaluation and reporting**

1. By ... [OP please insert the date = 5 years after the entry into force] and every 5 years thereafter, the Commission shall carry out an evaluation of this Regulation in light of the objectives that it pursues and shall present a report thereon to the European Parliament, to the Council and to the European Economic and Social Committee.

   That report shall include:

   (a) an overview of the state of progress that Member States have reached in relation to the implementation of this Regulation;

   (b) an assessment of the effectiveness, efficiency, coherence, relevance and Union added value of this Regulation, in particular with regard to the objectives referred to in Article 2.

2. At the request of the Commission and in accordance with Chapter 1 of this Title, the Member States shall provide information on the implementation of this Regulation that is necessary for the preparation of the report referred to in paragraph 2.

# Chapter 3
# Currency conversion and time-limits

*Article 259*

**Currency conversion**

1. The competent authorities shall publish and/or make available on the internet the rate of exchange applicable where the conversion of currency is necessary for one of the following reasons:

(a) because factors used to determine the customs value of goods are expressed in a currency other than that of the Member State where the customs value is determined;

(b) because the value of the euro is required in national currencies for the purposes of determining the tariff classification of goods and the amount of import and export duty, including value thresholds in the Common Customs Tariff.

2. Where the conversion of currency is necessary for reasons other than those referred to in paragraph 1, the value of the euro in national currencies to be applied within the framework of the customs legislation shall be fixed at least once a year.

3. The Commission shall lay down, by means of implementing acts, rules on currency conversions for the purposes referred to in paragraphs 1 and 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

*Article 260*

**Periods, dates and time limits**

1. Unless otherwise provided, where a period, date or time limit is laid down in the customs legislation, such period shall not be extended or reduced and such date or time limit shall not be deferred or brought forward.

2. The rules applicable to periods, dates and time limits set out in Regulation (EEC, Euratom) No 1182/71 of the Council[43] shall apply, except where otherwise provided for in the customs legislation.

# Chapter 4
# Delegation of power and committee procedure

*Article 261*

**Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 4, 6, 7, 10, 14, 19, 23, 25, 27, 28, 29, 31, 32, 56, 58, 59, 60, 63, 65, 66, 71, 72, 73, 77, 80, 81, 83, 85, 86, 88, 90, 91, 95, 97, 99, 101, 102, 105, 107, 108, 109, 111, 115, 116, 119, 123, 132, 148, 150, 156, 167, 168, 169, 170, 173, 175, 176, 179, 181, 186, 193, 199, 242, 244, 265 shall be conferred on the Commission.

[43] Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time-limits (OJ L 124, 8.6.1971, p1.).

3. The delegation of power referred to in Articles 4, 6, 7, 10, 14, 19, 23, 25, 27, 28, 29, 31, 32, 56, 58, 59, 60, 63, 65, 66, 71, 72, 73, 77, 80, 81, 83, 85, 86, 88, 90, 91, 95, 97, 99, 101, 102, 105, 107, 108, 109, 111, 115, 116, 119, 123, 132, 148, 150, 156, 167, 168, 169, 170, 173, 175, 176, 179, 181, 186, 193, 199, 242, 244, 265 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles 4, 6, 7, 10, 14, 19, 23, 25, 27, 28, 29, 31, 32, 56, 58, 59, 60, 63, 65, 66, 71, 72, 73, 77, 80, 81, 83, 85, 86, 88, 90, 91, 95, 97, 99, 101, 102, 105, 107, 108, 109, 111, 115, 116, 119, 123, 132, 148, 150, 156, 167, 168, 169, 170, 173, 175, 176, 179, 181, 186, 193, 199, 242, 244, 265 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

*Article 262*

**Committee procedure**

1. The Commission shall be assisted by the Customs Code Committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011 in conjunction with Article 4 thereof shall apply.

4. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

5. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011 in conjunction with Article 5 thereof shall apply.

6. Where the opinion of the committee is to be obtained by written procedure and reference is made to this paragraph, that procedure shall be terminated without result only when, within the time limit for delivery of the opinion, the chair of the committee so decides.

# Chapter 5
# Final provisions

*Article 263*

**Repeal**

1. Regulation (EU) No 952/2013 is repealed.

2. References to Regulation (EU) No 952/2013 shall be construed as references to this Regulation and read in accordance with the correlation table in the Annex.

3. From the date set out in Article 265(4), references to the customs declaration shall be construed as covering the provision of the data necessary to place goods under a customs procedure using the capabilities of the EU Customs Data Hub.

4. From the date set out in Article 265(4), references to the declarant shall be construed as covering the carrier, the importer, the exporter or the holder of the transit procedure, as appropriate.

*Article 264*

**Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 265*

**Application**

1. Articles 205 to 237 shall apply from 1 January 2028.

2. The following provisions shall apply from 1 March 2028:

   (a) the provisions on the simplified tariff treatment laid down in Article 145(5), (6) and (7) and Article 147, point (a)(ii);

   (b) the provisions on the simplified tariff treatment for distance sales laid down in Articles 149(4), 150(10) and 156(2);

   (c) the provisions on deemed importers laid down in Article 20(3), point (e), Article 21, Article 59(2), Article 60(6), point (a), Article 67(2), Article 67(4), point (d), and Articles 159(2), 181(5) and 184(3).

3. The functionalities of the EU Customs Data Hub laid down in Article 29 shall be fully operational by 31 December 2037.

4. Economic operators may start fulfilling their reporting obligations under this Regulation by using the EU Customs Data Hub from 1 March 2032.

5. The customs authorities shall reassess the authorisations granted pursuant to Regulation (EU) No 952/2013 from 1 January 2035 to 31 December 2037.

6. Before 31 December 2027, the Commission shall present a report to the European Parliament and to the Council providing an assessment of centralised clearance referred to in Article 72. If appropriate, the Commission may present a legislative proposal with a view to ensuring a fair distribution of the rights and obligations of the Member States in connection with the assessment of and liability for the customs debt at import.

7. By 31 December 2035, the Commission shall present a report to the European Parliament and to the Council to assess, in particular:

   (a) the effectiveness of the customs supervision of the Trust and Check traders by the customs authorities of the Member State of establishment and of the implementation of the provisions governing the place of the incurrence of the customs debt;

   (b) the effectiveness of the customs supervision of economic operators other than Trust and Check traders;

   (c) the possible impact of the modifications foreseen in paragraph 8.

8. The Commission is empowered to adopt delegated acts, in accordance with Article 261, to amend this Regulation, if appropriate in the light of the report referred to in paragraph 7, by deleting or modifying the derogations foreseen in Article 42(3), second subparagraph, and Article 169(1) second subparagraph.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

| | |
|---|---|
| *For the European Parliament* | *For the Council* |
| *The President* | *The President* |

| | |
|---|---|
| *[...]* | *[...]* |

# LEGISLATIVE FINANCIAL STATEMENT

## 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

### 1.1. Title of the proposal/initiative

Proposal for a Regulation of the European Parliament and of the Council establishing the Union Customs Code and the European Union Customs Authority, and repealing Regulation (EU) No 952/2013.

### 1.2. Policy area(s) concerned

**Policy area:** Single Market , Innovation and Digital – Heading 1

**Activity:**

Co-operation in the field of customs (Customs) – subheading 03 05 01

EU Customs Authority (new subheading – 03 05 XX)

### 1.3. The proposal relates to

**X a new action**

**☐ a new action following a pilot project/preparatory action[1]**

**X the extension of an existing action**

**☐ a merger of one or more actions towards another/a new action**

### 1.4. Objective(s)

*1.4.1. General objectives*

Enable customs authorities to **act as one** across the EU, to:

(a) efficiently and effectively protect the Single Market, citizens, and values of the EU by ensuring compliance with an increasing series of non-financial requirements;

(b) ensure proper, effective and timely collection of customs duties and taxes due, including deterring customs duty evasion and thereby preventing the loss of revenue for both the EU budget and the Member States;

(c) facilitate legitimate trade, with the right balance between facilitation and ensuring effective controls across all the various types of risks, with as little cost and administrative burden as possible.

[1] As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

*1.4.2. Specific objective(s)*

1. **Strengthen EU customs risk management**.
2. **Reduce the administrative burden** and simplify the procedures for traders, consumers, and customs authorities, without jeopardising effective customs supervision.
3. Ensure a **level playing field between e-commerce and traditional trade** as regards customs, in line with the VAT rules.
4. **Enhance access and use of data** for strategic customs action to better support better risk management, crisis response, measurement of Customs Union performance and simpler rules for trade.
5. **Enable the Customs Union to act as** one by ensuring effective EU-wide protection, irrespective of where goods cross the border, including in crisis scenarios.

From the expenditure perspective, these objectives are delivered through the reform of customs processes underpinned by the following two major outputs: a **new EU Customs Data Hub** and a new **EU Customs Authority (EUCA)**.

*1.4.3. Expected result(s) and impact*

**EU Services:**

As part of the reform, there would be a significant change in how the European Commission's customs IT is handled. The Commission shall develop, implement and maintain the new EU Customs Data Hub, which the Commission may decide to delegate to the EU Customs Authority. In addition, the Authority is to take over from the Commission the bulk of development and business operation of existing trans-EU IT systems[2]. The Commission's current role in supporting customs to customs and cross-authority co-operation, operational support and co-ordination and operational capacity-building would be largely replaced and deepened by the EU Customs Authority. The Commission would retain its policy and legislative roles.

The EU Customs Authority would help to develop and streamline (cross-authority) strategies, including building intelligence, innovating, preparing for crisis, implementing EU analytics and synchronised operations. The EU Customs Authority would use the new Data Hub to bring additonal EU-level efforts in key areas including risk management, training, performance monitoring and evaluation, bringing its critical mass, focus and organisational/co-ordination mandate to the key tasks that need to be performed 'as one'. The EU Customs Authority would also monitor the common implementation of simplifications for traders, including those granted the *Trust and Check* approach, and prepare mini-applications to support trade facilitation services, as well as managing the overall trade interface with the customs union.

The EU Customs Authority would thus play a key and deeper role in achieving a more effective and uniform implementation of the customs rules and processes. It would

[2] Of the more than 120 Customs systems operated by DG TAXUD most will be fully handed over to the EU Customs Authority; these are in principle those implementing or supporting procedural and operational activities of Customs (for example: Customs Decisions, ICS2, NCTS, EBTI, SMS, etc.). On the other hand, applications supporting policy or program management will stay under TAXUD responsibility (TARIC, ART, CN, Surveillance 3, etc.).

bring a genuine strategic capability. This would help deliver EU protections and facilitations systematically to the benefit of citizens, businesses and all EU policies and services concerned. The EU would benefit from better prevention of revenue loss, and from the increased collection of customs duties arising from the removal of the EUR 150 threshold.

**Member States customs administrations:**

Due to the new EU Customs Data Hub paradigm, the customs IT workload in Member States would significantly decrease over the years, as the Member States would not be required to maintain the core Customs IT systems. Only IT systems where national specificities or integration require customisation would be maintained nationally and even in those cases it would be done using the EU Customs Data Hub capabilities, which would facilitate the task.

Member States would benefit from, and interact with, a new EU layer of customs data analytics and risk analysis performed at central level in the EU Customs Authority.

Member States would gain from a reduction in full-time-equivalent staff requirements due to common execution of tasks in the EU Customs Authority, particularly in the areas of risk management, IT and overall customs management functions. This does not oblige a reduction in numbers as such, but national customs administrations would be able to use their resources more efficiently.

Member States would benefit from the better delivery of customs and EU policy value. The shared interests in protection of citizens, consumers, trade and business reflected in common policies on product standards, security, safety, health, etc. would be achieved more effectively, efficiently and systematically across all points of entry, reducing the possibilities for illicit trade to circumvent enforcement in one Member State by finding entry through another external border.

The Member States would also benefit from better prevention of revenue loss (customs duty evasion) and from the increased collection of customs duties arising from the removal of the EUR 150 threshold.

**Businesses and Trade:**

Economic Operators would benefit significantly from a fundamental change in the customs processes, which would be delivered directly through the EU Customs Data Hub.

All traders would benefit from simplification and rationalisation of the steps in the customs processes. The number of data provision points is reduced and the data is provided to one single EU interface instead of through 27 national interfaces and processes. Data can be provided in advance and re-used, instead of being repeatedly provided. The data requirements are rebalanced to better fit commercial practices: data is in principle required from those who are best placed to give it, data is accepted in multiple formats, and the declarant role is removed. The EU Customs Authority reinforces cooperation among national customs authorities also at the border, on the ground, and supports the uniform implementation of simpler processes.

Some additional information would be provided (notably the manufacturer of the goods). However, the effort required to provide additional information would be more than compensated by the simplification and reduction in customs processes.

Improvements in customs targeting would improve the protection of legitimate businesses against non-compliant supply chains and supply chain security threats, and reduce unfair competition, through better enforcement of regulatory measures. This improves the protection of jobs, innovation, and investment. Moreover, the resilience of supply chains in crisis scenarios, such as disease outbreaks or security incidents, would be strengthened significantly by providing for immediate, specific and uniform targeting of risky flows while minimising the scope and scale of disruption, and by maintaining crisis-readiness on a 24/7/365 basis, underpinned by long-term co-operation with other relevant authorities.

*Trust and Check* traders would benefit from an improved partnership with customs. These traders would meet conditions similar to current AEO requirements and would also provide additional transparency by systematically making data available to customs systems. This data could be re-used by carriers in advance cargo information processes, and the goods flows could be 'self-released' on arrival (in principle the goods would keep moving, with the advance cargo processes providing the means for customs to intervene if that were to become necessary). *Trust and Check* traders would benefit from fewer and more targeted customs controls, would generally receive advance warnings and as far as possible have checks and formalities deferred to convenient locations. In so far as agreed with other authorities, some non-financial checks could also be moved away from the border and performed by the *Trust and Check* trader. Guarantee requirements would be reduced.

For e-commerce, the removal of the customs duty exemption threshold would mean more customs information would have to be provided, bearing in mind data is already provided on all imported goods according to the new VAT e-commerce rules as from July 2021. The EU Customs Data Hub would provide a single interface that would facilitate both the provision of information from the e-commerce intermediaries and the processing of that information for customs authorities.

By directly dealing with customs compliance, e-commerce platforms will benefit from the fact that they will offer a final price to their clients and will most likely see a reduction in the complaints and returns motivated by unexpected compliance costs at the border, reducing the friction currently experienced in their supply chains. Overall, the preferred option should result in lower compliance costs for economic operators, particularly at import. It would almost eliminate the need for launching the current "internal transit" procedure and the associated declarations in cases where goods are moved from the Member State of entry to the Member State of release.

**Citizens – Consumers:**

The removal of the EUR150 customs duty threshold may create a slight upwards price pressure for consumers of goods worth below that amount; however, simplification and stabilisation of processes will increase supply chain efficiency, and the impact on costs and prices will be determined by competitive factors.

Citizens and consumers will benefit from more transparent and predictable processes for e-commerce purchases from outside the EU and fewer surprise requests for duty payment and for logistics services charges for handling these as well as visits to post-offices compared with the baseline, alleviating the current experience of unexpected charges and delays. Citizens and consumers will benefit significantly from better and more visible protection under EU policies from the consequences of harmful and fraudulent products because of a systematic EU-wide improvement in the detection of harmful supply chains.

*1.4.4. Indicators of performance*

Indicators are foreseen under the headings below. The reform will also strengthen the basis for Customs Union Performance evaluation as such by enabling the processing of EU-wide operational data for that purpose.

**1. Improve revenue collection via operational risk management at EU level:**

- Revenue collection on goods valued above EUR 150
- Rate of unpaid duties
- Number of risk management strategies with other authorities (in charge of e.g. tax and antifraud)
- Seizures

**2. Improve detection of non-compliant imported products via operational risk management at EU level:**

- Number of supervision strategies with other authorities (in charge of e.g. antifraud, market surveillance, food, animal and health protection, product safety)
- Seizures

3. **Make trade flows smoother for trusted operators**:

- Number of *Trust and Check* traders
- Percentage of trade handled by *Trust and Check* traders
- Number of processes required to trade goods
- Number of audits carried out on *Trust and Check* traders
- Number of *Trust and Check* traders' authorisations suspended

**4. Collect revenue from e-commerce:**

- Revenue collection on consignments valued up to EUR 150
- Number of consignments valued up to EUR 150

**5. Exploit data for strategic customs action:**

- Volume and type of data available
- Number of data errors and interventions
- Interoperability with additional data sources (time and scope)

**6. (Act as one) Enhance uniform implementation and practices ('avoid port shopping'):**

- Number of controls and feedbacks on controls
- Minimum standards for risk management
- Number of EU risk profiles and control results
- Number of control recommendations

**7. (Act as one) Empower customs authorities to act in the same way:**

- Number and quality of trainings
- Number of joint activities, projects, workshops

## 1.5. Grounds for the proposal/initiative

*1.5.1. Requirements to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative*

The proposal entails the reform of customs processes, and in particular:

(a) the preparation and deployment of a common data management environment (EU Customs Data Hub) for customs operations at EU level;

(b) the establishment of an EU Customs Authority with an operational mandate to carry out key tasks at EU level, notably, the ongoing development and management of the Data Hub, common risk management, crisis management and co-operation activities to enable the customs union to deliver its functions and its common policy value uniformly, regardless of where goods cross the external borders of the EU.

The reform roll-out is envisaged to take place as follows:

**First phase 2024-2027:**

<u>IT/ EU Data Hub</u>

- preparation of initial components of EU Data Hub structure, including preparation for e-commerce data collection and initial interoperability use cases;
- vision, roadmap, costing and procurement strategy for completion of Data Hub capabilities and business applications;
- existing UCC IT systems continuity and planning of transition.

<u>EU Customs Authority</u>

- establishment of the Authority in 2026, with a view to becoming operational in from 2028; recruitment of Interim Executive Director and small staff to carry out recruitment, arrangements for hosting and accommodation, as well as required administrative procedures needed for operational readiness in 2028;
- preparation of initial activities for handover by a Commission task force which will prepare risk management networks and processes to be ready to work on EU data scope as soon as the EUCA is operational.

**Second phase 2028-2034:**

IT/ EU Data Hub

- potentially beginning the hand-over from the Commission to the EU Customs Authority of the initial Data Hub components and related central systems (e.g. ICS2, eCommerce, Single Window) to be completed by 2030; the EU Customs Authority takes up capacity, and the Commission transfers capacity for IT procurement and management, over a three-year window;
- complete infrastructure and Data Hub capabilities by 2031;
- transition of customs systems (central and national) to Data Hub.

