

# PROCEEDINGS

## **EU Customs Control Mechanisms and Their Potential Improvement**

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### Budgetary Control





This document was requested by the European Parliament's Committee on Budgetary Control.

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# **WORKSHOP PROGRAMME**







# **WORKSHOP**

## EU Customs Control Mechanisms and Their Potential Improvement

*organised by the Policy Department for Budgetary Affairs  
for  
the Committee on Budgetary Control*

**15 June 2022**  
**15:00 - 17:00**  
**European Parliament, Brussels, Room: Altiero Spinelli building,**  
**3G2**  
**(Hybrid meeting)**

### **PROGRAMME**

#### ***Opening remarks and Introduction***

15:00-15.10

**Introductory remarks by Tomáš Zdechovský MEP**  
Vice-Chair of the Committee on Budgetary Control and Rapporteur

## ***Customs control in the EU, challenges and responses***

### **Presentations**

- 15:10-15:20      **Improving EU Customs Control Mechanisms and shaping the future of our Customs Union**  
**Gerassimos Thomas**  
Director-General, Directorate-General for Taxation and Customs Union, European Commission
- 15:20-15:30      **Putting more Union in the European Customs – ten proposals by the Customs Wise Persons Group**  
**Mateja Vraničar Erman**  
Vice-Chair, Wise Persons Group on the Reform of the EU Customs Union
- 15:30-15:40      **Discussants: Ioanna Metaxopoulou**, Director in Chamber IV - Regulation of markets and competitive economy (European Court of Auditors) and **James Sweeney**, Head of Unit, Customs and Trade - Operations and Investigations (European Anti-Fraud Office)

## ***Questions and answers***

- 15:40 - 15:55      **Questions & answers**

## ***Sharing evidence and practical experiences***

### **Presentations**

- 15:55-16:05      **Customs controls in the European Union: towards a greater convergence**  
**Professor Giangiacomo D'Angelo**  
Principal Investigator, ECCE - European Common Customs Evaluation, Associate Professor in Tax Law, Department of Legal Studies, University of Bologna
- 16:05-16:15      **CELBET: customs cooperation in action**  
**It. colonel András Bartha**  
Head of Customs Eastern and South-Eastern Land Border Expert Team (CELBET)
- 16:15-16:25      **Enabling legitimate trade and controlling customs risks: getting the balance right” – perspective of the business community**  
**Luisa Santos**  
Deputy Director-General for International Relations, BusinessEurope

16:25-16:35

**Discussants: Ioanna Metaxopoulou**, Director in Chamber IV - Regulation of markets and competitive economy (European Court of Auditors) and **James Sweeney**, Head of Unit, Customs and Trade - Operations and Investigations (European Anti-Fraud Office)

### ***Questions and answers***

16:35-16:50

**Questions & answers**

### ***Conclusions and closing remarks***

16:50-17:00

**Closing remarks by Tomáš Zdechovský MEP**

Vice-Chair of the Committee on Budgetary Control and Rapporteur



# PROCEEDINGS



The workshop was chaired by Mr Tomáš Zdechovský, Vice-Chair of the Committee on Budgetary Control, who was also participating in the event as Rapporteur.

### **Opening remarks from Chair/Rapporteur**

In a brief opening intervention, Mr Zdechovský welcomed the timely debate on customs control activities. He highlighted that:

- customs and customs related VAT fraud has a negative impact on the EU's own resources;
- cooperation is crucial among customs authorities, within the EU and also between the EU and third countries;
- cooperation is crucial with police and judicial authorities within and between Member States and also with external partners.

### **First round of presentations**

#### Gerassimos Thomas

The Director-General started by confirming that the Commission is very much engaged with Member States, there are dedicated communication channels set up among customs authorities. He explained that:

- the broader environment imposes changes on the customs union (both big megatrends and shorter term changes), main challenges highlighted were for example high volume of trade, in particular that of e-commerce (customs authorities need to check every transaction, the number of which has increased substantially with e-commerce), new geopolitical and sanitary context, expectations of citizens in terms of security, sustainability, safety, health, production methods of imported goods (no child or forced labour), etc.;
- reality is that customs could not keep up with these challenges in every Member State;
- after the Covid related crisis, the challenges related to the war in Ukraine come in addition to the broader issues mentioned, the Commission has coordinated with Member States on customs matters, implementation of sanctions and the prevention of potential security threats (a dedicated communication channel was set up for customs authorities, surveys and questionnaires conducted);
- in the context of the war related measures, the Commission also coordinated with border authorities, customs and tax authorities and with Europol;
- customs controls used to focus on fiscal risks, however, the tasks tackled today are far beyond that;
- it is difficult for EU customs to act as one, to carry out the same control, because of the lack of common control priorities, and as a result, there are in fact 27 borders, not one, and billions of customs duties and taxes remain uncollected, and non-compliant products enter the EU territory;
- the reflections on the future of customs started a couple of years ago (e.g. a foresight exercise in 2018, together with JRC), the Wise Persons Group report is used, among others, as an input in the upcoming reform proposals (planned end of 2022) trying to address challenges and weaknesses the Commission;

- the reforms would aim to solve short term problems, such as crisis management and adjustments triggered by e-commerce, but also to give a vision on how to better integrate risk management and IT systems and share information among national authorities;
- the level of risk management systems varies across Member States, but at the same time the level of sharing information gained from the those systems needs to be improved in terms of technicalities but also willingness, a good example of cooperation and information sharing is CELBET;
- a positive element is that in the current MFF for the first time there is an instrument dedicated to customs control equipment;
- overall there should be one external border that protects the Single Market, its functioning and integrity;
- the possibility of reforming the current governance (in place since 1968) of the customs union is to be carefully examined, as it is true that Member State have different resources and capacities, and that the idea of a more centralised governance have been called for several times, but the reform proposals need to be based on a careful impact assessment and stakeholder consultations.

