

# EU customs control mechanisms and their possible improvement

The Committee on Budgetary Control (CONT) decided to organise a workshop with the aim to get a better understanding about customs control practices in Member States and their possible improvements. This briefing provides background information to this event that took place the 15<sup>th</sup> June 2022.

## 1. Introduction - Customs Union<sup>1</sup>

The European Union (EU) has exclusive competence in the area of the customs union (Article 3 of the Treaty on the Functioning of the European Union, TFEU). In practice this means, that:

- on the one hand the customs legislation is enshrined in EU legal acts, the implementation of which is monitored by the Commission (assessing whether Member States and their systems comply with EU legislation) that also is involved in coordinating activities such as development of IT systems, customs laboratories, training materials;
- on the other hand on the ground it is managed by Member States' customs authorities, acting, in principle, as if they were one, i.e. implementation of the customs union is dependent on coordination among national level authorities and among them and the EU level.

The TFEU includes the provisions governing the free movement of goods that stipulate that once a common customs tariff has been applied at the external borders, goods must be able to circulate freely in the EU; thus goods traded between EU Member States are not subject to customs duties (Articles 28-29). It is in the remit of the Council of the European Union to decide what common customs tariff duties should be imposed (based on a proposal from the Commission); and the Council oversees together with the European Parliament customs cooperation between Member States and between Member States and the European Commission. To ensure a level playing field of customs control in the EU, implementation of the EU customs legislation should be harmonised, standardised and well coordinated in all Member States.

**The basis for managing the customs union is the Union Customs Code (UCC)<sup>2</sup>**, that entered into force in 2016 and created a modernised framework for customs rules and procedures; with it the uniform application of customs controls has become embedded in law. Apart from the UCC customs authorities enforce other EU legislative acts, such as legislation on product safety, health and environmental standards. As a basis for controls and supervision of own resources, they (and also the Commission) rely on [Council Regulation \(EU, Euratom\) 2021/768 of 30 April 2021 laying down implementing measures for the system of own resources of the European Union](#).

<sup>1</sup> This section is partially based on "[The European Union explained: Customs](#)" and on the website "[Taxation and Customs Union](#)" (accessed 5 May 2022)

<sup>2</sup> [Regulation \(EU\) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code](#)



It has to be noted that the collection of import duties is no more the most important task of customs authorities that are charged with diverse other tasks such as enforcement of trade policy rules (preferential trade), surveillance of dangerous goods and health hazards, fight against not only fraud but organised crime and terrorism, but also the collection of statistics. Insofar national customs authorities cooperate with the European Police Office (Europol), European Union Agency for Criminal Justice Cooperation (Eurojust) and the European Anti-Fraud Office (OLAF). The non-fiscal, protection role of EU customs became more prominent during the Covid-19 pandemic.

### 1.1 Customs duties - the own resource

Customs duties form a significant part of the **traditional own resources** of the EU budget. They are collected by the Member State authorities and then transferred to the EU budget, after deduction of a 25% (applicable as of 2021, earlier 20 %) lump sum for the administrative costs of the Member States borne in relation to the collection of these duties. Customs collected are considered as revenue resulting from the application of an EU common policy, rather than “national contributions” to the EU budget, which is important to note, as the one paying the customs duties is not always a resident in the Member State collecting it, making it difficult to collect customs duties equitably on a national basis.

With global trade rising, it is likely to remain an important part of EU revenues, although the relative share of customs duties (and VAT) in own resources has significantly decreased over time. Customs duties represent the following in traditional own resources in recent years:

**Table 2.: Customs duties revenue and EU traditional own resources, 2019-2021, EUR million**

Revenue category	2019	2020	2021 <sup>3</sup>
Customs duties (100 %)	26.706,7	24.833,2	23.130,8
Collection costs (20 %, and 25 % in 2021) retained by Member States	-5.341,3	-4.966,6	-5.782,7
Traditional own resources (80 %, and 75 % in 2021)	21.364,5	19.866,5	17.348,1
Total own resources	144.767,5	160.089,9	156.993,4