EU Customs Authority

- progressive handover of certain activities from the Commission to the EU Customs Authority; gradual development of new activities referred to in this proposal by the the EU Customs Authority;
- delegation of certain implementation tasks from the Commission to the EU Customs Authority via contribution agreements.

*1.5.2. Added value of Union involvement.*

**Reasons for action at European level (ex-ante):**

As analysed in the impact assessment accompanying this legislative proposal, the problems being addressed are difficulties for customs authorities to deliver their mission to protect the EU (both for financial and non-financial risks); the burdensome nature of customs formalities for legitimate trade; the mismatch between the customs model and the new e-commerce business models; the limited availability and use of data for customs processes (including efficient risk management); and the divergence across the Member States in the implementation of customs rules. Consequences of these problems include loss of revenue for the Member States and the Union; the entry of non-compliant and dangerous products to the Single Market and associated harm to EU consumers and businesses and to the environment; and the exploitation of supply chains by criminal activities.

The reform addresses problems which Member States cannot solve on their own. Action at Union level is essential to reform Customs Union processes, data management and governance to address the problems identified. The choice of instrument (Regulation) is essential because the Customs Union must provide legal certainty for trade and public authorities, to ensure the smooth flow of legitimate trade

and at the same time provide for effective, risk-based intervention by public authorities to implement major elements of the EU acquis, notably in the areas of the Single Market, security and own resources.

**Expected generated Union added value (ex-post):**

The proposal addresses the problem drivers: the inadequacy and excessive complexity of the customs processes, including for e-commerce traffic, the fragmented and complex customs digitalisation, and the fragmented customs union governance structure. It provides for a reform of customs processes, including for the handling of e-commerce traffic, in tandem with a common data management environment (EU Customs Data Space) and the establishment of an EU Customs Authority providing an operational governance layer. These elements are mutually reinforcing, enabling a significant reduction of burden on both public authorities and private sector operators and a significant improvement in the uniform delivery of EU policies through the Customs Union, as analysed in the impact assessment.

*1.5.3. Lessons learned from similar experiences in the past*

The *Customs 2020 evaluation* concludes that the programme has contributed significantly to improving the functioning of the Customs Union and to its modernisation. It has fostered cooperation and the exchange of information, ranging from facilitating convergence at the strategic level to approximating approaches, interpretation, administrative procedures, best practices and rules at the operational level. The programme has been especially important in transitioning to a customs paperless environment. Yet, the evaluation also identified areas where improvements are needed, notably (i) the differences in the application of customs controls, (ii) e-commerce fraud, (iii) economic operators not perceiving the benefits of the UCC and voicing concerns over (iv) the complexity of the customs IT environment, the customs legislation and processes. The programme evaluation demonstrated that it could be worthwhile for the Commission and Member States to share more customs data. This would serve to better measure the costs and benefits of the investments made.

Additional evidence in this regard is found in the *interim evaluation of the UCC,* noting flexibilities in relation to the methods and penalties for addressing non-compliance with the customs legislation and on monitoring economic operators considered trustworthy (Authorised Economic Operators, AEO).

Businesses also confirm the divergent application of the UCC. In a large survey for an external study on AEO (almost 2000 replies), 28% of the 900 trustworthy operators active in more than one Member State consider that some of the benefits can vary significantly from one Member State to another.[3]

On financial risks, the European Court of Auditors identified structural challenges on the risk management of financial risks, finding that the lack of uniform application of customs controls and of harmonised risk management and analysis hampers EU financial interests and warning that current weaknesses *'could allow non-compliant operators to target EU points of entry with lower levels of controls'.* (See further:

[3] Study on the Authorised Economic Operator programme, Oxford Research, Ipsos, Wavestone, CT Strategies and Economisti Associati, 2022.

*Special Report 04/2021: Customs controls: insufficient harmonisation hampers EU financial interests*).

On non-financial risks, the current risk management framework does not adequately address the potential customs contribution to implementation of requirements relating to the increasing number of non-financial issues of concern for EU citizens, including human rights, labour rights, sustainability, environmental protection, health, safety, and security.

Experience with the digitisation of customs processes and information exchanges has been positive – however challenges remain with the collection, analysis and sharing of data. The current customs processes require the data to be submitted to different national and common systems and the related Member States. The *Wise Persons Group* also noted that different IT systems are often not interconnected (see further: *Report by the Wise Persons Group on the Reform of the EU Customs Union*). Data are not transferred from one declaration system to another. Information is fragmented across different databases and systems, making it difficult to ensure coherence and data integrity, which is essential in customs risk management, particularly for risk analysis at EU level. This reduces the capacity of customs to address undervaluation, non-compliance, or security risks on a uniform basis. The European Court of Auditors identified several reasons for the increased cost and additional time necessary to build the UCC systems (see further: *Special report no 26/2018: A series of delays in Customs IT systems: what went wrong?*). The UCC evaluation draws a mixed picture of the IT implementation, with positive aspects on the centrally developed components.

Experience gained in attempting to organise customs co-operation on a more permanent basis under the customs programme, have again been valuable in developing policy understanding and making progress on specific themes above, but such voluntary co-operations cannot have the infrastructural capacity or governance character which would be necessary to deliver uniform implementation of the customs union.

Experience in relation to the establishment and operation of other EU Agencies and bodies has also been taken into account.

The proposal follows largely the current model for decentralised agencies, addressing the majority of issues along standard provisions.

From the practical perspective, the need for resourcing within the Commission to prepare the EU Customs Authority before it comes into operation is noted. The necessary actions to set up the EU Customs Authority, such as preparation of administrative procedures, governance structures and organisational structure, as well as initial recruitment, could be performed by a dedicated team of Commission staff prior to the start of the EU Customs Authority's activities. Taking into account the experience of other agencies set-up recently, about 10 FTEs should be envisaged for this activity.

Concerning the preparation of the EU Customs Authority's operational activities, the Commission has significant experience in policy development in relation to the tasks and in piloting common projects on a voluntary basis (see *e-customs annual reports*).

This has included managing the development of trans-European IT systems, including single EU portals for trader interaction (the reformed import control system – ICS2), organising collaborative risk analysis operations, developing a common approach to the evaluation of customs union performance, developing common customs training, organising co-operation between customs and other sectoral authorities at EU level on specific themes (such as air cargo security), handling customs crisis response, and in working closely and in a structured manner with national customs authorities in all these areas. This experience will assist significantly in preparing the EU Customs Authority's initial structure and operations and in monitoring and evaluating its performance.

*1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments*

A new budget line will need to be created, corresponding to the establishment of the EU Customs authority, in the current Multiannual Financial Framework. The following Multiannual Framework would also need to be programmed so that the required resources are provided for the implementation of this legislation.

As regards **synergies with other instruments**, the reform aims to put in place a strategic capacity for the Union to support better implementation and enforcemement of important EU policies applied to and through trade in goods, as well as tackling the exploitation of supply chains by organised crime and terrorism. The reform will directly contribute to:

- better collection of revenue, including Traditional Own Resources both through collection of additional revenue – estimated at €6.035 billion for the period 2028-2034 in the Impact Assessment accompanying this proposal[4] and through better prevention of loss of revenue through non-compliance;
- better protection for EU citizens and businesses envisaged by EU policies which depend to an extent on customs enforcement work, including prohibitions and restrictions, the Single Market and security; while this cannot be quantified in financial terms, the Impact Assessment shows how one illustrative use case for better enforcement of ecodesign and product safety requirements could lead to a consumer saving of €7.7 billion over the period 2028-2034.
- a reduction in administrative burden, supporting competitiveness - the Impact Assessment also identifes a potential saving of €11.6 billion for traders, primarily relating to an overall aggregate reduction in the time needed to complete import processes.

In the Impact assessment accompanying this proposal, a representative sample of use cases was used to evaluate how each reform option would perform, focusing on the value added which would come from improved management of risks in the supply chain. These illustrated coherence with other specific policy areas including Single Use Plastic Directive, Environmental policies addressing persistent chemicals and consumer emissions, the EU Serious and Organised Crime Threat Assessment

[4] The assumptions used to prepare these estimates are detailed in the Impact Assessment and its Annexes.

(SOCTA), Drugs precursors[5], Civil Aviation Security[6], Tobacco smuggling, Toy Safety, the Market Surveillance Regulation, the Ecodesign Directive and proposed Ecodesign for Sustainable Products Regulation, and the proposed General Product Safety Regulation.

Most of these policy areas are undergoing changes, and customs action is being included by means of the EU Single Window Environment for Customs. However, the Single Window only indirectly tackles the exchange of information on risk, as its main purpose is to facilitate the exchange of the information required to clear the goods. The reform will improve the effectiveness of the Single Window, and will build on it, by enabling customs to retrieve all necessary data by Union non-customs formality at central level, and use it for EU-wide risk management.

More broadly, the reform will deliver a strategic customs union capability to prepare and deliver a co-operation framework with other policies to support their delivery in border operations; to have operational visibility of EU-wide trade flows; to see EU-wide policy performance and have a granular view on how controls and simplifications are being applied; to adapt to future needs and changing business models, notably, the readiness of the customs union information environment to integrate different information sources, and support flexible action against risks; time to market. It will in addition provide the currently lacking "critical mass" needed to handle many priorities in parallel and prepare for crisis.

This strategic capability will position the customs union to support other tasks to which it may be asked to contribute, including for example in the areas of the Carbon Border Adjustment Mechanism, or strategic trade controls and sanctions or other restrictive measures.

As regards synergies more broadly, the proposal will also lead to administrative savings for national customs administrations, by simplifying the processes and providing central common interfaces and tools which will permanently reduce customs compliance and administration costs. In the Impact Assessment accompanying this proposal, these are estimated to be in the region of €7.9 billion for Member States, primarily deriving from savings in IT but also coming from reduction in administrative effort required for certain important tasks, freeing up administrative capacity.

*1.5.5 Assessment of the different available financing options, including scope for redeployment*

Within the current MFF, the needs can be met by redeployment within the existing budget line for *Co-operation in the field of customs (Customs) – subheading 03 05 01 and to a new budget line for the EU Customs Authority – subheading 03 05 XX.* That is, no additional cost foreseen within the current MFF.

In the post-2027 MFF, the cost for the Data Hub and Customs Authority is proposed to be financed through the subsequent MFF, without pre-empting the agreement on the MFF and programmes.

5 Council Regulation (EC) No 111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Community and third countries in drug precursors (OJ L 22, 26.1.2005, p. 1).

6 Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002 (OJ L 97, 9.4.2008, p. 72).

## 1.6. Duration and financial impact of the proposal/initiative

☐ **limited duration**

– ☐ Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY

– ☐ Financial impact from YYYY to YYYY

**X unlimited duration**

– Implementation with a start-up period from 2026-2027,

– followed by full-scale operation.

## 1.7. Method(s) of budget implementation planned

**X Direct management** by the Commission through

– ☐ executive agencies

– **X** by its departments, including by its staff in the Union delegations;

☐ **Shared management** with the Member States

**X Indirect management** by entrusting budget implementation tasks to:

☐ international organisations and their agencies (to be specified);

☐the EIB and the European Investment Fund;

**X** bodies referred to in Article 70;

☐ public law bodies;

☐ bodies governed by private law with a public service mission to the extent that they are provided with adequate financial guarantees;

☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees;

☐ bodies or persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

Comments:

| |
|---|
| At the time of entry in to force, the Commission will still be managing the development and maintenance of current UCC systems, and will need to take forward the preparation of the initial elements of the Data Hub during the current MFF.<br><br>In period which follows the current MFF, for a selection of tasks, notably the provision of the Data Hub, the Commission will retain funding and delegate tasks under a contribution agreement to the EU Customs Authority. The retention of direct |

management of funds for the current UCC systems, and the indirect management of Data Hub funds through contribution agreements with the EU Customs Authority, will help to ensure transitional continuity and the effective policy delivery of the future EU customs data environment, while the Authority scales up its capabilities after its establishment in 2028.

## 2. MANAGEMENT MEASURES

### 2.1. Monitoring and reporting rules

**In relation to the overall reform:**

The Commission will regularly monitor the implementation of the proposed regulation. For this purpose, the proposal envisages making information and analysis tools available to the Commission through the EU Customs Data Hub, covering all customs processes in the scope of the reform.

With the assistance of the EU Customs Authority, the Commission will also assess and evaluate the performance of the Customs Union as such at least on an annual basis. This will includes the measurement of customs activities performed by the customs authorities of the Member States. To this end, the EU Customs Authority will identify key trends, strengths, weaknesses, gaps, and potential risks, and provide recommendations for improvement to the Commission.

The Commission, in cooperation with the EU Customs Authority and the national customs authorities, will also evaluate the implementation of **risk management** in particular, in order to continuously improve its operational and strategic effectiveness and efficiency. The Commission will also use the information available in the Data Hub for this purpose, and may request further information from the EU Customs Authority and from national customs and other authorities. This evaluation work will be used by the Commission in establishing common risk management provisions, notably common risk criteria and common priority control areas.

**In relation to the EU Customs Authority specifically:**

All Union agencies work under a strict monitoring system involving an internal control coordinator, the Internal Audit Service of the Commission, the Management Board, the Commission, the Court of Auditors and the Budgetary Authority. This system is reflected and laid down in TITLE XII. In accordance with the Common Approach on the EU decentralised agencies, the annual work programme of the EU Customs Authority shall comprise detailed objectives and expected results including performance indicators. The activities of the EU Customs Authority will be then measured against these indicators in the Annual Activity Report. The annual work programme will be coherent with the multi-annual work programme and both shall be included in an annual single programming document which shall be submitted to European Parliament, the Council and the Commission.

The Management Board of the EU Customs Authority will be responsible for supervision of the efficient administrative, operational and budgetary management of

the EU Customs Authority. It will be assisted by an Executive Board responsible for preparing the decisions of the Management Board.

The Commission will ensure that regular evaluations of the EU Customs Authority's performance in relation to its objectives, mandate, tasks and governance and location(s) are carried out. The evaluations will, in particular, address the possible need to modify the mandate of the EU Customs Authority, and the financial implications of any such modification. On the occasion of every second evaluation, the results achieved by the EU Customs Authority will be assessed, having regard to its objectives, mandate, tasks and governance, including an assessment of whether the continuation of the EU Customs Authority is still justified with regard to those objectives, mandate, governance and tasks. The Commission will report to the European Parliament and the Council on the evaluation findings. The findings of the evaluation shall be made public.

## 2.2. Management and control system(s)

### *2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed*

The EU Customs Authority will ensure that appropriate standards are met for internal control.

Regarding ex-post controls, the EU Customs Authority, as a decentralised agency, is subject to: (i) internal audit by the Internal Audit Service of the Commission; (ii) annual reports by the European Court of Auditors, giving a statement of assurance as to the reliability of the annual accounts and the legality and regularity of the underlying transactions; (iii) annual discharge granted by the European Parliament; (iv) possible investigations conducted by OLAF to ensure, in particular, that the resources allocated to agencies are put to proper use.

The activities of the EU Customs Authority will also be subject to the supervision of the Ombudsman in accordance with Article 228 TFEU.

In view of the Union's exclusive competence in the field of customs and given that the proposal includes significant investments for the development, operation, maintenance and use of a Data Hub, it seems appropriate to retain the budgetary responsibility for certain activities at the Commission and to entrust the EU Customs Authority with certain implementation tasks under contribution agreements. These should include provisions allowing the Commission to maintain a high degree of control of the delegated activities, as provided for in this proposal.

Furthermore, it is appropriate that the Commission has an important role in the programming and monitoring activities of the EU Customs Authority's Management Board and Executive Board.

### *2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them*

As the EU Customs Authority will be a new body, there is a risk that recruitment and administrative procedures may not be on schedule, and will impact the EU Customs Authority's operational capacity at the beginning of its operations. It is therefore

crucial that the partner DG prepares the start of operations by establishing administrative procedures, governance structures, initial work programmes and performs some initial recruitment activities, so that the EU Customs Authority can soon achieve full administrative autonomy. It is advisable that Member States be involved in such preparatory actions through regular exchanges of views.

Frequent meetings and regular contacts will be required between the partner DG and the EU Customs Authority throughout the first years of the EU Customs Authority's operations, in order to assist in its ramp-up. Secondment of experienced Commission staff could be envisaged.

The EU Customs Authority will be required to implement an Internal Control Framework in line with the European Commission's Internal Control Framework. Information on the EU Customs Authority's internal controls will be included in the EU Customs Authority's annual reports.

An Internal Audit capability will be established to take account of risks specific to the operation of the EU Customs Authority, and bring a systematic and disciplined approach to evaluate the effectiveness of risk management, control, and governance processes, and by issuing recommendations for their improvement.

As regards TAXUD Funds: Fraud prevention and detection is one of the objectives of internal control as stipulated in the Financial Regulation and a key governance issue, which the Commission has to address throughout the whole expenditure life cycle. In addition, TAXUD's anti-fraud strategy (AFS) mainly aims at prevention, detection and reparation of fraud, ensuring inter alia that its internal anti-fraud related controls are fully aligned with the Commission's anti fraud strategy (CAFS) and that its fraud risk management approach is geared to identifying fraud risk areas and adequate responses.

*2.2.3. Estimation and justification of the cost-effectiveness of the controls*

The partner DG's costs of overall supervision of the EU Customs Authority can be estimated to be at 0.5% of the annual budget entrusted to the EU Customs Authority, including delegated funds. Such costs include, for example but not exclusively, the costs related to the assessment of the annual programming and budget, the participation of Commission representatives to the Management Board and Executive Board and related preparatory work.

## 2.3. Measures to prevent fraud and irregularities

*Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.*

Anti-fraud measures are provided for in the provisions concerning the EU Customs Authority. In line with the Common Approach on decentralised agencies, an Anti-fraud strategy will be adopted by the EU Customs Authority.

It will also adopt rules for the prevention and management of conflicts of the members of the Management Board and Executive Board.

Furthermore, the EU Customs Authority will adopt security rules that shall be based on the principles and rules laid down in the Commission's security rules for protecting European Union classified information (EUCI) and sensitive non-classified information.

