



Union Customs Code

State of play

European
Implementation
Assessment

STUDY

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In April 2018, the European Parliament's Committee on the Internal Market and Consumer Protection (IMCO) launched an implementation report on Regulation (EC) 952/2013 establishing the Union Customs Code. In order to prepare the required research evidence to support the Committee's work, the Ex-Post Evaluation Unit (EVAL) of EPRS produced a European Implementation Assessment. This assessment examines the current state of play as regards the implementation of the Union Customs Code. It examines in particular whether the Code is being properly implemented for the benefit of European consumers, businesses and the EU budget. It also analyses the governance structure and makes recommendations on how to improve its transparency.

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List of acronyms

AEO	Authorised economic operator
AES	Automated export system
BCG	Business policy group
BTI	Binding tariff information
BVI	Binding valuation information
C2C	Consumer-to-consumer
CCC	Customs Code Committee
CCI	Centralised clearance for import
CDS	Customs decisions system
CED	Common entry document
CEG	Customs Expert Group
CPG	Customs Policy Group
CVED	Common veterinary entry document
ECA	European Court of Auditors
ECCG	Electronic Customs Coordination Group
ECJ	European Court of Justice
GUM	Guarantee management
ICS	Import control system
INF	Information sheets
IOSS	Import one-stop shop
MASP	Multi-annual strategic plan
MFF	Multiannual financial framework
MSI	Member State of identification
NCTS	New computerised transit system
P2P	Permission to proceed
PoUS	Proof of Union status
REX	Registered exporter
RIMSCO	Risk Management Strategy Implementation Coordination Group
SAD	Single administrative document
SW	Single window
TCG	Trade Contact Group

TFEU	Treaty on the Functioning of the European Union
UCC DA	Commission Delegated Regulation (EU) 2015/2445
UCC IA	Commission Implementing Regulation (EU) 2015/2446
UCC TDA	Commission Delegated Regulation (EU) 2016/341 establishing transitional rules
UCC	Union Customs Code
UUM&DS	Uniform user management & digital signature
WCO	World Customs Organization

Introduction

The European customs union constitutes the framework which allows more than €3 trillion worth of goods to flow in and out of the EU each year.¹ While the customs union has been in place since 1968,² it was only in 1992 that a formal codification of the rules for its functioning was undertaken, specifically by Council Regulation (EEC) 2913/92.³ Before the entry into force of the Regulation, the common set of rules of Union customs was fragmented across various regulations and directives.

The Code was thus meant to lay down the general rules and procedures governing the trade in goods between the EU and third countries in a single text in the interests of both traders and customs authorities and to facilitate flow of goods in and out of the internal market. In accordance with these provisions, a uniform system for the collection or suspension of customs duties is used for imports from outside the EU and no customs duties are due at the borders between EU countries.⁴

In 2008, the Code was amended further to adapt the legislation to the electronic environment and to simplify and restructure the rules. This 'Modernised Customs Code' was intended to apply once its implementing provisions came into force, and by 24 June 2013 at the latest.⁵ However, the European Commission decided to amend the modified Code through a recast procedure prior to its becoming applicable. In its explanatory memorandum, the Commission justified this procedure citing the following reasons:⁶

- The implementation of a major part of the processes envisaged in the Modernised Code depended on the definition and the development of a wide range of electronic systems. It became apparent that only a very limited number or even no new customs IT systems would have been introduced in June 2013, the cut-off date for the Code's implementation.
- Furthermore, the entry into force of the Lisbon Treaty in 2009 and its related provisions on the delegation of powers and the conferral of implementing powers had an impact on the Modernised Code's implementing provisions, which now had to be 'split' between delegated acts and implementing acts in accordance with the new TFEU provisions.
- Finally, the joint work on the implementing provisions with the Member States' experts and trade representatives also revealed the need to adjust further some provisions of the Modernised Code, notably regarding the temporary storage of goods.

¹ See: [New EU rules for a simpler, faster and safer Customs Union come into force](#), press release, European Commission, 29 April 2016.

² Karakas C., [Understanding the EU Customs Union](#), EPRS, European Parliament, September 2017.

³ [Council Regulation \(EEC\) No 2913/92](#) of 12 October 1992 establishing the Community Customs Code. The Regulation is based on the [Treaty establishing the European Economic Community](#), in particular Articles 28, 100a and 113. Article 28 states that 'the Union shall comprise a Customs Union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries'. Article 100 specifies that the related provisions shall apply to transport by rail, road and inland waterway; Article 113 provides that 'the Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, adopt provisions for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition'.

⁴ See: [EU Customs Union](#), European Commission website

⁵ See: Article 188 of the [Modernised Customs Union Code](#).

⁶ [Proposal for a regulation laying down the Union Customs Code](#) (Recast), COM(2012) 64 final.

As a result, the Commission proposed a Union Customs Code (UCC)⁷ in 2012, aimed at harmonising and reducing the number of customs procedures across the Member States, organising them in a new structure and creating an electronic system to accelerate entry and exportation procedures. The adopted text includes new provisions and rules, notably on centralised clearance allowing traders to clear customs in their place of establishment irrespective of where the goods actually are; allowing companies accredited as authorised economic operator (AEO) to carry out some customs formalities and benefit from simplifications; extending the obligation of financial guarantees for potential customs debts; and including an additional declaration for the temporary storage of goods.⁸

The UCC entered into force in May 2016. The Code was, however, accompanied by some transitional arrangements, most notably for customs formalities which were still in the process of being gradually transitioned to electronic systems. Such a transition period was deemed necessary due to the fact that implementation of the Code meant developing new IT systems or upgrading existing ones. The final deadline for implementing the IT systems and techniques needed in a paperless customs environment was therefore set by the Code as 31 December 2020.

The European Parliament has voiced criticism regarding both the content and implementation of the Customs Code on several occasions. In a resolution adopted in 2017,⁹ Members regretted that, due to the recast technique, the UCC had not been subject to a cost-benefit analysis, nor had its related delegated act and implementing act been subject to an impact assessment. Members suggested stepping up efforts to create more uniform electronic customs requirements and risk-assessment programmes at the EU level within the time limit set by the UCC to ensure that the arrival, transit and exit of goods are registered in the EU as effectively as possible while not compromising security. Members recommended a proactive approach in this respect, in particular through a co-financing arrangement to ensure the development of interoperable IT systems and to guarantee interoperability with other IT systems for health and animal health certificates. The Commission was explicitly asked to:

- cooperate closely with economic operators at every stage of development of the UCC implementation;
- clarify that a customs debt through non-compliance can also be extinguished in cases where it may be established by appropriate evidence that there is no attempt at deception;
- present, by the end of 2017, an interim report thoroughly evaluating the EU customs policy and, by 2021, a fitness check including an independent impact assessment, to ensure that the regulatory framework of the EU customs policy, including the new UCC, is effective, proportionate and appropriate for the purposes of both the Member States and the trade operators.

In January 2018, the Commission released a report on the implementation of the Union Customs Code¹⁰ and in March 2018 proposed that the transitional period for full implementation be

⁷ [Proposal for a regulation laying down the Union Customs Code](#) (Recast), COM(2012) 64 final.

⁸ [Updating the EU Customs Code](#), EPRS, European Parliament, September 2013.

⁹ Resolution of 19 January 2017 on [tackling the challenges of the Union Customs Code implementation](#), 2016/3024(RSP), European Parliament.

¹⁰ [Report on the implementation of the Union Customs Code and on the exercise of the power to adopt delegated acts pursuant to Article 284 thereunder](#), European Commission, January 2018.

extended from 31 December 2020 to 2025 for a small number of customs formalities managed by electronic systems.¹¹

It is in this context that the European Parliament's Committee on the Internal Market and Consumer Protection (IMCO) has launched an implementation report on Regulation (EC) 952/2013 establishing the Union Customs Code (Rapporteur: Virginie Rozière, S&D).¹²

In order to prepare the required research evidence to support the Committee's work, the Ex-Post Evaluation Unit (EVAL) of EPRS has commissioned a research paper aimed at evaluating the implementation of the UCC Regulation. The research paper:

- describes the complex legislative and administrative framework of the UCC,
- assesses the impact of the transitional measures,
- analyses the governance structure of the UCC,
- comments on the findings of the relevant reports of the Court of Auditors,
- addresses the specific challenges raised in the e-commerce area,
- assesses the extent to which the UCC is consistently applied across the EU Member States

The extent to which the UCC is properly implemented for the benefit of European consumers, businesses and the EU budget, and what could potentially improve the functioning of the internal market and strengthen its competitiveness, are evaluated on the basis of the above findings.

¹¹ [Proposal for a regulation amending Regulation \(EU\) No 952/2013](#) to prolong the transitional use of means other than the electronic data-processing techniques provided for in the Union Customs Code, 2 March 2018, COM(2018) 85 final 2018/0040 (COD).

¹² See: [2018/2109\(INI\)](#), Legislative Observatory (OeIL), European Parliament.

Implementation of the Union Customs Code

Michael Lux

Executive summary

Union Customs Code and its implementation: a complex legal and administrative environment

The Union Customs Code, entered into force in 2016, is accompanied by two delegated and four implementing acts, which refer to each other. Furthermore, Decision No 70/2008/EC on a paperless environment for customs and trade, as well as the Customs 2020 programme support the activities necessary for the implementation of the UCC and the related delegated and implementing acts. Depending on the legal basis of a measure or an action, various committees, expert or working groups are involved.

All this makes understanding the rules and the decision processes, as well as finding the relevant documents, difficult. In order to improve the situation, the Directorate General for Taxation and Customs Union (DG TAXUD) should consider the followings actions increasing transparency through its website:

- explaining the roles of the various committees and groups and making the reports of their meetings accessible on that website or link to them;
- making available an integrated database in which all provisions of the UCC and related legal acts are interlinked; if guidance and other working documents explain a certain provision, these could also be included;
- making available draft legal acts on its website or creating a link to the relevant register for each document so that economic operators become aware of possible changes.

As the UCC needs to be implemented in part by legal provisions of the Member States, the Commission should verify whether this work has been completed, in particular with regard to sanctions for failures to comply with Union customs legislation.

Delays in the implementation of UCC IT projects

Implementing a paperless environment for customs and trade in a Customs Union with 28 members which all have their own import and export clearance systems is a complex task which requires much more time than initially envisaged. Consequently, the time limit for the implementation of some of the UCC-related IT projects will have to be extended beyond 2020. Given that some IT-related customs projects (in particular centralised import clearance and the introduction of a single window covering all import and export related declarations and documents) might not be fully implemented even within the extended period (end of 2025) currently proposed by the Commission, and given that further changes to, and new, IT projects can be expected, a more flexible approach with regard to the legal basis for updates and new IT customs projects is recommended.

Besides the missing data model for centralised import clearance further uncertainty exists with regard to the data model for import declarations for small consignments (up to a value of €150) dispatched in the context of E-Commerce. The lack of a definitive definition of the required data elements has a knock-on effect on other trans-European and national systems using the common data model, since a number of Member States hesitate to implement new systems or to upgrade existing systems on the basis of provisional data elements because they want to avoid costly upgrades. The massive increase of import declarations due to the abolition of the declaration waiver for small Business to Consumer (B2C) consignments up to a value of €22 (the impact of which on

other IT projects is not yet known) will be a major future challenge for national customs administrations.

Further reasons for delays are in particular:

- frequent changes of customs provisions which have an impact on existing or new IT systems;
- decisions taken outside the customs area (such as the new VAT rules on low value consignments) which create a need to adjust existing IT systems or even to create new systems;
- an underestimation of the complexity of the task (e.g. with regard to the introduction of multiple filing for the Import Control System);
- the fact that the UCC-related IT projects (currently 17) are only part of the many IT projects pursued by DG TAXUD (currently 41 according to the Multi-annual Strategic Plan, and which is not even complete);
- the need for more shared functionalities at EU level so as to reduce the requirement for parallel costly national investments ;
- budgetary and political constraints.

In order to mitigate such effects the following actions are recommended:

- new legal provisions should only be proposed or adopted if they are accompanied by a description of the impact on existing or planned IT systems, or an explanation why a description has not been provided,
- legal changes having a major impact on current or future IT systems should be accompanied by a cost benefit analysis or impact assessment; in cases where it has been claimed that there is no impact , an explanation should be provided together with the proposal,
- a better coordination between the services and institutions generating changes for customs IT systems,
- establishing an integrated IT work programme which covers all customs-related projects and their interdependence, irrespective of their legal basis and the way they are funded,
- providing more support for those Member States which are struggling with the understanding or implementation of the customs rules or IT projects,
- ensuring that economic operators and software providers are, at the earliest opportunity, fully informed of forthcoming changes, when the changes will take effect and providing them sufficient time to adjust their IT systems to new requirements.