Source: [EU spending and revenue - Data 2000-2020 with retro-active impact of the 2014 own resources decision](#) (accessed on 25 March 2022) and [General Revenue](#)

The calculation of customs duties due depends on three elements:

- Customs valuation<sup>4</sup> is basically the determination of the economic value of goods declared to be imported. The customs value is the basis of the calculation of customs duties to be paid (usually a percentage of the value total). First and foremost the transaction value method is

<sup>3</sup> For 2021 the full amount of customs duties and the collection costs are calculated on the basis of the 75% figure available in [General Revenue](#)

<sup>4</sup> Defined in the Union Customs Code (Regulation (EU) No 952/2013), Articles 69 to 76. This Regulation entered into force in 2016

used (total amount to be paid by the importer for the imported goods), but if this method cannot be used, other methods are also available. (The [World Trade Organization's Customs Valuation Agreement](#) lays down the principles of customs valuation, and these rules are transposed into EU rules via the UCC and secondary regulations.)

- Customs tariffs: in the EU, there is a Common Customs Tariff applicable to all imports from third countries, whichever EU Member State is the destination. The duty rates depend on the type of product and its economic sensitivity, and where it comes from. The tariff is in fact a product nomenclature<sup>5</sup> combined with the duty rates applicable to each class of goods, containing however all other EU legislation with an effect on the level of customs duty that is due on a particular import (for example country / territory of origin).
- The so called rules of origin help determine where goods originate from, i.e. where they were produced or manufactured. For customs, two types of origin have significance: preferential origin and non-preferential origin. [Preferential rules of origin](#) help decide if goods originate from countries with which special arrangements or agreements are in place. This opens the possibility for imported goods to be eligible for lower or zero duty rates. [Non preferential rules of origin](#) serve to decide upon the country of origin of goods so that the [most-favoured nation treatment](#) (MFN) can be applied, but also serve the implementation of a number of commercial policy measures (e.g. anti-dumping and countervailing duties, trade embargoes, etc.)

At this point the so called **“customs gap”** needs to be mentioned: the difference between customs duties collected in reality, and the amount of customs duties due theoretically. The difference can be due to for example goods not being declared or being wrongly declared (undervaluation) and not detected by customs controls. A customs gap needs to be compensated by higher Gross National Income (GNI) contributions to the EU budget by Member States and ultimately paid by European taxpayers. (In addition, imports are also subject to value added tax (VAT), and in case the VAT due on imports is not paid either, it mainly affects national budgets but partially also the EU budget.)

The European Parliament (EP) requested already in 2013 (in the context of the 2011 discharge procedure) that the Commission collects data on VAT and customs gap. Already in their responses to this request, the Commission acknowledged not making such estimation on the customs revenue<sup>6</sup>. In relation to this, the ECA in a 2017 [Special report](#) considered that this very request of the Parliament had not been fulfilled, and recommended that such estimations should be carried out. The EP repeated its request in 2018 in its resolution<sup>7</sup>, based on a report of the CONT Committee, where it called on the Commission to produce periodic estimates of the customs gap stating in 2019, using a suitable methodology, and to report back to Parliament every six months. Another [ECA Special report from 2021](#) confirms that the customs gap remains unknown thus the Commission has not followed the earlier ECA recommendations or EP requests in this regard.

Finally, a [2019 EP study](#) also gives, among others, a recommendation on the customs gap measurement: a methodology should be used that measures at least the main elements of the customs gap (but also differentiates between the source of the loss to the budget, such as smuggling, undervaluation, misclassification, etc.), because it is essential for appropriate risk analysis and fraud mitigation strategy, as well as for the development of appropriate policy responses.

<sup>5</sup> The so called Combined Nomenclature (CN) has been set up to meet the requirements of both the Common Customs Tariff and the EU's external trade statistics. See more [here](#).