## 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

### 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

| Heading of multiannual financial framework | Budget line | Type of expenditure | Contribution | | | |
|---|---|---|---|---|---|---|
| | Number 1 | Diff./Non-diff.[7] | from EFTA countries [8] | from candidate countries and potential candidates[9] | From other third countries | other assigned revenue |
| 01 | Single Market<br>Co-operation in the field of customs (Customs) – subheading 03 05 01 | Diff. | NO | NO | NO | NO |

It may be anticipated that contributions from some third countries would be provided in connection with the development and operation of the EU Customs Data Hub; such contributions are currently made in respect of participation in the new Import Control System (ICS2). However, no provision is made for them in this Statement as such agreements are not part of the legal proposal.

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

| Heading of multiannual financial framework | Budget line | Type of expenditure | Contribution | | | |
|---|---|---|---|---|---|---|
| | Number 1 | Diff./non-diff. | from EFTA countries | from candidate countries and potential candidates | from other third countries | other assigned revenue |
| | **03 XX XX EU Customs Authority** | Diff. | NO | NO | NO | NO |

[7] Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.
[8] EFTA: European Free Trade Association.
[9] Candidate countries and, where applicable, potential candidates from the Western Balkans.

| | | | | | | |
|---|---|---|---|---|---|---|
| | | | | | | |

## 3.2. Estimated impact on expenditure

### *3.2.1. Summary of estimated impact on expenditure*

General caveats: following adoption of the legislation, in the annual budget procedure, the budget may adjust depending on actual salary adjustment coefficient. Figures below are indexed from 2025 values at 2%. In case the funding available in the 2028-2034 period would be less, the tasks will be reduced to fit within the available funding under the post-2027 MFF and post-2027 customs programme. If less tasks than foreseen are delegated to the EU Customs Authority, then staff levels will be reduced accordingly (and not reach 250 staff).

EUR million (to three decimal places)

| **Heading of multiannual financial framework** | Number | [Heading 1 – Single Market, Innovation and Digital ……<br>**03 XX XX EU Customs Authority** ……] |
|---|---|---|

Estimation for the period 2026-2034:

| **EU Customs Authority** | | | 2026 | 2027 | 2028 | 2029 | 2030 | 2031 | 2032 | 2033 | 2034 | **TOTAL** |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Title 1: *(administrative costs including salaries)* | Commitments | (1) | 0.494 | 1.392 | 4.078 | 7.270 | 12.641 | 20.493 | 29.748 | 38.237 | 44.365 | 158.718 |
| | Payments | (2) | 0.494 | 1.392 | 4.078 | 7.270 | 12.641 | 20.493 | 29.748 | 38.237 | 44.365 | 158.718 |
| Title 2: *(other administrative costs including infrastructure)* | Commitments | (1a) | 0.434 | 0.662 | 4.416 | 3.235 | 3.469 | 4.365 | 4.681 | 5.396 | 5.516 | 32.173 |
| | Payments | (2a) | 0.434 | 0.662 | 4.416 | 3.235 | 3.469 | 4.365 | 4.681 | 5.396 | 5.516 | 32.173 |
| Title 3: *(operational costs including customs co-operation)* | Commitments | (3a) | 0 | 0 | 9.742 | 11.041 | 11.262 | 12.636 | 14.060 | 15.536 | 18.285 | 92.561 |
| | Payments | (3b) | 0 | 0 | 9.742 | 11.041 | 11.262 | 12.636 | 14.060 | 15.536 | 18.285 | 92.561 |
| **TOTAL appropriations for EU Customs Authority** | Commitments | =1+1a +3a | 0.928 | 2.054 | 18.236 | 21.546 | 27.371 | 37.493 | 48.489 | 59.169 | 68.166 | 283.452 |
| | Payments | =2+2a +3b | 0.928 | 2.054 | 18.236 | 21.546 | 27.371 | 37.493 | 48.489 | 59.169 | 68.166 | 283.452 |

Period of 2026-2027 – redeployment:

| 03 XX XX | | | | | | | | 2026 | 2027 | **TOTAL** |
|---|---|---|---|---|---|---|---|---|---|---|
| EU Customs Authority | Commitments | (1) | | | | | | 0.928 | 2.054 | 2.981 |
| | Payments | (2) | | | | | | 0.928 | 2.054 | 2.981 |
| **TOTAL appropriations for** 03 XX XX | Commitments | =1+1a +3a | | | | | | 0.928 | 2.054 | 2.981 |
| | Payments | =2+2a +3b | | | | | | 0.928 | 2.054 | 2.981 |

| **Heading of multiannual financial framework** | Number | Heading 1 – Single Market, Innovation and Digital |
|---|---|---|

| **03 05 01** | | | 2026 | 2027 | 2028 | 2029 | 2030 | 2031 | 2032 | 2033 | 2034 | **TOTAL** |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Co-operation in the field of customs (Data Hub - Commission) | Commitments | (1) | 23.072 | 31.946 | 101.682 | 127.015 | 50.817 | 0 | 0 | 0 | 0 | **334.533** |
| | Payments | (2) | 23.072 | 31.946 | 101.682 | 127.015 | 50.817 | 0 | 0 | 0 | 0 | **334.533** |
| Co-operation in the field of customs (Data Hub - **contribution arrangement** to EU | Commitments | (1a) | | | 25.420 | 84.677 | 203.268 | 268.580 | 227.785 | 237.611 | 247.739 | **1 295.080** |
| | Payments | (2a) | | | 19.065 | 82.564 | 211.736 | 268.580 | 227.785 | 237.611 | 247.739 | **1 295.080** |
| **TOTAL appropriations for 03 05 01** | Commitments | =1+1a +3a | 23.072 | 31.946 | 127.102 | 211.692 | 254.085 | 268.580 | 227.785 | 237.611 | 247.739 | **1 629.613** |
| | Payments | =2+2a +3b | 23.072 | 31.946 | 120.747 | 209.579 | 262.553 | 268.580 | 227.785 | 237.611 | 247.739 | **1 629.613** |

In the case of the EU Customs Authority, it is assumed that payments are at 75% of commitments in 2028 and 90% of commitments in 2029. In the case of the Commission, it is assumed that payments and commitments are at the same level as there is continuity from existing programmes.

Period of 2026-2027 – redeployment:

| 03 05 01 | | | | | | | | 2026 | 2027 | TOTAL |
|---|---|---|---|---|---|---|---|---|---|---|
| Co-operation in the field of customs (customs) – subheading 03 05 01 | Commitments | (1) | | | | | | 23.072 | 31.946 | 55.019 |
| | Payments | (2) | | | | | | 23.072 | 31.946 | 55.019 |
| **TOTAL appropriations for** 03 05 01 | Commitments | =1+ 1a | | | | | | 23.072 | 31.946 | 55.019 |
| | Payments | =2+ 2a | | | | | | 23.072 | 31.946 | 55.019 |

In the current MFF, the reform entails an EU spend of €60.165.000, combining operational and administrative expenditure. Of this, €55.019m in **operational expenditure** noted above goes to the developing the first structural capabilities of the EU Customs Data Hub and to the start of the EU Customs Authority.

This expenditure will come from the existing budget of the Customs Programme. Outputs include readiness to collect new e-commerce duties from 2028, pilot work led by the Commission on a selection of financial and non-financial risk management projects, and the preparation for operations of the EU Customs Authority.

Without prejudice to the next MFF, an analysis is presented addressing the period 2028-2034 above, addressing anticipated costs to the Union budget to cover expenditure on the EU Data Hub and the budget of the EU Customs Authority.

As regards **operational expenditure**:

- This Statement concerns the new budgetary needs which arise from this reform proposal. It does not concern the Commission's ongoing support for customs co-operation and existing UCC systems under 03 05 01, and the instrument for financial support for customs control equipment under 11 01 02. The Commission will continue to manage the existing UCC systems and will reduce its

operational expenditure on these over time. The Commission will also carry out some customs co-operation activities, reduced in view of the EUCA's new activities in this area. These costs are not included in this Legislative Financial Statement as they are not costs of this proposal.

- The IT costs in scope of this proposal relate to the development of the Data Hub. The funding line above covers approximately €1.63 billion after indexation at 2% per table above.

- The Commission would allocate Data Hub tasks to the EUCA through contribution arrangements. The relevant costs are therefore included in the succession for the Customs Programme in the post-2027 MFF.

- The EUCA's operational expenditure, which is primarily on delivering customs co-operation, is further described in the Annex. The EUCA is presumed to enter its start-up phase in 2026, with 7 staff (5 Contract Agents and 2 Temporary Agents), increasing staff by a further 7 in 2027, and starting operations in 2028 (building to 30 staff in that year).

- Title I includes an estimated staffing for the EUCA of 250 in 2034, of which approximately 115 would be directly associated with IT and Data management functions. These IT and Data management posts would address both the development of the Data Hub platform and applications as assigned under a contribution agreement, and technical management of the Data Hub for data projects, analytics and management of the customs data model.

-

| **Heading of multiannual financial framework** | **7** | 'Administrative expenditure' |
|---|---|---|

EUR million (to three decimal places)

| | | | | | | | | 2026 | 2027 | **TOTAL** |
|---|---|---|---|---|---|---|---|---|---|---|
| DG: TAXUD | | | | | | | | | | |
| • Officials | | | | | | | | 0.513 | 1.197 | 1.710 |
| • Contract Staff | | | | | | | | 0.182 | 0.273 | 0.455 |
| **TOTAL DG** TAXUD | Appropriations | | | | | | | 0.695 | 1.470 | **2.165** |

As regards **administrative expenditure:** In the current MFF, TAXUD would need an additional 5 FTE in 2026 and a further additional 5 FTE in 2027 to prepare the Authority.

EUR million (to three decimal places)

| | | | | |
|---|---|---|---|---|
| **TOTAL appropriations under HEADING 7** of the multiannual financial framework | Net total 2026-2027 (Total commitments = Total payments) | 0.695 | 1.470 | |

The estimated totals **under all Headings** for period 2026-2034 are summarised below:

| | | 2026 | 2027 | 2028 | 2029 | 2030 | 2031 | 2032 | 2033 | 2034 | **TOTAL** |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **TOTAL appropriations under HEADINGS 1 to 7** of the multiannual financial framework | Commitments | 24.695 | 35.470 | 145.338 | 233.238 | 281.456 | 306.073 | 276.274 | 296.780 | 315.905 | 1 915.230 |
| | Payments | 24.695 | 35.470 | 138.983 | 231.125 | 289.924 | 306.073 | 276.274 | 296.780 | 315.905 | 1 915.230 |

*3.2.2. Estimated impact on appropriations*

– ☐ The proposal/initiative does not require the use of operational appropriations

– **X** The proposal/initiative requires the use of operational appropriations, as explained below:

The proposal is not limited to establishment of an Agency. It comprehensively reforms the Customs Union. It provides a new strategic capability (in terms of Governance, a new EU Customs Authority, and in terms of capacities, a new EU Customs Data Hub), in tandem with a revision and simplification of operation processes for national authorities and trade operators. As it improves the co-operation in delivering the Customs Union *"as one"* and produces effects which are delivered by national authorities (rather than only by the Authority), it would not be appropriate to attempt to map the outputs to activity indicators of the Authority. It is more appropriate to map the two major outputs (and expenditure categories) which work together to deliver the reform objective – the EU Customs Data Hub and the EU Customs Authority - as per the tables below.

The figures for the **current MFF** below relate to the Commission's operational costs only. These concern the Data Hub.

Amounts in EUR million (to three decimal places)

| **Indicate objectives and outputs** ⇩ | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | 2024 | | 2025 | | 2026 | | 2027 | | **TOTAL** | |
| | **OUTPUTS** | | | | | | | | | | | | | | | | | |
| | Type[1] | Average cost | No | Cost | | Cost | No | Cost | No | Cost | No | Cost | No | Cost | No | Cost | Total No | Total cost |

[1] Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

| GENERAL OBJECTIVE | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| - EU Customs Data Hub | | | | | | | | | | | | | 23.072 | | 31.496 | | 55.018 |
| Subtotal | | | | | | | | | | | | | 23.072 | | 31.496 | | 55.018 |
| **TOTAL COST** | | | | | | | | | | | | | 23.072 | | 31.496 | | 55.018 |

The figures for the period 2028-2034 below relate to the costs of the development of the EU Customs Data Hub, and of the operation of the EU Customs Authority. These are operational costs, indexed from 2025 at 2%.

| **Indicate objectives and outputs** | | **2028** | | **2029** | | **2030** | | **2031** | | **2032** | | **2033** | | **2034** | | **TOTAL** |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | **OUTPUTS** | | | | | | | | | | | | | | |
| ⇩ | Average | No. | Cost | | Cost | | Cost | No. | Cost | No | Cost | | Cost | No. | Cost | Total cost |
| **GENERAL OBJECTIVE** | | | | | | | | | | | | | | | | |
| **- EU Customs Data Hub** | | | | | | | | | | | | | | | | |
| *EU data space CAPEX* | | | 47.424 | | 60.465 | | 61.674 | | 50.326 | | 0 | | 0 | | 0 | 219.889 |
| *EU data space OPEX* | | | 47.857 | | 113.900 | | 149.371 | | 169.288 | | 172.673 | | 176.127 | | 179.649 | 1 008.865 |
| *Transformation program CAPEX* | | | 31.822 | | 32.458 | | 33.107 | | 33.770 | | 34.445 | | 35.134 | | 35.837 | 236.573 |
| *Transformation program OPEX* | | | 0 | | 4.869 | | 9.932 | | 15.196 | | 20.667 | | 26.350 | | 32.253 | 109.268 |

[2] Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

| | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Subtotal | | | | 127.102 | | 211.692 | | 254.085 | | 268.580 | | 227.785 | | 237.622 | | 247.739 | | 1 574.594 |
| **- EU Customs Authority** | | | | 18.235 | | 21.546 | | 27.371 | | 37.943 | | 48.489 | | 59.169 | | 68.166 | | 280.471 |
| Subtotal | | | | 18.235 | | 21.546 | | 27.371 | | 37.943 | | 48.489 | | 59.169 | | 68.166 | | 280.471 |
| **TOTAL COST** | | | | 145.338 | | 233.238 | | 281.457 | | 306.073 | | 276.274 | | 296.780 | | 315.905 | | 1 855.065 |

Amounts in EUR million (to three decimal places). Where applicable, amounts reflect the sum of the Union contribution to the agency and other revenue of the agency (fees and charges).

Additonal explanations for EU Customs Data Hub costs:

**EU data space CAPEX:**

This budget line covers the design and implementaiton of the Data Hub platform including the development (or licencing/purchasing) and the integration of the different components covering the data exchange, data processing, application management and data catalogue capabilities.

**EU data space OPEX:**

This line includes the provision of the necessary infrastructure (data centres rental, hardware, cloud services, software licensing etc.) and the operational capabilities (services desk, technical support, operational support, etc.) to ensure the adequate level and capacity of service. This line also covers eventual maintenance of the Data Hub once delivered and in service mode.

**Transformation program CAPEX:**

This line covers development and implementation in the Data Hub platform of the functionalities relative to the National Customs systems being trasferred to the central implementation according to the reform legislation.

**Transformation program OPEX:**

This line covers the operational and maintenance costs in the Data Hub platform of the element implementing the functionalities relative to the National Customs systems being trasferred to the central implementation according to the reform legislation.

### *3.2.3. Estimated impact on the EU Customs Authority's human resources*

#### 3.2.3.1. Summary

– ☐ The proposal/initiative does not require the use of appropriations of an administrative nature

– **X** The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

The figures below are based on the EU Customs Authority reaching cruising speed at 2034 and human resource levels being stable from that point. An assumption of a ratio of 2:1 between establishment plan and external staff is assumed. While it is not possible at this stage to quantify the number of AST or AD grades, or the number of SNE which may be provided by national administrations, an estimation is made. The costs are indexed at 2%.

EUR million (to three decimal places) Where applicable, amounts reflect the sum of the Union contribution to the agency and other revenue of the agency (fees and charges).

| | 2026 | 2027 | 2028 | 2029 | 2030 | 2031 | 2032 | 2033 | 2034 | **TOTAL** |
|---|---|---|---|---|---|---|---|---|---|---|
| Temporary agents (AD Grades) | 0.119 | 0.423 | 1.542 | 3.335 | 5.970 | 10.018 | 14.693 | 19.073 | 22.234 | 77.408 |
| Temporary agents (AST grades) | 0.059 | 0.212 | 0.771 | 1.668 | 2.985 | 5.009 | 7.346 | 9.537 | 11.117 | 38.704 |
| Contract staff (CA) | 0.237 | 0.676 | 0.749 | 1.085 | 1.927 | 3.220 | 4.691 | 6.090 | 7.099 | 25.773 |
| Seconded National Experts (SNE) | | | 0.187 | 0.271 | 0.482 | 0.805 | 1.173 | 1.523 | 1.775 | 6.215 |
| TOTAL | **0.415** | **1.311** | **3.249** | **6.360** | **11.363** | **19.051** | **27.903** | **36.223** | **42.226** | **148.101** |

As regards the attribution of costs between the above grades, the establishment plan posts are assumed to be allocated 2:1 AD:AST, and the external posts are assumed to be allocated 4:1 CA/SNE from the operational start in 2028.[1] These estimations are without prejudice to the eventual recruitment distribution.

Staff requirements (FTE):

| | 2026 | 2027 | 2028 | 2029 | 2030 | 2031 | 2032 | 2033 | 2034 | Total |
|---|---|---|---|---|---|---|---|---|---|---|
| Temporary agents (AD Grades) | 2 | 5 | 14 | 22 | 40 | 62 | 91 | 122 | 111 | 111 |
| Temporary agents (AST grades) | | | 6 | 11 | 20 | 31 | 46 | 31 | 56 | 56 |

[1] It may be that some secretarial posts would be in the would be in the TA (AST/SC) category; however this LFS is prepared on the assumption that those posts would be in CA categories.

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Contract staff | 5 | 9 | 8 | 16 | 24 | 39 | 50 | 62 | 66 | 66 |
| Seconded National Experts | | | 2 | 3 | 6 | 8 | 13 | 15 | 17 | 17 |
| **TOTAL** | 7 | 14 | 30 | 50 | 90 | 140 | 190 | 230 | 250 | **250** |

It is assumed that all newly hired staff work for 6 months in their year of recruitment.