The Commission should be encouraged to pursue its review of the governance and structure of customs IT projects so that national components can be developed only once rather than Member States developing 28 (after Brexit: 27) parallel national import and export clearance systems. Such a solution also has to meet other demands, such as data security, system reliability, interoperability, ease of use, and adaptability to future requirements.

Transitional rules

Transitional rules permitting means other than electronic data processing techniques and the use of data elements applicable under the previous Customs Code will, under the current provisions, expire on 31 December 2020 (Articles 278, 279 UCC). The existing transitional rules are scattered over the UCC Transitional Delegated Act (TDA), Delegated Act (DA) and Implementing Act (IA). They often refer to the implementation of a specific IT project, as described in the UCC IT work programme. This programme is regularly updated and the indicated completion dates frequently change. Furthermore, the legislation has failed to keep pace with current developments: when a

new IT system has become operational or there has been an upgrade, the corresponding transitional rules have not been repealed.

The Commission should therefore consider how transparency can be improved, and should in particular repeal transitional rules which are no longer applicable. It should also consider repealing the UCC TDA after 2020 and inserting the remaining transitional rules at their appropriate place in the UCC DA and IA.

With regard to customs declarations and notifications the main issue is not whether electronic data processing techniques must be used or not, but whether and how long existing IT systems may use the data model in force prior to 1 May 2016. This issue should be considered in the context of the amendment of Article 278 UCC extending the transitional period for some IT projects to the end of 2025.

The implementation of a single window has been kept separate from the UCC and the UCC IT work programme, given that this project concerns also documents and requirements emanating from legislation other than customs legislation. This issue is currently covered by the E-Customs decision. However, this decision will be repealed by the end of 2020 if the proposal for a regulation establishing 'Customs' programme for cooperation in the field of customs' is adopted. As this proposal does not set out concrete actions or projects, a new legal basis for the implementation of a single window is required. The Commission has already launched an inception impact assessment, but given that the E-Customs decision will likely be repealed the preparation of the appropriate legal framework has become urgent.

Finally, a flexible and permanent way for setting the start and end date of individual IT projects should be introduced, because new UCC IT projects might be added (e.g. a database for binding valuation decisions), and existing IT systems might need to be further upgraded. Consequently, the legal provisions in the UCC DA and IA would have to lay down the conditions before and after the upgrade. Extensions of the implementation period in Article 278 UCC will not provide the required flexibility and may even be harmful in cases where the full use of the extended period is not needed. The sequence and time limits of IT projects should be set in a permanent, but regularly updated, IT work programme, either on the basis of Article 17 UCC or a new, and permanent, Article 279 UCC, covering both new, and upgrades of existing, IT systems.

Shortcomings identified and recommendations made by the European Court of Auditors

The European Court of Auditors (ECA) has identified shortcomings in particular with regard to customs controls of imported goods, and a high degree of non-compliance with regard to small consignments dispatched in the context of E-Commerce and treated under the declaration waiver for goods of a value up to the VAT-exempt €22 threshold. Based on its findings the ECA has recommended, in particular, a uniform approach to customs controls and a better exchange of information with regard to irregularities.

The request to prepare the introduction of binding valuation decisions has been acted on by the Commission, the next step being an impact assessment. If a new database for such decisions is to be developed similar to that for binding tariff information, the impact of such a project on the other UCC-related IT projects would have to be analysed. The time limit in Article 278 UCC, even when extended to the end of 2025, should not apply to projects which have been added following the adoption of the UCC.

E-commerce

The Commission and the Council took up the request of the ECA to improve the rules on small consignments imported under E-Commerce by abolishing the declaration waiver and VAT-exemption for goods up to a value of €22; instead an explicit, but simplified, declaration is required for goods up to a value of €150. The necessary upgrades of Member States' import clearance systems and the possible requirement of trans-European systems still need to be clarified and developed. The implementation of these complex rules and systems is planned for 1 January 2021 and may have a knock-on effect on other customs IT projects.

The requirement of electronic declarations (replacing the waiver for goods up to a value of €22) will increase the number of declarations lodged enormously.

Uniform application of the UCC and other improvements

The UCC will bring about a more uniform application of Union customs legislation, in particular due to the harmonisation of data and other legal requirements. One remaining gap leading to divergent application by the Member States are provisions which allow to reject a request by the economic operator (e.g. for the movement of goods under temporary storage, or for the use of a guarantee provided by a person other than the declarant). These provisions are worded as follows: 'the customs authorities may' authorise or reject requests. Some of these provisions are interpreted by certain Member States as a right not even to consider the merits of such a request and to flatly refuse it on the basis of national policy considerations. When the Commission becomes aware of such cases, it should take appropriate actions, given that such behaviour undermines the uniformity of treatment of economic operators, removes some of the benefits provided by the UCC, and thus undermines the objectives of the single market.

The pending extension of the scope of Article 124(1) (h) UCC with regard to temporary storage should be used to include failures which occurred during the time between the entry of the goods in the customs territory of the Union and their presentation to customs, i.e. before the moment they are covered by the rules on temporary storage. Such a change had already been requested by the European Parliament. A general empowerment for regulating situations in which an error occurred could avoid constant amendments of the UCC provisions concerned.

In order to assist economic operators with regard to the complexity of customs provisions, the Commission should make available up-to-date consolidated or integrated information as soon as new or amended provisions have entered into force, either by creating a database of the UCC and related legal acts with cross-references, or by postponing the entry into force of amendments until a consolidated version can be made available.

1. Background

This research paper examines the current situation with regard to the implementation of the Union Customs Code, taking into account the delays in the introduction of the electronic systems and its effect on the functioning of the internal market.

The methodology followed consisted of an examination of available documents (World Customs Organisation - WCO, EU institutions and from some national customs administrations, academic literature) and with discussions with officials from Member States and the Commission, as well as with economic operators and other customs experts. Furthermore, the expertise gained through the author's consultancy activities and past experience in a national and the European customs administration have also informed the findings of the study.

2. Customs Union: legislative and administrative framework

2.1. Legislative aspects

Key findings

The UCC (which has already been amended and is now subject to further amendments) is complemented by two delegated acts and four implementing acts, most of which have already been corrected and amended several times, both for reasons related to IT projects and for other reasons, given that the various legal acts are intertwined, and transitional rules concerning the introduction or amendment of IT systems cannot be restricted to the transitional delegated act. This act had originally been foreseen as the means to pave the way for the full use of IT systems by the end of 2020, but experience has shown that other legal acts also need to address situations related to the introduction of, and changes to, IT systems.

One of the implementing acts is the UCC IT work programme which has superseded a previous programme and will now need a further version in order to take into account the extension of the transitional period. Some new projects have already been implemented and one upgrade of an existing system has taken place. Delays have occurred with regard to the implementation of most trans-European projects. Extending only the deadline for the delayed projects is not sufficient because a permanent legal basis is required for the planning and implementation of customs IT projects.

UCC related – but also other – actions are supported by the E-Customs Decision and the Customs 2020 programme. According to the Commission’s proposal on the Customs programme replacing the Customs 2020 programme, the E-Customs Decision would be repealed. This means that a new legal basis needs to be found for the projects and tools covered by the E-Customs Decision and not by the UCC IT work programme, such as the introduction of a single window and the Multi-annual Strategic Plan.

Member States play an important role in the implementation, in particular with regard to customs clearance and controls, as well as IT projects, but they also need to adjust their legislation to the new Union customs rules, e.g. with regard to sanctions.

The UCC Regulation was adopted as a recast on 9 October 2013 and was published the following day.¹³ In order to leave sufficient time for the adoption of the necessary delegated and implementing acts, the entry into force for traders and customs administrations was fixed for 1 May 2016. Until now, seven corrigenda (not all of them covering all linguistic versions) and one minor amendment have been published.¹⁴ Two further amendments are currently before the Parliament and the Council,

- one extending the period during which techniques other than electronic data processing may be used until the end of 2025 for certain IT projects,¹⁵ and
- the other one providing some technical amendments, among which figures the extension of the rules on the extinguishment of the customs debt in cases where an error was committed while the goods were in temporary storage.¹⁶

¹³ [Regulation \(EU\) No 952/2013](#) laying down the Union Customs Code, OJ L 269, 10.10.2013.

¹⁴ [Regulation \(EU\) 2016/2339](#) amending Regulation (EU) No 952/2013 laying down the Union Customs Code, as regards goods that have temporarily left the customs territory of the Union by sea or air, OJ L 354, 23.12.2016.

¹⁵ [COM\(2018\)0085](#), [2018/0040\(COD\)](#).

¹⁶ [COM\(2018\) 259 final](#), [2018/0123\(COD\)](#). The amendment of the customs debt provision concerned is treated under Sub-section 7.2.

The UCC Regulation is supplemented by two delegated acts:

- Commission Delegated Regulation (EU) 2015/2446 supplementing Regulation (EU) No 952/2013 as regards detailed rules concerning certain provisions of the Union Customs Code (in the following: UCC DA),¹⁷ and
- Commission Delegated Regulation (EU) 2016/341 supplementing Regulation (EU) No 952/2013 as regards transitional rules for certain provisions of the Union Customs Code where the relevant electronic systems are not yet operational and amending Delegated Regulation (EU) 2015/2446 (in the following: UCC TDA).¹⁸

Three corrigenda and three amendments have been published so far with regard to the UCC DA,¹⁹ and two corrigenda and one amendment with regard to the UCC TDA.²⁰ Further amendments of the UCC DA are being prepared.

Apart from Regulations on tariff classification, tariff quotas, and temporary derogations from preferential origin rules, the following implementing acts have been adopted on the basis of the UCC Regulation:

- Commission Implementing Regulation (EU) 2015/2447 laying down detailed rules for implementing the Union Customs Code²¹ (hereafter: UCC IA); it has been corrected three times and amended twice;
- Commission Implementing Decision (EU) 2016/578 establishing the Work Programme relating to the development and deployment of the electronic systems provided for in the Union Customs Code²² (hereafter: UCC IT work programme); this decision supersedes Commission Implementing Decision 2014/255/EU establishing the Work Programme for the Union Customs Code;
- Commission Implementing Regulation (EU) 2017/2089 on technical arrangements for developing, maintaining and employing electronic systems for the exchange of information and for the storage of such information under the Union Customs Code;²³
- an implementing act laying down a set of criteria to be applied in the Member States' risk analysis systems in order to continuously screen electronic advance cargo information for security and safety purposes.²⁴

Decision No 70/2008/EC on a paperless environment for customs and trade (hereafter: E-Customs Decision)²⁵ is the legal basis of the Multi-annual Strategic Plan (MASP). The Decision lays down the objectives to be met in creating a paperless environment for customs and trade, as well as the structure, means and time limits for doing so. It obliges the Commission and the Member States to

¹⁷ [Commission Delegated Regulation \(EU\) 2015/2446](#) supplementing Regulation (EU) No 952/2013 as regards detailed rules concerning certain provisions of the Union Customs Code, OJ L 343, 29.12.2015.

¹⁸ [Commission Delegated Regulation \(EU\) 2016/341](#) supplementing Regulation (EU) No 952/2013 as regards transitional rules for certain provisions of the Union Customs Code where the relevant electronic systems are not yet operational and amending Delegated Regulation (EU) 2015/2446, OJ L 69, 5.3.2016.

¹⁹ Please see [eur-lex website](#); last amendment by Regulation (EU) 2018/1118, OJ L 204, 13.8.2018.

²⁰ See [eur-lex website](#).

²¹ See [eur-lex website](#).

²² See [eur-lex website](#).

²³ [Commission Implementing Regulation \(EU\) 2017/2089](#) on technical arrangements for developing, maintaining and employing electronic systems for the exchange of information and for the storage of such information under the Union Customs Code, OJ L 297, 15.11.2017.

²⁴ This act is not public, see [Customs Risk Management Framework](#). According to the DG TAXUD Management Plan for 2018 it will be updated in 2018.

²⁵ [Decision No 70/2008/EC](#) on a paperless environment for customs and trade, OJ L 23, 26.1.2008. An impact and process evaluation of the E-Customs Decision is available on the [TAXUD website](#).

set up secure, integrated, interoperable and accessible electronic customs systems for the exchange of data contained in customs declarations, documents accompanying customs declarations and certificates and the exchange of other relevant information. One of the flagship projects is the introduction of single window services providing for the seamless flow of data between economic operators and customs authorities, between customs authorities and the Commission, and between customs authorities and other administrations or agencies, and enabling economic operators to submit all information required for import or export clearance to customs, including information required by non-customs related legislation. Given that the UCC and the UCC IT work programme cover a part – but not all – of the projects treated in this Decision, a new legal basis needs to be found for those projects and tools which are currently not placed under the UCC umbrella (such as single window and the Multi-annual Strategic Plan) if the E-Customs Decision is repealed in accordance with the Commission's proposal on the new Customs programme replacing Customs 2020.

