



Union Customs Code Reform – BusinessEurope’s views

KEY MESSAGES

- 1** EU Customs are subject to increasing pressures from enormous e-commerce volumes to ever-growing non-financial measures. The UCC reform is therefore more urgent than ever. BusinessEurope fully supports this reform, which is crucially needed. Thus, we urge the Commission to work on an even shorter implementation timeframe than foreseen in its reform proposal, provided businesses are given at least 18 months lead time to prepare. Customs policy plays a major role in the competitiveness of European businesses, and ensuring the **right balance between trade controls and the facilitation of legitimate trade** is extremely important. Regular business consultation and pilot testing will be key requirements for a successful implementation ensuring that businesses are ready in time for implementation.
- 2** BusinessEurope has requested the implementation of simplifications, including self-assessment, for Authorised Economic Operators for years. The Trust & Checked trader program should be foreseen in a much shorter timeframe. Before having the Trust & Checked trader scheme in place, **real simplifications and trade facilitations, including self-assessment**, should be implemented **for the economic operators that currently hold the AEO status**.
- 3** The UCC reform should foresee the use of the **latest available technology such as artificial intelligence for customs simplifications and trade facilitation**. The **security of data**, especially business sensitive information, should be a key priority of the EU Customs Data Hub.
- 4** The EU Customs Authority should not entail another layer of bureaucracy for businesses. The **Authority should steer, coordinate, and support national customs authorities to ensure harmonized customs procedures**, especially with regards to the implementation of the UCC across the EU.
- 5** Going forward, many important details of the future UCC will be defined via **delegated and implementing acts**. It is very important that the European Commission taps into the expertise of business in order to get those details right. In particular, the customs legislation should build on the processes of businesses as much as possible to allow for the foreseen simplifications to take full effect. Continued consultation and engagement with businesses is key. A regular structured/formalised dialogue should be established, and appropriate consultations carried out with business e.g. through DG TAXUD’s Trade Contact Group.

Introduction

The Customs Union is one of the main assets of the EU. Customs are essential to protect the EU Single Market as well as EU companies against unfair competition. They are also crucial to facilitate trade by managing enormous trade volumes, which are increasing dramatically, notably driven by the extraordinary growth of e-commerce.

EU legislation setting very ambitious standards in areas such as the environment, health, safety, security and digital, has significantly increased in recent years in line with the EU Green and Digital transitions. Many of these legislations have a direct impact on Customs, which are now burdened with an ever-growing range of tasks, having to check a large number of non-fiscal measures. Currently, goods need to comply with hundreds of pieces of EU legislation that customs have a duty to enforce in order to ensure a level playing field, protect the EU Single Market and contribute to implement the various EU policy objectives.

But this has also had a direct impact on European companies, which have had to make the necessary investments and quickly adapt to this new reality of having to comply with a rapid surge in legislation, which goes much beyond tariffs. This trend is set to continue in future and substantially increase the bureaucratic burden for EU businesses.

These challenges are exacerbated by the recent shifts in the geopolitical landscape. We have seen disruptions in global supply chains in recent years and we are witnessing reconfigurations of value chains led by concerns linked to security and the reduction of strategic dependencies, among others. This is also putting pressure on Customs, which are key to ensuring a level playing field and the security of supply chains as well as on companies which may have to plan and reconfigure their supply chains.

While we are conscious of these growing challenges and the need to control a large variety of risks, we should not lose sight of the **major importance of Customs policy for the competitiveness of European businesses**. Customs policy plays a crucial role in the facilitation of legitimate trade, and keeping smooth and open trade flows is key for European business, which are amongst the most dependent on trade globally. It is therefore **extremely important to ensure the right balance between trade controls and the facilitation of legitimate trade**.

Against this background, ***taking the Customs Union to the next level is more urgent than ever***. BusinessEurope supports the reform of the UCC with the suggestions provided below to the Commission proposal. In general, we consider that the timeline foreseen in the UCC is very long and will lead us to lose momentum and sight on the reform. With the growing trade volumes and the increasing non-fiscal requirements at the border, we **need the reformed UCC in a shorter timeframe** and ensure that the foreseen changes are implemented according to the foreseen timeline. The world moves at a fast pace, and we can only expect it will be very different in the timeframe foreseen in the Commission's reform proposal. For the future UCC to deliver and truly stand the test of time, we not only need to get the reform right, but implement it in a shorter timeline.



BusinessEurope's views on the Commission's proposal for UCC reform

Digitalization and Technology are crucial

For the reformed UCC to succeed, it should be centred around digitalisation and take into account that technology evolves incredibly fast. The proposal should consider the latest available technology and be flexible enough to keep up with the fast pace of technological advancements.

This has been widely recognized before. For example, the Foresight Report on EU Customs, included as one of its main recommendations "*leveraging technological advancements and making the most effective use of customs*" also for trade facilitation¹. The Wise Persons Group Report² had similar recommendations.