While the precise allocation of staff figures by profile cannot be definitively identified at this point in time, the following table gives a general overview of what may be anticipated:

| | **2026** | **2027** | **2028** | **2029** | **2030** | **2031** | **2032** | **2033** | **2034** |
|---|---|---|---|---|---|---|---|---|---|
| **Total** | 7 | **14** | **30** | **50** | **90** | **140** | **190** | **230** | **250** |
| Administrative | 6 | 8 | 12 | 20 | 22 | 22 | 22 | 22 | 22 |
| Data and IT | 1 | 4 | 10 | 18 | 40 | 65 | 90 | 105 | 115 |
| Coordination/Capacity building | | 2 | 8 | 12 | 28 | 53 | 78 | 103 | 113 |

**Administrative** profiles would deal with issues such as human resources, finance, accounting, legal affairs, communications, quality control and audit, administrative support to senior management, the EUCA's own IT, and logistics.

**Data and IT** profiles would deal with the EU Customs Data Data Hub including management of IT development, operations and infrastructure, data projects and their management and data governance).

**Co-ordination and Capacity building** profiles would deal with the operational co-ordination of work involving the Member States customs and co-operation with other external experts, in areas including risk management, crisis management, co-operation with other non-customs authorities, training and guidance on common working methods and processes, and co-ordination of operationaal work as well as performance measurement, monitoring, research and innovation, joint controls and control equipment support.

FTE are rounded to the nearest whole number.

3.2.3.2. Estimated requirements of human resources for the parent DG

– ☐ The proposal/initiative does not require the use of human resources.

– **X** The proposal/initiative requires the use of human resources, as explained below:

*Estimate to be expressed in full amounts (or at most to one decimal place)*

| | | 2026 | 2027 |
|---|---|---|---|
| **• Establishment plan posts (officials and temporary staff)** | | | |
| 20 01 02 01 and 20 01 02 02 (Headquarters and Commission's Representation Offices) | | +3 | +7 |
| 20 01 02 03 (Delegations) | | | |
| 01 01 01 01 (Indirect research) | | | |
| 10 01 05 01 (Direct research) | | | |
| **• External staff (in Full Time Equivalent unit: FTE)[1]** | | | |
| 20 02 01 (AC, END, INT from the 'global envelope') | | +2 | +3 |
| 20 02 03 (AC, AL, END, INT and JPD in the Delegations) | | | |
| Budget line(s) (specify)[2] | - at Headquarters[3] | | |
| | - in Delegations | | |
| **01 01 01 02** (AC, END, INT – Indirect research) | | | |
| 10 01 05 02 (AC, END, INT – Direct research) | | | |
| Other budget lines (specify) | | | |
| **TOTAL** | | **+5** | **+10** |

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

1 AC = Contract Staff; AL = Local Staff; END = Seconded National Expert; INT = agency staff; JPD = Junior Professionals in Delegations.

2 Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

3 Mainly for the EU Cohesion Policy Funds, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime Fisheries and Aquaculture Fund (EMFAF).

Description of tasks to be carried out:

| | |
|---|---|
| Officials and temporary staff | The EU Customs Authority would start its operations in 2028, leaving a period of approximately two years between adoption of the founding act and start of operations, which could be devoted to the activities necessary for starting up the new body. The Commission should be in charge of the setting up of the EU Customs Authority. Therefore, resources need to be envisaged for this process. The additional FTE indicated in 2026 and 2027 in the table above; thereafter the net effect on Commission staff is a reduction.<br><br>In order for the EU Customs Authority to be ready for the start of its operations, the additional FTE would carry out the following preparatory activities:<br>1. Preparation of first budget, including readiness of implementation tools (accounting/budget management systems) and procedures.<br>2. Selection procedure for the Executive Director (starting with an interim executive director from the Commission for 2026/2027 before the EUCA is operational).<br>3. Nomination of Management Board and Executive Board members.<br>4. Preparation of first meetings and decisions.<br>5. Preparation of headquarters building in coordination with the hosting state; negotiation of a hosting agreement; purchase of equipment; IT; security; maintenance.<br>6. Recruiting for the EU Customs Authority, in anticipation of very steep initial needs. Priority in the beginning on functions required for basic functioning (capacity to pay salary, organise time management, training etc.).<br>7. Definition of organisational structure, internal organisation and procedures<br>8. Identify possibility of Commission Staff temporary transfer to the EU Customs Authority.<br>9. Creation of a basic web page and visual identity.<br>10. Preparation of a first Annual Work Programme and/or Single Programming Document.<br>11. Preparation of contribution agreement(s) if retained.<br>12. Provision of Customs Programme support to the first expert-level meetings of the EUCA in 2026/2027<br><br>Experience from other agencies recently set up shows that a team of approximately 10 staff members in the partner DG is needed to perform these start-up tasks. |

| | |
|---|---|
| | The above-mentioned tasks are mainly administrative and process-related. With the exception of item 12, they do not concern the substance of the EU Customs Authority's future work. |
| External staff | Work in connection with tasks above, notably 1, 4, 5, 9, 12. |

*3.2.4. Compatibility with the current multiannual financial framework*

**X** The proposal/initiative is compatible the current multiannual financial framework. The €58 million required in 2026 and 2027 will be allocated within the existing provision under the Single Market budget line: *Co-operation in the field of customs (Customs) – subheading 03 05 01*

– ☐ The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

– ☐ The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework[4].

–

*3.2.5. Third-party contributions*

**X** The proposal/initiative does not provide for co-financing by third parties.

– The proposal/initiative provides for the co-financing estimated below:

EUR million (to three decimal places)

| | Year **N** | Year **N+1** | Year **N+2** | Year **N+3** | Enter as many years as necessary to show the duration of the impact (see point 1.6) | | | Total |
|---|---|---|---|---|---|---|---|---|
| Specify the co-financing body | | | | | | | | |
| TOTAL appropriations co-financed | | | | | | | | |

[4] See Articles 12 and 13 of Council Regulation (EU, Euratom) No 2093/2020 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027

### 3.3. Estimated impact on revenue

– ☐ The proposal/initiative has no financial impact on revenue.

– ☐ The proposal/initiative has the following financial impact:

– **X** on own resources

– ☐ on other revenue

– please indicate, if the revenue is assigned to expenditure lines ☐

EUR million (to three decimal places)

| Budget revenue line: | Appropriations available for the current financial year | Impact of the proposal/initiative[5] | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | 2028 | 2029 | 2030 | 2031 | 2032 | 2033 | 2034 | Total |
| Article ……. | | 812 | 828 | 845 | 862 | 879 | 896 | 914 | 6 035 |

For miscellaneous 'assigned' revenue, specify the budget expenditure line(s) affected.

Specify the method for calculating the impact on revenue.

In the period 2028-2034, the reform brings in extra income from e-commerce duties minus 25% national collection costs (net TOR). This is estimated at €750 million per annum, indexed at 2%, which yields approximately €6.035 Billion in this period.

EUR million (to three decimal places)

[5] As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.

## ANNEX – ASSUMPTIONS:

### Staffing evolution in the Authority:

The overall FTE evolution is anticipated as follows.

| | 2026 | 2027 | 2028 | 2029 | 2030 | 2031 | 2032 | 2033 | 2034 |
|---|---|---|---|---|---|---|---|---|---|
| EU Custom Authority | 7 | 14 | 30 | 50 | 90 | 140 | 190 | 230 | 250 |

While it is not in the scope of this Statement, it is useful to note that the Impact Assessment accompanying this proposal provides an estimate for freeing up of administrative effort at national level arising from the simplification and rebalancing of customs processes. By 2034, compared with the baseline the Member States would need to expend lower efforts on the given tasks concerned, estimated in the region of 2000 FTE.[6] This does not imply or require that Member States would decide to reduce customs numbers accordingly.

From 2028 onwards there would also be a progressive freeing up of staff in the parent DG as certain activities previously carried out under the customs programme and under TAXUD management would be superseded by activities of the Authority.

[6] The assumptions used to prepare these estimates are detailed in the Impact Assessment and its Annexes.

**Title III:**

| Title III | 2028 | 2029 | 2030 | 2031 | 2032 | 2033 | 2034 | Totals |
|---|---|---|---|---|---|---|---|---|
| Customs co-operation | 9.000.000 | 10.000.000 | 10.000.000 | 11.000.000 | 12.000.000 | 13.000.000 | 15.000.000 | 80.000.000 |
| Indexed at 2% | 9.741.889 | 11.040.808 | 11.261.624 | 12.635.542 | 14.059.913 | 15.536.203 | 18.284.916 | 92.560.896 |

The operational expenditure of the EU Customs Authority concerns operational customs co-operation.

The EU Customs Authority will also manage costs under a contribution arrangement, for the EU Customs Data Hub.

The **Custom Co-operation** line above covers the costs of convening working groups of Member States customs experts to collaborate intensively on themes in the scope of the proposal, including on risk management, implementation and evaluation of common risk criteria and standards and common priority control areas, training, development of working methods and guidance in relation to technical issues, *Trust and Check* implementation, development of common business processes and interoperability related to the EU Customs Data Space and its connection with other systems, etc. It also includes convening multi-disciplinary groups of experts at different levels (sectoral, national, international) on themes in the scope of the proposal, including crisis preparation and response, implementation of common policy priorities, development and implementation of co-operation frameworks and their elements (including supervision strategies). The groups organised by EU Customs Authority will be essential to effective uniform delivery of the customs union, as most of the operational work continues to be performed "boots on the ground" by national authorities.

Council of the European Union

Brussels, 22 May 2023
(OR. en)

**9596/23**
**ADD 1**

**Interinstitutional File:**
**2023/0156(COD)**

**UD 110**
**CODEC 917**
**ENFOCUSTOM 57**
**ECOFIN 452**
**MI 429**
**COMER 57**
**TRANS 194**
**FISC 95**

**PROPOSAL**

| | |
|---|---|
| From: | Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director |
| date of receipt: | 17 May 2023 |
| To: | Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union |
| No. Cion doc.: | COM(2023) 258 final |
| Subject: | ANNEX to the Proposal for a Regulation of the European Parliament and of the Council establishing the Union Customs Code and the European Union Customs Authority, and repealing Regulation (EU) No 952/2013 |

Delegations will find attached document COM(2023) 258 final.

Encl.: COM(2023) 258 final

EUROPEAN
COMMISSION

Brussels, 17.5.2023
COM(2023) 258 final

ANNEX

**ANNEX**

**to the**

**Proposal for a Regulation of the European Parliament and of the Council**

**establishing the Union Customs Code and the European Union Customs Authority, and repealing Regulation (EU) No 952/2013**

{SEC(2023) 198 final} - {SWD(2023) 140 final} - {SWD(2023) 141 final}

**ANNEX: Correlation table**

| **Regulation (EU) 952/2013** | **This Regulation** |
|---|---|
| Article 1 | Article 1 |
| Article 3 | Article 2 |
| Article 4 | Article 3 |
| Article 2 | Article 4 |
| Article 5 | Article 5 |
| Article 22 | Article 6 |
| Article 23 | Article 7 |
| Article 26 | Article 8 |
| Article 27 | Article 9 |
| Article 28 | Article 10 |
| Article 29 | Article 11 |
| Article 30 | Article 12 |
| Article 33 | Article 13 |
| Article 34 | Article 14 |
| Article 43 | Article 15 |

| | |
|---|---|
| Article 44 | Article 16 |
| Article 45 | Article 17 |
| Article 52 | Article 18 |
| Article 9 | Article 19 |
| — | Article 20 |
| — | Article 21 |
| — | Article 22 |
| Article 38 | Article 23 |
| Article 39 | Article 24 |
| — | Article 25 |
| — | Article 26 |
| Article 18 | Article 27 |
| Article 19 | Article 28 |
| — | Article 29 |
| — | Article 30 |
| — | Article 31 |
| — | Article 32 |

| | |
|---|---|
| — | Article 33 |
| — | Article 34 |
| — | Article 35 |
| — | Article 36 |
| — | Article 37 |
| Article 13 | Article 38 |
| Article 14 | Article 39 |
| Article 51 and 163 | Article 40 |
| Articles 134(1) first sentence and 158 | Article 41(1) |
| Article 134(1) second subparagraph | Article 41(2) |
| Article 134(1) fourth subparagraph | Article 41(3) |
| Article 158(3) | Article 41(6) |
| Article 134(2) | Article 41(7) |
| Article 159 (1) (2) | Article 42 (1) (2) |
| Article 46(1) | Article 43 (1) (2) |
| Article 47(1) | Article 43(3) |
| Article 188(1) | Article 44 (1) |

| | |
|---|---|
| Article 189 | Article 45 (1) (2) (3) |
| Article 190 (1) | Article 45(4) |
| Article 191 | Article 46 |
| Article 192 | Article 47 |
| Article 48 | Article 48 (1) (2) |
| Article 49 | Article 49 |
| Article 46(4) second subparagraph | Article 50 (2) |
| Article 46(6) (7) | Article 52 |
| Article 153 | Article 51 |
| Article 154 | Article 52 |
| — | Article 53 |
| — | Article 54 |
| — | Article 55 |
| Article 153 | Article 56 |
| Article 154 | Article 57 |
| Article 155 | Article 58 |
| — | Article 59 |

| | |
|---|---|
| Article 194 (1) first subparagraph | Article 60 (2) |
| | Article 61 |
| Article 129 | Article 62 (1) (2) |
| Article 158(1) (2) | Article 63 (1) and (3) |
| Article 159(3) | Article 63 (4) |
| Article 162 | Article 64 |
| Article 166 | Article 65 |
| Article 167 | Article 66 |
| Article 170 | Article 67 |
| Article 171 | Article 68 |
| Article 172 | Article 69 |
| Article 173 | Article 70 |
| Article 174 | Article 71 |
| Article 179 | Article 72 |
| Article 182 | Article 73 |
| — | Article 74 |
| — | Article 75 |

| | |
|---|---|
| Article 197 | Article 76 |
| Article 198 | Article 77 |
| Article 199 | Article 78 |
| Article 127 (1) | Article 79 |
| Article 127 (3) first subparagraph and (4) first subparagraph | Article 80 (1) |
| Article 127 (2) | Article 80 (6) |
| Article 128 | Article 81 (1) |
| Article 129 | Article 82 |
| Articles 133 | Article 83 |
| Article 135 | Article 84 |
| Article 139 | Article 85 |
| Article 147 (1) (2) | Article 86 (2) (3) |
| — | Article 87 |
| Article 201 (1) | Article 88 (1) |
| Article 201 (2) | Article 88 (3) |
| Article 202 | Article 89 |
| Article 203 | Article 90 |

| | |
|---|---|
| Article 204 | Article 91 |
| Article 205 | Article 92 |
| Article 208 | Article 93 |
| — | Article 94 |
| Article 263 (1) (2), 270, 271, 274 | Article 95 (1) (2) |
| Article 272 and 275 | Article 96 |
| Article 264 | Article 97 |
| — | Article 98 |
| Article 269 (1) and 274 | Article 99 (1) |
| Article 277 | Article 100 |
| Article 210 | Article 101 |
| Article 211 | Article 102 |
| Article 211 (2) | Article 103 |
| Article 214 | Article 104 |
| Article 215 | Article 105 |
| Article 218 | Article 106 |
| Article 219 | Article 107 |

| | |
|---|---|
| Article 220 | Article 108 |
| Article 223 | Article 109 |
| — | Article 110 |
| Article 226 | Article 111 |
| Article 227 | Article 112 |
| Article 228 | Article 113 |
| Article 229 | Article 114 |
| Article 230 | Article 115 |
| Article 233 | Article 116 |
| Article 234 | Article 117 |
| Articles 237 and 246 | Article 118 |
| Article 145 (1) | Article 119 (1) |
| Article 146 | Article 120 |
| Article 238 | Article 121 |
| Article 240 | Article 122 |
| Article 148 (1) (2) (3) | Article 123 |
| Articles 148 (5) (6) and 240 (3) | Article 124 |

| | |
|---|---|
| Article 241 | Article 125 |
| Article 242 | Article 126 |
| Article 243 | Article 127 |
| Article 244 | Article 128 |
| Article 247 | Article 129 |
| Article 248 | Article 130 |
| Article 249 | Article 131 |
| Article 250 | Article 132 |
| Article 251 | Article 133 |
| Article 252 | Article 134 |
| Article 254 | Article 135 |
| Article 255 | Article 136 |
| Article 256 | Article 137 |
| Article 257 | Article 138 |
| Article 258 | Article 139 |
| Article 259 | Article 140 |
| Article 260 | Article 141 |

| | |
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| Article 260a | Article 142 |
| Article 261 | Article 143 |
| Article 262 | Article 144 |
| Article 56 | Article 145 |
| Article 57 | Article 146 |
| Article 59 | Article 147 |
| Article 60 | Article 148 |
| Article 61 | Article 149 |
| Article 64 | Article 150 |
| Article 67 | Article 151 |
| Article 69 | Article 152 |
| Article 70 | Article 153 |
| Article 71 | Article 154 |
| Article 72 | Article 155 |
| Article 73 | Article 156 |
| Article 74 | Article 157 |
| — | Article 158 |

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|---|---|
| Article 77 | Article 159 |
| Article 78 | Article 160 |
| Article 79 | Article 161 |
| Article 80 | Article 162 |
| Article 81 | Article 163 |
| Article 82 | Article 164 |
| Article 83 | Article 165 |
| Article 84 | Article 166 |
| Article 85 | Article 167 |
| Article 86 | Article 168 |
| Article 87 | Article 169 |
| Article 89 | Article 170 |
| Article 90 | Article 171 |
| Article 91 | Article 172 |
| Article 92 | Article 173 |
| Article 93 | Article 174 |
| Article 94 | Article 175 |

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|---|---|
| Article 95 | Article 176 |
| Article 96 | Article 177 |
| Article 97 | Article 178 |
| Article 98 | Article 179 |
| Article 101 | Article 180 |
| Article 102 | Article 181 |
| Article 103 | Article 182 |
| Article 104 | Article 183 |
| Article 105 | Article 184 |
| Article 107 | Article 185 |
| Article 108 | Article 186 |
| Article 109 | Article 187 |
| Article 110 | Article 188 |
| Article 111 | Article 189 |
| Article 112 | Article 190 |
| Article 113 | Article 191 |
| Article 114 | Article 192 |

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|---|---|
| Article 116 | Article 193 |
| Article 117 | Article 194 |
| Article 118 | Article 195 |
| Article 119 | Article 196 |
| Article 120 | Article 197 |
| Article 121 | Article 198 |
| Article 124 | Article 199 |
| Article 125 | Article 200 |
| — | Article 201 |
| — | Article 202 |
| — | Article 203 |
| — | Article 204 |
| — | Article 205 |
| — | Article 206 |
| — | Article 207 |
| — | Article 208 |
| — | Article 209 |

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|---|---|
| — | Article 210 |
| — | Article 211 |
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| — | Article 213 |
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| — | Article 215 |
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| — | Article 218 |
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| — | Article 222 |
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| — | Article 225 |
| — | Article 226 |

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| — | Article 227 |
| — | Article 228 |
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| — | Article 230 |
| — | Article 231 |
| — | Article 232 |
| — | Article 233 |
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| — | Article 235 |
| — | Article 236 |
| — | Article 237 |
| — | Article 238 |
| — | Article 239 |
| — | Article 240 |
| — | Article 241 |
| — | Article 242 |
| — | Article 243 |

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|---|---|
| — | Article 244 |
| — | Article 245 |
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| — | Article 247 |
| — | Article 248 |
| — | Article 249 |
| — | Article 250 |
| — | Article 251 |
| — | Article 252 |
| — | Article 253 |
| — | Article 254 |
| — | Article 255 |
| — | Article 256 |
| — | Article 257 |
| — | Article 258 |
| Article 53 | Article 259 |
| Article 56 | Article 260 |

| | |
|---|---|
| Article 284 | Article 261 |
| Article 285 | Article 262 |
| Article 286 | Article 263 |
| Article 287 | Article 264 |
| Article 288 | Article 265 |

Council of the European Union

Brussels, 22 May 2023
(OR. en)

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**Interinstitutional File: 2023/0158(CNS)**

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**ENFOCUSTOM 60**
**ECOFIN 457**
**FISC 98**
**MI 436**
**COMER 61**
**TRANS 197**

**PROPOSAL**

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| From: | Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director |
| To: | Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union |
| No. Cion doc.: | COM(2023) 262 final |
| Subject: | Proposal for a COUNCIL DIRECTIVE amending Directive 2006/112/EC as regards VAT rules relating to taxable persons who facilitate distance sales of imported goods and the application of the special scheme for distance sales of goods imported from third territories or third countries and special arrangements for declaration and payment of import VAT |

Delegations will find attached document COM(2023) 262 final.