#### Mateja Vraničar Erman

Ms Vraničar Erman presented the work and the recommendations of the Wise Persons Group:

*(The customs union we have)*

- the existing division of responsibilities (customs policy is at the level of the European Union but implementation is the responsibility of Member States) is acceptable, but could be improved, as there is one single EU legislation but there are 27 different ways the EU legislation is implemented;
- differences in implementation can be used by fraudsters for so called “customs shopping”;
- customs revenues remain important part of public revenues, but the focus of customs work shifted to control of restrictions and prohibitions;
- customs control challenges related to e-commerce are not reflected in current legislation;

*(A customs union we want)*

- it should be resilient to crisis, to changes in trade patterns and should be future proof;
- 27 national customs authorities acting as one in effective cooperation among themselves and with other authorities, to protect the Single Market and be integral part of the digital and green transition;

*(10 proposals)*

- must be seen as a reform package, not a list of alternatives;
- the main issues are linked to a new approach to data;
- develop further a system based approach so that customers would do a significant portion of controls that today are performed by customs authorities;
- ABC model (Authorised, Bonded or subject to greater Control);
- a comprehensive framework for cooperation within the existing division of responsibilities;



- it is time for developing a European Customs Agency/body that would not take over responsibilities from Member States but would help them perform their responsibilities in a more effective manner, e.g. coordinating risk management, public procurement, developing a single IT system supporting the work of customs agencies instead of 27 different IT systems;
- remove the customs duty exemption threshold for e-commerce, as it was done in the VAT area to see where the fiscal part of customs' work does not function as it should;
- contribution of customs to the EU green agenda;
- introduce annual Customs Revenue Gap Report;
- properly resource, skill and equip Customs;

Concluding her intervention, Ms Vraničar Erman stated that even though customs authorities have done a tremendous job protecting the European Single Market and core values and principles of our society and EU customs system has developed over the past decades, further fundamental changes are needed. Changes must be led by customs authorities (doing the technical part), but also, they need political visibility and recognition.

### **First round of interventions by discussants**

#### Ioanna Metaxopoulou

Ms Metaxopoulou said that the Court has carried out several audits in the past 10 years, and all have come to the same conclusion, namely that there has been progress in the uniform application of customs legislation, nevertheless the differences in implementation of customs control activities adversely affect the financial interests of the EU, but also the safety and security of EU citizens. Lining up to earlier speakers, she agreed that with the expansion of e-commerce and the current challenges we face, having uniform controls, increased cooperation and better data sharing is becoming increasingly important.

Ms Metaxopoulou said that the Court's own findings are similar to those presented in the report of the Wise Persons Group and reminded that already in 2017, the European Court of Auditors have recommended that the Commission calculate the customs gap (the request was repeated in another report in 2021). Measuring the size of the problem would help efficiently target resources to measure the effectiveness of actions taken by the Commission and Member States to protect the financial interests of the EU.

She underlined that there is concrete evidence of the existence of import point shopping linked to the lack of uniform approach to customs controls; of which fraudsters are aware and they channel the imports of undervalued goods accordingly to avoid payment of customs duties and VAT. It is important to prevent them from targeting border entry points that have lower level of controls.

ECA, in its 2021 report, also recommended the creation of a central function at EU level, to better guide overall customs control efforts; in addition effective data mining capabilities should be developed to carry out data analysis at EU level and to identify EU relevant risks. The ECA is currently carrying out an audit on the authorised economic operator scheme (planned to be published in the first half of 2023) - it is the first time to have a dedicated audit on this important topic.

James Sweeney

In the area of customs OLAF “wears two hats”: it is an investigation and a fraud prevention body as well. OLAF annual reports well document undervaluation customs fraud, mentioning the big cases of undervaluation (such as that of the UK) and the links to VAT fraud.

Indeed, customs shopping has been central to organised type of fraud. To counter such fraud, the key has to be based on digitalisation in terms of control, and of creating a framework for risk analysis, to assist the work of national authorities whose range of responsibilities has expanded in recent years, but not the resources at their disposal thus they do more with less.

Sharing of available data is important, in fact lot of data is available in different domains, but the regulatory base to share the data to assist fraud prevention and prevention of irregularities is missing. It is an aspect that has to be further examined.

It should not be forgotten that apart from undervaluation there are also big fraud cases involving anti dumping duties.

The administrative framework of OLAF, working together with Member States has allowed to find fraud cases - and these findings are based on data shared by Member States with OLAF.

What concerns VAT fraud, it is often linked to customs procedure 42 - which means that VAT can be paid at the final destination Member State of import transactions.

The future is to enhance cooperation, to carry on with Member States and other Commission DGs and further develop cooperation with EPPO as well.

**First round of questions**

Joachim Kuhs

Mr Kuhs thanked the speakers for the presentations, and highlighted the complexity of challenges.

Tomáš Zdechovský

Mr Zdechovský wanted to know what more can be done to fight fraud, where do biggest shortcomings lie that allow for such fraud, how controls and investigations should be changed, and what positive examples exist and what actions are missing.

James Sweeney

Mr Sweeney took the floor to respond and explained that OLAF had been examining links between customs undervaluation and VAT fraud.

Dealing with VAT fraud at EU level is less effective due to several issues. It has to be borne in mind that the EU level has no strong powers to deal with VAT issues that are guided by the VAT directive.

The legal basis for OLAF goes back to the definition to what is due directly or indirectly to the EU budget. In the case of VAT it is indirect, thus the role of OLAF is indirect: OLAF has overall a role, as VAT affects EU revenues, but it depends on sharing of data that is in the hands of Member States.

Matthias Petschke, Director for Customs, Directorate- General for Taxation and Customs, European Commission (replacing Mr Gerassimos Thomas who had to leave shortly after his presentation)

Mr Petschke reminded of the various activities in the area of customs union, in which the EP was also involved, such as the Single Window Environment for Customs that clearly can bring about improvements in terms of digitalisation and also preventing fraudsters from reusing authorisations for different consignments in different Member States. Mr Petschke agreed there is more to be done in terms of digitalisation, better use needs to be made of available data and information, and it is crucial to “act as one”.