<sup>6</sup> See: Commission Staff Working Document Accompanying the document Report from the Commission to the European Parliament and to the Council on the follow-up to 2011 discharge - Replies to requests from the European Parliament, SWD (2013)0349, 26.9.2013

<sup>7</sup> [European Parliament resolution of 4 October 2018 on fighting customs fraud and protecting EU own resources \(2018/2747\(RSP\)\)](#)

## 2. Customs control

**Customs controls is defined in the UCC (Article 5(3))** as “specific acts performed by the customs authorities in order to ensure compliance with the customs legislation and other legislation governing the entry, exit, transit, movement, storage and end-use of goods moved between the customs territory of the Union and countries or territories outside that territory, and the presence and movement within the customs territory of the Union of non-Union goods and goods placed under the end-use procedure;”.

**Articles 46-50 of the UCC detail provisions on customs controls and risk management.** According to these provisions, “Customs controls may in particular consist of examining goods, taking samples, verifying the accuracy and completeness of the information given in a declaration or notification and the existence, authenticity, accuracy and validity of documents, examining the accounts of economic operators and other records, inspecting means of transport, inspecting luggage and other goods carried by or on persons and carrying out official enquiries and other similar acts.”

The following controls are carried out<sup>8</sup>:

- Customs duties that are due (together with the correct description, origin and value of goods);
- Security and safety measures (smuggling, drugs, cigarettes, weapons, fight against terrorism);
- Prohibitions and restrictions (for example product compliance and safety, counterfeits, health and environmental hazards, etc.);
- Common Agricultural Policy related rules.

Another grouping of controls is based on<sup>9</sup>:

- timing: pre- and post-release-controls are being applied before and after import clearance, respectively, with the latter being less disruptive to trade flow;
- type: documentary controls and physical checks; the former means checking the customs declarations for their correctness, completeness and validity, while the latter means checking (counting, taking samples) the goods themselves against the customs declaration.

**Customs controls (other than random checks) are based on risk analysis<sup>10</sup> that uses electronic data-processing techniques, and are carried out in the context of a risk management framework**, also bearing in mind that effectively targeted controls help avoid unnecessary delays to legitimate traffic of goods. The risk management framework includes the establishment of<sup>11</sup>:

- common risk criteria and standards for security and safety - implementing act adopted under Article 50(1) of the UCC (publicly not available);
- common risk criteria and standards for financial risks - Commission implementing decision of 31 May 2018, the so called Financial Risks Criteria and Standards Implementing Decision (the “FRC decision”)<sup>12</sup> - publicly not available.

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<sup>8</sup> See: [Customs Controls](#)

<sup>9</sup> Source: ECA [Special Report on Customs controls: insufficient harmonisation hampers EU financial interests](#)

<sup>10</sup> Risk Management rules are laid down in the Union Customs Code, Article 46

<sup>11</sup> This and the following paragraphs are partially based on: [https://ec.europa.eu/taxation\\_customs/measures-customs-risk-management-framework\\_en](https://ec.europa.eu/taxation_customs/measures-customs-risk-management-framework_en)

<sup>12</sup> Commission Implementing Decision of 31 May 2018 laying down measures for the uniform application of customs controls by establishing common financial risk criteria and standards pursuant to Regulation (EU) No 952/2013 laying down the Union Customs Code for goods declared for release for free circulation.

Further to the common EU-wide criteria and standards the framework establishes common control measures and priority control areas. The latter may refer to e.g. types of goods, traffic routes, modes of transport, certain economic operators, or controls during a certain period. These series of criteria can be used by customs to better target shipments that represent a security and safety hazard to citizens, legitimate traders and/or to the EU's financial interests. However, in practice each Member State has its own process for managing risks, based on specific characteristics and depending on several inputs.

Exchanges about risk information and about the results of risk analysis among customs authorities are essential for the good functioning of a risk management framework. For example, it could be that an authority considers that risks are significant and controls show that trigger events have occurred or where controls do not show such events being occurred but the authority considers that it is highly likely that it can happen elsewhere in the EU. For this purpose there is also the so called Common Customs Risk Management System (CRMS) that is to be used as a platform to exchange risk-related information between operational officials and risk analysis centres in the Member States. The "Risk Information Form (RIF)" is completed electronically and is accessible by all customs offices connected to the system.