Encl.: COM(2023) 262 final

EUROPEAN
COMMISSION

Brussels, 17.5.2023
COM(2023) 262 final

2023/0158 (CNS)

Proposal for a

**COUNCIL DIRECTIVE**

**amending Directive 2006/112/EC as regards VAT rules relating to taxable persons who facilitate distance sales of imported goods and the application of the special scheme for distance sales of goods imported from third territories or third countries and special arrangements for declaration and payment of import VAT**

# EXPLANATORY MEMORANDUM

## 1. CONTEXT OF THE PROPOSAL

### • Reasons for and objectives of the proposal

The present initiative is, together with the proposal for a Regulation of the European Parliament and of the Council establishing the Union Customs Code, the European Union Customs Data Hub and the European Union Customs Authority, and repealing Regulation (EU) 952/2013 ("UCC revision"), and the proposal for a Council Regulation amending Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty and Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, part of a broad and comprehensive reform of the Customs Union.

Value added tax (VAT) is a major source of government revenue in all EU Member States.[1] In 2020, its contribution to total tax receipts ranged from 20% to 50% across Member States and accounted for approximately 26% of the total yearly tax receipts for general government in the EU27. It is also a key source of financing for the EU budget since 0.3% of VAT collected at national level is transferred to the EU as own resources, representing 12% of the total EU budget.

The revenue loss, known as the 'VAT gap', delineates the issues caused by sub-optimal VAT collection and control. Estimated at a total of EUR 93 billion for 2020, a significant part of this loss is due to missing trader intra-Community (MTIC) fraud. The VAT gap also includes revenues lost to domestic VAT fraud and evasion, VAT avoidance, bankruptcies and financial insolvencies, as well as miscalculations and administrative errors. The VAT system is not only prone to fraud, but has also become increasingly complex and burdensome for businesses.

In response to the explosive growth in e-commerce activity and a fragmented regulatory framework for the collection of VAT on e-commerce supplies, on 1 July 2021, the VAT e-commerce package introduced a number of VAT and customs related reforms to modernise and simplify the collection of tax on e-commerce transactions. The implementation of the e-commerce package has proven to be a great success as shown in the results of an evaluation that was conducted in relation to the first 6 months of application. This was confirmed by Member States in the Council Conclusions[2] of the March 2022 ECOFIN.

On the import side, one of the primary objectives of the VAT e-commerce package was to level the playing field for EU established suppliers by addressing distortive rules that led to competition issues in the e-commerce market. The VAT exemption for the importation of small value consignments not exceeding EUR 22 was abolished. As a result, VAT is now due on all commercial goods imported into Europe from a third country or third territory, irrespective of their value.

With the abolition of the EUR 22 threshold, the e-commerce package introduced a number of simplifications to help ease the compliance burden for traders making distance sales of imported

[1] Tax revenue statistics - Statistics Explained (europa.eu), Eurostat.

[2] Council conclusions on the implementation of the VAT e-commerce package, ST 7104/22 of 15 March 2022.

goods into the EU. Albeit, the scope of these simplifications was limited to imports with an intrinsic value not exceeding EUR 150.

One such simplication is the Import One-Stop Shop (IOSS) ), which is however only available for distance sales of imported goods with an intrinsic value not exceeding EUR 150 (as the VAT e-commerce package did not remove the EUR 150 customs duty exemption threshold). Traders who opt to use the IOSS do not need to register for VAT in each Member State in which their eligible supplies of imported goods to consumers take place. When the IOSS is used, the VAT due on those supplies is collected upfront at the time of the supply, meaning that VAT does not have to be collected at the time of importation. However, the regime is different for goods with a value above EUR 150, as such distance sales of imported goods are liable to import VAT at the time of importation (VAT is not collected upfront).

The proposal to reform the customs framework[3] creates a clear rationale to delete the EUR 150 threshold, which currently limits the application of the IOSS to distance sales of imported goods not exceeding EUR 150. That proposal introduces the concept of a 'deemed importer', who is any person involved in distance sales of goods to be imported from third territories or third countries and who is authorised to use the IOSS. Such persons will incur a customs debt when the payment for the distance sale is accepted and will be able to apply a 'simplified tariff treatment for distance sales' when determining the appropriate customs value.

Under the simplified tariff treatment, the deemed importer can apply one of the 'bucket' tariffs to the customs value. The deemed importer will therefore have all the information required, including the duties due by reason of importation, to properly calculate the taxable amount upon which VAT must be applied. Therefore, it is opportune to amend Council Directive 2006/112/EC by deleting the EUR 150 threshold that applies to the IOSS.

The removal of the EUR 150 IOSS threshold is warranted in its own right as it will help to support the objective of a single VAT registration in the Union by allowing IOSS registered traders to declare and remit the VAT due on all their eligible supplies of IOSS goods, irrespective of their value. While the removal of the IOSS threshold is not dependent on the implementation of the customs reforms, it will, nevertheless, support the reform of the customs framework as it will maximise the benefits that the customs oriented simplifications will create for the calculation of VAT on distance sales of imported goods. As the deemed importer, an IOSS registered trader will have all of the information needed to calculate the correct amount of VAT payable on all their eligible distance sales of imported goods. This measure will therefore also help to prevent undervaluation in relation to distance sales of imported goods as the correct amount of VAT will be collected at the time of supply, which is when the payment for the e-commerce transaction is accepted.

Moreover, this proposal aims to further reduce the compliance burden faced by traders making distance sales of imported goods by also extending the simplification known as the 'special arrangements'.

When certain conditions are met, the special arrangements allow postal operators, express carriers, customs agents and other operators who fulfil the customs import declarations on behalf of the customer to declare and remit the collected VAT on those imports on a monthly basis. The special arrangements are an optional simplification and apply, subject to conditions, to the importation of goods with an intrinsic value not exceeding EUR 150, excluding excise

[3] Revision of the Union Customs Code (europa.eu)'

goods. Under this proposal the EUR 150 threshold, which currently applies to the special arrangements, will also be removed. This iniaitve will further ease the compliance burden and costs associated with the importation of goods above EUR 150.

In addition to the IOSS simplification and the special arrangements, the e-commerce package also provided for the deemed liability of marketplaces and platforms, where they facilitate distance sales of goods imported into the EU with an intrinsic value not exceeding EUR 150. The 'deemed supplier' regime is a key reform that is designed to mitigate the risk of non-payment of VAT. Where this regime applies, individual sellers on marketplaces do not have to register for VAT in respect of supplies covered by the deemed supplier rule. This particular measure removes the compliance burden from sellers who operate via marketplaces. It also bolsters compliance as it streamlines the VAT obligations of thousands of underlying sellers by deeming the marketplace as the person liable to declare and pay the VAT due on those supplies. This initiative proposed the removal of the EUR 150 threshold to further expand the scope of the deemed supplier regime to cover all distance sales of imported goods into the EU, irrespective of their value. Consequently, this proposal also aims to reduce the compliance burden for taxable persons making distance sales of imported goods into the EU via marketplaces, which is in line with the key objectives of the VAT in the Digital Age (ViDA) proposal.

Building on the moment of the VAT e-commerce reforms, the Commission adopted the VAT in the Digital Age (ViDA) proposal in December 2022, as announced in the 2020 Action Plan for fair and simple taxation supporting the recovery.[4]

This current proposal seeks to further adapt the EU VAT framework by expanding the range of supplies covered by the IOSS, Special Arrangements and deemed supplier regime. Under this proposal, the IOSS could be used to declare and remit the VAT due on all distance sales of imported goods into the EU, irrespective of their value, but not including products subject to excise duties, which remain excluded from the scheme. Likewise, both the speical arrangements and the deemed supplier regime will be extended by removing the EUR 150 threshold, which currently limits their appication and effectiveness. This initiative will further stengthen the concept of a single VAT registration in the EU. Therefore, this proposal is coherent with the ViDA proposal and its objective to reduce the compliance burden for taxable persons, as it will remove the multiple registration obligations that persons making distance sales of imported goods above EUR 150 may otherwise face.

- **Consistency with existing policy provisions in the policy area**

This initiative is consistent with the ViDA proposal[5], which was adopted by the Commission on 8 December 2022 and is currently being discussed in Council. The ViDA proposal aims to modernise and reshape the EU system of VAT to the the digital era. In fact, the ViDA proposal represents an extensive and multifaceted package of reforms with three key primary aims, one of which is to enhance the concept of a single VAT registration (SVR) in the EU.

One of the main objectives of the ViDA proposal is to limit the need for multiple VAT registrations in the EU. The ViDA proposal strives to achieve this aim by expanding the scope

[4] VAT in the digital age (europa.eu).

[5] Proposal for a COUNCIL DIRECTIVE amending Directive 2006/112/EC as regards VAT rules for the digital age (COM/2022/701 final). Proposal for a COUNCIL REGULATION amending Regulation (EU) No 904/2010 as regards the VAT administrative cooperation arrangements needed for the digital age (COM/2022/703). Proposal for a COUNCIL IMPLEMENTING REGULATION amending Implementing Regulation (EU) No 282/2011 as regards information requirements for certain VAT schemes (COM/2022/704 final.)

of the simplification tools used to declare and remit the VAT due on distance sales of goods[6]. The ViDA reforms will advance the concept of a Single VAT Registration (SVR) in the EU by expanding the range of supplies covered by Union One-Stop Shop (Union OSS) simplification, which forms part of the suite of One-Stop Shop (OSS) simplifications. This proposal aims to further reduce the instances in which a taxable person making distance sales of imported goods has to register for VAT in more than one Member State by expanding the deemed supplier rule and by expanding the IOSS and special arrangements to cover imported goods above EUR 150. Therefore, both this initiative and the ViDA proposal help to support the aim of a single VAT registration in the EU.

The ViDA proposal also imposed the mandatory use of the IOSS for platforms. Under the ViDA proposal, the IOSS will be mandatory for marketplaces acting as deemed supplier for certain distance sales of imported goods. Under this proposal, marketplaces that facilitate distance sales of imported goods above EUR 150 will now be the deemed supplier in respect of those supplies and will, as a consequence, be obliged to declare and remit the VAT due on those supplies via the IOSS. This reform further protects the EU VAT system and strengthens the fight against VAT fraud as the compliance effort will now be focused on an even smaller pool of marketplaces (taxable persons) who are well versed in the field of VAT compliance and who, from a customs perspective, will also be the deemed importer for all supplies of imported goods that they facilitate via their platform. Futhermore, this measure will reduce the risk of undervaluation in relation to distance sales of imported goods. As the deemed importer, the marketplace will have all of the component ingredients at its disposal, which are needed to calculate the correct amount of VAT payable on such supplies. Undervaluation will no longer be possible as the marketplace will charge VAT upfront on the listed sales price of the goods. When determining the taxable amount upon which VAT is levied, the IOSS-registered marketplace, acting as both deemed supplier and deemed importer, will include all factors such as the taxes, duties and levies due by reason of importation, along with other incidental expenses such transport and insurance costs, that are required to properly calculate the taxable amount for VAT purposes. Consequently, the correct amount of VAT will be charged and remitted to the relevant tax authorities. As VAT is collected upfront at the time of sale of IOSS goods, the import process will also be eased as the subsequent import of IOSS goods is exempt from import VAT.

The initiative supports the EU's sustainable growth strategy[7] that refers to better tax collection, reduction of tax fraud, avoidance and evasion and to the reduction of compliance costs for business, individuals, and tax administrations. Improving taxation systems to favour more sustainable and fairer economic activity is also part of the EU's competitive sustainability agenda.

- **Consistency with other Union policies**

This initiative is consistent with the Customs Action Plan[8]. Management of e-commerce is one of the four key areas of action in the Customs Action Plan. This proposal to extend the IOSS scheme by removing the EUR 150 threshold is done in the framework of the customs reform.

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6 https://ec.europa.eu/taxation_customs/business/vat/vat-e-commerce_en

7 Member States' recovery and resilience plans envisage a wide set of reforms aimed at improving the business environment and favouring adoption of digital and green technologies. These reforms are complemented by important efforts to digitalise tax administrations as a strategic sector of the public administration. (Annual Sustainable Growth Survey 2022, COM(2021) 740 final.

8 Communication from the Commission to the European parliament, the Council and the European Economic and Social Committee Taking the Customs Union to the Next Level: a Plan for Action, Brussels, COM/2020/581 final.

In the final report of the Conference on the Future of Europe[9], citizens call for 'Harmonizing and coordinating tax policies within the Member States of the EU in order to prevent tax evasion and avoidance', 'Promoting cooperation between EU Member States to ensure that all companies in the EU pay their fair share of taxes'. This proposal is consistent with these goals.

## 2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

### • Legal basis

This Directive amends the VAT Directive on the basis of Article 113 of the Treaty on the Functioning of the European Union. That Article provides that the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, can adopt provisions to harmonise Member States' rules in the area of indirect taxation.

### • Subsidiarity (for non-exclusive competence)

This initiative is consistent with the principle of subsidiarity. Given the need to modify the VAT Directive, the objectives of this initiative cannot be achieved by the Member States themselves. Therefore, the Commission, which has responsibility for ensuring the smooth functioning of the single market and for promoting the general interest of the EU, needs to propose actions to improve the situation.

In addition, this proposal aims to make improvments to the functioning of the IOSS, which is a simplification tool for the declartion and payment of VAT, which is common to all Member States. Therefore, uncoordinated and fragmented national actions would have the potential to distort trade. In the targeted consultation[10], businesses stated their preference in this regard to have VAT rules applied uniformly at EU level, rather than having to comply with different reporting or registration obligations at national level. In terms of VAT collection and control, the size of the VAT gap and its persistence clearly demonstrates how national instruments are not sufficient to fight VAT fraud.

### • Proportionality

The proposal is consistent with the principle of proportionality and does not go beyond what is necessary to meet the objectives of the Treaties, in particular the smooth functioning of the single market.

Proportionality is ensured by the fact that this initiative promotes a more effective and robust principle of a single VAT registration, which does not interfere with national VAT registration processes. Instead, it focusses on expanding the IOSS scheme and deemed supplier regime to further limit the instances in which a trader who is engaging in distance sales of imported goods via a markerplace, or in their own right, is required to register for VAT in other Member States where they are not established and make such supplies of imported goods.

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9 Conference on the Future of Europe – Report on the Final Outcome, May 2022, Proposal 16 (1)-(3). The Conference on the Future of Europe was held between April 2021 and May 2022. It was a unique, citizen-led exercise of deliberative democracy at the pan-European level, involving thousands of European citizens as well as political actors, social partners, civil society representatives and key stakeholders.

10 VAT in the Digital Age. Final Report (vol. IV Consultation Activities). Specific Contract No 07 implementing Framework Contract No TAXUD/2019/CC/150.

An EU-wide framework for handling VAT registration is proportionate as it will make the functioning of the single market more sustainable. Removing the need for multiple registrations within the EU can, by its very nature, only be achieved with a proposal to amend the VAT Directive.

- **Choice of the instrument**

The proposal requires amending Directive 2006/112/EC on the common system of value added tax (the 'VAT Directive').

## 3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The VAT e-commerce package came into application on 1 July 2021 and introduced a number of amendments to the VAT rules governing the taxation of business-to-consumer (B2C) cross-border e-commerce activity in the EU.

The Commission conducted an *ex-post* evaluation of the first 6 months of application of the VAT e-commerce package. The initial results are very encouraging and are testament to the success of the new measures. On the import side, the first results hightlight that in the first 6 months, approximately EUR 2 billion of VAT was collected specifically in relation to imports of low value consignments with an intrinsic value not exceeding EUR 150, which equates to around EUR 4 billion on an annual basis. Of the EUR 2 billion of VAT that was collected in relation to imports of low value goods in the first 6 months, almost EUR 1.1 billion was collected via the IOSS. These figures demonstrate how the IOSS has establised itself as the key simplification tool for the declaration and payment of VAT on distance sales of imported goods.

The implementation of the package has also helped to counter VAT fraud. Analysis from customs data indicates that the top 8 IOSS registered traders accounted for approximately 91% of all transactions declared for import into the EU via the IOSS. This is a very encouraging statistic as it shows the impact the new ‘deeming’ provision for marketplaces has had on compliance, to the extent that the follow-up and auditing of this very limited number of taxable persons is sufficient to ensure the collection of VAT on this type of transaction.

This proposal builds on the success of the VAT e-commerce package and the ambition of the ViDA proposal, as it envisages the further extension of the deemed supplier regime to cover all distance sales of goods imported from third territories or third countries, irrespective of their value. As a result, the compliance effort will be even more focussed on a far smaller number of large players in the market, who will account for the majority of distance sales of imported goods into the EU.