Tomáš Zdechovský

The Chair welcomed the explanations by the Commission, and added that hopefully more pressure can be put on Member States to achieve better harmonisation.

## **Second round of presentations**

Giangiacomo D’Angelo

Professor D’Angelo started by explaining that risk analysis is the essence of customs control. He addressed the following:

- the current governance system puts the Commission in a supervisory role, the vast majority of controls is carried out by Member States, thus the main question is whether these controls are carried out in a uniform way;
- analysis of control activities and whether they are carried out in a uniform way focuses on risk analysis, investigative capacities of Member States and sanctions;
- the EU level risk analysis framework is laid down in the Union Customs Code and a general criteria is included in a Commission Decision from 2018, which provide that customs controls should be based on risk analysis;
- risk analysis is the tool that allows customs authorities to strike the balance between facilitating legitimate trade and carry out effective controls;
- then there is the national risk analysis which is based on national data; the impression is that the EU and the national level are two-fold;
- in practice, there is lack of data but also no interconnection between Member State authorities to share data; some Member States plan to introduce new tools to refine national risk analysis, e.g. Artificial Intelligence tools, data mining, also external data;
- investigation capacities of EU bodies are regulated by EU law, those of national bodies by national law; there are differences among Member States in terms of

accessing data, using digital forensics, or other tools, especially when customs fraud is connected to organised crime, which is often the case;

- investigative capacities are important - there should be dedicated bodies dealing with customs fraud; some Member States already have bodies dedicated to customs fraud investigations (Germany, the Netherlands, Italy); most successful investigations are the ones where OLAF go together with national authorities;
- concerning the third aspect, sanctions, despite the fact that there is clear legal bases at EU level on sanctions and penalties (Union Customs Code and the directive on Protection of Financial Interest that also applies to customs fraud), the scenario in Member States is fragmented, the Commission identified conformity issues in many Member States with the transposition of aspects related to sanctions and penalties;
- non homogenous implementation is dangerous because fraudsters are fully aware of these differences; recent reports and results of investigations show that fraudsters are very quick in moving fraudulent schemes between entry points from one country to another, posing a big challenge to authorities in terms of expecting and better controlling their change of behaviour.
- e-commerce poses a new challenge with large number of small parcels directly shipped from outside the EU to final consumers in the EU, and often misreported in terms of the value, content and place of origin;
- some think that refined risk analysis is needed, with new criteria tailored to e-commerce, together with more data from third countries, use of artificial intelligence, etc. and that the upgrading of these methods should be sufficient in stepping up controls; others are of the opinion that even a more refined risk analysis is likely to be ineffective, because the number of parcels selected for inspection would still be too large;
- possible solution could be the involvement of the logistic/postal service providers and platforms, possibly vested with the power to inspect and review the Customs declarations; it remains however to be seen whether private operators should be vested with the possibility to carry out controls.

In conclusion, Professor D'Angelo pointed out that perhaps the customs governance needs a major overhaul. Some Member States have standards not in line with European standard of effective customs control, an issue that need to be addressed. It is critical to reduce divergences in Member State customs inspections, particularly in terms of risk analysis, inspection capacities and sanctions. The Commission should continue to act as a steering body for customs inspection, and Action Plans should be introduced for the Member States not fully in compliance with the European standards of effective customs controls.

#### András Bartha

Mr Bartha presented the Customs Eastern and South-Eastern Land Border Expert Team (CELBET) and their achievements, explaining that:

- CELBET represents close cooperation of 11 Member States, and is one of the first expert teams initiated under Customs 2020 programme; CELBET is an advanced form of cooperation, showing that acting as one is possible;
- the original aim was to jointly develop the activities of the land border crossing points at Eastern and South-Eastern borders of the EU; there are 6 subgroups of activities with a 7th activity exploring the future of the expert team (172 border crossing points are included);

- activities include practical cooperation through trainings, information exchange, officer exchange programme and new working methods;
- two areas are to be highlighted that are not only important for the 11 participating Member States but also for the other EU Member States: (1) CELBET has actively contributed to the preparation of the new Customs control equipment instrument, available to all Member States; in this context it should be mentioned that it is a very complex topic, both their use and procurement, (2) the other area is training - CELBET has successfully organised several educational programmes where all Member States participated;
- an important plus for participating countries is the possibility to keep up to date information on what is happening at borders, including on threats and possible difficulties; some IT solutions have been developed over the years, used for exchange of information on seizures, exchange of X-ray images, etc.
- to use information effectively, competent staff is needed - specific networks have been established within CELBET, to be able to get results to those who use them in their daily activities;
- the focus remains on practical cooperation - helping officers by developing their control skills and building channels for cooperation, for example through missions i.e. deployment of customs officers to other countries, aiming at sharing know how and best practices; there is also the possibility to send officers to border crossing points with limited resources / in crisis situation / with high smuggling activity;
- human capacity building and training is high priority across Member States, as technology needs enhanced skills; thus there are joint educational programmes, cooperation with all potential partners, interagency cooperation (those responsible for border control) among Member States;
- CELBET have reached their limits in the framework of the project, the reflections on future activities have led to the realisation that a permanent structure is needed; the next steps in the project is to extend activities to ports and airports, which will allow all Member States to cooperate actively, on a voluntary basis;
- from the point of view of CELBET, the creation of a single entity (European Customs Agency) on EU level would be a good decision benefiting all Member States;
- the decision on future governance of the customs union is difficult and extremely complex, there must be consistency between political expectations and practical/professional needs.

#### Luisa Santos

Ms Santos started out stating that there is no doubt in the business community about customs being a key asset of the EU, contributing to the proper functioning of the Single Market. She underlined that EU customs plays a key role in controlling a large variety of risks, but also facilitating legitimate trade which is important for competitiveness, and echoed previous speakers when adding that customs face numerous challenges e.g. increasing e-commerce transactions, growing range of sectoral legislation, as a new element, the war in Ukraine, etc.