Regulation (EU) No 1294/2013 establishing an action programme for customs in the European Union for the period 2014-2020 (Customs 2020)²⁶ supports the activities necessary for the implementation of the UCC and the related legal acts. However, this programme covers a much wider scope of customs activities than the implementation of the UCC. The general objectives of Customs 2020 are to support²⁷

- the protection of the financial and economic interests of the Union and its Member States;
- the fight against fraud;
- the protection of intellectual property rights;
- the increase of safety and security;
- the protection of citizens and the environment;
- the improvement of the administrative capacity; and
- the strengthening of the competitiveness of European businesses.

Annual work programmes are laid down by Customs 2020.²⁸

Besides all this, DG TAXUD has adopted a Strategic Plan 2016 – 2020²⁹ and issues a management plan for each year.³⁰ The current version states, inter alia: 'In 2018, TAXUD will continue, together with the Member States and business, to develop the different IT systems, which underpin the UCC implementation. The full set of IT systems will cover further modernisation and harmonisation of import, export and transit processes, and the introduction of new concepts, such as centralised clearance.'

Finally, apart from applying the above-mentioned legal acts and developing the required IT systems, Member States also need to adjust their legislation insofar as it implements or complements Union customs legislation. The definition of the term 'customs legislation' (Article 5 UCC) acknowledges this when it refers to provisions adopted at national level. At least in one Member State (Germany) this adaptation has not yet completely taken place because certain national provisions, in particular with regard to administrative sanctions, still refer to the previous Customs Code and its implementing provisions.³¹ Article 42(3) UCC stipulates that Member States shall notify the

²⁶ [Regulation \(EU\) No 1294/2013](#) establishing an action programme for customs in the European Union for the period 2014-2020, OJ L 347, 20.12.2013.

²⁷ For details on the implementation see the Customs 2020 [Progress report](#) of 2016.

²⁸ For 2018 see [TAXUD website](#)

²⁹ See [TAXUD website](#)

³⁰ See [TAXUD website](#)

³¹ Cf. Lux, Möller, Pickett, Retemeyer, GTCJ 2018, p. 321; Weerth, ZfZ 2018, p. 167.

Commission of their national sanction provisions, including subsequent amendments. The Commission should therefore request to be updated on the state of national implementation.

2.2. The UCC IT work programme

The Commission's report on the implementation of the IT work programme³² responds to a request from the European Parliament in a Resolution of 19 January 2017³³ and to the invitation of the Council in its Conclusions on the Follow up of the Union Customs Code of 29 September 2016.³⁴ In addition, the Commission therewith submitted its report to the European Parliament and the Council on its use of the delegation of power to adopt delegated acts conferred by Article 284 UCC, as required under paragraph 2 of that Article.

As the Commission explains, the UCC aims, in line with modern-day needs, to offer greater legal certainty and uniformity for the benefit of both businesses and customs administrations, to simplify rules and procedures, to facilitate more efficient customs transactions and to achieve full automation of all customs procedures and processes. At the same time, the UCC is intended to better safeguard the financial and economic interests of the Union and of the Member States. In addition, it aims to take into account the evolution of policies and legislation in other fields that might impact customs legislation such as the safety and security of imports.

Under the current version of the UCC, the exchange of information between economic operators and customs authorities as well as between customs authorities must, by the end of 2020, be based entirely on electronic data-processing techniques. This is perceived as a major step forward to facilitate legitimate trade, reduce administrative burdens and ensure that harmonised requirements apply throughout the EU. To achieve this goal, seventeen electronic systems are being upgraded or developed in accordance with the timetable set out in the UCC IT Work Programme.

According to the current UCC IT work programme as laid down in Decision (EU) 2016/578, the new systems to be developed on the basis of the UCC are:³⁵

- the Customs Decisions System (CDS) which aims to harmonise the processes for customs decisions related to the application of customs legislation across the Union by facilitating consultations during the decision-taking period and the management of the authorisations process;
- the Uniform User Management & Digital Signature (UUM&DS) or 'EU Trader Portal' which aims to provide direct and EU-harmonised trader access to different electronic customs systems as defined in the UCC;
- Proof of Union Status – PoUS: this system will store, manage and retrieve all declarations that traders provide to prove the Union status of their goods;
- Standardised Exchange of Information for Special Procedures (INF): this system will support and streamline the processes of data management and the electronic handling of data in the domain of Special Procedures (i.e. inward and outward processing, temporary admission, customs warehousing and end-use);

³² [COM\(2018\) 39](#).

³³ European Parliament, [Resolution on tackling the challenges of the Union Customs Code implementation](#), 2016/3024(RSP).

³⁴ [OJ C 357](#), 29.9.2016.

³⁵ The Commission also lists the REX system, but this system was already specified in Regulations (EU) No 1063/2010, (EU) No 530/2013, and (EU) 2015/428 which implemented the original Customs Code. The introduction of the new rules and the IT system was foreseen for, and was deployed on, 1 January 2017, thus during the period of application of the UCC.

- centralised clearance for Import (CCI): this system aims to coordinate the processing of customs declarations and the release of goods between relevant customs offices so that economic operators can centralise their dealings with customs authorities;
- Guarantee Management (GUM): this system will allow a real time allocation and management of comprehensive customs guarantees across the EU so that traders are obliged to provide security where there are risks that duties might not be paid.

The upgrades of EU systems and the development and upgrades of national systems have to be taken into account for the assessment of the workload and the sequencing of the different projects, but are not described here in detail.³⁶

Four UCC-related IT projects have been completed since the date of application of the UCC:

- the Registered Exporter (REX) system on 1 January 2017 (this project was launched prior to the UCC Regulation);³⁷
- the Customs Decision system (CDS) in October 2017,
- the Uniform User Management & Digital Signature system (UUM&DS) in October 2017,³⁸ and
- an upgrade of the Binding tariff information (BTI) system in October 2017.

According to the Commission report, most of the other electronic systems³⁹ are also on track for completion by the dates set out in the IT work programme. The Commission expects that close to eighty per cent of the Commission's work on the trans-European systems will be completed by 2020.

The report then goes on to explain the reasons for the delays:

- the complexity of the task, delays in the adoption of the UCC DA, TDA and IA which led to delays in producing the functional specifications for the electronic systems dealing with declarations and notifications,
- delays in harmonising national data requirements and aligning them on international data models or other countries' IT systems,
- the interaction between different IT systems which requires careful sequencing,
- an underestimation of workload for the Import Control System (ICS) due to the high security requirements for data in the central repository, high operational costs,
- the costs of introducing new IT systems across the EU, and
- the need for more shared functionalities at EU level so as to reduce the requirement for costly parallel national investments.

Consequently, the Commission proposed extending the deadline for the full automation of customs processes beyond 2020 and indicated the following projects as being affected by such delays:

³⁶ See insofar p. 5 and 6 of the Commission report.

³⁷ This is, however, only a first version, as recital 7 of delegated Regulation (EU) 2018/1063 explains: 'the existing electronic data processing system for registered exporters, the Registered Exporter System (REX) referred to in the Annex to Implementing Decision (EU) 2016/578, does not currently include a harmonised interface for communications with economic operators. The derogation is temporary and will not be needed once the REX system will provide that harmonized interface.'

³⁸ Recital 7 of Implementing Regulation (EU) 2017/2089 states, however, that the 'Digital Signature' functionality is not yet available as part of the Uniform User Management and Digital Signature system, i.e. the system has only been partially completed.

³⁹ These systems are: the Authorised Economic Operators (AEO) upgrade, the Economic Operator Registration and Identification System upgrade (EORI 2), the next upgrade of the current Surveillance system, the Notification of Arrival, Presentation Notification and Temporary Storage, the National Import Systems upgrade, and possibly the upgrade of electronic systems existing at the national level to manage the guarantees valid in a single Member State (insofar it is not clear whether Member States which do not have such a system are required to introduce it by the end of 2020).

- the upgrades of the following trans-European systems already in place: Import Control System (ICS), the New Computerised Transit System (NCTS) and the Automated Export System (AES), including the export component of the national Special Procedures System; and
- the introduction of the following trans-European systems: centralised clearance for import (CCI), Proof of Union Status (PoUS), and Guarantee Management (GUM).

On 2 March 2018 the Commission submitted a proposal to extend the transition period until 31 December 2025 (COM(2018) 85 final). The proposal for amending Article 178 UCC is twofold:

- In paragraph 1 the current time limit for electronic data transmission (end of 2020) is maintained for all provisions which are not listed in paragraph 2 (paragraph 1 includes all national developments - except export and re-export - not directly linked to the trans-European systems covered in paragraph 2, and some upgrades to existing EU IT systems).
- In paragraph 2 those UCC provisions requiring electronic systems which will not be ready by the end of 2020 are listed. Both existing trans-European systems which need an upgrade (NCTS, ICS, AES) and new trans-European systems (GUM, CCI, PoUS) figure on this list.⁴⁰

With regard to the existing IT systems, the term 'use of other than electronic data processing techniques' is a misnomer since electronic data processing techniques are already being used. What is actually meant is that data elements and functionalities in force before 1 May 2016 may still be used for these systems beyond 2020.

2.3. Assessment of current and future delays

The implementation of the UCC is only a part of the many IT projects being pursued in the customs field. The Multi-annual Strategic Plan (MASP) covers a total of 41 projects intended to implement the UCC and the E-Customs projects. Further customs related projects are based on other legal acts. All this makes the coordination and implementation of customs IT systems **extremely complex**. This complexity stems from several factors, including the need for **business continuity** of the upgraded systems, the fact that projects are often **interdependent**, the difficulties of coordinating centralised and shared systems, and the challenging implementation period laid down in the UCC.

These factors, as well as **budgetary constraints** (budgets need to be planned for specific periods, which are often set too early in order to ensure that the required funding will be available when it is needed), **psychological factors** (when a project is planned for a point in time far in the future, the necessary preparation does not even start) and **political factors** (an implementation date far in the future is difficult to sell), have led to **unrealistic time plans**.

A further complicating factor is the constant introduction of **new legal requirements** which affect both upgrades of existing systems and planned new systems. Besides unresolved issues (such as the way in which centralised clearance on import will function and which additional data elements are required, in particular with regard to VAT), new requirements constantly crop up, such as those arising from Council Directive (EU) 2017/2455 concerning distance sales of goods imported from outside the EU (see Sub-sections 6.3. and 6.4. below).

Each time data elements are added or their existing structure is modified, the technical specifications for the IT systems must be amended. It is understandable that some Member States

⁴⁰ According to recital 8, upgrades of the National Export Systems (including the export component of the national Special Procedures System) are also covered. This allows de facto maintaining in these systems the data model in force before 1 May 2016.

hesitate to update their national systems before they have a complete picture of the common data elements across all procedures and declarations. A typical example for this is the harmonisation of the Notification of Arrival, Presentation Notification and Temporary Storage for which the current UCC IT work programme (point 13) and the Multi-annual Strategic Plan (MASP) foresee an implementation by Quarter 4 2020.

Under the current proposal a discrepancy between the deadlines for trans-European and national systems exists where **Member States are required to update** their national systems with regard to procedures (apart from export and re-export) and processes taking place only **on their territory**, whereas for the **other cases** they will have to **wait** until an **EU system** (for which the deadline will now be postponed to 2025) will be available. As the functional and data specifications for the trans-European systems have not been laid down yet, Member States which implement the required upgrade now may have to adjust their national systems again once the EU specifications are available. This concerns in particular the guarantee management (GUM)⁴¹ and special procedures.⁴²

In addition, Member States need to implement national requirements (e.g. with regard to import VAT and excise duties; import and export prohibitions and restrictions insofar as they are not regulated by Union law). The result is that they are subjected to even more competing requests for resources and results. The divergent national requirements are also an obstacle to creating IT import and export clearance systems at the EU level.

A further challenge is the introduction of a single window (SW) for imports and exports.⁴³ The MASP (not, however, the UCC IT workplan) includes the introduction of a SW which is stipulated in Article 4(4)(c) of the E-Customs Decision. This provision foresees 'single window services providing for the seamless flow of data between economic operators and customs authorities, between customs authorities and the Commission, and between customs authorities and other administrations or agencies, and **enabling economic operators to submit all information required for import or export clearance to customs, including information required by non-customs related legislation**'. The EU SW environment shall, according to the MASP (version 2017), initially cover the validation of the Common Veterinary Entry Document (CVED) for animals and animal products as well as the Common Entry Document (CED). The addition of three further EU certificates is planned.