The ECA in its Special Report 2021 states that: "Statistics collected by the Commission show that the level of controls currently varies significantly between Member States: from less than 1 % of import declarations in some countries to more than 60 % in others". Moreover, the ECA found that the framework itself defining risk management has shortcomings: the ECA found weaknesses in the definition of risk included in the earlier mentioned FRC decision, that could result in Member State practices not controlling imports that pose high risk to the EU's financial interests. Finally, even though the UCC includes the requirements of the common risk criteria and standards to be applied in Member States, the rules are not stringent enough, finds the Court. Basically, the indicators of risk that trigger the selection of goods or economic operators for custom controls are used in different ways across the EU, harmonised selection of declarations for control is not ensured. The nature and duration of controls, the methods to use random checks of controls are not (sufficiently) harmonised either. In practice, "the same import declaration may or may not be subject to a recommendation for control, depending on the Member State". The ECA finds that the Commission (DG TAXUD) does not have a procedure to regularly monitor application of the framework. The regular visits of DG BUDG aim at inspecting customs duties, and not the application of the FRC decision - in fact there is no procedure for the EC to deal with failure to comply with this decision. With regard to the CRMS, the ECA found that it is "**not well adapted for Member States to share information** systematically with one another on risky importers". Thus, Member States only have details about importers they assessed as risky, which makes it possible for importers declared risky in one Member State to change the location of customs clearance, and to avoid controls in another Member State.

To conclude: coordination among MS customs authorities is important because it can help countering major trends of illegal trade, and ensure that goods refused in one country do not pass controls elsewhere in case of multiple attempts of entry to the EU. **There is not a harmonised shared risk assessment, management and control system for all Member States.** In practice, customs administrations apply their own risk assessment and management systems, without even using the same IT system. This can weaken coordination and hinder effective sharing of information. In their 2017 special report<sup>13</sup> the ECA found that in fact there is a disincentive for Member States to carry out customs controls, those performing such controls will bear the financial consequences if cannot make successful recoveries from importers; whereas Member States not carrying out controls may avoid such negative consequences. Importers obviously may favour less control and choose their entry points accordingly.

<sup>13</sup> Special report on "[Import procedures: shortcomings in the legal framework and an ineffective implementation impact the financial interests of the EU](#)", paragraphs 29-32

On a final note, it is also important to **take into account the needs of businesses** and ensure close cooperation with their representatives when (re)designing customs control. Procedures should be streamlined and simplified (with the help of information technology and highly specialised examination equipment).

### 3. Challenges, EU Customs Strategy and the future of customs<sup>14</sup>

Member States authorities are struggling in face of the growing challenges towards customs activities. The Union Customs Code was created also to help them step up efforts, but it is clear to policy makers and practitioners both at national and EU level, that further development is needed in this area. Customs fraud activities try to use weaknesses in the existing system, a clear example are cases of undervaluation of goods aiming at avoiding customs duties and VAT obligations, but also smuggling (e.g. of tobacco). These fraud activities take advantage of the imbalances of Member State customs control mechanisms and divert goods to the weakest entry (and exit) points of the EU external border. Beyond fraudulent traffic, there are the broader challenges such as digitalization of the world economy, emergence of e-commerce, and emergency circumstances such as the recent COVID-19 pandemic. In the absence of an EU Customs Agency, some steps have been taken to better alignment through intergovernmental collaboration - the EP in its earlier mentioned 2018 resolution on fighting customs fraud and protecting EU own resources in fact called on the Commission “to consider transferring the responsibilities of customs authorities from national to EU level as regards ensuring harmonised treatment at all EU points of entry, monitoring the performance and activities of customs administrations, and collecting and processing customs data”.

The earlier mentioned 2019 EP study underlined that **the Commission clearly recognises the weaknesses and needs regarding cooperation in tackling customs fraud, but more ambitious proposals are needed** in areas, such as customs gap, data collection, data validation, collaboration and information-exchange among national authorities, a single window for customs clearance with improved data management. The study identified the **key challenges for the Commission being the lack of resources and the lack of engagement by national governments**.