Overall, controls are also to create a level playing field for EU businesses, ensuring that third country players comply with the same rules as EU based businesses. However, excessive controls for minimum risks should be avoided; to achieve such balance is difficult, private and public entities need to work on it together.

She outlined four main points to get the balance right between controls and trade facilitation:

*(Effective, business friendly customs processes)*

- harmonisation among Member States is needed;
- digitalisation should be stepped up to simplify procedures and reduce bureaucracy, also to help SMEs, e.g. acceptance of digital documents;
- full implementation of the electronic systems provided for in the Union Customs Code is critical, and (it is already delayed to 2025), is needed, as these are essential to ensure that economic operators can benefit from procedural simplifications;
- economic operators should be more closely involved in digital developments both on national and EU level to ensure that digitalisation leads to real simplification;
- different IT systems need to be harmonised, national and EU level IT systems are not harmonised, more interoperability is needed;

*(Restoring the balance between customs obligations and simplifications for business)*

- the implementation of the Union Customs Code (introduced in 2016) mainly focuses on obligations and risks control, innovative solutions to simplify business operations are needed;
- the authorised economic operator status has been sought by many companies, but they now question whether it has been worth it; a good authorised economic operator system is needed together with a fully centralised customs clearance (allowing for companies to deal with declarations elsewhere where the products are stationed), the latter requiring some adjustments with regard to VAT, export controls systems, etc.;

*(EU customs policy supporting and facilitating international trade)*

- customs should not be a mean in itself, but also should support trade;
- there should be good implementation of trade agreements and helping trading partners modernise their customs policy and processes;
- there should be simple rules of origin, modern harmonised system product codes, effective combating of counterfeit goods;
- simplification and more digitalisation would also allow more SMEs to benefit from trade opportunities in third countries, and benefit from trade regularisation that are done via the trade agreements;

*(Expanding role of customs in the future)*

- there will be multiple challenges, e.g. increasing sectoral legislations, security and sustainability concerns, challenges to global supply chains, etc.;
- promotion of regulatory cooperation and the use of international standards is important;
- customs procedures should be used to accompany other important policies e.g. digital and green transitions, e.g. through modernised harmonised system codes for products;
- more customs cooperation with key trading partners and mutual recognition of trusted traders schemes e.g. with the US (and more is needed worldwide) is important.



## Second round of interventions by discussants

### Ioanna Metaxopoulou

Ms Metaxopoulou recalled again that the lack of harmonised and coherent approach in customs controls endangers not only the EU's financial interests but also is a threat to security and safety of EU citizens.

She agreed that the risk management framework has weaknesses in the Member States, and they have significant discretion in how they implement this framework. A lack of uniform approach was also detected in the Court's report on intellectual property rights and the fight against counterfeit. In the case of e-commerce, the Court acknowledges the challenges and recommended to the Commission the exploration of the use of suitable technology based collection systems to tackle fraud in e commerce.

Cooperation is key, good examples are also included in the Court's report on missing trader intra community fraud. She also agreed that the authorised economic operator scheme is facilitating legitimate trade, but cases of non-compliance were found during audits, and thus a new audit has been launched on the authorised economic operator programme.

### James Sweeney

Mr Sweeney also underlined the importance of cooperation, with the national level, but also at EU level, with different directorate-generals of the Commission, (DG TAXUD, DG BUDG, OLAF and ECA).

A question is how to alleviate the burden on customs authorities to reform risk framework, to digitalise in a way to make it more effective and less burdensome, when e.g. existing systems are based on transactions, and in the time of e-commerce transactions happen in a very short amount of time. It needs to be given careful thought how the system can deal with e-commerce.

It should not be forgotten that the vast bulk of trade is good and sound and legitimate, the debate is about those emblematic serious cases that if not tackled head on, using all available resources, they undermine the objectives of the single market, and the strategic position of the EU in manufacturing. In this fight OLAF can take the "good cop" perspective, and feed their experience into the processes on how to prevent fraud upstream.

## Second round of questions

### Joachim Kuhs

Mr Kuhs thanked for the many good recommendations that were put forward by the speakers and wondered that if it was not possible to have a uniform way of implementing the customs union, and only small improvements can be achieved, i.e. big fraudsters cannot be stopped, plus the proportion of traditional own resources continues to be lower, would it then not be time to think about own resources again and abandon customs as EU revenue?

## **Closing remarks by the Chair**

Tomáš Zdechovský

The Chair concluded that the debate needs to continue, and thanked for the important food for thought received during the workshop, also on how the Commission and Member States could be pressed to do more in the area, how to achieve more effective fight against fraud. After all, CONT, the Commission and the Court and Member State authorities all have the same goal, improving the customs union and preventing fraud and protecting the interests of the EU citizens.



# 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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# **BIOGRAPHIES OF SPEAKERS**





**Gerassimos Thomas**

***Director-General, Directorate-General for Taxation and Customs Union, European Commission***

Prior to his current assignment, G. Thomas had professional assignments as: Deputy Minister for Environment and Energy in Greece (2019-2020); Deputy Director-General in the Directorate-General for Energy and Chairman of the Steering Board of the European Fund for Strategic Investments (EFSI) (2014-2019); Director Finance at DG ECFIN (2009-2014); member of the EIB and EIF Board of Directors (2009-2017); Head of cabinet of Joaquin Almunia, Commissioner for Economic and Monetary Affairs (2005-2009); Deputy Spokesman for Commission President Romano Prodi; Spokesman for economic and monetary affairs for Commissioner Pedro Solbes (2000-2004). Prior to 2004 held various positions in the European Commission, the European Investment Fund and in investment banking in London.



**Mateja Vraničar Erman,**  
***Vice-Chair,***  
***Wise Persons Group on the Reform of the EU Customs***  
***Union***

Mateja Vraničar Erman is a senior adviser at the Ministry for Foreign Affairs of the republic of Slovenia. Until recently she was a senior advisor in the Cabinet of the Minister, responsible for broader economic policy issues from the perspective of the Ministry for Foreign Affairs. In September 2021 she was appointed as a vice-chair to the Wise Persons Group on Challenges facing the Customs Union.