This initiative also supports the principle of a single VAT registration in the EU as it will further limit the instances in which a taxable person will need to register for VAT. The extension of the IOSS simplification to cover all distance sales of imported goods, irrespective of their value, along with the extension of the special arrangements to cover certain importations of goods in consignments above EUR 150, will further reduce the need for taxable persons to register for VAT in more than one Member State. Also, as a consequence of the further extension of the deemed supplier regime, taxable persons making distance sales of imported goods into the EU via marketplaces will no longer have to register for VAT in respect of those supplies where the

intrinsic value of the consignment is above EUR 150. Instead, the marketplace, acting as deemed supplier, will declare and remit the VAT due on those supplies via the expanded IOSS scheme, which will now be mandatory for marketplaces under the ViDA proposal.

- **Stakeholder consultations**

The Commission launched an open Public Consultation on 22 January 2022, which remained open until 5 May 2022. This public consultation was launched together with a Call for Evidence. The Public Consultation was structured using a dedicated questionnaire consisting of 71 questions. As part of the consultation process, the general public and all key stakeholders, including businesses, were invited to submit their views on the three core areas addressed by the ViDA initiative, namely, (i) Digital Reporting Requirements and e-invoicing; (ii) the VAT treatment of the platform economy; and (iii) the use of a single VAT registration. In total, 193 responses were received from 22 Member States and 5 non-EU countries. Respondents were also permitted to upload position papers.

A number of respondents to the public consultation expressed the view that the scope of the IOSS should also be broadened by removing the EUR 150 threshold to help simplify the process of declaring and remitting VAT on distance sales of imported goods above that amount. In turn, the removal of the EUR 150 threshold will decrease the need to register in different Member States, which will clearly help businesses, in particular, small and medium enterprises (SMEs) to cope more easily with their VAT obligations and to extend and grow their business throughout the EU.

Over 80% of respondents to the open public consultation considered that difficult compliance with VAT registration requirements contributes to high levels of fraud and non-compliance, and that taxpayers do not pursue certain markets or transactions as they prefer to avoid VAT registration in multiple Member States.

- **Collection and use of expertise**

The Commission built on the analysis carried out by an external contractor for the study 'VAT in the Digital Age'[11].

The study's aim was first to evaluate the current situation with regard to digital reporting requirements, the VAT treatment of the platform economy, and a single VAT registration and IOSS. Secondly, to assess the impacts of a number of possible policy initiatives in these areas. That study specifically examined the option to remove the EUR 150 threshold that applies to the IOSS. The study noted that distances sales of imported goods above EUR 150 and distance sales of goods subject to excise duties are transactions that are prevalent in particular in e-commerce. Distance sales from third countries/territories of goods worth more than EUR 150 and goods subject to excise duties imported from third countries/territories make up around 10-20% of the total value of e-commerce distance sales into the EU, as suggested by the targeted consultation.

Moreover, the Commission used the analysis carried out by another external contractor in the framework of the study on "An integrated and innovative overhaul of EU rules governing e-commerce transactions from third countries from a customs and taxation perspective" [12]. The study follows up action 9 of the Customs Action Plan whereby the Commission endeavoured

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12 The evaluation of the second version of the final report is still ongoing at the time of the proposal.

to examine the effects of e-commerce on customs duty collection and on the level playing field for EU operators, including possible arrangements for customs duty collection on the lines of the new VAT collection approach under the IOSS. The study assessed the possible implications of changing the EUR 150 duty relief threshold and concluded that the removal of such threshold would result in the largest revenue increase, and would level the playing field between foreign sellers and the domestic market to the greatest extent. It would also remove fraud or evasion of customs duty payment resulting from the splitting of consignments and reduce the incentive for undervaluation.

- **Impact assessment**

Examined by the Regulatory Scrutiny Board on 22 June 2022, the impact assessment for ViDA proposal obtained a positive opinion. The Board recommended more detail be added, to better describe the methodologies used for modelling and to further clarify the options. Accordingly, the impact assessment was amended to include Member State and sectoral perspectives on the platform economy, the econometric analysis/techniques used for modelling were comprehensively described and the structure of the DRRs linked to the options was detailed.

Several policy options were analysed in the impact assessment accompanying the ViDA proposal. For VAT registration, the impact assessment examined three particular policy options, including sub-options, specifically in relation to the use and scope of the IOSS. The three IOSS related policy options focussed on maintaining the status quo, making the IOSS mandatory for different suppliers (with/without a certain limit) and the removal of the EUR 150 threshold for the use of the IOSS. These three IOSS related options were grouped into broader policy approaches, along with other policy options centred on Digital Report Requirements (DRR), the platform economy and other initiatives to minimise VAT registrations under the umbrella objective of a single VAT registration in the EU. In total, there were five broader policy approaches included in the impact assessment, two of which included changes to the IOSS, namely, the 'enhanced approach' and the 'maximal approach'. The former approach included the option the make the IOSS mandatory, while the latter approach included both the option to make the IOSS mandatory, along with the option to remove the EUR 150 threshold for the use of the IOSS.

The impact assessment highlighted the importance of addressing the VAT framework for the administration and collection of VAT on distance sales of imported goods. In fact, in 2020, across the EU-27, distance sales of imported goods were estimated to amount to EUR 29 billion. Furthermore, stakeholders indicated that a significant proportion of distance sales of imported goods – indicatively around 10-20% – exceeded EUR 150 and are, therefore, currently ineligible for the IOSS. The option to remove the EUR 150 threshold would allow the use of the IOSS for higher-value goods, making it potentially more useful for distance sellers of imported goods of which at least some of their distance sales of imported goods are valued at more than the current threshold. The impact assessment acknowledges that the removal of the EUR 150 threshold would result in a reduction of the administrative burden and costs associcated with VAT registration for businesses as some businesses would no longer be required to register in the Member State of destination, thus reducing their burdens.

Both the maximal and enhanced approaches were seen to have a wide coverage, hence the greatest potential benefits. For example, in the VAT registration area where the focus is more on the issue of high administrative and compliance costs, the sub-options for OSS and IOSS mainly differ in terms of the scope of the situations currently triggering multiple VAT registrations that would be addressed.

Ultimately, the analysis included in the impact assessment revealed that best balance regarding the policy options in terms of effectiveness, proportionality and subsidiarity would be achieved by implementing the 'enhanced approach'. The enhanced approach combines the introduction of DRRs at EU level, a 'deemed supplier' provision for the short-term accommodation rental and passenger transport sectors and a combination of broader OSS extension, reverse charge and a mandatory IOSS for platforms.

The 'maximal approach' proposed the removal of the 150 EUR threshold, however, due to its strong links to the calculation of the customs duty, it was not considered to be the most effective option in the context of the ViDA proposal. The impact assessment recognises that the expansion of the IOSS to include distance sales of imported goods exceeding EUR 150, represents an improvement that is supported by businesses. Therefore, the removal of the EUR 150 threshold is addressed in this proposal in conjunction with the comprehensive revision of the respective customs rules.

Between 2023 and 2032 it is expected that EUR 8.7 billion in savings will be achieved from removing VAT registration obligations. Environmental, social and business automation benefits, as well as benefits related to the functioning of the Internal Market (more level-playing field) and tax control efficiency are also expected.

The impact assessment and its annexes, the executive summary and the Board's opinion on the impact assessment are available at the consultation's page on "Have your say" portal: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13186-VAT-in-the-digital-age_en.

The impact assessment report on the Customs Union reform also identified undervaluation as an issue. When undervalued, goods are declared below their correct customs value and, consequently, the basis on which customs duties and VAT is applied is lower. Undervaluation is considered more relevant in the categories of goods where duties apply. However, a study conducted by Copenhagen Economics in 2016 estimated that about 65% of the e-commerce consignments are undervalued for VAT purposes, regardless of the duty exemption.[13] There have also been cases of systematic undervaluation of certain categories of goods, resulting in important revenue losses in customs duties. [14]

- **Regulatory fitness and simplification**

This proposal builds on the ViDA proposal, which is a REFIT initiative to modernise the current VAT rules and take account of the opportunities offered by digital technologies[15]. The proposal is expected to enhance the single market and help improve tax collection on distance sales of imported goods. This proposal will therefore ensure sustainable revenues during the recovery from the COVID-19 pandemic.

The expectation is that companies engaged in distance sales of imported goods will see a net benefit from the introduction of the proposal. Overall, this proposal will further enhance the concept of a single VAT registration (SVR), which will support the 'one in, one out' principle

13 Copenhagen Economics (2016) E-commerce imports into Europe: VAT and Customs treatment.

14 The largest of OLAF's investigations concerned imports through the UK between 2013 and 2016. See European Court of Justice Case C-213/19 European Commission v United Kingdom of Great Britain and Northern Ireland.

15 2022 Commission Work Programme, Annex II: REFIT initiatives, sub-section "An economy that works for people" (No 20).

or even go further to 'one in, multiple out', taking account of the multiple registration obligations that can exist in respect of distance sales of imported goods above EUR 150.

This proposal builds on the principle of a single VAT registration in the EU and is expected to further reduce the need for multiple registrations in other Member States. It will therefore help to reduce the administrative burden and related costs for businesses involved in making distance sales of imported goods above EUR 150.

The Fit for Future Platform included the VAT in the Digital Age initiative in its annual work programme for 2022, recognising its potential for reducing the administrative burden in the policy field[16]. This current proposal also builds on the ViDA's core objectives by further reducing the admistrative burdens and costs associated with VAT compliance.

## 4. BUDGETARY IMPLICATIONS

This proposal is expected to increase VAT revenues for Member States as it will improve the collection of VAT by focussing the compliance effort on a smaller number of largely compliant taxable persons. The expansion of the IOSS scheme to cover all distance sales of imported goods, with the exception of products subject to excise duty, will help to reduce the administrative burden and costs associated with issuing and controlling VAT registrations. With the expansion of the deemed supplier rule, IOSS and special arrangements, tax administrations should experience a corresponding decrease in the number of registration requests made by non-established taxable persons. Therefore, for Member States, this proposal will reduce the administration costs associated with registering traders who make disance sales of goods imported into the EU above EUR 150 as such traders will now be able to declare and remit the VAT due on those supplies via the IOSS scheme, negating to need to register for VAT in respect of those supplies in multiple Member States.

## 5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The VAT Committee, an advisory committee on VAT issues in which representatives of all Member States participate and which is chaired by Commission officials from the Directorate General Taxation and Customs Union (DG TAXUD), will discuss and clarify possible interpretation issues between Member States regarding the new legislation.

The Standing Committee on Administrative Cooperation (SCAC) will deal with possible issues regarding administrative co-operation between Member States resulting from the new provisions covered by this proposal.

In addition, the Commission will monitor and evaluate whether this initiative is functioning properly in terms of achieving its objectives.

[16] 2022_annual_work_programme_-_fit_for_future_platform_en.pdf (europa.eu)

- **Detailed explanation of the specific provisions of the proposal**

This proposal includes three main elements. First, it is proposed to extend the application of the deemed supplier rule, which is currently limited to distance sales of imported goods not exceeding EUR 150, to cover all distance sales of goods imported from a third territory or third country. This extension of the deemed supplier rule is achieved by removing the reference to the EUR 150 threshold in paragraph 1 of Article 14a of Council Directive 2006/112/EC. Under its expanded scope, the deemed supplier rule would therefore apply to all distance sales of imported goods into the EU that are facilitated by an electronic interface, irrespective of the intrinsic value of the consignment.

Second, it is proposed to extend the application of the IOSS, which is currently limited to distance sales of imported goods in consignments of an intrinsic value not exceeding EUR 150, to cover all distance sales of imported goods, irrespective of their value. However, products subject to excise duty would remain excluded from the scheme. The extension of the IOSS would help to advance the concept of a single VAT registration in the EU by further limiting the instances in which a taxable person is required to register for VAT in another Member State. This extension of the application of the IOSS is achieved by removing the reference to the EUR 150 threshold in the first paragraph of Article 369l of Council Directive 2006/112/EC.

Third, the proposal would extend the application of the special arrangements set out in Chapter 7 of Title XII of Council Directive 2006/112/EC, which is currently limited to eligible imported goods of an intrinsic value not exceeding EUR 150, to cover all eligible goods. Products subject to excise duty would remain excluded from these arrangements. The extension of the special arrangements will help to advance the concept of a single VAT registration in the EU by further limiting the instances in which a taxable person is required to register for VAT in another Member State. Article 369y of Council Directive 2006/112/EC is therefore amended to remove the reference to the EUR 150 threshold.

2023/0158 (CNS)

Proposal for a

# COUNCIL DIRECTIVE

## amending Directive 2006/112/EC as regards VAT rules relating to taxable persons who facilitate distance sales of imported goods and the application of the special scheme for distance sales of goods imported from third territories or third countries and special arrangements for declaration and payment of import VAT

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament[1],

Having regard to the opinion of the European Economic and Social Committee[2],

Acting in accordance with a special legislative procedure,

Whereas:

(1) Article 14a(1) of Council Directive 2006/112/EC[3] provides for the 'deemed supplier regime'. Pursuant to that Article, where a taxable person facilitates, through the use of an electronic interface, distance sales of imported goods from third territories or third countries, that taxable person is to be the deemed supplier of those goods.

(2) The application of the 'deemed supplier' regime is currently limited to distance sales of goods imported from third territories or third countries in consignments of an intrinsic value not exceeding EUR 150. To reduce the compliance burden for traders selling via electronic interfaces, such as marketplaces, and to support a single value added tax (VAT) registration in the Union, the EUR 150 limit should be deleted. Consequently, the deemed supplier regime should cover all distance sales of goods imported from third territories or third countries into the Union, irrespective of their value.

(3) Title XII, Chapter 6, Section 4, of Directive 2006/112/EC sets down a special scheme for distance sales of goods imported from third territories or third countries known as the Import One-Stop Shop (IOSS). Taxable persons who opt to register for the IOSS do

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1 OJ C , , p. .

2 OJ C , , p. .

3 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

not need to register for VAT in each Member State in which their eligible supplies of goods to consumers take place. Instead, the VAT due on those supplies can be declared and paid in a single Member State via the IOSS scheme. However, the IOSS special scheme is limited to distance sales of imported goods in consignments with an intrinsic value not exceeding EUR 150. To support a single VAT registration in the Union, the threshold of EUR 150 should be deleted so that taxable persons who make distance sales of goods imported from third territories or third countries into the Union exceeding EUR 150 are not obliged to register for import VAT in each Member State of destination of the goods.

(4) Title XII, Chapter 7, of Directive 2006/112/EC sets down the special arrangements for the declaration and payment of import VAT. When certain conditions are met, the special arrangements allow postal operators, express carriers, customs agents and other operators who fulfil the customs import declarations on behalf of the customer to declare and remit the VAT collected on certain imports on a monthly basis. The special arrangements are limited to imported goods in consignments of an intrinsic value not exceeding EUR 150, excluding products subject to excise duty. Therefore, to reduce the compliance burden and costs associated with imported goods in consignments of an intrinsic value above EUR 150, the threshold of EUR 150 should be deleted.

(5) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents[4], Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(6) Since the objective of this Directive, namely to advance the concept of a single VAT registration in the Union, can only be achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(7) Directive 2006/112/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

**Amendments to Directive 2006/112/EC**

Directive 2006/112/EC is amended as follows:

(1) in Article 14a, paragraph 1 is replaced by the following:

‘1. Where a taxable person facilitates, through the use of an electronic interface such as a marketplace, platform, portal or similar means, distance sales of goods imported

4 OJ C 369, 17.12.2011, p. 14.

from third territories or third countries, that taxable person shall be deemed to have received and supplied those goods himself.';

(2) in Article 369l, the first paragraph is replaced by the following:

'For the purposes of this Section, distance sales of goods imported from third territories or third countries shall not include products subject to excise duty.';

(3) Article 369y is replaced by the following:

*'Article 369y*

Where, for the importation of goods, except products subject to excise duties, the special scheme in Section 4 of Chapter 6 is not used, the Member State of importation shall permit the person presenting the goods to customs on behalf of the person for whom the goods are destined within the territory of the Community to make use of special arrangements for declaration and payment of import VAT in respect of goods for which the dispatch or transport ends in that Member State.'.

*Article 2*

**Transposition**

1. Member States shall adopt and publish, by 31 December 2027 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 1 March 2028.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 3*

**Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 4*

**Addressees**

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council*
*The President*

Council of the European Union

Brussels, 22 May 2023
(OR. en)

9625/23

**Interinstitutional File: 2023/0157(NLE)**

**UD 112**
**ENFOCUSTOM 59**
**ECOFIN 456**
**FISC 97**
**MI 435**
**COMER 60**
**TRANS 196**

**PROPOSAL**

| | |
|---|---|
| From: | Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director |
| date of receipt: | 17 May 2023 |
| To: | Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union |
| No. Cion doc.: | COM(2023) 259 final |
| Subject: | Proposal for a COUNCIL REGULATION amending Regulation (EEC) No 2658/87 as regards the introduction of a simplified tariff treatment for the distance sales of goods and Regulation (EC) No 1186/2009 as regards the elimination of the customs duty relief threshold |

Delegations will find attached document COM(2023) 259 final.

Encl.: COM(2023) 259 final

EUROPEAN
COMMISSION

Brussels, 17.5.2023
COM(2023) 259 final

2023/0157 (NLE)

Proposal for a

# COUNCIL REGULATION

**amending Regulation (EEC) No 2658/87 as regards the introduction of a simplified tariff treatment for the distance sales of goods and Regulation (EC) No 1186/2009 as regards the elimination of the customs duty relief threshold**

# EXPLANATORY MEMORANDUM

## 1. CONTEXT OF THE PROPOSAL

### • Reasons for and objectives of the proposal

The present initiative is, together with the proposal for a Regulation of the European Parliament and of the Council establishing the Union Customs Code, the European Union Customs Data Hub and the European Union Customs Authority, and repealing Regulation (EU) 952/2013 ('UCC revision')[1] and the proposal for a Council Directive amending Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ('VAT proposal')[2], part of a broad and comprehensive reform of the Customs Union which the Commission has adopted today.