In July 2019, the von der Leyen Commission set out to strengthen the Customs Union, in particular with “a bold package for an integrated European approach to reinforce customs risk management and support effective controls by the Member States”.<sup>15</sup> In face of these challenges the European Commission drew up an Action Plan “[Taking the Customs Union to the Next Level: a Plan for Action](#)” in 2020, that includes 17 actions in different fields to be carried out up to 2025. **The four groups of actions are: risk management, e-commerce, promotion of compliance and customs authorities acting as one.** Risk management is a central element of customs control, as the volume of traded goods is substantial and authorities cannot examine imports on an individual basis. There is an EU-wide common risk-management framework, but there are concerns that it is not implemented in the same way in all Member States. This framework comprises common risk criteria and standards, measures to exchange risk information and the performance of electronic risk analysis. The principle is to have a two tier defense: assessing in advance and controlling when and where required, before or after the goods enter the EU customs territory. There are also concerns that Member States’ risk assessment systems may miss important data because it is not collected or not shared or there is no EU level comparative data that would help interpret the national level data.

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<sup>14</sup> This section is based on the website “[Taxation and Customs Union](#)” (accessed 6 May 2022)

<sup>15</sup> [Political Guidelines for the next European Commission 2019-2024](#), A Union that strives for more, My agenda for Europe By candidate for President of the European Commission Ursula von der Leyen



The Action Plan announces that the Commission is to support the implementation of the actions through technical support programmes. Many of the proposed actions should have a positive impact on customs control mechanisms, directly or indirectly, such as:

- the “Joint Analytics Capabilities” initiative of the Commission that will “facilitate the collection of data and the better use of data from customs and non-customs sources and to provide tools for better sharing and interlinkage of the data”, and that will allow for better addressing EU-wide risks through EU level analysis (currently, risk assessment centres often work at national level);
- revision of the Risk Management Strategy, review of the legal framework to combat customs fraud (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) to decide whether an update is needed;
- enhance cooperation between customs and security and border management authorities and synergies between their information systems; better equip Member States with modern and reliable customs control equipment.

In September 2021 the Commission established a **Wise Persons Group on Challenges Facing the Customs Union** “to reflect on the development of innovative ideas and concepts and deliver a report that contributes to a general inter-institutional debate on the future of the Customs Union”. The Group published their [final report](#) on 31 March 2022, in which they concluded that **despite its overall success, the EU customs union needs an urgent structural change**, to be able to face the challenges stemming from an ever faster changing world. The **rootcauses of the shortcomings** are identified as (1) changes in trade and technology (e-commerce), (2) growing expectations towards customs authorities in terms of their responsibilities and tasks, and (3) “a systematic absence of common implementation of customs measures, different control practices across border entry points, both within and across Member states, differences in control priorities, and differences in methods and sanctions for non-compliance” topped with (4) poor availability and quality of data, with (5) insufficient level of data sharing (making it difficult to properly manage risks) and with (6) investments in capacity in customs not matching the growing expectations.

The group made ten recommendations to be implemented by 2030, among others aiming at strengthening EU customs capacity to ensure proper collection of customs duties and taxes. These include, to

- have annual estimates of the customs revenue gap;
- adopt a new approach to data that should be better shared among administrations and better used for EU risk management;
- create a comprehensive framework for cooperation between European Customs, with Market Surveillance Authorities, other Law Enforcement bodies and tax authorities;
- set up a European Customs Agency that would provide services to both Member States and the Commission, whilst respecting the existing allocation of competencies.

#### 4. Customs fraud, EU and national level efforts to prevent fraud<sup>16</sup>

An earlier study (2019), commissioned upon request of the CONT Committee<sup>17</sup>, aimed at describing the current levels of customs fraud, outline and analyse the effectiveness of the EU cooperation measures in

<sup>16</sup> This section is largely based on [Protection of EU financial interest on customs and VAT: Cooperation of national tax and customs authorities to prevent fraud](#), Deloitte, 2019

<sup>17</sup> [Protection of EU financial interest on customs and VAT: Cooperation of national tax and customs authorities to prevent fraud](#), Deloitte, 2019

tackling fraud. One of the findings was that **the absence of a methodology for measuring customs gap (or its elements, such as customs fraud) prevents the design of tailored risk based policy actions.** Moreover, the study found that cooperation has several weaknesses, although positive developments can be observed and it is expected that the joint fight against fraud is strengthened in the future.