The adoption of a Commission proposal on a SW is envisaged in the inception impact assessment for Quarter 1 in 2020 with the proviso 'to be confirmed'. Such a legal act must in fact enter into force before 1 January 2021 because, according to the proposal for the new Customs programme (which contains no specific actions), the E-Customs Decision will be repealed with effect from 1 January 2021. Otherwise, at least in DG TAXUD's view, there would be no legal basis for this project.⁴⁴ One could also take the view that Article 47 UCC requires the implementation of a SW, with the consequence that this objective would have to be included in the UCC IT work plan and added to the projects which will be implemented after 2020.⁴⁵ Article 10.4.1 of the WTO Trade Facilitation

⁴¹ Point 16 of the current UCC IT work programme. According to the 2017 version of the MASP the deployment window for the national component runs from Quarter 2 2019 to Quarter 2 2024.

⁴² Point 12 of the current UCC IT work plan. According to the 2017 version of the MASP the national deployment window runs for the export component from Quarter 1 2021 to Quarter 4 2023, whereas for the import component Quarter 4 2020 is foreseen as the final deadline.

⁴³ For further details see the [TAXUD website](#), and the [Better Regulation website](#).

⁴⁴ The final evaluation of the E-Customs Decision states on p. 10: 'The future of the e-Customs environment is to a great extent linked to the single window concept. Although foreseen in the e-Customs Decision, in the years since its entry into force the ambitious goal of a 'framework of single window services' has yet to be achieved.'

⁴⁵ Especially federally organised Member States, such as Germany, face difficulties because some documents are handled by federal authorities, others by the 16 states (Länder), and others by regions, cities or communes within each state. Such countries might not be able to fully implement a single window even by 2025.

Agreement⁴⁶ also requires the implementation of a SW, so that the EU would also comply with its international obligations. It is therefore recommended that **the Commission either includes the SW in the UCC IT projects to be implemented after 2020** (possibly after explicitly inserting a reference to the introduction of a SW in Article 47 UCC) **or submits a separate proposal on the introduction of a single window in all Member States soon so that it can be adopted and the legal act become applicable by 1 January 2021.**⁴⁷ The impact assessment for the new customs programme also regards this project as a priority.⁴⁸

For traders the most important among the projects which are affected by the extension of the 2020 deadline is the full implementation of **centralised clearance for import** (CCI) which allows centralising all imports at one place and using the same IT platform, which will now be postponed to 2025.⁴⁹ This means that in the coming years the focus will be on other projects which also require a high amount of resources. The introduction of centralised clearance has been praised as one of the flagship projects of the UCC;⁵⁰ however, the lack of a pan-European IT system hinders the widespread use of this facilitation.⁵¹ Besides the lack of an exchange of risk and control data between the supervising customs office (which receives the customs declaration) and the customs office of presentation (where the goods are located)⁵² other obstacles to the use of this facilitation are the lack of agreement on how to handle import VAT (including the data elements to be provided, and to whom) and prohibitions and restrictions.⁵³ **Solving the outstanding issues** should be considered as a **priority**, so that at least the extended deadline can be met. Furthermore, the absence of an agreement on the required data elements has a knock-on effect on other IT systems which may have to use some of the missing data elements, given that Member States are reluctant to implement new, or to upgrade existing, IT systems on the basis of provisionally defined data elements.

In the light of all these difficulties it can be expected that at the end of 2020 and 2025 it will turn out that some of the provisions and projects listed for completion will not, or not fully, have been implemented by the respective deadline. In order to avoid the deadline in Article 278 UCC needing to be extended again, consideration should be given to how this can be achieved. In this context the following considerations need to be taken into account:

- On the one hand, deadlines are necessary in order to coordinate the efforts of all parties involved and to create the necessary pressure to achieve the objectives. In the EU context this means that deadlines must be laid down in a legal act.

⁴⁶ This provision (OJ L 284, 30.10.2015) reads: 'Members shall endeavour to establish or maintain a single window, enabling traders to submit documentation and/or data requirements for importation, exportation, or transit of goods through a single entry point to the participating authorities or agencies. After the examination by the participating authorities or agencies of the documentation and/or data, the results shall be notified to the applicants through the single window in a timely manner.'

⁴⁷ In its Management Plan for 2018 DG TAXUD has committed to conduct an Impact Assessment on the initiative for developing an EU Single Window environment for customs.

⁴⁸ See better regulation [website](#), p. 24.

⁴⁹ See [TAXUD website](#).

⁵⁰ See [TAXUD website](#). The [Council conclusions](#) (OJ C 357, 29.9.2016), also call for further developing effective simplifications and modernization, such as centralised clearance.

⁵¹ Article 20 UCC TDA allows Member States to reject applications until the introduction of CCI if they consider the administrative burdens to be too high. The prolongation of this provision will make centralised clearance on importation largely inapplicable for another five years.

⁵² Article 231(11) UCC IA, as amended, suspends the obligation to exchange such data until the introduction of CCI.

⁵³ With regard to external trade statistics, rules have been established by Regulation (EU) 2016/1253 (OJ L 205, 30.7.2016), but the corresponding IT system, which would be part of the UCC project, is missing.

- On the other hand, it is common knowledge that targets for IT projects are often not met. This means that it must be possible to adjust the deadlines which have been laid down earlier.

Laying down **final end dates** in the UCC is counterproductive for a number of reasons:

- It leads to **unrealistic planning**. A good example for this is the first two UCC IT work programmes: The first UCC IT work programme⁵⁴ squeezed the target start date of deployment of all electronic systems into the period ending with 2020, except for two projects for which it stated, 'To be defined in the next version of the work programme'. The second UCC IT work programme⁵⁵ split the column 'Dates of deployment of the electronic systems' between a start and end date, highlighted different components (thus implying that further components will be implemented after the fixed end date), and, instead of indicating a concrete target date, stated where implementation depended on Member States 'To be defined by MS as part of the national plan'. Again, in order to respect the current version of Article 278 UCC, no implementation date exceeded the end of 2020.
- It encourages **blame games**, as to whether the delay is the fault of the Commission or of the Member States, something which deteriorates the image of the Union as a whole.
- It underestimates the **interdependence** of the **UCC Customs Data Model** laid down in Annex B to the UCC DA and IA. Some of the data required for centralised clearance on import have not been laid down yet. Common data elements must, however, be incorporated in all systems using them (e.g. ICS, CCI, AES, NCTS). Introducing system changes on the basis of a provisional data model risks costly subsequent modifications to IT systems.
- Extending rigid time limits to another rigid end date for updates of existing trans-European systems (such as those for transit [NCTS] and export [AES]) creates the risk that certain Member States might adjust their systems only when the implementation end date has been reached. For Member States which are ready at the earliest opportunity, this means that they would need to **maintain in parallel** the **previous version** for a long time.
- Any decision at the Union level on the implementation of NCTS is insufficient because countries outside the EU (such as Switzerland and Turkey; after Brexit the UK, too) also use the EU transit system on the basis of the Common Transit Convention⁵⁶ and therefore need to make the necessary IT changes. If this international agreement is to be changed, all partners must agree.

Consequently, a **permanent legal basis** for a UCC IT work plan is needed even if all of the projects laid down in the current work plan were completed on time because the current systems need to be upgraded and new systems will be created (e.g. a database for binding valuation decisions). Legal requirements would then be laid down, as appropriate, in the UCC, the UCC DA and IA, so that the UCC TDA can be repealed (with regard to NCTS the Common Transit Convention would also need to be amended in parallel). The UCC IT work programme would lay down the projects, the sequencing and the implementation time, including for Member States, rather than referring to 'national plans'. In conjunction with the repeal of the E-Customs Decision it should also be considered whether a future customs IT work programme could cover **both UCC-related and other customs IT projects** in order to avoid two separate, and potentially conflicting, work plans.

⁵⁴ [OJ L 134](#), 7.5.2014.

⁵⁵ [OJ L 99](#), 15.4.2016.

⁵⁶ [OJ L 226](#), 13.8.1987.

In order to ensure better planning the legislator should insist that **no new legal provisions (including changes to existing provisions) which have an impact on current or future IT customs systems can be adopted without a proper business model of the future or upgraded IT system and a realistic implementation estimate being available before the adoption of the legal act.**⁵⁷

The Multi-annual Strategic Plan or the UCC IT Work Programme could be used to set out in more detail:

- the phases or stages of each project and the specific objectives to be achieved during the respective phase, including a completion date for each objective or phase,
- dates on which the Member States would have to commence a project; such dates would take into account an evaluation of the Member States with regard to resources (e.g. in terms of staff and financial resources) available for a specific phase.

Furthermore, Member States should be required to submit **progress reports**⁵⁸ and to notify the Commission when it becomes apparent that the objective is unable to be achieved in time. A **dashboard** could show where each Member State stands with regard to the different projects.

Finally, all proposals for legislative changes should respect the **better regulation** criteria,⁵⁹ which require that Commission proposals meet policy goals at minimum cost while delivering maximum benefits to citizens, businesses and workers and avoiding all unnecessary regulatory burdens. Given that many Member States cannot cope with the overload of customs IT projects, the following options should be considered:

- doing less more efficiently,⁶⁰ or
- developing more IT projects centrally (see Sub-section 4.3. below).

⁵⁷ To give an example, in Doc. Ares(2018)2690641-24/05/2018 the Commission proposed adding the following paragraph to Article 333(6) UCC IA: 'When the goods have left the customs territory of the Union, the person who took over the goods under the single transport contract shall without delay notify the exit to the customs office of exit by providing the MRN of the export declaration and the date the exit. This obligation shall not apply insofar as that information is available to the customs authorities through existing commercial, port or transport information systems.' Such an additional message, the content of which would still have to be defined in the UCC Customs Data Model, would require an adaptation of existing IT systems, both for the economic operators concerned and for the national customs administrations.

⁵⁸ Such a requirement exists already under the current UCC IT work programme and the Commission publishes national planning information on the [TAXUD website](#); however, some Member States hesitate to inform the Commission of expected delays beyond the fixed deadline. The submission of national progress reports is also foreseen under the new Customs programme.

⁵⁹ See the Commission's [Better Regulation website](#).

⁶⁰ See the white paper on the future of Europe on the [Commission website](#).

3. The transitional measures

Key findings

Article 278 UCC allows for the use of other means than electronic data processing techniques until the necessary electronic systems are operational. The UCC TDA has been adopted on this basis. Permanent and transitional derogations are, however, also contained in the UCC DA and IA. The transitional derogations refer to the implementation of systems of the UCC IT work programme. However, so far references to systems have not been repealed even where the system has been implemented. The result is that it is unclear which transitional measures still apply, and which do not.

The pending extension of the transitional period should be seen as an opportunity to streamline the provisions referring to situations before and after the introduction of a new system or an upgrade of an existing system in order to improve transparency. Such a solution will be needed even after the end of any transitional period because new systems will also be created in the future and existing systems will be further upgraded.

3.1. What transitional measures are currently in force?

Article 6(1) UCC stipulates that all exchanges of information between customs authorities and between economic operators and customs authorities shall be made using electronic data-processing techniques. Article 6(3) and (4) UCC allows derogations from this requirement. The Commission has used Article 6(3) UCC for a number of cases in which Member States are – at least for the time being – not required to develop electronic systems (Articles 4, 7a, 9, 19(3), 21, 38(1), 39, 40, 87, 92(2), 94, 96, 124, 125, 135 – 143, 157, 160, 163(5), 164, 165, 175(6), 246, 247, 249 UCC DA). In such cases no transitional measures are necessary.

In cases for which no such 'permanent' derogation exists, provisions are needed which set out the rules for the time until the introduction of new or upgraded systems, as well as for afterwards. These rules can be found in the UCC TDA, the UCC DA and the UCC IA.

The UCC Transitional Delegated Act

Articles 278, 279 UCC empower the Commission to adopt transitional measures with regard to situations in which the necessary electronic systems are not yet operational. These measures have been introduced by Regulation (EU) 2016/341 (UCC TDA). They largely allow for paper-based procedures insofar as the planned IT systems are not yet operational. Although not clearly stated, for Member States it also serves as a basis for the application of the data elements and functionalities which were in force and used by their IT systems prior to the UCC until they are adjusted to Annex B of the UCC DA and IA (common data model). Article 216 UCC IA seems to support this view with regard to customs procedures, though it also refers only to **setting up electronic systems** and upgrades of national import systems and not specifically to the **alignment of existing IT systems to the common data model**.⁶¹ However, one of the purposes of upgrading national import systems is to align them on the common data model.

⁶¹ Article 216 UCC IA reads: 'For the processing and exchange of information relating to the placing of goods under a customs procedure, electronic systems set up pursuant to Article 16(1) of the Code shall be used. The first paragraph of this Article shall be applicable from the respective dates of the upgrading of the national import Systems, the deployment of the UCC Special Procedures and UCC AES referred to in the Annex to Implementing Decision 2014/255/EU.' This Article still refers to the first UCC IT work programme though in 2016 the second IT work programme has been published.

Articles 2, 3 and 22 UCC TDA refer to the time until the UCC Customs Decisions system has become operational. This system was introduced in October 2017.