The Customs Union is one of the earliest achievements of the Union and is essential for the proper functioning of the single market. It is based on a Common Customs Tariff laying down the customs duties rates to be applied on imports of goods from outside the Union and common procedures for goods being brought into or taken out from the customs territory of the Union. Customs duties arise from commercial and trade policies. Together with other duties in respect of trade with third countries, they are referred to as Traditional Own Resources (TOR) accounting for 11% of Union budget for 2022. Member States are responsible for the collection of customs duties, according to the rules established by Council Regulation implementing the Own Resources Decision[3].

In recent years, the change in trade patterns and the rise in e-commerce has become a major challenge for customs authorities. Today, e-commerce represents more than twice the number of traditional trade transactions for only 0.5 % of the value.[4] This high number of transactions for a low value makes it difficult both for customs authorities to properly supervise the online trade flows, and for operators to comply with multiple reporting obligations per parcel.

Parcels valued up to EUR 150 that are directly sent from a third country to a consignee in the EU are relieved from customs duties.[5] The customs duty exemption for low-value goods was enacted in 1983 and increased in 1991 and in 2008. Until 1 July 2021, there was also a VAT exemption on imported goods of negligible value (below EUR 22). Both exemptions were justified in the disproportionate administrative burden of handling customs declarations for charging low customs duties and VAT on low value goods.

However, in 2017, with the adoption of the VAT e-commerce package Member States agreed to eliminate the VAT exemption for low-value imported goods to protect Member States' tax revenue, to create a level playing field for the businesses concerned and to minimise burdens

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1 OJ C , , p. .

2 OJ C , , p. .

3 Council Regulation (EU, Euratom) No 609/2014 of 26 May 2014 on the methods and procedure for making available the traditional, VAT and GNI-based own resources and on the measures to meet cash requirements (Recast) (OJ L 168, 7.6.2014, p. 39).

4 Between 1 Jan 2022 and 31 December 2022, "traditional traders" filed over 405 million import declarations for a value of EUR 2.907 billion. By contrast, 1,1 billion super-reduced customs declarations (on item level) for goods up to EUR 150 were recorded, for a total declared value of EUR 12,3 billion. That is an average declared item value around EUR 11,00 EUR.

5 Article 23 of Duty Relief Regulation (Council Regulation 1186/2009 (Official Journal L 324 of 10/12/2009, p.1).

on them.[6] The Directive also provides for a One Stop Shop (IOSS) for e-commerce intermediaries selling goods from third countries to European consumers, allowing them to collect the import VAT at the moment of sale instead of collecting it when the goods enter the Union market. To check whether VAT was charged at the moment of the sale or needs to be collected at the border, all parcels must be declared to customs upon arrival to the EU. Accordingly, from July 2021, all imported goods are subject to VAT and covered by a digital customs declaration, including for goods valued up to EUR 150 for which no customs duties are due. According to the Commission evaluation[7] of the VAT rules, eliminating the VAT exemption for low value imports has been a success. In the first 6 months, Member States collected EUR 1.9 billion in VAT and both the tax and customs authorities now have data on e-commerce transactions.

However, the difference between the VAT and customs treatment of e-commerce goods renders the system very complex for the parties involved. The current picture is the following: VAT is applicable on all goods, while customs duties are applicable on goods of value higher than EUR 150; VAT is collected and declared at the moment of sale by online platforms but is checked at arrival when postal and express operators declare the goods to customs.

Moreover, despite the fact that from July 2021 each parcel is reported to customs, checking the compliance with financial requirements remains a challenge for customs authorities. In particular, maintaining the customs duty exemption for goods up-to EUR 150 has left the door open for the systematic abuse of that threshold through undervaluing and splitting of consignments. There is evidence of such abuse of the EUR 150 threshold through undervaluing and splitting consignments. A study conducted by Copenhagen Economics in 2016 estimated that about 65% of the e-commerce consignments are undervalued in terms of customs duties.[8] Moreover, in its special report on import procedures[9], the European Court of Auditors (ECA) concluded that the current customs IT clearance systems are not able to prevent the importation of goods that are ineligible for the customs duty relief, and this is not compensated for by ex-post controls and investigation plans.[10]

Competition is therefore distorted. The duty exemption favours third country e-commerce operators over traditional trade and EU retailers, which must pay customs duties when importing in bulk, and encourages the establishment of e-commerce distribution centres outside the EU.

The present proposal builds on the report of the **Wise Persons Group** on the Challenges Facing the Customs Union**.**[11] The Wise Persons Group recommended, inter alia, the removal of the customs EUR 150 threshold for e-commerce because, by pushing exporters to the Union to split

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6 Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods (OJ L 348, 29.12.2017, p. 7).

7 See Commission Staff Working Document impact assessment report accompanying the proposal for a Council directive amending Directive 2006/112/EC as regards VAT rules for the digital age (SWD(2022) 393 final).

8 Copenhagen Economics (2016), E-commerce imports into Europe: VAT and Customs treatment.

9 ECA Special Report No. 19/2017 Import procedures: shortcomings in the legal framework and an ineffective implementation impact the financial interests of the EU

10 ECA Special Report no 12/2019, points 81-88.

11 The Wise Persons Group on the challenges facing the Customs Union was composed by 12 high-profile members with experience, in the public or the private sector, of customs matters, e-commerce, risk management, the international supply chain, IT and data analytics internal market legislation and international trade law. The group, led by Mrs. Arancha González Laya, former Minister of Foreign Affairs, European Union and Cooperation of Spain, conducted hearings with 48 interlocutors and an open consultation. The report was published on 30 March 2022.

consignments into smaller packages, such threshold provides the wrong incentives both in terms of trade (unfair competition) and of environmental sustainability (higher emissions footprint).

In order to address the specific challenge posed by e-commerce goods, the present proposal complements the proposal on the UCC revision which was adopted by the Commission today by: 1) eliminating the duty relief for the importation of goods with a value not exceeding EUR 150; and 2) introducing a simplified tariff treatment for goods imported under a business-to-consumer (B2C) transaction qualifying as distance sales for VAT purposes. The proposal on the revision of the UCC foresees further simplifications in relation to tariff classification, customs value and origin to determining the customs duty for the goods imported under distance sales. The simplified tariff treatment is to be applied on a voluntary basis by the (deemed) importer. Therefore, if the (deemed) importer wishes to benefit from preferential tariff rates by proving the originating status of the goods or from conventional or applicable lower autonomous duty rates, that person can do so by applying the standard procedures.

The proposed facilitations in the calculation of the customs duty are expected to offset the affects of the removal of the duty relief threshold on the administrative burden of customs authorities and businesses and simplify processes and procedures for operators.

- **Consistency with existing policy provisions in the policy area**

This initiative is consistent with and follows up to the 2022 Customs Action Plan[12] where the Commission identified a number of actions to take the Customs Union to the next level. The actions focused on four main areas of intervention: risk management, e-commerce, compliance, and the Customs Union acting as one. In particular, under action 9, the Commission endevoured to examine the effects of e-commerce on customs duty collection and on the level playing field for EU operators, including possible arrangements for customs duty collection on the lines of the new VAT collection approach under the Import One-Stop-Shop ('IOSS').

- **Consistency with other Union policies**

This initiative is consistent with the VAT in the Digital Age (ViDA) proposal[13], which was adopted by the Commission on 8 December 2022 and is currently being discussed in the Council. The ViDA proposal aims to modernise and reshape the EU system of VAT to the the digital era. It represents an extensive and multifaceted package of reforms with three key primary aims, one of which is to enhance the concept of a single VAT registration (SVR) in the EU. The concept of a single VAT registration (SVR) in the EU aims to introducing measures to further reduce the instances in which a taxable person has to register for VAT in more than one Member State.

In addition to the ViDA proposal, the third element of the Customs Union reform package is a proposal to amend the VAT Directive[14] with a view to eliminate the EUR 150 threshold for the purpose of the liability of the taxable persons facilitating the distance sales of goods and the application of the special scheme for distance sales of goods imported from third territories or

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12 Communication from the Commission to the European parliament, the Council and the European Economic and Social Committee -Taking the Customs Union to the Next Level: a Plan for Action, Brussels, 28.9.2020 (customs-action-plan-2020_en.pdf (europa.eu)).

13 COM(2022) 701, 703, 704.

14 Proposal for a Council Directive amending Directive 2006/112/EC as regards the value added tax provisions relating to taxable persons who facilitate distance sales of imported goods and the application of the special scheme for distance sales of goods imported from third territories or third countries and special arrangements for declaration and payment of import VAT

third countries and special arrangements for declaration and payment of import VAT. The removal of the EUR 150 threshold for customs duties exemption in conjunction with the removal of the EUR 150 threshold for the use of the IOSS should help to mitigate instances of undervaluation, thereby protecting the revenues of Member States.

The initiative supports the EU's sustainable growth strategy[15] that refers to better tax collection, reduction of tax fraud, avoidance and evasion and to the reduction of compliance costs for business, individuals, and tax administrations. Improving taxation systems to favour more sustainable and fairer economic activity is also part of the EU's competitive sustainability agenda.

## 2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

### • Legal basis

This Regulation amends Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty and Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff.

Both amendments are based on Article 31 of the Treaty on the Functioning of the European Union. That Article provides that the Common Customs Tariff duties shall be fixed by the Council on a proposal from the Commission.

### • Proportionality

The proposal is consistent with the principle of proportionality and does not go beyond what is necessary to meet the objectives of the Treaties, in particular the smooth functioning of the customs union and the single market.

Proportionality is ensured by the fact that this initiative eliminates the duty relief threshold for the importation of low value consignments into the EU and promotes a more effective and simpler approach for the collection of customs duties in relation to goods imported under distance sales.

### • Choice of the instrument

The proposal requires amending Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty (the 'Duty Relief Regulation') and Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (the 'Common Customs Tariff').

[15] Member States' recovery and resilience plans envisage a wide set of reforms aimed at improving the business environment and favouring adoption of digital and green technologies. These reforms are complemented by important efforts to digitalise tax administrations as a strategic sector of the public administration. (Annual Sustainable Growth Survey 2022 (COM(2021) 740 final)).

## 3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

### • Ex-post evaluations/fitness checks of existing legislation

The Commission has not carried out an *ex-post* evaluation of Council Regulation (EC) No 1186/2009 and Council Regulation (EEC) No 2658/87.

However, the results of the *ex-post* evaluation of the VAT e-commerce package are relevant for this proposal as they give an overview of the volumes and value of low value consignment imports into the EU. These data were entirely invisible at EU level before the entry into application of the VAT e-commerce package on 1 July 2021, because the majority of the parcels were released into the EU market without customs formalities. However, as the VAT e-commerce package abolished the import VAT exemption for the goods below EUR 22, there was a need to introduce the requirement of a formal customs declaration for all imported goods as of that date to ensure compliance with VAT payment obligations.

The Commission conducted an *ex-post* evaluation of the first 6 months of application of the VAT e-commerce package. The initial results are very encouraging and are testament to the success of the new measures. On the import side, the first results hightlight that in the first 6 months, approximately EUR 2 billion of VAT was collected specifically in relation to imports of low value consignments with an intrinsic value not exceeding EUR 150. Of the EUR 2 billion of VAT that was collected in relation to imports of low value goods in the first 6 months, almost EUR 1.1 billion was collected via the Import One-Stop Shop.

The implementation of the package has also helped to counter VAT fraud. Analysis from customs data indicates that the top 8 IOSS registered traders accounted for approximately 91% of all transactions declared for import into the EU via the IOSS. This is a very encouraging statistic as it shows the impact the new 'deeming' provision for marketplaces has had on compliance, to the extent that the follow-up and auditing of this very limited number of taxable persons is sufficient to ensure the collection of VAT on this type of transaction.

Considering the success of the VAT e-commerce package, the Customs Union Reform proposal introduces clear liabilities for e-commerce intermediaries as 'deemed importers' regarding the products imported from third countries that they sell to consumers in the EU. Such deemed importers will become liable for the collection and payment of import duties on these goods along the principles of the VAT Import-One-Stop-Shop. As a result, the compliance effort will be even more focussed on a far smaller number of large players in the market, who will account for the majority of distance sales of imported goods into the EU.

### • Stakeholder consultations

An input from stakeholders was sought regarding the content of the present initiative in the context of the study on 'An integrated and innovative overhaul of EU rules governing e-commerce transactions from third countries from a customs and taxation perspective' produced by an external contractor.[16] The consultation ran from 16 December 2021 until 10 March 2021 and gathered in total 69 replies[17]. Most input was provided by economic operators (companies

[16] The evaluation of the second version of the final report is still ongoing at the time of the proposal.

[17] In total 5 (out of the 69) responses had to be ignored for the analysis of the questionnaire. One was provided by a Member State customs authority and this reply was taken into account in the assessment of

and business organisations together) with 33 responses and by consumers (in total 26 responses and an additional input by a consumer protection association). In addition 19 Member States replied to the targeted questionnaire.

The outcome showed that around 65% of business respondents (including e-commerce platforms) would support the removal of the customs *de minimis* threshold at least to a limited extent, whilst the opinion of the Member States customs authorities do not indicate a clear preference between removing or increasing the €150 threshold in their questionnaire responses (with 44% of the respondents supporting the removal of the threshold at least to a limited extent and 43% preferring the increase of the threshold at least to a limited extent). However, they did not consider lowering the threshold a viable option (57% of the replies indicating that it should not be considered at all as an option).

In addition to the above feedback on the public consultation, a range of targeted consultation activities were organised during the work on the impact assessment on the reform of the Customs Union to gather views of expert stakeholders. This included discussions in the context of the Reflection Group, composed by the directors general of the Member States customs administrations and steered by the Commission and of the Trade Contact Group which is the main forum to consult businesses at Union level on the development and implementation of customs related issues and developments of customs policy.

- **Collection and use of expertise**

In preparing the present initiative, the Commission took into account the analysis included in the above-mentioned study carried out by an external contractor. This is linked to action 9 of the Customs Action Plan whereby the Commission endeavoured to examine the effects of e-commerce on customs duty collection and on the level playing field for EU operators, including possible arrangements for customs duty collection on the lines of the new VAT collection approach under the Import One-Stop-Shop ('IOSS'). The study assessed the possible implications of changing the EUR 150 duty relief threshold by examining and comparing three different options: 1) removing the duty relief threshold; 2) increasing it to EUR 1,000; 3) lowering it to EUR 22. The study concluded that the removal of the EUR 150 threshold would result in the largest revenue increase, and would level the playing field between foreign sellers and the domestic market to the greatest extent. It would also remove fraud or evasion of customs duty payment resulting from the splitting of consignments and reduce the incentive for undervaluation. Therefore, the conclusion was that the removal of the customs de minimis threshold would result in the greatest number of benefits.

Furthermore, the Commission built on the analysis carried out by another external contractor for the study 'VAT in the Digital Age'. Such study provided input also to the proposal to amend the Directive 2006/112/EC to extend the deemed supplier rule, IOSS and special arrangments to cover imports of goods above EUR 150 that forms part of the present package on the Customs Union reform.

The study's aim was first to evaluate the current situation with regard to digital reporting requirements, the VAT treatment of the platform economy, and a single VAT registration and Import One-Stop Shop. Secondly, to assess the impacts of a number of possible policy initiatives in these areas. That study specifically examined the option to remove the EUR 150 threshold that applies to the IOSS. The study noted that distances sales of imported goods above

the national authority survey. Another 4 responses were provided without any factual content and are therefore, were not considered for the analysis.

EUR 150 and distance sales of goods subject to excise duties make up around 10-20% of the total value of e-commerce distance sale imports into the EU.

- **Impact assessment**

The reform of the customs rules concerning e-commerce was examined in the context of the impact assessment of the Customs Union reform, to which this proposal is part.[18] Following a negative opinion issued on 28 October 2022, the Regulatory Scrutiny Board issued a positive opinion on the impact assessment supporting the Customs Union reform package on 27 January 2023. The Board recommended more detail be added among others on how the options on e-commerce were identified, particularly what the reasoning for the removal of the EUR 150 exemption and making electronic platforms 'deemed importers' is and more explanation on the introduction of a 'bucketing system' for duty calculation, especially regarding the range of policy choices available to the Commission. The impact assessment was amended accordingly.

The impact assessment identified five main areas of problems that lead to shortcomings and vulnerabilities in the functioning of the customs union and analysed several policy options to address these problems.

One of these is the rise of e-commerce and the related changes in trade patterns (from goods traditionally brought into the EU in big quantities via cargo, to millions of small consignments shipped directly to individual consumers), which have brought new challenges to customs. Customs is not prepared to cope with the increase of volumes of goods and declarations. Despite the changes introduced by the VAT e-commerce package and applicable since 1 July 2021 that aimed to tackle VAT fraud inherent to the misuse of the VAT exemption at import, some problems still pertain, and so is undervaluation, in particular through the splitting of consignments to avoid the payment of import duty.

Therefore, when analysing to what extent the processes for e-commerce need to be modified, the options to decrease or increase the EUR 150 customs duty exemption were discarded. The reason was that none of the identified problems (distortion of competition, complexity, uncertainty, difficulty to control and fraud) is linked to the amount exempted but to the very existence of the exemption. The possibility to have the consumers declaring to customs the goods that they buy on-line was also discarded, because it is considered burdensome for them while the ones placing goods in the Union market are the e-commerce intermediaries, not the consumers.

According to the impact assessment, additional customs duties on e-commerce traffic are estimated around EUR 13 billion over 15 years. The improved information from economic operators under the new processes, the centralisation of data in the European Customs Data Hub and the operational role of the European Union Customs Authority would also allow a significant prevention of lost revenues stemming from fraudulent practices such as undervaluation or misclassification of the goods ('closure of customs gap').

- **Regulatory fitness and simplification**

This proposal is part of the Customs Union reform which is a REFIT initiative to simplify customs processes via a better interaction between customs and economic operators by focusing on operators and supply chains instead of individual transactions that have to comply with various formalities as today. Businesses (including e-commerce platforms) offering customs

[18] SWD(2023)140.

visibility over their supply chains will enjoy simpler and faster procedures, by providing customs with access to their commercial data. The simplification and centralisation of functions at several levels are expected to result in cutting red tape and simplifying processes and procedures for operators.

The potential increase in the administrative burden related to the proposed removal of the duty relief threshold is expected to be offset by the simplified tariff treatment through the five-tier bucketing system. However, such increase should be limited, because, since 1 July 2021, an electronic customs declaration is already required for all goods imported into the EU. Therefore, the simplified tariff treatment complemented by further facilitations for customs valuation and origin proposed as part of the UCC revision will simplify the determination of customs duty for e-commerce goods and reduce the administrative burden both on customs authorities and economic operators.