Prior to the present assignment Ms Vraničar Erman hold different positions in Slovenian public administration: she was a Minister for Finance (2016-2018), State Secretary within the Ministry for Finance, responsible for Public Finance as well as Tax and Customs Policy and Legislation (2010-2012 and 2013-2016). Prior to that Ms Vraničar Erman hold different expert positions within the Ministry of Finance, Directorate for Tax and Customs Policy and Legislation, dealing with broader issues of tax and customs policy, coordination of tax and customs administration, adaptation of Slovenian Customs Administration to the membership to the EU and modernisation of the customs and tax administration.

She led the expert group for drafting the first Customs Law of the Republic of Slovenia, aligned with the EU Customs Code, as well as negotiated the final text of the law with national Parliament (1995). She also led the expert group for drafting implementing regulations to the Customs Law (1996). She drafted the first Slovenian Law on Customs Service as a part of the legislative package that the Parliament adopted upon declaring the independence of Slovenia (1991). In 2013 and 2014 she supervised (from the management point of view) merger of Customs and Tax Administration into a single Financial Administration of the Republic of Slovenia.



**Joanna Metaxopoulou,**  
***Director in Chamber IV - Regulation of markets and***  
***competitive economy (European Court of Auditors)***

Ms Joanna METAXOPOULOU has been the Director of Audit Chamber IV – Regulation of Markets and Competitive Economy at the European Court of Auditors since September 2018.

Ms Metaxopoulou joined the European Commission in 2001, where she was employed in several departments. In the Directorate-General for Agricultural and Rural Development and the Directorate-General for Regional and Urban Policy, she dealt with matters relating to the European Regional Development Fund.

She also held positions in the Directorate-General for Economic and Financial Affairs, where she worked on the financing of climate change, infrastructure policies and Euratom and contributed to the development of the InvestEU programme, and in the Directorate-General for Energy, where she dealt with nuclear energy, nuclear waste and decommissioning.

She is a Certified Internal Auditor and holds a degree in economics from the University of Michigan, Ann Arbor, a Master of Science in economics from University College London, and a Master of European Economics from Université Libre de Bruxelles.



**James Sweeney**

***Head of Unit - OLAF UNIT B3 – CUSTOMS and TRADE FRAUD***

James Sweeney

(Nationality – Irish)

Has many years of experience in OLAF, first as Head of Unit for Investigations in expenditure matters (Structural Funds and Agriculture) and more recently as Head of Unit for Customs (Revenue) Investigations.



**Professor Giangiacomo D'Angelo**

***Principal Investigator, ECCE - European Common Customs Evaluation, Associate Professor in Tax Law, Department of Legal Studies, University of Bologna***

Associate Professor in Tax Law at  
Alma Mater Studiorum - University of Bologna Dept. Legal Studies

Graduated in Law  
LLM in Law and Economics of the EU  
PhD - European Tax Law

He teaches Public Finance Law and Customs Law in the Master's in Law at University of Bologna.  
Joint coordinator of the Erasmus+ Module (2022-2025) in European Public Finance Law (EPFIL) at University of Bologna, designed to teach students about the momentous changes in European public finance

His research interests centre on changes in taxation resulting from membership of the European Union.  
His current focus is on the study of inspection powers of the tax authorities, in particular with reference to the extraterritorial exercise of tax inspection powers and customs controls relating to the value of imports.

Parallel, he is researching in the domains of agricultural/environmental/food taxation with a view to outlining new reference paradigms for these areas of taxation.

He is general coordinator of ECCE - European Common Customs Evaluation, an independent legal research program funded in the Hercule III programme (2021-2022), and carried on by University of Bologna in partnership with Erasmus University Rotterdam, Westfälische Wilhelms-Universität Münster, and Universitat de València.



**Lt. colonel András Bartha**  
***Head of Customs Eastern and South-Eastern Land  
Border Expert Team (CELBET)***

András Bartha has extensive knowledge of cooperation between customs administrations in the European Union.

He is the head of Customs Eastern and South-Eastern Land Border Expert Team since November 2021. He is in CELBET since the beginning of project (2016). He started his activity in the project as the team leader of Equipment team.

Since 1990 he works for National Tax and Customs Administration (NTCA) Central Office, Enforcement Department Enforcement Management and Coordination Division. Head of Division

His main responsibilities:

- coordination of national and international operations mostly related to border management,
- process set-up and management for control procedures,
- supervision of border and mobile control,
- selection and provision of customs detection technology.

He is a former member of DG TAXUD Land Frontier Contact Group, DG TAXUD Customs 2020 Customs Detection Technology Expert Group and World Customs Organization Enforcement Committee

He is an invited Lecturer on National University of Public Service, Faculty of Law Enforcement, in Hungary.

He holds a degree in financial investigation from the University of Public Service, Budapest.



**Luisa Santos**  
***Deputy Director-General for International Relations,  
BusinessEurope***

Ms Santos is Deputy Director General at BusinessEurope, responsible for international relations and Chair of BusinessEurope's EU-UK Task Force. She is also the EU private sector representative in the G20 Empower group. She was a member of the TTIP Advisory Group and of the Expert Group on EU trade agreements of the European Commission. Her principal experience is in trade and the textiles sector, having acted first as the chief representative for the Portuguese textile industry in Brussels, later as Trade and Industry Manager for Euratex - the European Apparel and Textile Confederation. She was also the manager responsible for international partnerships – including a joint venture in India – for a leading Portuguese textile company. Her academic background is law and management.