Articles 4 - 6, 12, 14 – 17, 21, 24 – 54 UCC DA refer to pending upgrades of existing systems (Binding Tariff Information, Authorised Economic Operator, National Import Systems, New Computerised Transit System, Automated Export System).

Articles 7 – 11, 13, 18 – 20, 23 UCC DA cover the time until the deployment of new systems (UCC Guarantee Management, UCC Notification of Arrival, Presentation Notification, and Temporary Storage systems, UCC Proof of Union Status, UCC centralised clearance for Import).

The UCC Delegated Act

The transition from the previous to the new customs rules is governed by Articles 250 – 255 UCC DA (re-assessment and validity of authorisations issued prior to 1 May 2016, validity of decisions already in force on 1 May 2016, use of seals corresponding to the requirements of the previous legislation). Once the time limit fixed therein has expired, these provisions are no longer applicable (e.g. as of 1 May 2019 with regard to the re-assessment of authorisations which were granted before 1 May 2016).

Specific provisions contain also transitional rules, notably⁶²

- Article 7a UCC DA (period until the implementation of an interface for the Registered Exporter system - REX),
- Articles 104, 106 and 113 UCC DA (period until the upgrading of the Import Control System - ICS),
- Articles 124, 124a, 126, 126a, 128a – 128d UCC DA (period until the implementation of the Proof of Union Status system - PoUS),
- Article 141 UCC DA (period until the upgrading of the National Import Systems with regard to goods up to a value of €22),⁶³
- Articles 161, 181(5) UCC DA (Information Sheets for Special Procedures which will be covered by the Special Procedures System),
- Article 184 UCC DA (period until the upgrading of the New Computerised Transit System - NCTS).

The UCC Implementing Act

In parallel to the UCC DA the UCC IA also contains transitional and final rules, notably in:⁶⁴

- Article 2 UCC IA (formats and codes),
- Article 7 UCC IA (EORI),
- Article 18 UCC IA (binding origin information),
- Article 30 UCC IA (AEO),
- Article 56 UCC IA (Surveillance),
- Articles 182 – 188 UCC IA (entry summary declaration and risk analysis),
- Articles 194, 196, 198 – 204 UCC IA (Proof of Union Status),
- Article 216 UCC IA (placing goods under a customs procedure),
- Article 226 UCC IA (Master Reference Number),
- Articles 229, 231 UCC IA (centralised clearance),
- Article 271 UCC IA (UCC INF system),

⁶² Transitional rules which are no longer applicable are not indicated here, e.g. Article 122a UCC DA (regular shipping service information).

⁶³ This provision will be affected by Council Directive (EU) 2017/2455, see 3.2 above.

⁶⁴ Transitional rules which are no longer applicable are not indicated here, e.g. Article 10 UCC IA (decisions).

- Articles 273, 280, 305 UCC IA (NCTS upgrade),
- Article 333 UCC IA (supervision of exit).
- In addition, Articles 345 – 349 UCC IA lay down transitional provisions governing the re-assessment of authorisations in force on 1 May 2016 (they expire on 1 May 2019), the application of the previous so-called first sale rule for the determination of the customs value (this possibility expired on 31 December 2017), and customs procedures which began before 1 May 2016 and end on, or after, that date (these provisions are largely no longer applicable).

Apparently, no IT system is currently planned, inter alia, for the transmission of the Information Sheet (INF) 4 for supplier's declarations for goods benefiting from preferences (Article 64 UCC IA), the Information Sheet (INF) 3 for returned goods (Articles 253, 255 UCC IA), the mutual assistance for the recovery or repayment of duties (Articles 165 – 171, 175 UCC IA), the banana weighing certificate (Article 251 UCC IA), and the transit accompanying document (Articles 276, 303, 314 UCC IA).

3.2. Assessment and recommendations

The need for transitional provisions is obvious, both for cases in which existing IT systems are going to be upgraded in order to cover new requirements and with regard to the deployment of new systems. However, the way in which these rules are currently presented does not favour transparency. One of the reasons for the current approach is that Articles 278, 279 UCC allow for the use of paper-based procedures on a transitional basis until the necessary IT systems are available and the adoption of delegated acts specifying the rules for the exchange and storage of data in such situations. What has been overlooked is that some procedural rules might also be necessary in the context of specific provisions in the UCC DA or IA dealing with situations in which the required IT systems are not yet available or have not yet been upgraded. The alternatives include not only paper-based versus IT procedures but also **IT systems before and after an upgrade**. The Commission has filled that vacuum, but the price is that transitional rules are scattered throughout the customs legislation.

The adaptation of the delegated and implementing acts to the new deadlines could be used as an opportunity to streamline the legislation, for example by

- including the transitional rules still necessary after 2020 in the relevant Articles of the UCC DA or IA,
- repealing provisions which are no longer needed because the IT system referred to has already been implemented,
- creating separate Articles or sub-sections for situations until, and after, the deployment of a new system or an upgrade, as the Commission has done in Articles 74 - 77 UCC IA (procedure if Form A is used) and Articles 78 – 90 UCC IA (procedure if the Registered Exporter [REX] system is used).

Even if all the new systems and upgrades listed in the proposed Article 278(2) UCC were implemented at the end of 2025, there would still be a need for transitional rules, for example because:

- it has been decided to create new systems implementing the UCC;
- new upgrades to existing systems have been decided; or
- new data elements have been created for the common data model.

As the Commission has stated in the impact assessment⁶⁵ to the new customs programme, 'the implementation of the UCC and [the] development of electronic systems is not the final goal but only the starting point for a demanding process whereby European customs administrations are evolving towards modern administrations able to deal with the increased number of core tasks incumbent on them due to external factors (e.g. digitalisation, security threats)'.

The end of 2025 will therefore not be the end of customs modernisation. A **flexible way for setting the rules for the implementation of UCC IT systems** therefore needs to be found, for example by reformulating the empowerment in Article 17 or 279 UCC and by abandoning the use of a fixed end date in the UCC.⁶⁶ In this context it should be noted that the programme replacing 'Customs 2020' will, in line with the Multi-annual Financial Framework, run until 2027, and even after that period new customs IT systems will be created and existing ones will be upgraded. This should also be reflected in the legislation.

When it comes to setting priorities, consideration should be given to the fact that a number of changes introduced under the UCC which aim at ensuring compliance and the collection of own resources (such as stricter conditions for being and remaining an AEO, the mandatory provision of a guarantee for temporary storage, customs warehousing and inward processing, additional data requirements) have already been implemented or will be in the near future, whereas some of the facilitations for traders envisaged (in particular centralised clearance on import and the use of a single comprehensive guarantee across all customs procedures and other operations⁶⁷) are hampered by the lack of supporting IT systems. In order to allow compliant economic operators to reap the benefits of the UCC, **priority** should be given to **centralised clearance on import**.

Finally, no project for automating the exchange between Member States of certain paper documents prescribed by the import- and export-related Union legislation seems to have been planned. These issues should only be resolved at a later stage because the Commission and Member States are already unable to meet the deadlines for the existing projects.

At this stage it is therefore recommended to create a **complete list of Union documents covered and not covered by an IT project**,⁶⁸ so that it can be analysed whether some of these documents can be included in one of the existing projects, e.g. INF 3 and 4 in the data exchange system planned for special procedures which also use INF sheets. For the purposes of a single window it must be possible to submit all documents in electronic form. For some of the documents required at importation or exportation (including national documents) no data exchange between Member States will be necessary. The inclusion of all documents could become part of the **single window** project.

⁶⁵ See the Commission's [Better Regulation website](#), p. 25.

⁶⁶ According to Article 290 TFEU the duration of an empowerment to adopt delegated acts shall be explicitly defined, but this provision does not require that new IT systems and upgrades of existing systems may only be deployed or implemented within a time frame of five years.

⁶⁷ Article 89(5) UCC allows for the granting of a single comprehensive guarantee with regard to 'two or more operations, declarations or customs procedures'; however, in practice, the reference amount must be established and supervised for each customs procedure, temporary storage, and for deferred payment individually due to the link to the authorisation concerned, see Arts 155 – 157 UCC DA, see also the Commission guidance document on the [TAXUD website](#), p. 38.

⁶⁸ The TARIC database contains a list of Union documents required at importation or exportation, and provides a code for each of them.

4. The governance of the Customs Union and its IT projects

Key findings

The governance of the Customs Union and its IT projects is difficult to understand for outsiders because a multitude of committees and expert groups, based on various legal acts, are involved. Their work is made known to the public through three different Union registers.

Transparency should therefore be improved. This includes making the information easy to locate (e.g. a single source/website for them to gather the information, though possibly with links for further details) and readily understandable. Timely notifications of impending changes can be posted and subscribers can be automatically notified by e-mail.

4.1. The UCC and other customs legislation

The Union Customs Code is based on Articles 33, 114 and 207 TFEU and must therefore be adopted and amended by the European Parliament and the Council in accordance with the ordinary legislative procedure. The UCC empowers the Commission in a number of instances to adopt delegated and implementing acts (see Articles 284, 285 UCC). The empowerment to adopt delegated acts needs to be regularly renewed by the European Parliament and the Council.

When the Commission prepares delegated acts, a discussion in the Customs Expert Group – CEG (in which national customs administrations are represented)⁶⁹ and in the Trade Contact Group – TCG (in which European trade federations are represented)⁷⁰ takes place. Neither group votes on legal changes. When the Commission considers that a delegated act can be adopted, it does so, but it can only enter into force if neither the European Parliament nor the Council raises an objection within two months after they have been notified.⁷¹

When the Commission prepares implementing acts, they are first also discussed in the CEG and in the TCG. When the Commission considers that an implementing act can be adopted, and the examination procedure is applicable,⁷² it submits it – normally under the examination procedure – to a vote in the Customs Code Committee – CCC (in which national customs administrations are represented).⁷³ As long as at the vote there is no qualified majority against the proposal, the Commission can then adopt the implementing act.⁷⁴

The Customs Code Committee has not only been empowered in the UCC to adopt implementing acts but also in other Regulations, for example in:

- Article 10 of Council Regulation (EEC) No 2658/87;⁷⁵

⁶⁹ Rules of procedure in doc. Ares(2016)2616740 - 06/06/2016.

⁷⁰For further details see [TAXUD website](#)

⁷¹ Article 284 UCC; the period can be extended by two further months and both bodies can also give early notification that they have no objections.

⁷² Other procedures are only exceptionally applicable.

⁷³ Rules of procedure of the Committee in [doc. Ares\(2018\)3444533](#) - 28/06/2018. The examination procedure is laid down in Article 5 of Regulation (EU) No 182/2011.

⁷⁴ In case of a negative majority, the Commission can submit its proposal to the appeal committee, and in certain cases the advisory procedure applies, but under the UCC this is exceptional, see Article 37(2) UCC.

⁷⁵ Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1)

- Article 3 of Council Regulation (EC) No 3050/95;⁷⁶
- Article 10 of Council Regulation (EC) No 32/2000.⁷⁷

Given that different units in DG TAXUD and different national officials are responsible for the many subjects treated, the following sections (i.e. specialised groups) have been created, both for the CCC and the CEG:

- General Customs Legislation;
- Data Integration and Harmonisation;
- Authorised Economic Operator;
- Customs Control and Risk Management;
- Tariff and Statistical Nomenclature;
- Tariff Measures;
- Duty Relief;
- Origin;
- Customs Valuation;
- Customs Debt and Guarantees;
- Import and Export Formalities;
- Customs Status and Transit;
- Special Procedures other than Transit; and
- Enforcement of Intellectual Property Rights.

In some areas sub-sections also exist (e.g. Tariff and Statistical Nomenclature).

The CEG has the following additional sections:

- TIR Convention and other UNECE customs Conventions, dealing in particular with international transit and border formalities;
- International Customs Matters, i.e. other than the above-mentioned issues.

Insofar as autonomous tariff quotas and suspensions are concerned, they are adopted by the Council by virtue of Article 31 TFEU. Requests for tariff quotas and suspensions are examined in the Economic Tariff Questions Group.⁷⁸

Outside observers have difficulties in understanding this structure and the responsibilities of the various groups for which no global overview is given on the DG TAXUD website. This makes it more difficult to find the required information in the relevant register.⁷⁹

4.2. Governance

Legislation with an impact on IT projects is prepared in the above-mentioned expert groups. In the case of implementing acts they are voted on in the Customs Code Committee. When it comes to IT projects, a myriad of other committees or expert groups are involved, in particular the Customs Policy Group (CPG), the Electronic Customs Coordination Group (ECCG), the Business Policy Group (BCG), the Risk Management Strategy Implementation Coordination group (RIMSCO), and the

⁷⁶ Council Regulation (EC) No 3050/95 of 22 December 1995 temporarily suspending the autonomous Common Customs Tariff duties on a number of products intended for the construction, maintenance and repair of aircraft (OJ L 320, 30.12.1995, p. 1).