We commend that the UCC proposal takes into account the need to leverage technology, but we are concerned it does not go far enough focusing mainly on the use of technology for controls and risk assessment. This is the case, for example, of artificial intelligence, which is mentioned (e.g. Article 29(1)d)) as an enabler of risk analysis (as well as economic analysis and data analysis), but not of trade facilitation and simplifications.

- The UCC reform should foresee the use of the **latest available technology such as artificial intelligence for customs simplifications and trade facilitation** e.g. allowing customs authorities to supervise the requirements for self-assessment.
- The UCC should also include provisions that would allow rapid changes in the legislation to take account of new technologies. This would ensure that the reformed UCC will be future-proof and able to effectively adapt to a quickly changing world.

The Trust & Check Trader and the Authorised Economic Operator

The proposal introduces the new concept of the "Trust and Check trader", which builds on the existing notion of Authorised Economic Operators (AEO) and other concepts such as "self-assessment" and "process-based approach". The Trust and Check (T&C) traders will enjoy certain benefits and simplifications but will also be subject to several obligations, among which they should provide customs with full access to their systems, records and operations.

For BusinessEurope **the concept of "self-assessment" and the change of approach from "transaction-based" to a "process-oriented" system has been a top priority for many years**. Despite "self-assessment" being included in the current UCC (Article 185), it was never implemented. This has led to significant frustrations for traders that invested important administrative and financial resources to obtain and maintain the AEO status. Moreover, European companies are questioning whether the costs and benefits of becoming an AEO are adequately balanced, and whether it merits such investments and efforts. The UCC reform offers an opportunity to reverse this idea if we get it right and do not further delay the process.

Additionally, the implementation, application procedures as well as the simplifications granted for AEOs differ from member state to member state. The UCC reform needs to ensure that the new Trust & Check Trader programme will be implemented uniformly across the EU. Currently Article 25(7), for example, seems to allow national customs authorities significant discretion on which simplifications they may authorise for Trust & Check Traders. Not being granted automatic simplifications once a business obtains the T&C status might not make the programme very attractive for companies, especially considering the significant obligations that need to be fulfilled to obtain it.

¹ <https://publications.jrc.ec.europa.eu/repository/handle/JRC121859>

² https://taxation-customs.ec.europa.eu/system/files/2022-03/TAX-20-002-Future%20customs-REPORT_BIS_v5%20%28WEB%29.pdf



The timeline

According to Article 26(2) of the Commission proposal, we understand that the Trust and Check trader will be fully operational as of 31 December 2037, even if traders can start using the EU Customs Data Hub as of January 2032 on a voluntary basis. This is a very long timeframe that will make us lose momentum on the reform.

Self-assessment was not only included in the current UCC, but also already in the previous Modernised Customs Code (Article 116 of Regulation No 450/2008). Therefore, considering that EU economic operators have been waiting for the implementation of self-assessment and reformed AEO for such a long time and that the world changes at a fast pace, **the benefits of the Trust and Checked trader should be implemented as quickly as possible.**

- We urge the Commission to open the possibility for willing companies to use all the benefits and simplifications of The Trust and Check trader as soon as the EU Customs Data Hub allows for it.
- SMEs should receive capacity building (e.g. from the EU Customs Authority and national Customs Authorities) to be able to get the Trust & Check trader status. SMEs may have less resources and means to comply with the requirements and not getting the T&C status would put them at a disadvantage as compared with bigger companies. Considering this, an intermediary solution could be provided whereby certain flexibilities for SMEs are envisaged regarding the conditions to get the T&C status, while they can still enjoy its benefits.

Urgent need to deliver on self-assessment and other simplifications

The UCC reform offers an opportunity to truly deliver on the elements that have an impact on European businesses' competitiveness if effective, business friendly customs processes that facilitate operations and ensure smooth transactions are put in place.

We understand that the Commission proposal links the concept of self-assessment (as performed by Trust and Check traders) to the requirement of having in place the EU Customs Data Hub. However, before having this system in place, self-assessment and other simplifications should already be put in place, given that they are included in the current UCC for AEOs and traders have been waiting for them for years/decades.

- **The simplifications for traders including “self- assessment” should be put in place urgently for economic operators currently holding the status of AEOs.** This applies in particular for recurring shipments with the same contents from the same supplier/to the same recipient. The Commission should (as stated in Article 23(9)) define real simplifications and facilitations for the economic operators that currently hold the AEO status. This could include, for example, periodic declarations of recurring shipments. Finally, self-assessment should always remain optional.
- Businesses should be consulted on the above and a working group could be envisaged so that business processes are taken into account.

Uniform application across Member States

The UCC reform needs to ensure that the new Trust & Check trader scheme will be implemented uniformly across the Member States.