# PRESENTATIONS





**Presentation by Gerassimos Thomas,  
Director-General, Directorate-General for  
Taxation and Customs Union,  
European Commission**



# Improving EU Customs Control Mechanisms and shaping the future of our Customs Union

European Parliament's CONT Committee

15 June 2022



## Introductory remarks



# Commission's response to Russia's military aggression against Ukraine



## Customs response against Russia

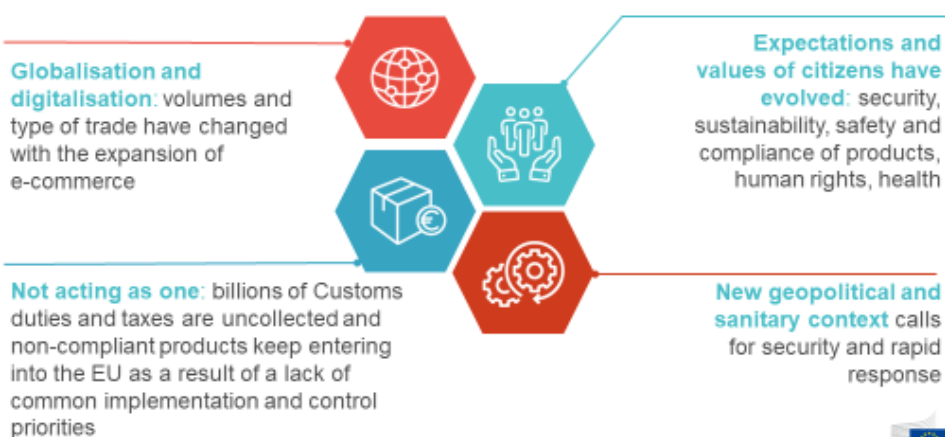
- **Close coordination with MSs** on implementation of sanctions
- **Preventing possible security threats** caused by the current situation



# Challenges for the future



## The world is changing, the Customs Union needs to evolve



## Overview



## Wise Persons Group

## Wise Persons Group Report Methodology

- **12 high level members** from across the EU
- **Open public consultation**
- **Series of reports** have been considered (e.g. the foresight exercise Customs2040 by the European Commission, the report on Customs controls by the European Court of Auditors).



## Wise Persons Group Report: 10 recommendantions

- |   |   |
|---|---|
| <b>1.</b> A package of <b>reform proposals</b> , including of the Union Customs Code, relating to processes, responsibilities and liabilities, and governance of the European Customs | <b>6.</b> Build a new framework of <b>Responsibility and Trust</b> : ABC model (authorised, bonded or subject to greater control) |
| <b>2.</b> A new approach to <b>data</b>   | <b>7.</b> Remove the <b>customs duty exemption threshold</b> of €150 for e-commerce   |
| <b>3.</b> Set up a comprehensive framework for <b>cooperation with</b> other authorities (Market Surveillance, tax, Law enforcement)  | <b>8.</b> Implement a package of measures to <b>green EU customs</b>  |
| <b>4.</b> Set up a <b>European Customs Agency</b>   | <b>9.</b> Properly <b>resource, skill and equip Customs</b> to ensure their capacity to fulfil their missions                     |
| <b>5.</b> Introduce a <b>Systems-Based Approach</b> with a reformed Authorised Economic Operator scheme   | <b>10.</b> Introduce an <b>annual Customs Revenue Gap Report</b> to better manage Customs revenue collection                      |



## What would the reforms achieve?

Europe's strategic autonomy and strengthened crisis management with a protective "one external border"

EU Customs promoting the EU way of life

Protection of the Single Market and Europe's trade might

Greener customs

Digitalised Customs making better use of data through artificial intelligence



## A reform of the Customs Union governance





## A reform of the Customs Union governance?

- **A similar governance since 1968**
- Different resources & capacities: **need to act together**
- **Several calls for a centralised governance** (WPG, Foresight report, ECA)
- **Need for a careful assessment:** Impact Assessment for the reform



## Conclusion





**Presentation by Mateja Vraničar Erman  
Vice-Chair, Wise Persons Group on the Reform  
of the EU Customs Union**



# Putting more Union in the European Customs

Ten proposals by the Customs Wise Persons Group

Mateja Vraničar Erman, vice-chair

## The Customs Union we have

- Responsibility for customs policy is at the level of the European Union but implementation is the responsibility of Member States.
- One legislation but 27 (different) implementations.
- Even though the customs revenues are still important part of public revenues, the focus of customs work shifted to control of restrictions and prohibitions.
- Developments in the area of e-commerce (shift from small number of very valuable shipments to a huge number of low value shipments) are not reflected in the way how customs controls are designed.

## The Customs Union we want

- Resilient to crises, rapid changes to trade patterns, future proof.
- 27 Customs authorities acting as one and in effective cooperation with other authorities protect EU core values and principles and support competitiveness of EU business at the same time.
- Customs authorities are integral parts of European endeavours in the area of digital and green transition, not only as technical implementation units but as so-creator of policies that contribute to EU goals set in these areas.

## Ten proposals by the Wise Persons Group

- Must be seen as a package, not a list of alternatives
- A new approach to data
- A system based approach
- ABC model (Authorised, Bonded or subject to greater Control)
- A comprehensive framework for cooperation within the existing division of responsibilities.
- It is time for a European Customs Agency/body
- Remove the customs duty exemption threshold for e-commerce
- Contribution of Customs to the EU green agenda
- Introduce annual Customs Revenue Gap Report
- Properly resource skill and equip Customs

## In conclusion

- So far customs authorities have done a tremendous job protecting European Single Market and core values and principles of our society.
- EU customs system has developed over past decades but further fundamental changes are needed.
- More of the same approach will not bring a result we are looking for. We need a fundamental change in approach how Customs is used to protect and to support EU businesses.
- Changes must be led by customs authorities but not everything can be done by customs.
- Customs work might be technical but it needs political visibility and recognition.





**Presentation by Professor Giangiacomo  
D'Angelo  
Principal Investigator, ECCE -  
European Common Customs Evaluation,  
Associate Professor in Tax Law,  
Department of Legal Studies,  
University of Bologna**





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EP CONT Committee Workshop  
EU Customs Control Mechanisms and Their  
Possible Improvement  
Brussels, 15<sup>o</sup> June 2022

## The Customs Union of the European Union: towards a greater convergence

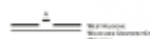
**Giangiacomo D'Angelo**  
University of Bologna - Dept. Legal Studies  
ECCE - European Common Customs Evaluation

## ECCE - European Common Customs Evaluation

ECCE is an independent legal research project, sponsored by Hercule III program.