⁷⁷ [Council Regulation \(EC\) No 32/2000](#) opening and providing for the administration of Community tariff quotas bound in GATT and certain other Community tariff quotas and establishing detailed rules for adjusting the quotas, and repealing Council Regulation (EC) No 1808/95 (OJ L 5, 08.01.2000, p. 1).

⁷⁸ For further details see Commission [communication concerning autonomous tariff suspensions and quotas](#), OJ C 128, 25.4.1998.

⁷⁹ Click [here for committees](#) and [here for expert groups](#). The following [register](#) has been created for delegated acts.

Customs 2020 programme committee. In addition, several other project and expert groups have been funded through the Customs 2020 programme.

Of particular importance for IT projects is the ECCG which was created to guide the development of IT capabilities connected to the full applicability of the UCC. The ECCG provides a platform that supports the development of consensus and helps to find common positions among participating countries and the Commission to support the implementation of E-Customs and IT systems defined in the Multi-annual Strategic Plan. The ECCG enables national customs administrations to more efficiently implement E-Customs rules and tools. Discussions within the group give participating countries the opportunity to benefit from sharing experiences and best practices and to discuss progress in relation to the MASP with a view to aligning national interpretation and implementation of the Union Customs Code. The work of the group ensures coherence between the customs legislation and the implementation of IT systems. It also guarantees consistency between all projects related to E-Customs and the MASP.

An explicit legal basis exists for certain work done under the E-Customs Decision, namely the **Customs Code Committee**, and the **Customs 2020 programme committee** with regard to activities under that programme.⁸⁰

The Customs 2020 programme has been largely used for the funding of the EU components, whereas the national components have to be funded by Member States. The purpose of the E-Customs Decision is to lay down the objectives to be met in creating a paperless environment for customs and trade, as well as the structure, means and time limits for doing so. It specifies the respective responsibilities and tasks of the Commission and the Member States and provides how costs are to be shared between them.⁸¹ At least since the adoption of the UCC and the related IT work programme there are certainly overlaps which would make it difficult to describe the different roles and responsibilities of the various committees and expert groups. The DG TAXUD website on E-Customs does not explain this in detail, either.⁸² The Commission has, however, already recognised that external communication activities need to be stepped up.⁸³

In June 2018, in its proposal for a Regulation establishing the 'Customs' programme for cooperation in the field of customs (hereafter: Customs programme)⁸⁴ the Commission proposed repealing both the E-Customs Decision and the Customs 2020 Regulation by 1 January 2021, and to maintain only the 'Customs programme committee' insofar as a committee procedure is envisaged. Given that delegated acts are also planned and draft implementing acts need to be discussed before a vote can take place, a corresponding expert group will also be necessary,⁸⁵ as is the case today within framework of the UCC where prior to a vote under the examination procedure is to be taken and drafts of delegated acts are discussed prior to their submission to the European Parliament and the Council.

Further funding can be achieved on the basis of the Proposal for a Regulation of the European Parliament and of the Council establishing, as part of the Integrated Border Management Fund, the

⁸⁰ In addition, the programme is managed within DG TAXUD by a Commission Programme Management Team (CPMT), the Programme Coordination Group (PCG), as well as the DG TAXUD Board of Directors, and in Member States by national programme coordinators. The work of the management and coordinating bodies is complemented by several coordinating activities and fora, including the Customs Policy Group (CPG), other comitology committees, expert groups and the programme's project groups with a coordination function.

⁸¹ Recitals 4 and 5.

⁸² See [TAXUD website](#).

⁸³ See [TAXUD website](#), for example, p. 21.

⁸⁴ See [Proposal for a Regulation](#) establishing the 'Customs' programme for cooperation in the field of customs and its [impact assessment](#).

⁸⁵ See recitals 17 and 18.

instrument for financial support for customs control equipment.⁸⁶ The Customs Programme Committee will be in charge under the proposal.

In parallel to these programmes, as of 1 January 2021 there will also be an EU Anti-fraud programme⁸⁷ replacing Regulation (EU) No 250/2014.⁸⁸ This programme will have separate budgets, workplans, monitoring and evaluations and will include customs matters.⁸⁹ According to recital 23 an expert group will support the programme.

Finally, the Customs IT systems must also be coherent with the Digital Europe Programme⁹⁰ which supports the following specific objectives: (a) High Performance Computing, (b) Artificial Intelligence, (c) Cybersecurity and Trust, (d) Advanced Digital Skills, (e) Deployment, best use of digital capacity and interoperability. This programme also has a special budget with work programmes, monitoring, evaluations and an expert group (recital 46).

In view of these forthcoming changes it appears premature to analyse the governance structure for future customs-related projects and their funding. What can be said at this stage is that the roles and responsibilities of the different committees and expert groups dealing with customs matters should be explained on the DG TAXUD website, where appropriate, by creating links to the websites of other Directorates General. **An integrated IT work programme should be created which covers all customs-related projects and their interdependence**, irrespective of their legal basis and the way they are funded.

4.3. Improving the governance structure

Improving the governance of the Customs Union has been a constant subject of Commission communications.

In 2011⁹¹ the Commission stated that governance needed to be improved and updated, both in terms of structures and working methods, notably by evolving towards a more business-oriented approach to the Customs Union processes. In addition to addressing governance structures and institutional questions, and the streamlining of day-to-day steering, this would include adopting the systematic use of robust, standardised working methods for better definition of business cases and detailed business process modelling for all initiatives. This will allow not only a better prior understanding of the potential implementability, effects and outcomes of initiatives, but also allow better prioritisation of initiatives and a more streamlined utilisation of scarce resources.

In a 2012 report⁹² the Commission acknowledged that the current decentralised system of implementation and management at national level of a common core of responsibilities, tasks and increasingly common processes and IT systems has, for many reasons, reached the limits of effectiveness and efficiency. These reasons include duplication, inconsistency, problems of interoperability and mismatch of resources with needs across the EU. Recent experiences in applying pan-European processes and IT in the implementation of the security amendment of the

⁸⁶ [COM\(2018\) 474 final](#).

⁸⁷ [COM\(2018\) 386 final](#) 2018/0211 (COD) Proposal for a Regulation of the European Parliament and of the Council establishing the EU Anti-Fraud Programme.

⁸⁸ [Regulation \(EU\) No 250/2014](#) establishing a programme to promote activities in the field of the protection of the financial interests of the European Union (Hercule III programme), OJ L 84, 20.3.2014.

⁸⁹ The Anti-Fraud Information System (AFIS) is financed through this programme; as the Court of Auditors describes in its [Special Report 19/2017](#), this system partially overlaps with DG TAXUD's Risk Information System (RIF).

⁹⁰ [COM\(2018\) 434](#), Proposal for a Regulation of the European Parliament and of the Council establishing the Digital Europe programme for the period 2021-2027.

⁹¹ [COM\(2011\) 922](#), Report on Progress on the Strategy for the Evolution of the Customs Union, p. 15.

⁹² [COM\(2012\) 791](#), Report on the State of the Customs Union, pp. 14-15.

Community Customs Code and in the application of certain EU-wide authorisations confirm these problems. Furthermore, economic operators have reported of different treatment across the EU and complained of the uncertainty and costs that arise from different service levels and practical requirements that they encounter across the EU. As the legal basis is common, it is apparent that it is the operational implementation that falls short in this respect.

In its 2016 report⁹³ the Commission stated that it had identified three major objectives that require strategic and coherent action:

- implementing a vision of how customs authorities can work to achieve fully effective and coherent action;
- creating and implementing a shared vision between customs and other competent authorities on the management of the EU border and the coordination of their respective activities; and
- tackling the major resource challenges of the Customs Union.

It announced a process of examining the future options for the development and maintenance of customs IT systems with a view to preparing a debate in advance of future decisions on the next Multi-annual Financial Framework (MFF). To launch a viable long-term plan, the issue of possible synergies with existing agencies needs to be looked at in the analysis of further co-operation between administrative services dealing with border management and law enforcement.

In its 2018 Report on the IT strategy for customs⁹⁴ the Commission points out that many Member States are concerned by the fact that national import and export clearance and supporting systems are created 28 times and are thus delivering poor value for the taxpayer due to the multiplication of the costs involved. In addition, although all Member States receive 20% of the customs duties collected, nearly 80% of import declarations are made in only three Member States.⁹⁵

The report further points out that major savings can be made if Member States collaborate on development, operations and maintenance on the order of between 35 and 53% where a minimum of ten Member States are involved. A complicating factor is that Member States have different business models for producing national components and are also in different positions in relation to the weight of legacy systems. Some Member States have substantial in-house IT expertise while others rely more on third party providers.

For the short term the Commission proposes to maintain the current business model and governance structure in order not to jeopardise the implementation of the UCC IT projects. For the medium and long-term it considers a 'shared IT supplier' approach through an entity/agency or other method of collaboration with various options. It points out that a detailed cost-benefit analysis still needs to be performed.

Finally, the Commission sees the need for further consideration of the following subjects:

- Further development of the vision of digital customs;

⁹³ [COM\(2016\) 813](#), Report on Developing the EU Customs Union and Its Governance, pp 6 et seq.

⁹⁴ [COM\(2018\) 178](#).

⁹⁵ According to footnote 14 of the Special Report 19/2017 of the European Court of Auditors the three Member States which collect the highest share of customs duties are: Germany (21 %), the United Kingdom (17 %), and the Netherlands (12 %). It is not clear whether the discrepancy of the figures is due to the fact that the 80% mentioned include duty-free imports and/or imports under duty suspension (such as transit) or to other reasons. It needs to be added that, besides customs clearance (which often does not lead to duty collection, e.g. export, transit), customs administrations must perform other tasks for which no remuneration is foreseen, such as authorising and supervising customs procedures (e.g. customs warehousing, inward and outward processing), providing binding tariff information or IT systems.

- Defining a stable governance relationship with a view to business needs and the related legal framework to recognise the challenge of IT delivery in a dynamic policy environment;
- Factoring in technological innovation into the process of decision;
- The scope the wider interaction under the Digital Agenda with other policy areas;
- Integrating the lessons of ongoing 'collaboration' initiatives and analysing their effectiveness;
- Outlining an appropriate IT architecture;
- Establishing the future delivery model(s) based on cost/benefit considerations with an eye to 'blended' solutions.

The impact assessment to the new Customs programme⁹⁶ also sees a strong and increasing call for deeper operational cooperation and possible centralisation in specific areas, such as IT, as also underlined in the recent European Parliament resolution,⁹⁷ Council conclusions⁹⁸ and European Court of Auditors (ECA) recommendations.⁹⁹ The Customs 2020 programme currently does not work on these dimensions, but it would be legitimate to aspire to having significantly deepened the integration of the Customs Union by 2030, driven not through more legislation – this is already in place – but through a deepening of the connective tissue: adequately resourced joint IT developments providing a stronger backbone, deeper cross-border agency cooperation underpinned by more visible Union financial support for equipment providing more integrated operational limbs, reaping synergies in data analysis at the Union level, a functioning single window environment and robust comparable performance indicators (and state-of-the-art data analytics) providing a more visible face, possibly all held together by a dedicated body, and benefiting from the fact that customs is an area where Member States do actually want to work more closely together.

Against this backdrop, there is a strong case for a more **centralised provision of IT solutions** for customs instead of the current delivery model (part Commission, part national, and part hybrid). That would also offer the basis for deepening operational cooperation in the area of data analysis. The current set of IT developments will inevitably have to be delivered under the existing division of responsibilities because they are already underway. However, now is the time to be planning to be in a position to do better when the next round of IT upgrades will be needed after 2025. Discussions on this have already started, including at the ministerial level at the informal ECOFIN¹⁰⁰ in Tallinn, and more preparatory work is required.

Without prejudging the outcome, which would require appropriate legal analysis and cost/benefit exercises, there remains a case to explore further the medium/long-term possibility of creating an **EU Customs IT Agency**. The size, scale and permanence of the challenges would justify such an examination. It could also provide the embryo for a further deepening of operational integration between EU customs authorities in a subsequent future step.

In its recent Report on Progress in Developing the EU Customs Union and its Governance¹⁰¹ the Commission highlights that more needs to be done to ensure that the Customs Union can continue

⁹⁶ See Commission [better regulation website](#)

⁹⁷ European Parliament resolution on tackling the challenges of the Union Customs Code implementation (2016/3024(RSP)).

⁹⁸ [Outcome of the Council Meeting](#) – 3543rd Council meeting (Economic and Financial Affairs) – Brussels, 23 May 2017 (Document 9581/17)

⁹⁹ European Court of Auditors, [Special report 19/2017](#), *Import procedures: shortcomings in the legal framework and an ineffective implementation impact the financial interests of the EU*.