This study identified the following **types of fiscal customs fraud**:

- mis-declaration of tariff classification;
- mis-declaration of value (undervaluation);
- mis-declaration of origin (preferential or non-preferential).

E-commerce is a fertile ground for undervaluation of imported goods, with the aim to benefit from VAT exemption and customs declaration relief; the way to counter this is to either open the parcel or to use transactional data.

The study found that Member States' approach to customs control, the level of strictness, depends on how they wish to position themselves in global trade, thus it can be rather detached from revenue collections aspects. This weakens the level of protection of the EU's external borders, which is as strong as its weakest point of entry. The existing cases of entry point shopping by fraudsters point to the lack of equal customs enforcement. Overall, the existing customs controls system is seen as inadequate to address new types of fraud risks, especially those linked to e-commerce. Supporting these findings, the European Court of Auditor's [Special Report on Customs controls: insufficient harmonisation hampers EU financial interests](#), points out that the prerequisite of preventing fraudulent importers from shifting to border entry points that exercise lower levels of control is the uniform application of customs controls by Member States. Based on the UCC, the Commission is to take action (from 2016 onwards) to ensure that customs controls are applied uniformly on the national level.

There are various cooperation channels supporting the fight against customs and customs related VAT fraud, which however are underused. Overall, cooperation between the national administrations (customs and tax) has improved, but challenges remain, such as lack of national resources, of motivation, of incentives and of data or access to data. Examples of best practices include [EUROFISC](#) and [Customs Eastern and South-Eastern Land Border Expert Team \(CELBET\)](#). Cooperation between and with the national and EU law enforcement bodies has also improved, examples include joint investigations teams and joint customs operations. Challenges remain here as well, e.g limits of the mandates of e.g. OLAF, who lacks prosecutive powers to ensure recovery. Finally, duty/tax fraud is less of a priority, compared to smuggling of illegal (counterfeit, etc.) products (although these could also have a fiscal impact).

The Commission understands the shortcomings of the current system and relevant programmes (such as Customs and Fiscalis), and has improved administrative cooperation in the fight against fraud. More could however be done in the area of measuring of the customs gap as well as encouraging national authorities to improve their data collection, data validation, mutual collaboration and information-exchange. Moreover, there is not yet a EU customs agency, although examples of further alignment among MS exist, such as intergovernmental collaboration, as mentioned before. Finally, the study concludes, a single customs declaration system (also called the 'single window' for customs clearance) would improve data management, analytics and comparison of data, helping to indicate fraud.

As explained in the [second Biennial report](#) accompanying the Action Plan of the Commission, **several actions have been taken on the EU level to counter customs fraud in recent years**:



- Guidance and established rules in the area of common risk criteria and standards for financial risks;
- Introducing new VAT rules for e-commerce to prevent fraud;
- Changes related to Customs Procedure 42/63 that allows goods to be imported or re-imported to the EU with VAT being not paid until the goods reach their final destination (Member State) - i.e. fighting fraud in the context of VAT exempt importations related to both VAT and customs duties (undervaluation).

In addition, efforts have been made to improve efficiency of customs administration in tackling fraud through the [Customs 2020 programme](#), that supported the proper functioning and modernisation of the customs union and strengthening the internal market through cooperation between Member States. For the period 2021-2027, the programme is renewed<sup>18</sup> and is allocated EUR 950 million (current prices). Another programme, [Hercule III](#) (managed by the European Anti-Fraud Office (OLAF)) aimed to protect the EU's financial interests by supporting projects that aim to combat irregularities, fraud and corruption affecting the EU budget. In the 2021-27 period, Hercule programmes are replaced by (integrated into) the new Union Anti-Fraud Programme that has a "Hercule component" (with a budget of EUR 114,207 million in current prices for 2021-27). In this context, the [Fiscalis programme](#) is also relevant, as it provides for cooperation of tax administrations, and their officials in the fight against tax fraud, tax evasion and aggressive tax planning (it is also renewed, with a budget of EUR 269 million (current prices), for the period 2021-2027).