Alma Mater Studiorum – Università di Bologna



Westfälische Wilhelms-Universität Münster, WWU



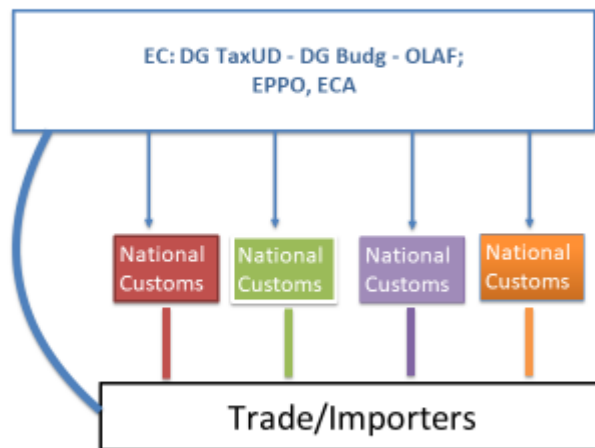
Erasmus University Rotterdam



Universitat de València



## The shared responsibility for customs inspections in the EU



The EC plays a **supervisory role** on the MS, and may carry out **direct investigations** on importers

The **vast majority** of the customs inspections are carried out by Member States

But are they carried out in a **uniform way** ?



## Risk Analysis



### Art. 46 UCC (par. 3)

Customs controls shall primarily be **based on risk analysis** using electronic data-processing techniques

- EC issued a decision (C(2018)3293 final) for the general risk analysis and connected financial issues
- **NOT PUBLIC**



## Risk Analysis

EU – wide risk analysis:

EC, OLAF, involvement of Joint Research Centre of the EC;

National risk analysis: fragmented approach

MS risk analysis is mainly based on national data.

Best practice: some MS are considering the introduction of **AI, data mining, external data**.



## Investigative Capacities



Inspection Capacities are regulated, for

- EU investigative bodies (OLAF and EPPO) by the **EU law**;
- MS customs, essentially, by the **national law**;

- Investigative capacities of the Member State Customs range from the inspection of documents strictly related to the imports, to the inspection of business records, bank accounts, access to business and private premises, access to mail and IT apparel, digital forensic, phone calls;



## Investigative capacities

The customs frauds need to be investigated with intrusive capacities and dedicated bodies

Dedicated MS investigative bodies for customs frauds in some countries:

- The Netherlands FIOD - Fiscale Inlichtingen- en Opsporingsdienst
- Germany ZFA – Zollfahndungsamt;
- Italy Guardia di Finanza;

Best practice: The OLAF/MSs joint investigations are the most successful;



## Sanctions and Penalties for Customs Fraud



### Art. 42 UCC

Effective,  
Proportionate and  
Dissuasive sanctions

### Directive PFI

**2017/2131** applies  
also to Customs  
Frauds.

Despite clear legal bases at EU level, the scenario is fragmented.

*"In roughly half of the Member States, the Commission identified **conformity issues in the transposition** of the main aspects of these offences."*

EC report on implementation of PFI Directive 2017/2131 (COM/2021/536 final)



## Fraudsters like “customs shopping”

**Fraudsters**, often linked to organized crime, **are aware of these differences** and are always at work to exploit them.

Recent reports, investigations and intelligence activities show that the **fraudsters are quick to move fraudulent schemes from one country to other**.



## The challenge of e-commerce

Large number of small parcels directly shipped from outside the EU to final consumers in the EU, and often misreported in terms of the value, content and place of origin.

But how should Customs inspections be carried out?

First school of thought: **risk analysis should be refined**, and **new criteria** for e-commerce should be introduced



## The challenge of e-commerce

Second school of thought: even a refined risk analysis is likely to be ineffective, because the number of parcels selected for inspection would still be too large.

Possible solution: **involvement of the logistic/postal service providers and platforms**, possibly vested with the **power to inspect and review** the Customs declarations

Practice of the German Customs: publish and regularly update a **blacklist of extra EU operators** who have committed customs frauds



## Conclusion - room for greater convergence

-**Reducing divergences** in Member State Customs inspections particularly in terms of **risk analysis, inspection capacities** and **sanctions** is critical;

-EC should continue to act as **steering body** for Customs inspections (continuous sharing of information, intelligence, best practices);

-Introducing **Action Plans for the Member States** not fully in compliance with the effective standards of Customs inspections.







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**Presentation by Lt. colonel András Bartha  
Head of Customs Eastern and South-Eastern  
Land Border Expert Team (CELBET)**