¹⁰⁰ See [Council website](#).

¹⁰¹ [COM\(2018\) 524](#), 5.7.2018.

to face the challenges ahead. It acknowledges the need for a long-term overarching policy and **shared operational management vision for the Customs Union** in order to allow necessary decisions to be taken in an inclusive manner and in an atmosphere of partnership across the different policies with the different stakeholders, taking everybody's needs into account. In the next few years a coherent implementation should be achieved that encourages compliance and targets risk areas, while reaching out to other policy areas, notably security, to strengthen EU common policies. The Commission has identified the following priority issues:

- Managing Brexit,
- Strengthening controls and tackling fraud,
- Greater use of monitoring of EU customs law,
- Improving efficiency of customs administrations,
- Harnessing innovation,
- Optimising customs electronic systems and their use,
- Dealing with the challenges of e-commerce,
- Capitalising on the Customs Union to improve EU security,
- Continuing to work on international relations.

The Estonian Presidency, in its Note for the informal ECOFIN Tallinn, on 15 September 2017,¹⁰² stated the following:

'The Member States and the Commission work together on many aspects of the IT systems and indeed a complex and effective IT eco-system exists already, based on EU legal acts, and funded at EU level. But the fact remains that despite the ever increasing harmonisation of law and standardisation of procedures, there is a significant duplication in the development and operation of IT systems. The outcome of this paradoxical situation is that 28 Member States develop similar IT systems 28 times which is a sub-optimal use of national and EU scarce human and budgetary resources. As a result, the 28 Member States will spend up to 2 billion EUR to upgrade existing systems and set up the new IT systems necessary for the implementation of the Union Customs Code. This estimation does not include IT costs for trade. [...]

Against this background, it is worth considering what benefits would be provided by a shift from the current decentralised system to a more centralised approach to customs IT, should such a course be chosen after, hopefully, a successful implementation of the Union Customs Code. The approach to centralize IT systems would deliver economies of scale and prove to be much cheaper and efficient in terms of development and maintenance of such systems. It would ensure the uniform application of the EU customs legislation and of risk management, while improving the cooperation between Customs and Border Guard, other relevant agencies and third countries.

Nowadays when IT technology is rapidly evolving, centrally developed and maintained IT systems would be easier to adapt to changes. Furthermore, the idea of common IT systems, worthy of a Digital Single Market professed by the EU itself, has the strong support of the business community, which is understandably reluctant to develop up to 28 different interfaces, and is looking for cost-efficient and more adaptable solutions for their IT systems'.

The Presidency conclusions after the meeting were that 'more discussions on the expert level are needed to achieve an agreement on how to go further. There is strong support for a pilot project and it could prove that the **centralised approach to the IT** works for the customs union'.¹⁰³

¹⁰² See: [European Council website](#).

¹⁰³ See the [press release](#).

4.4. Assessment and recommendations

The common thread of all these communications and reports is that the Customs Union must be managed in a more efficient way. It is clear that the current structure cannot be maintained in the long run, given that it is cumbersome and does not deliver value for money, notably with regard to the national components of common IT systems. In the impact assessment for the new customs programme, the Commission has indicated that it is contemplating the creation of an EU Customs Agency.

The problem is, as the Commission outlines, that **not all Member States share a common vision of how and when to use common IT systems**. Depending on legacy systems and country context, some prefer a more blended model where countries can opt in to shared EU services or maintain national solutions. Countries with fewer legacy customs systems are generally in favour of a more centralised approach. Similarly, Member States with smaller flows of goods might not see the business value for more advanced functionalities compared to larger Member States who might have more wide-ranging needs. Given that ca. **50% of import declarations leading to the collection of customs duties are made in only three Member States**,¹⁰⁴ it is not surprising that there would be diverging opinions around the need for, and feasibility of, a given IT system.

For instance, in the case of the **Customs Decision System (CDS)**, as one of the largest and earliest UCC IT projects, savings of €40-50 Million in the EU were projected if the Commission had developed purely a centralised architecture that would interface with national systems. Although this would increase the development costs for the Commission, the Member States would have reaped the benefits of such a solution. However, this was not feasible in the end, with most Member States opting for hybrid solutions which both supported their own national developments, and others opting for a central solution.¹⁰⁵

Member States have also **voiced concerns about the cost of implementing some of the new IT systems** as well as regarding the voluminous scope of activities and projects to be completed under the Union Customs Code. As UCC IT projects are only a portion of the projects pursued under the MASP and further customs-related projects are pursued outside the MASP, this is a concern which should be taken seriously.

Further analysis is to be welcomed in order to arrive at a better business model.

The multitude of expert and working groups makes it difficult to attend all of them, especially for smaller Member States given their limited resources and the need to cover their national duties when officials are out of office or are participating in such groups.

Furthermore, some short term 'quick fixes' should be considered, including:

- the obligation not to propose or adopt legal changes affecting current or future IT systems for which no business process model and no realistic implementation time estimate have been made available,

¹⁰⁴ See footnote 14 of the [Special Report 19/2017](#) of the European Court of Auditors, according to which the three Member States which collect the highest share of customs duties are: Germany (21 %), the United Kingdom (17 %), and the Netherlands (12 %).

¹⁰⁵ The following Member States chose to use the access to the central portal only: BE, BU, CY, DK, HU, IE, IT, LV, LT, LU, MT, NL, PT, RO, SI, SE; to use the central portal for multi-Member State decisions and a national portal for decisions concerning only that Member State: AT, HR, CZ, FI, FR, DE, GR, PL, SK, UK; and a hybrid model allowing either central or national access, and only a national portal for decisions affecting only that Member State: ES.

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- requiring a cost benefit analysis or impact assessment for legal changes having a major impact on current or future IT systems,¹⁰⁶ including a realistic implementation time; in cases where such impact is declared as not to exist, an explanation should be provided together with the proposal,
 - the creation of a summary of all customs related projects (including those generated by other services than customs), indicating sequencing, workloads and priorities,¹⁰⁷
 - a better coordination between the services and groups generating changes for customs IT systems and avoiding a 'silo management' of customs IT projects,
 - providing more support for those Member States which are struggling with understanding or the implementation of the customs rules or IT projects,
 - ensuring that economic operators and software providers are informed and provided sufficient time to adjust their IT systems to new requirements.

¹⁰⁶ The new Import Control System (ICS2) is one of the most ambitious IT projects attempted; highly resource-intensive, not only in terms of development but also in relation to the future maintenance of the system, despite results from cost-benefit analyses undertaken showing the higher cost of the alternative (i.e. that all Member States implement their part to be compliant to the agreed policy and the new Union Customs Code legislation). Although cost sharing agreements and gradual phasing of the project will now extend further than 2020, Member States remain concerned about how realistic the aims are, especially in terms of the financial resources needed to implement and maintain the system.

¹⁰⁷ This is already partially available through Annex II of the MASP.

5. The financial interests of the Union

Key findings

The Court of Auditors has found a number of shortcomings in the import clearance processes of Member States which lead to customs duties and import VAT not being collected, or not being collected for the amount due. It therefore sets out a number of recommendations, including a uniform approach to customs controls, and the introduction of binding valuation information.

Given the wide range of the tasks the customs authorities need to fulfil, it is necessary that, besides ensuring the correct collection of the Union's own resources, the priorities are appropriately set taking into account these other tasks.

5.1. Findings and recommendations of the Court of Auditors

The main findings of the Court critical of the current situation are:

- The current system does not prioritise the importance of customs duties as a source of the financing of the EU budget. There are gaps in the customs control of imports.
- Member States do not follow a uniform approach to customs control of imports, which can lead to underpayment of customs duties. In particular, approaches differ with regard to tackling undervaluation, misdescription of origin and misclassification, and to customs penalties imposed. Burdensome customs controls can have an impact on the traders' choice of the customs office of importation, and (air)ports with fewer customs controls may attract more traffic.
- The Member States are not sufficiently financially encouraged to perform customs controls. Those which perform customs controls but are not successful in recovering losses to the revenue of the EU risk financial consequences, whereas those which do not carry out such controls may not suffer such consequences.
- The EU's tools and programmes for exchanging customs information and increasing cooperation have not reached their full potential.
- There are still no EU-wide valuation decisions.

The recommendations of the Court to the Commission which are relevant with regard to the implementation of the UCC are summarised as follows:

- 1 The Commission should consider all available options to strengthen support for national customs services in their important EU role in the new Multiannual Financial Framework (MFF), including a review of the appropriate rate of collection costs.
- 2 The Commission should propose that the next EU action programmes which support the Customs Union should be used to contribute to the financial sustainability of the customs European Information Systems.
- 3 The Commission should propose amendments to customs legislation in 2018 aimed at making compulsory the indication of the consignor in the customs import declaration (Single Administrative Document - SAD).
- 4 The Commission should be more precise in the requests contained in a Mutual Assistance communication to ensure their uniform implementation by the Member States.
- 5 The Commission should carefully follow-up their checks on compliance with Binding Tariff Information (BTI) decisions in Member States by 2020.

- 6 The Commission should make the issuance of EU-wide valuation decisions possible without further delay, as recommended by the Court in Special Report No 23/2000.
- 7 The Commission should propose legislative changes allowing it to impose financial corrections, from 2021, on those Member States which are not adequately addressing the risks and possibly encouraging 'import point shopping'.¹⁰⁸
- 8 In 2018 the Commission should propose legislative action to make mandatory the provision of additional data elements allowing the performance of financial risk analysis at the pre-arrival stage and on the trader's notification of arrival of goods at their premises.
- 9 The Commission should improve the Surveillance database to identify the recipient of the goods when customs procedure 42¹⁰⁹ is used.
- 10 The Commission should investigate the abuse of the low value consignment reliefs on E-Commerce trade in goods with non-EU countries.¹¹⁰

The Court addresses the following recommendations to Member States. They should¹¹¹

- make overrides of controls suggested by a particular risk filter conditional on prior or immediate hierarchical approval;
- introduce checks in their customs electronic release systems to block the acceptance of import declarations applying for duty relief for low value consignments of goods with a declared intrinsic value higher than €150 or for commercial consignments (B2C) declared as gifts (P2P);
- verify ex-post traders' compliance with customs duty relief for low value consignments, including AEOs;
- set-up investigation plans to tackle abuse of these reliefs on E-Commerce trade in goods with non-EU countries.

5.2. Assessment and recommendations

Providing sufficient **financial support** to Member States and the Commission (points 1 and 2 above) will certainly be helpful for achieving the objectives of the UCC. However, under the proposal for a new customs programme¹¹² the current split of responsibilities (including the allocation of costs) between EU and national components is maintained, so that a reduction of Member State's financial burdens would require the use of more common components.

Making the indication of the **consignor** in the customs import declaration compulsory (point 3 above) would indeed be helpful for risk analysis, not only for fiscal but also for other reasons, such as security, compliance with product standards or intellectual property rights. The Commission has accepted this recommendation, but explains that such a legal change may entail significant costs for those Member States that do not yet collect it.¹¹³ My recommendation therefore is to analyse the financial and IT aspects and to make a proposal only if the benefit outweighs the cost; the entry into force of such change, if adopted, should then take into account the necessary implementation time.

¹⁰⁸ This means importing through the Member State which applies the least controls.

¹⁰⁹ This procedure code implements Article 143(1)(d) and 2 VAT System Directive, i.e. a suspension of import VAT in cases where goods are released for free circulation in one Member State (e.g. Belgium) but immediately moved to a trader in another Member State (e.g. France) where the VAT on an intra-EU acquisition must be paid by the trader.

¹¹⁰ This issue will be treated in Section 6.

¹¹¹ Low value consignments will be treated in Section 6.

¹¹² [COM\(2018\) 442 final](#).

¹¹³ See point 107 of the Commission reply.

An improvement of the quality and clarity of **Mutual Assistance communications** (point 4 above) is welcome. This is, beyond the findings of the Court, also true with regard to the underlying factual basis, when OLAF recommends duty recoveries (e.g. because the goods concerned do not have their origin in the country declared but in a country subject to a definitive anti-dumping duty); when Member States receive such communications, they must be able to prove in a court of law that the recovery was justified on the basis of the facts submitted (for investigations outside the EU OLAF is responsible, meaning that the success of duty recoveries depends in this respect largely on sufficient proof being established by OLAF in the export countries).¹¹⁴

The **monitoring of BTI usage** (point 5 above) is certainly useful; however, as long as no IT tool is available in national import systems¹¹⁵ this can be done only through manual checks and post clearance audits. It should be borne in mind that every additional task for the Commission or Member States must be weighed against available resources and other priorities which might be pursued to a lesser degree in order to fulfil such a request.

The Commission has started the process for the introduction of **binding valuation information** (point 6 above) by conducting an open consultation which led to the conclusion that the business community was supportive of this project. The next step will now be an impact assessment. If an IT system for the storage of such decisions is to be created, the cost and implementation time also need to be assessed.