Finally, **OLAF plays a key role** in investigating fraud harming the EU's own resources, be it smuggling and counterfeiting or the avoidance of paying duties and taxes, such as undervaluation of goods, transit fraud (e.g. "missing trader" schemes, remote hacking of national transit IT systems, bribing of customs officers) or the evasion of anti-dumping duties (through false declaration of origin). OLAF also coordinates large-scale Joint Customs Operations (JCOs) that involve international partners, and are targeted operations over a limited duration, usually combatting fraud, the smuggling of sensitive goods.

#### 4.1 Undervaluation of goods: examples

As mentioned earlier, a common method of fraud is to under-declare the value of imported goods, to avoid paying higher rates of import duties (false declaring destination of goods is also a way to avoid paying VAT).

##### *OLAF annual report 2017*

As described in the [2017 OLAF report](#) in 2017, OLAF concluded large-scale investigations into the undervaluation of textiles and footwear entering the EU territory usually in Germany, but going through customs clearance in the United Kingdom, Slovakia, the Czech Republic, France and Malta. The crime explained:

"The fraudsters' modus operandi was fairly simple. Goods from China would arrive in containers on vessels, which would generally enter Europe through the port of Hamburg, although other European ports were used occasionally. The containers, considered to be in transit, would then be placed on lorries and taken for customs clearance elsewhere in the EU, wherever fraudsters considered they could get away with declaring falsely low values for the products they were importing."

Source: OLAF report 2017

<sup>18</sup> See: [Regulation \(EU\) 2021/444 of the European Parliament and of the Council of 11 March 2021 establishing the Customs programme for cooperation in the field of customs and repealing Regulation \(EU\) No 1294/2013](#)

Among the cases examined in 2017, the largest volume of goods was declared in the UK, OLAF calculations resulted in EUR 1.9 billion in customs duties lost to the EU budget, and it was recommended for recovery. In addition, the amount of VAT evasion was estimated at EUR 3.2 billion (2013 to 2016). The total loss estimated by OLAF in the other countries investigated in 2017 was adding up to EUR 300 million in customs duties lost.

OLAF investigations also showed that authorities are not defenceless against this type of fraud:

“OLAF’s investigation also uncovered a direct correlation between diminishing traffic in the fraud hubs in the other Member States where authorities took action, and the increase of the fraudulent traffic through the hub in the UK. By implementing risk profiles, which prompt customs officers to take action to deal with the risk indicated, such as to physically examine a container or to check the customs declaration and accompanying documents, the cases of undervaluation fraud quickly started to diminish in the Czech Republic, Malta and France. Indeed, the sooner a Member State took action, the lower the revenue losses for the budget.”

Source: OLAF report 2017

The reason why the amounts detected in the UK were so much higher is that the UK did not implement such risk profiles mentioned above (despite several warnings from OLAF), and thus fraudsters increasingly shifted their activities there. As the UK refused to repay the losses to the EU budget, the Commission launched a formal infringement procedure in 2018 and referred the case to the European Court of Justice in 2019. The European Court of Justice ruled on the UK case (*European Commission v United Kingdom of Great Britain and Northern Ireland*) on 8 March 2022, stating that the UK failed to apply effective customs control measures and did not provide OLAF with the information necessary to calculate the amount of customs duties lost.<sup>19</sup>

#### *OLAF annual report 2018*

The [OLAF Report 2018](#) describes details of how OLAF is trying to fight undervaluation (of textiles and footwear) imported to the EU, and being subject to customs clearance in the UK, Slovakia, Czechia and Greece. As also pointed out earlier, organised criminal networks choose entry points to the EU where controls are perceived to be more lax. This finding is supported by the fact that during 2017 and 2018 such textiles and shoes were not declared any more in Member States previously targeted but where authorities took action. Instead, these goods were brought to other countries, such as Greece or Hungary. In the case of Greece, OLAF investigated shoe and textile imports between 1 January 2015 and 31 May 2018 and issued a financial recommendation to Greek customs authorities to recover EUR 202.3 million in lost customs duties. The Greek case was the sixth case concluded by OLAF, the total of which involved over EUR 2.5 billion customs duties lost to the EU budget (adding to this is the VAT not paid to national and ultimately the EU budget). OLAF concludes that there are organised crime groups clearly targeting the EU as a whole, and both Member States and the EU are victims of such crimes. Therefore, more cooperation is needed between national customs offices to be able to give coordinated responses to such criminal networks. OLAF works closely with customs authorities of Member States affected by this type of irregular trade, through OLAF investigations, early warnings and alerts in case of surges in suspicious trade flows, precautionary measures and other actions.