## CEL BET: customs cooperation in action

**András Bartha**  
Head of CEL BET



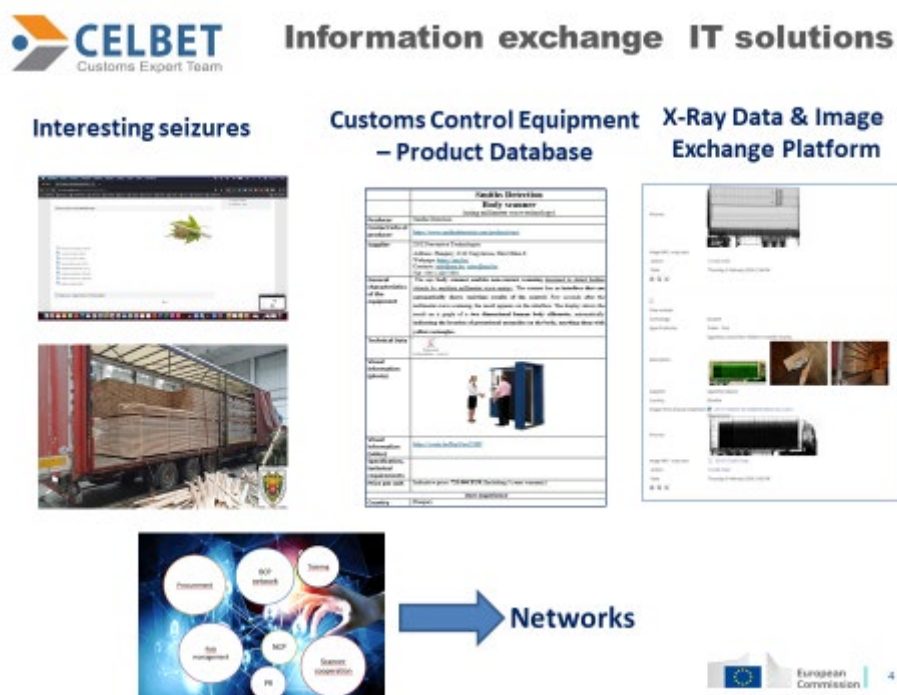
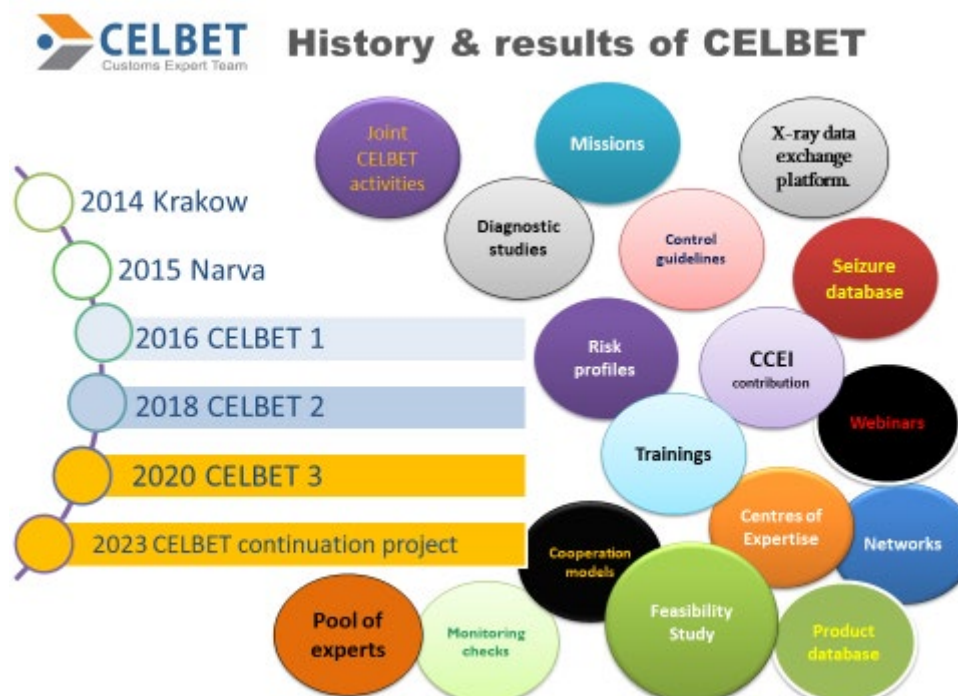
### Practical cooperation

- ✓ Trainings
- ✓ Common activities
- ✓ Information exchange
- ✓ Officer exchange programme
- ✓ New working methods

### Working areas

1. Risk management
2. Customs control at the borders
3. Equipment
4. Training
5. BCP Evaluation
6. Cooperation
7. Planning of future activities







## Practical cooperation



## What do Member States gain from CEL BET?





**Thank You  
for your attention!**

**András Bartha**  
Head of CELBET  
[bartha.andras@nav.gov.hu](mailto:bartha.andras@nav.gov.hu)





**Presentation by Luisa Santos**  
**Deputy Director-General for International**  
**Relations, BusinessEurope**





## WORKSHOP ON “EU CUSTOMS CONTROL MECHANISMS AND THEIR POSSIBLE IMPROVEMENT”

*Enabling legitimate trade and controlling customs risks:  
getting the balance right*

Luisa Santos, Deputy Director General, BusinessEurope

Date: 15 June 2022



### Enabling trade and controlling customs risks

- EU Customs **key asset of the EU** and essential for the proper functioning of the Single Market
- Key role in **controlling** but also **facilitating trade**
- EU Customs face numerous challenges e.g. increasing e-commerce transactions, growing range of sectoral legislation, etc.
- Understand the need for controls, which favors the **level playing field**. But **facilitating trade also important for competitiveness**.



## Enabling trade and controlling customs risks

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- 4 main points to get the balance right:
- 1. **Effective, business friendly customs processes** are necessary for the competitiveness of EU companies
  - Digitalisation
  - Implementation of the electronic systems provided for in the Union Customs Code (UCC)
  - Need more homogeneity across Member States



3

## Enabling trade and controlling customs risks

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- 2. Need to **restore the balance between customs obligations and simplifications**
    - UCC implementation, main focus on obligations and risks control. Innovative solutions to simplify business operations are not there yet.
- We need e.g.:
- Authorised Economic Operator (AEO): big investments from companies that do not really see the benefits
  - Centralised customs clearance: important for a modern EU Single Market



4

## **Enabling trade and controlling customs risks**

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### **3. EU's customs policy should support and facilitate international trade**

We need e.g.:

- Simple rules of origin, modern HS codes, combating counterfeit goods
- Good implementation of trade agreements and helping trading partners modernise their customs policy and processes



5

## **Enabling trade and controlling customs risks**

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### **4. Expanding role of customs in future (e.g. increasing sectoral legislations, security and sustainability concerns, challenges to global supply chains):**

- Promote regulatory cooperation and the use of international standards
- Use customs procedures to accompany other important policies e.g. digital and green transitions
- Customs cooperation, including mutual recognition of trusted traders schemes e.g. with the US



6



Thank you for your attention!

The workshop brings together experts and policy makers to discuss challenges related to customs control mechanisms, especially what regards collection of customs duties (one of the traditional own resources of the EU budget). The event was requested by the CONT committee following the persistence of so called undervaluation fraud cases, but the idea is to analyse control mechanisms in the broader context of reforming the customs union.

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