- The word “may” in Article 25(7) (*Customs authorities may authorise Trust and Check traders*) should be changed to “shall” to ensure that Trust & Check traders will effectively enjoy the mentioned simplifications.

Data Security

Article 25(3) establishes the criteria for customs authorities to grant the status of Trust and Check trader. In particular, point (f) states that these traders should give customs authorities real-time access to all data on the movement of the goods and their compliance with all requirements applicable on those goods, including sharing in the EU Customs Data Hub several records, systems, etc. that contain business sensitive information. This provision has raised concerns among companies regarding safety and the risk of potential backdoors and cyber security breaches of the EU Customs Data Hub.

- Businesses are concerned about uncontrolled and unauthorized access to their data (e.g. access to commercial Enterprise Resource Planning (ERP) system) and should be able to know who accessed their data and for what purpose. Moreover, businesses would like to be involved in the design of the processes on how company data (especially business sensitive information) will be accessed.

The EU Customs Data Hub

The UCC reform proposal foresees the set-up of an EU Customs Data Hub, which will be “the face and the engine of the Customs Union”. All relevant customs data will be collected, processed, connected and stored via the Customs Data Hub, redefining the way in which information is provided, used for customs supervision and shared with partner authorities. It will also run an EU-level risk analysis.

BusinessEurope fully supports the creation of an EU Customs Data Hub. We believe the digitalisation of customs and a new approach to data are essential elements for any modern and forward-looking customs. Digitalisation is a crucial tool to simplify customs procedures and reduce bureaucracy, which benefits not only companies, but also customs authorities, especially given the increasing number of tasks they have to perform. The COVID-19 pandemic also highlighted that digitalisation helps to maintain the flow of international trade and the well-functioning of supply chains in case of crisis.

European businesses have therefore witnessed with frustration the delays in implementing the electronic systems provided for in the current UCC from 2020 to 2025, which in turn resulted in delaying many of the benefits and simplifications related to customs processes for business and administrations alike.

The timeline

According to Article 265(3) the functionalities of the EU Customs Data Hub laid down in Article 29 shall be fully operational by 31 December 2037, although some features will be ready in 2032. Taking into account the delays that IT implementation normally entails, having the EU Customs Data Hub only by 2038 (if not further delays apply) is not acceptable for European businesses.

- The foreseen timeline for the EU Customs Data Hub should be much shorter. Given the significant delays in implementation of the current IT systems, it should be ensured that there will not be similar delays in the implementation of the EU Customs Data Hub. We urge the Commission to create and deploy more components of **the EU Customs Data Hub within a tighter deadline,** and provide an opt-in option for businesses which would be able and willing to use its facilities earlier than 2038. A well-coordinated transition or phased roll-out might also be necessary to allow businesses and authorities to transition to the new system and avoid bottlenecks or delays. This should be considered accordingly in the implementation timeline.
- Close and timely cooperation with the EU’s key trade partners, notably their customs authorities, should be foreseen to help enable a smooth implementation of the EU Customs Data Hub and the UCC in general.



Work closer with Business

- It is essential to work closer with economic operators in the development and implementation of digital solutions both at EU and national levels. This is the only way to ensure that digitalisation leads to real simplifications on the part of business. Economic operators in third countries should also be informed about the implementation of the Data Hub and its implications.

Data Security and Data Quality

Article 31 describes which authorities may have access to the EU Customs Data Hub. The more agents have access to the Data Hub, the more issues will arise related cyber security, potential backdoors and security breaches.

- Access to the EU Customs Data Hub by authorities other than Customs Authorities (as indicated in Article 31) should be extremely limited and restricted to the minimum need-to-know necessary. Additionally, businesses should be able to know who accessed their data and for what purpose.
- The Customs Data Hub should strive to collect **good quality of data** instead of focusing on the collection of large amounts of data.

The EU Customs Authority

Together with the EU Customs Data Hub, the EU Customs Authority will be key to deliver on the ambition to truly reduce compliance costs for businesses and administrations as well as enable EU Customs to protect the Single Market and the financial and non-financial interests of the EU.

While **BusinessEurope supports the creation of an EU Customs Authority**, the Authority should not entail another layer of bureaucracy for businesses. The Authority should truly help to steer, coordinate, and support national customs authorities to have more harmonization, especially with regards to the implementation of the UCC across the EU.

- From the core tasks mentioned under Article 208, we consider important those that would develop common standards and issue best practice recommendations to create and maintain harmonisation and equal treatment across member states.
- The EU Customs Authority should also play an important role in helping to ensure harmonization in the application of EU sanctions and other measures that have an impact on trade with third countries for instance through the development of common guidelines in enforcement. Ensuring this harmonization across Member States would help authorities and companies that are confronted with an enormous surge of restrictive measures, especially sanctions.