<sup>19</sup> For more details, see [press release](#) of the European Court of Justice.

*OLAF annual report 2020*

[The OLAF report 2020](#) describes the following case:

"Following a tip-off from Czechia, OLAF began investigating suspected irregularities and frauds affecting import duties and related VAT on goods imported from China into several EU countries. OLAF's investigation revealed a sophisticated scheme that saw the goods coming from China introduced into the EU via several Member States and declared for transit to other EU country. This declaration allowed the goods to enter the EU without paying VAT in the country into which they were initially imported; under EU rules, this VAT payment would normally be paid in the EU country that was declared as the final destination for the goods in question. Focusing its initial investigations on 24 containers, OLAF's case quickly grew to encompass more than 1400 consignments amounting to 19,000 tonnes of textiles and shoes from China. The investigations conducted by OLAF in close cooperation with authorities in Poland, Czechia and Slovakia showed that the consignments were not only systematically undervalued but also transported to Member States other than the one indicated on the official documents. The goods disappeared and were most likely traded on the black markets, thus also evading VAT payments. The under-valuation of the goods is estimated to have cost the EU around €4.5 million in lost customs duties, while the VAT losses amount to €33 million affecting at least seven EU countries. OLAF has recommended that the Member States concerned take action to recover the money, while judicial action was recommended in Poland, Slovakia and Czechia."

Source: The OLAF Report 2020, Twenty-first report of the European Anti-Fraud Office, 1 January to 31 December 2020

Typically, these fraud cases involve textiles and shoes imported from China and systematically undervalued upon declaration to customs. As shown earlier, OLAF, together with the Member States authorities have worked to investigate these cases, to adapt customs controls activities, and their efforts resulted in decreasing the number of such cases between 2017 and 2020. According to the 2020 OLAF report, the estimated losses to the EU budget decreased from over EUR 1 billion to around 180 million. Nevertheless, efforts need to continue, as there are new patterns emerging in this type of fraud, also involving e-commerce.

The earlier mentioned 2021 ECA special report points to the fact that cases such as the undervaluation fraud in the UK, and other unknown potential losses to the EU budget lead to **inaccuracies in the traditional own resources amounts transmitted to the EU budget**, a concern also included in the [2019](#) and [2020](#) Annual Activity Reports (AAR) of the Directorate General for Budget (DG BUDG). The 2020 AAR states that inspections confirmed that undervaluation fraud does concern every Member State. The amount lost to the EU budget linked to the undervaluation of textile and shoes imported from China in the period of November 2011 to October 2017 is estimated at EUR 2 679 637 088.86 (gross) for UK, but there are additional unquantified potential losses in other Member States (and the UK) continuing to occur after 2017. The 2020 AAR explains that inspections were carried out in all Member States during which it was checked how Member States are organised to address undervaluation - it was found that their control strategy for customs value has serious shortcomings - if appropriate Member States can be held financially responsible for the losses occurred.

Finally, apart from the losses to the EU budget, undervaluation fraud is on the one hand a source of conflict among Member States as some might consider a lax approach to customs control activities as unfair competition to attract more commercial traffic (the lower level of traditional own resources are compensated by all Member States through the GNI-based contribution). On the other hand, it distorts the internal market and harms the competitiveness of EU industrial actor, and might be a threat to consumers in case of undetected non compliance with safety and quality standards.

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Administrator responsible: Diána HAASE Editorial assistant: Mirari URIARTE

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

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Print ISBN 978-92-846-9483-9| doi: 10.2861/591166| QA-07-22-380-EN-C

PDF ISBN 978-92-846-9482-2| doi: 10.2861/176609| QA-07-22-380-EN-N