## 4. BUDGETARY IMPLICATIONS

This proposal is estimated to increase customs duty revenues at around EUR 13 billion in 15 years for the EU and national budgets of the Member States as it will eliminate the customs duty relief threshold for the importation of low value consignments. In addition, it is expected to reduce the incentive for undervaluation and eliminate the incentive to artificially split consignments so that they unduly benefit from the duty relief. The introduction of the simplified customs duty collection method will mitigate the administrative burden on customs authorities and e-commerce operators. Building on the principles and mechanisms of the VAT Import One-Stop Shop, e-commerce webshops and platforms will be able to collect customs duties in addition to VAT. This will increase the transparency of prices because the final sales price at checkout will cover all additional costs up-to the destination for the consumers.

Goods subject to EU harmonised excise duties are excluded from the simplified tariff treatment. Goods subject to commercial policy measures, such as anti-dumping, anti-subsidy duties or safeguard measures are also to be excluded.

## 5. OTHER ELEMENTS

### • Implementation plans and monitoring, evaluation and reporting arrangements

The Customs Code Committee (‘CCC’) and the Customs Expert Group (‘CEG’), advisory bodies on customs issues in both of which representatives of all Member States participate and which are chaired by Commission officials from the Directorate General Taxation and Customs Union (DG TAXUD), will discuss possible interpretation issues between Member States regarding the new legislation.

In addition, the new customs rules on e-commerce will be monitored and evaluated in the context of the broader monitoring and evaluation framework foreseen in the proposal on the UCC revision by the Commission.

### • Detailed explanation of the specific provisions of the proposal

To address the problems identified in the field of e-commerce goods coming from third countries, this proposal includes two main elements. The first element is the removal of the

customs duty relief for goods up to the value of EUR 150. This would be achieved by deleting Chapter V of Council Regulation (EC) No 1186/2009 of 16 November 2009.

The second element is a simplified duty calculation method based on five different buckets (each of them with a different duty rate) which is aimed at reducing the administrative burden stemming from the calculation of the applicable duty rates on e-commerce goods both for customs and businesses.

The concept of the simplified duty rate system, the so-called 'duty bucketing system' is based on a Canadian model that is in place since 2012 in relation to goods destined to private use (business-to-consumer or consumer-to-consumer goods) with a value up-to CAD 500 (around EUR 340) ([19]). According to the approach there are a limited number of 'duty buckets' each of them including clearly specified categories of goods with a fixed duty rate. Within the bucketing system, the applicable duty rates for individual products may be slightly higher compared to the applicable rate based on the full commodity code.

The proposal foresees five buckets with respective *ad valorem* duty rates of 0% (e.g. for books, printed materials, works of art) 5% (e.g. for toys, musical instruments, metal cutlery), 8% (e.g. for silk and cotton products, ceramic products, photographic goods), 12% (e.g. for leather articles, travel bags) and 17% (e.g. for footwear, glassware) and refers to goods which are identified based on the Chapters of the Harmonised System. Nevertheless, the economic operators will still need to indicate the 6-digit Harmonised System code number, which remains a requirement in the advanced cargo information under the legislative proposal on the UCC revision. Goods which currently have a 0% *erga omnes* duty rate currently will continue to benefit from zero duties.

Goods subject to harmonised excise duties as well as goods which are subject to antidumping, anti-subsidy or safeguard measures are excluded from the simplified duty collection approach.

The bucketing system takes as a reference the existing conventional duty rates and does not take into account the originating status of the goods. However, if the economic operator wishes to benefit from preferential tariff rates by proving the originating status of the goods, that person can do so by applying the standard procedures. Similarly, if the economic operator wishes to benefit from conventional or applicable lower autonomous duty rates, that importer can do so by applying the standard procedures.The duty relief for the import of goods with a total value up-to EUR 150 per consignment will be eliminated as of 1 March 2028. As of that date, importers may opt for the use of the simplified tariff treatment for the calculation of the customs duty due on the import e-commerce goods and deemed importers will start providing information to the EU Customs Data Hub on transactions related to goods sold to consumers in the EU and dispatched from a third territory or a third country.

[19] Canada's Low-Value Shipments Policy Regarding the Application of Customs Duties, WTO Working Group on Micro, Small and Medium-sized Enterprises September 2021.

2023/0157 (NLE)

Proposal for a

# COUNCIL REGULATION

## amending Regulation (EEC) No 2658/87 as regards the introduction of a simplified tariff treatment for the distance sales of goods and Regulation (EC) No 1186/2009 as regards the elimination of the customs duty relief threshold

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 31 thereof,

Having regard to the proposal from the European Commission,Whereas:

(1) Chapter V of Council Regulation (EC) No 1186/2009[1] provides for the relief from import duties for goods sent directly from a third country to a consignee in the Union in consignments with a total intrinsic value not exceeding EUR 150. Until 1 July 2021, the import VAT was also exempted for the importation of goods with a value not exceeding EUR 22. The increase in the volume of low value imports following the explosive growth of e-commerce and the associated facilitations made it challenging for customs authorities to enforce compliance with fiscal and non-fiscal requirements. Therefore, Council Directive (EU) 2017/2455[2] eliminated the import VAT exemption for these low value goods to protect Member States' tax revenue, to create a level playing field for the businesses concerned and to minimise burdens on them.

(2) At the same time, the customs duty relief for goods below EUR 150 was maintained, leaving the door open for the systematic abuse of that threshold through undervaluing and artificially splitting consignments.

(3) In a digitalised customs environment where electronic data are available for all imported goods regardless of their value, maintaining a duty relief that was introduced to prevent the disproportionate administrative burden on customs authorities, businesses and private individuals is no longer justified. At the same time, considering the significant volumes of low value imports, it has become necessary to protect the financial interests of the Union and its Member States.

(4) It is therefore necessary to delete from Chapter V of Regulation (EC) No 1186/2009 the threshold, under which goods of negligible value not exceeding EUR 150 per consignment are exempted from customs duties at import.

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1 Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty (OJ L 324, 10.12.2009, p. 23).

2 Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods (OJ L 348, 29.12.2017, p. 7).

(5) Nevertheless, calculating the applicable duty is a complex task based on the tariff classification, the customs value and the origin of the goods. Applying this method in e-commerce would often result in a disproportionate administrative burden both for customs and businesses. To avoid this, it is necessary to provide e-commerce intermediaries with the possibility to apply a simplified tariff treatment based on a five-tier bucket system, where each of the buckets is associated with a different duty rate in relation to goods sold to the final consumer. Goods having currently a 0% *erga omnes* duty rate will continue to benefit from zero duties.

(6) The bucketing system should take as a reference the existing conventional duty rates and should not take into account the originating status of the goods. However, if the importers wish to apply the conventional or lower applicable autonomous duty rates or benefit from preferential tariff rates by proving the originating status of the goods, they can do so by applying the standard procedures, since the use of the simplified tariff treatment is optional.

(7) Goods subject to harmonised excise duties and goods subject to anti-dumping, anti-subsidy and safeguard measures should be excluded from the simplified tariff treatment for distance sales of imported goods from third countries. Moreover, goods contained in Chapters 73, 98 and 99 of the Combined Nomenclature are also excluded because the importation of such goods (respectively iron and steel products, complete industrial plants and goods imported or exported under special circumstances) due to their nature should not benefit from any simplification.

(8) In accordance with the principle of proportionality as set out in Article 5 of the Treaty on European Union (TEU), this Regulation does not go beyond what is necessary to meet the objectives of the Treaties, in particular the smooth functioning of the customs union and the single market. Proportionality is ensured by the fact that this initiative eliminates the duty relief threshold for the importation of low value consignments into the EU and promotes a more effective and simpler approach for the collection of customs duties in relation to goods imported under distance sales.

(9) Regulations (EEC) No 2658/87 and (EC) No 1186/2009 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

*Article 1*

Council Regulation (EEC) No 2658/87 is amended as follows:

(1) in Article 1, the following paragraphs 4 and 5 are added:

‘4. By derogation from paragraph 3, upon request of the importer, customs duty shall be charged on the import of goods the supply of which qualifies as distance sales of goods imported from third territories or third countries within the meaning of Article 14(4), point (2), of Directive 2006/112/EC, in accordance with the simplified tariff treatment for distance sales set out in the table in Part One, Section II, point G of Annex I.

5. The simplified tariff treatment for distance sales referred to in paragraph 4 shall not apply to

(a) goods referred to in Article 1(1) of Council Directive (EU) 2020/262[3];

(b) goods on which measures in accordance with Regulation (EU) 2016/1036[4], or Regulation (EU) 2016/1037[5], or Regulation (EU) 2015/478[6] or Regulation (EU) 2015/755[7] have been imposed, irrespective of their origin; and

(c) any goods included in Chapters 73, 98 and 99.

(2) Annex I is amended in accordance with the Annex to this Regulation.

*Article 2*

Chapter V of Council Regulation (EC) No 1186/2009 is deleted.

*Article 3*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 March 2028.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council*
*The President*

[3] Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (OJ L 058 27.2.2020, p.4).

[4] Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 21–54)

[5] Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 55–91)

[6] Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports are or might be imposed following an open investigation (OJ L 83, 27.3.2015, p. 16–33)

[7] Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33–49)

Council of the European Union

Brussels, 22 May 2023
(OR. en)

**9625/23**
**ADD 1**

**Interinstitutional File:**
**2023/0157(NLE)**

**UD 112**
**ENFOCUSTOM 59**
**ECOFIN 456**
**FISC 97**
**MI 435**
**COMER 60**
**TRANS 196**

**PROPOSAL**

| | |
|---|---|
| From: | Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director |
| date of receipt: | 17 May 2023 |
| To: | Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union |
| No. Cion doc.: | COM(2023) 259 final |
| Subject: | ANNEX to the Proposal for a Council Regulation amending Regulation (EEC) No 2658/87 as regards the introduction of a simplified tariff treatment for the distance sales of goods and Regulation (EC) No 1186/2009 as regards the elimination of the customs duty relief threshold |

Delegations will find attached document COM(2023) 259 final.

Encl.: COM(2023) 259 final

EUROPEAN
COMMISSION

Brussels, 17.5.2023
COM(2023) 259 final

ANNEX

**ANNEX**

**to the**

**Proposal for a Council Regulation**

**amending Regulation (EEC) No 2658/87 as regards the introduction of a simplified tariff treatment for the distance sales of goods and Regulation (EC) No 1186/2009 as regards the elimination of the customs duty relief threshold**

# ANNEX

(a) In Annex I [to Council Regulation (EEC) No 2658/87], Summary, the following point is inserted:

'G. SIMPLIFIED TARIFF TREATMENT FOR DISTANCE SALES'

(b) In Annex I [to Council Regulation (EEC) No 2658/87], Part One, Section II, the following point G is inserted:

'G. Simplified tariff treatment for distance sales

The simplified tariff treatment for distance sales is based on a five-tier bucket system. Each bucket includes a duty rate and a reference to the relevant chapters of Annex 1 Part Two [to Council Regulation (EEC) No 2658/87] to which the duty rate concerned shall apply.'

**Bucket A: 0% ad valorem**

| Chapter | Description |
|---|---|
| 14 | Vegetable plaiting materials; Vegetable products not elsewhere specifies or included |
| 26 | Ores, slag and ash |
| 47 | Pulp of wood or of other fibrous cellulosic material; Recovered (waste and scrap) paper or paperboard |
| 48 | Paper and paperboard; Articles of paper pulp, of paper or of paperboard |
| 49 | Printed books, newspapers, pictures and other products of the printing industry; Manuscripts, typescripts and plans |
| 80 | Tin and articles thereof |
| 97 | Works of art, collectors' pieces and antiques |

**Bucket B: 5% ad valorem**

| Chapter | Description |
|---|---|
| 05 | Products of animal origin, not elsewhere specified or included |
| 25 | Salt; Sulphur; Earths and stone; Plastering materials, lime and cement |
| 27 | Mineral fuels, mineral oils and products of their distillation; Bituminous substances; Mineral waxes |
| 34 | Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing or scouring preparations, candles and similar articles, modelling pastes, 'dental waxes' and dental preparations with a basis of plaster |
| 43 | Furskins and artificial fur; Manufactures thereof |
| 45 | Cork and articles of cork |
| 46 | Manufactures of straw, of esparto or of other plaiting materials; basketware and wickerwork |
| 66 | Umbrellas, Sun umbrellas, Walking sticks, Seat-sticks, Whips, Riding-Crops and parts thereof |
| 67 | Prepared feathers and down and articles made of feathers or of down; Artificial flowers; Articles of human hair |
| 68 | Articles of stone, plaster, cement, asbestos, mica or similar materials |

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|---|---|
| 71 | Natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal, and articles thereof; Imitation jewellery; Coin |
| 73 | Articles of iron or steel |
| 75 | Nickel and articles thereof |
| 78 | Lead and articles thereof |
| 79 | Zinc and articles thereof |
| 82 | Tools, implements, cutlery, spoons and forks, of base metal; Parts thereof of base metal |
| 83 | Miscellaneous articles of base metal |
| 84 | Boilers, machinery and mechanical appliances; parts thereof |
| 85 | Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles |
| 86 | Railway or tramway locomotives, rolling stock and parts thereof; Railway or tramway track fixtures and fittings and parts thereof; Mechanical (including electromechanical) traffic signalling equipment of all kinds |
| 89 | Ships, boats and floating structures |
| 90 | Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; Parts and accessories thereof |
| 91 | Clocks and watches and parts thereof |
| 92 | Musical instruments; Parts and accessories of such articles |
| 94 | Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; Luminaires and lighting fittings, not elsewhere specified or included; Illuminated signs, illuminated nameplates and the like; Prefabricated buildings |
| 95 | Toys, games and sports requisites; Parts and accessories thereof |

**Bucket C: 8% ad valorem**

| Chapter | Description |
|---|---|
| 28 | Inorganic chemicals; Organic or inorganic compounds of precious metals, of rare-earth metals, of radioactive elements or of isotopes |
| 29 | Organic chemicals |
| 30 | Pharmaceutical products |
| 31 | Fertilisers |
| 32 | Tanning or dyeing extracts; Tannins and their derivatives; Dyes, pigments and other colouring matter; Paints and varnishes; Putty and other mastics; Inks |
| 33 | Essential oils and resinoids; Perfumery, cosmetic or toilet preparations |
| 36 | Explosives; Pyrotechnic products; Matches ; Pyropholic alloys; Certain combustible preparations |
| 37 | Photographic or cinematographic goods |
| 38 | Miscellaneous chemical products |

| | |
|---|---|
| 39 | Plastics and articles thereof |
| 40 | Rubber and articles thereof |
| 41 | Raw hides and skins (other than furskins) and leather |
| 44 | Wood and articles of wood; Wood charcoal |
| 50 | Silk |
| 51 | Wool, fine or coarse animal hair; Horsehair yarn and woven fabric |
| 52 | Cotton |
| 53 | Other vegetable textile fibres; Paper yarn and woven fabrics or paper yarn |
| 54 | Man-made filaments; Strip and the like or man-made textile materials |
| 55 | Man-made staple fibres |
| 56 | Wadding, felt and nonwovens; Special yarns; Twine, cordage, ropes and cables and articles thereof |
| 57 | Carpets and other textile floor coverings |
| 58 | Special woven fabrics; Tufted textile fabrics; Lace; Tapestries; Trimmings; Embroidery |
| 59 | Impregnated, coated, covered or laminated textile fabrics; Textile articles of a kind suitable for industrial use |
| 60 | Knitted or crocheted fabrics |
| 65 | Headgear and parts thereof |
| 69 | Ceramic Products |
| 72 | Iron and steel |
| 74 | Copper and articles thereof |
| 76 | Aluminium and articles thereof |
| 81 | Other Base metals; Cermets; Articles thereof |
| 88 | Aircraft, spacecraft and parts thereof |
| 96 | Miscellaneous manufactured articles |

**Bucket D: 12% ad valorem**

| Chapter | Description |
|---|---|
| 6 | Live trees and other plants; Bulbs, roots and the like; Cut flowers and ornamental foliage |
| 12 | Oil seeds and oleaginous fruits; Miscellaneous grains, seeds and fruit; Industrial or medicinal plants; Straw and fodder |
| 18 | Cocoa and cocoa preparations |
| 35 | Albuminoidal substances; Modified starches; Glues; Enzymes |
| 42 | Articles of leather; Saddlery and harness; Travel goods, handbags and similar containers; Articles of animal gut (other than silkworm gut) |
| 61 | Articles of apparel and clothing accessories, knitted or crocheted |
| 62 | Articles of apparel and clothing accessories, not knitted or crocheted |
| 63 | Other made-up textile articles; Sets; Worn clothing and worn textile articles; Rags |

| | |
|---|---|
| 87 | Vehicles other than railway or tramway rolling stock, and parts and accessories thereof |

**Bucket E: 17% ad valorem**

| Chapter | Description |
|---|---|
| 1 | Live animals |
| 2 | Meat and edible meat offal |
| 3 | Fish and crustaceans, molluscs and other aquatic invertebrates |
| 4 | Dairy produce; Birds' eggs; Natural honey; Edible products of animal origin, not elsewhere specified or included |
| 7 | Edible vegetables and certain roots and tubers |
| 8 | Edible fruit and nuts; Peel of citrus fruit or melons |
| 9 | Coffee, tea, mate and spices |
| 10 | Cereals |
| 11 | Products of the milling industry; Malt; Starches; Inulin; Wheat gluten |
| 13 | Lac; Gums, resins and other vegetable saps and extracts |
| 15 | Animal, vegetable or microbial fats and oils and their cleavage products; Prepared edible fats; Animal or vegetable waxes |
| 16 | Preparations of meat, of fish, of crustaceans, molluscs or other aquatic invertebrates, or of insects |
| 17 | Sugars and Sugar confectionery |
| 19 | Preparations of cereals, flour, starch or milk; Pastrycooks' products |
| 20 | Preparations of vegetables, fruit, nuts or other parts of plants |
| 21 | Miscellaneous edible preparations |
| 22 | Beverages, spirits and vinegar |
| 23 | Residues and waste from the food industries; Prepared animal fodder |
| 24 | Tobacco and manufactured tobacco substitutes; Products, whether or not containing nicotine, intended for inhalation without combustion; other nicotine containing products intended for the intake of nicotine into the human body |
| 64 | Footwear, gaiters and the like; Parts of such articles |
| 70 | Glass and glassware |