Temporary Storage

Non-Union goods brought into the Customs territory of the Union are in temporary storage from the moment they arrive and are presented to customs until they are placed under a customs procedure or re-exported.

Currently, the goods must (in accordance with Article 149 UCC) be placed under a customs procedure or re-exported **within 90 days** following their presentation to customs.

According to Article 86(5) of the UCC reform proposal, “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 [...]. In exceptional cases, that time limit may be extended.”

- Temporary storage is a useful mechanism that gives companies some margin of manoeuvre to decide what to do with the goods before placing them under a customs procedure. The IT and administrative systems of economic operators are built around the current timeline of 90 days allowed for temporary storage. Reducing this timeline so dramatically will have a considerable impact on European businesses.

Special Procedures

Special procedures offer the possibility to suspend customs duties by means of customs and excise authorisations. Nowadays, traders have to submit multiple authorisations and declarations depending on the special procedure.

- A real innovation of the new UCC and simplification for traders would be the **creation of a single authorization for special procedures**. We could envisage that through the trader's portal, economic operators can describe the sequence of possible operations to which incoming goods are to be subject to. They would not need to resort to separate authorizations and separate declarations. They would obtain a simple single authorization that allows them to transmit data on incoming goods, provide monitoring without further authorization, declarations or data transmission. At the end of the process, they would communicate and close the production cycle so that goods can be released for free circulation or re-export. Re-export would become a proper custom procedure.
- This system could be especially envisaged for the Trust and Check trader.

E-commerce

The volumes of E-commerce transactions have dramatically increased, and are set to continue to grow, especially in the form of millions of small packages to be processed at the EU borders. We understand that 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.

- The proposed simplifications for e-commerce should be further discussed with the aim of creating processes that effectively simplify and lessen the administrative burden for both the customs administration and the economic operators. To ensure that the new approach does not lead to increasing delays, especially for regular consignments, the legislation must consider existing e-business processes to the largest possible extent.

Way Forward

Many important details of the future UCC will be defined via delegated and implementing acts. Moreover, many of the simplifications envisaged for the transition period before the EU Customs Authority and Data Hub will be in place, will also be specified via secondary legislation. It is of particular importance that the Commission taps into the expertise of business in order to get those details right. It is important that the customs legislation builds on the processes of businesses as much as possible to allow for the foreseen simplifications to take full effect.

- **A regular structured/formalised dialogue should be established, and appropriate consultations carried out with business** e.g. through DG TAXUD's Trade Contact Group, which can have an advisory role in designing the implementing and delegated acts. Similar formats should be established at the national level.



- Before the new UCC is finalised and adopted, which can take some time, the Commission should continue with the implementation of the current IT systems as well as the simplifications currently included in the UCC.
- Every effort should be made to ensure that the delegated and implementing acts provided for in the new UCC are ready and enter into force sufficiently in advance of the application date of the Code. This would allow timely implementation by both Member States and businesses as well as enhancing legal certainty and predictability.

Other Issues:

Origin: the UCC, notably through the Customs Data Hub, could introduce the possibility of making the origin of exported products outside the EU traceable and codifiable when this is necessary for commercial reasons. Currently, the lack of a legally acceptable set of rules of origin in force in the countries of destination has led customs authorities and chambers of commerce to require proof of the non-preferential origin of products using the principle of last substantial transformation.

Nowadays, the chambers of commerce in the EU are entrusted with the issuing of certificates of origin for exported products outside the EU. Chambers of commerce could have access or connection to the Customs Data Hub in order to facilitate the issuing of origin certificates. This solution could be achieved using some of the possibilities envisaged by specific technology, such as blockchain.

Indirect Customs Representative (Art. 27): applying the status of importer/exporter to indirect customs representatives means imposing the same obligations on them as on other operators, whereas they have not got any means of control on the products and their sourcing. This exposes indirect customs representatives to considerable legal and financial risks.

Indirect customs representatives should not automatically be deemed to be importers/exporters (Article 27, para 1(3)).

Binding Information: the duration of binding information should be extended to at least 4 years, possibly to 6. It is understood that if conditions change an application must be resubmitted, but if nothing changes it remains valid.

Customs Infringements and Non-criminal Sanctions: it is welcomed that the proposal suggests harmonisation and a common approach to sanctions (administrative penalties) to ensure a level playing field in the EU Single Market between economic operators. If sanctions are regulated at EU-level, **the minimum amount of sanctions** (in case of customs infringement not committed intentionally), should be set at 10% of the customs duties avoided. A ceiling should be put on maximum penalties in addition to a minimum in order to comply with the principle of proportionality.

Procedure for Repayment and Remission: the period of 3 years (Art. 198.1.a) for the applications for repayment or remission to the custom authorities in accordance to Art. 193 should start running since the date of the new notification of the customs debt when the overcharged amounts of import or export duty is due to an error committed by the competent authorities or equity.