Penalties for insufficient controls (point 7 above) are, at the current stage of the Customs Union in which no common control standards exist, not feasible. The Commission¹¹⁶ proposes instead the creation of incentives ('nudging'). Such incentives could be the financing of detection equipment if certain control standards (to be defined) are met. On this issue the European Parliament has rightfully stated that 'effective customs controls are a key element in protecting EU financial interests, and that budgetary measures should not prevent the Member States' authorities from carrying out their missions.'¹¹⁷ The Court proposes introducing additional data elements allowing the performance of **financial risk analysis at the pre-arrival stage** and on the trader's notification of arrival of goods at their premises (point 8 above). As the Commission has correctly pointed out¹¹⁸ risk analysis for fiscal purposes is under the current rules not carried out on the basis of data generally available to the carriers lodging the entry summary declaration (ENS) at the pre-arrival stage but rather on the basis of the customs declaration data. The purpose of the ENS is primarily to carry out risk analysis on safety and security (Article 128 UCC). Extending the purpose of ENS to financial risks would place additional burdens on carriers who would have to seek additional data from their clients and to submit a more voluminous declaration. The situation could be reviewed once the Import Control System (ICS) allows for multiple filings (i.e. both the carrier and the importer can provide data). If such a solution is contemplated, the current split between the ENS and the temporary storage or import declaration should also be reviewed in order to facilitate trade.¹¹⁹

¹¹⁴ See on the issue to what extent OLAF reports can be used in Courts ECJ of 16 March 2017, C-47/16, *Veloserviss*, ECLI:EU:C:2017:220, points 47-50, and ECJ of 26 October 2017, C-407/16, *Aqua Pro*, ECLI:EU:C:2017:817, points 54 – 66; see also *Lux/Pickett*, ZfZ 2015, p. 250.

¹¹⁵ Currently there is no field in the customs declaration allowing the automatic retrieval of the reference to the binding tariff information declared and thus no mechanism for transferring the information to the Surveillance database.

¹¹⁶ Point 148 after 'recommendation 7' of the Commission reply.

¹¹⁷ Point 29 of resolution of 16 May 2017 on the Annual report 2015 on the protection of the EU's financial interests — Fight against fraud (2016/2097(INI)), OJ C 307, 30.8.2018.

¹¹⁸ Points 114, 115 of the Commission's reply.

¹¹⁹ The author has seen solutions in non-EU countries under which a single declaration is lodged before arrival which covers the purposes of the ENS, the temporary storage and the import declaration with the possibility that a supplementary declaration is lodged later where necessary.

Furthermore, the Court recommends (point 9 above) that the **Surveillance Database** include the **recipient** of the goods when customs procedure code 42 is used. The implementation of this proposal seems to be planned for the forthcoming upgrade of the Surveillance Database.¹²⁰ It is, however, doubtful whether including the name of the recipient is the most effective way of facilitating ex-post controls, because automated systems work better with codes (e.g. VAT ID No) than with names (and potentially addresses, given that certain names are quite common).

With regard to the recommendations addressed to Member States the following comments may be made:

- Making **overrides of controls suggested** by a particular risk filter conditional on prior or immediate hierarchical approval would delay import clearance and create a backlog in cases where a high number of consignments are suggested for controls. The possibility of overriding control proposals and to perform controls which are not proposed by the system must remain intact without the intervention of the hierarchical superior as this would have a demotivating effect and would be perceived by the officials concerned as a lack of trust.
- Improving the risk management systems of Member States so that they are able to identify illogical or contradictory declarations is reasonable and should be implemented.
- Verifying ex-post traders' compliance is a standard procedure set out in Article 48 UCC, and with regard to holders of authorisations (e.g. for simplified declarations or entry in the declarant's records) also in Article 23(5) UCC (so-called monitoring). Due to the high amount of imports and traders, not everybody can be subjected to such audits within a given period. This implies that a risk analysis needs to be performed which, inter alia, takes into account the amount of duties at stake and the reliability of the importer. Authorised Economic Operators (AEO) can thus be subjected to fewer controls and benefit from their status, which is in any event contingent on high compliance and effective organisational controls.

5.3. The tasks of customs authorities: a much wider scope than ensuring the correct collection of own resources

It is, of course, legitimate to analyse, as the Court of Auditors does, to what extent customs duties due to the Union budget are not collected and how the situation can be improved. Taking measures to improve duty collection are indeed necessary, as the shortcomings identified by the Court show.

However, customs administrations as the gatekeeper of the EU and Member States with regard to goods entering and leaving the Union have to fulfil many other tasks which might suffer if, as the Court recommends, the focus is primarily placed on import duty collection (import duties make up less than 14% of the Union budget). Facilitating legitimate business is in practice often neglected as an objective of customs administrations.

The mission statement in Article 3 UCC mentions the tasks of contributing to **fair and open trade**, implementing the external aspects of the **internal market**, of the **common trade policy** and of the **other common Union policies** having a bearing on trade, and to ensuring overall **supply chain security**. Besides the task of protecting the financial interests of the Union and its Member States, the following objectives need to be ensured by the customs authorities, where appropriate in cooperation with other authorities:

¹²⁰ Point 128 of the Commission's reply.

- protecting the Union from unfair and illegal trade while supporting legitimate business activity;
- ensuring the security and safety of the Union and its residents;
- ensuring the protection of the environment, and
- maintaining a proper balance between customs controls and facilitation of legitimate trade.

Without describing all these tasks in detail, it may suffice here to refer to the recent Commission report on the implementation of the EU Strategy and Action Plan for customs **risk management**¹²¹. This report explains under point 1.1:

'The world has changed dramatically during the first 50 years of the Customs Union and so has the role of EU customs authorities. As the lead authority that supervises the movement of goods across the external borders, customs are now the first line of defence against dangerous and criminal activities related to commercial trade. Examples include trade in non-compliant or dangerous goods, trafficking in cultural goods, firearms and drugs, wildlife and other illegal trafficking, fraud, terrorism and organised crime. All goods entering, leaving or passing through the EU (including goods carried by travellers) are subject to customs supervision and may be subject to customs controls.'

Customs have a vital role in guaranteeing the safety and security of our society, as well as in protecting the financial interests of the EU and its Member States. They consequently face a major challenge in developing controls within a common risk management framework. To reach their objective, customs must balance their role in facilitating legitimate trade and preserving the fluidity of the supply chains necessary for our economy, while contributing to our safety and security.'

Beyond the scope of the UCC, customs authorities also contribute to the implementation of the European Agenda on Security, a central component of the general objective of creating an area of justice and fundamental rights.

The Commission adopted several legislative proposals aimed at cutting off the **sources of terrorist financing**. The most relevant are the proposals on: (i) illicit cash movements;¹²² (ii) illicit trade in cultural goods;¹²³ and (iii) EU certification of airport screening equipment.¹²⁴ The Commission also continues to implement EU Action Plans: (i) against illicit trafficking and the use of firearms and explosives;¹²⁵ (ii) to strengthen the fight against terrorist financing;¹²⁶ and (iii) against wildlife trafficking.¹²⁷

In its conclusion the Commission highlights that customs authorities face continuing challenges, including unprecedented levels of **terrorism** and other **security threats**. With EU imports of goods constantly on the rise, they need to join forces with market surveillance authorities to prevent **unsafe or non-compliant products** from entering the market.

A further task for customs authorities is combating **intellectual property right** (IPR) infringements, for which the Commission has developed the Anti-Counterfeit and anti-Piracy Information System (COPIS).¹²⁸

¹²¹ [COM\(2018\) 549 final](#).

¹²² [COM\(2016\) 825 final](#).

¹²³ [COM\(2017\) 375 final](#).

¹²⁴ [COM\(2016\) 491 final](#).

¹²⁵ [COM\(2015\) 624 final](#).

¹²⁶ [COM\(2016\) 050 final](#).

¹²⁷ [COM\(2016\) 87 final](#).

¹²⁸ [COM\(2018\) 77 final](#), Report on the implementation of the EU customs Action Plan to combat IPR infringements for the years 2013/2017.

A further challenge is the forthcoming **Brexit** which will also create an additional workload for the customs authorities of the Member States, in particular with regard to an increase in customs declarations to be handled by the national declaration system and with regard to additional customs controls, both at the border as well as by way of audits.

The implementation of the **UCC**, including delays in the introduction of a paperless environment for customs and trade, as well as the collection of **own resources** should therefore not be analysed in isolation but be placed in a **wider perspective** in order to avoid setting priorities inappropriately and misallocating resources. The Commission has attempted to set out the recent priorities for the Customs Union under which the issue of own resources is addressed within the framework of the wider topic 'Strengthening controls and tackling fraud'.¹²⁹

The **electronic submission** of data and the introduction or upgrade of **customs IT systems** will allow for **better risk analysis**, both for safety and security and for fiscal purposes. Behind such systems there must, however, be people who analyse the data and take appropriate measures when a risk has been identified. One of the problems customs authorities are currently facing is that the **multitude of tasks** to be performed is **not matched by** available **human resources**.

Traders will be able to gain real benefits when a **single window** allows them to submit all import or export related data and documents to a single system and to receive replies through that system, ideally in combination with **centralised clearance**. Both of these projects are still outstanding.

¹²⁹ [COM\(2018\) 524](#) final, see Sub-section 4.3 above.

6. E-Commerce and low value consignments

Key findings

E-Commerce and in particular consignments declared to be of a low value (up to €22) are a particular challenge. Under the current rules no explicit import declaration is required and this facilitation is often abused for goods of a higher value. In 2021 the import VAT relief for mail order goods will be abolished and two special arrangements will be introduced for consignments up to a value of €150 and not subject to excise duty.

This creates, on the one hand, better possibilities for controls, but generates, on the other hand, the need to adjust existing import clearance systems and to create new databases. The introduction of such new requirements may have a knock-on effect on other customs IT projects.

In the foreword to the Cross-Border E-Commerce Framework of Standards of the World Customs Organisation (WCO) the Secretary General highlights the following:

'The growing trade in cross-border electronic commerce (E-Commerce) in physical goods has generated enormous opportunities for the global economy, providing new growth engines, developing new trade modes, driving new consumption trends and creating new jobs. This unprecedented growth has revolutionized the way businesses and consumers market, sell, and purchase goods, providing wider choices, advance shipping, payment and delivery options. It has also opened up global economic opportunities to micro, small and medium-sized enterprises (MSMEs) in terms of wider access to overseas markets by lowering entry barriers and reduced costs.

At the same time, cross-border E-Commerce, in particular Business-to-Consumer (B2C) and Consumer-to-Consumer (C2C) transactions, is presenting a number of new challenges and opportunities to governments. This fast-evolving trading environment requires comprehensive and well-considered solutions from all stakeholders, including Customs authorities, to manage the unprecedented growth in volumes, to overcome the lack of global standards and guidelines, and to address associated border risks...

*The key to the effective and efficient management of cross-border E-Commerce is the use of timely and accurate information, ideally from its source, to allow the early risk assessment and clearance of legitimate transactions in an automated environment with minimum need for physical interventions. The growing volumes and expectations by consumers for rapid clearance and delivery also mean that new models of revenue collection and border interventions are needed from Customs and other relevant government agencies.'*¹³⁰

6.1. The customs and VAT rules on imports of low value consignments

In order to relieve traders and customs administrations from high administrative costs for low value consignments which were considered as a small security and financial risk, numerous facilitations have been introduced in the Union customs and VAT legislation.

Article 104 UCC DA exempts the following goods from the obligation of a pre-arrival declaration:

¹³⁰ See [WCO website](#)

- goods in postal consignments the weight of which does not exceed 250 grams (paragraph 2),¹³¹
- [other] goods in postal consignments until the date of the upgrading of the Import Control System (paragraph 3),
- goods in a consignment, the intrinsic value of which does not exceed €22, until the date of the upgrading of the Import Control System, provided that the customs authorities accept, with the agreement of the economic operator, to carry out a risk analysis using the information contained in, or provided by, the system used by the economic operator (paragraph 4).

Goods up to a value of **€22** (so-called **goods of negligible value**) currently do not need to be explicitly declared for release for free circulation.¹³² The reason for this simplification is that neither customs duty nor import VAT is due.¹³³ Alcoholic products, perfumes and toilet waters, tobacco or tobacco products are excluded from this exemption. Furthermore, Member States can apply a lower threshold for import VAT (€10) or exclude mail order goods.

Samples of goods which are of negligible value and which can be used only to solicit orders for goods of the type they represent are also exempt from import VAT.¹³⁴

For goods sent by a private person to another private person – C2C (so-called **small consignments of a non-commercial nature**) an import VAT and excise duty exemption applies for goods up to a value of €45.¹³⁵ Limitations apply to tobacco products, alcohol and alcoholic beverages, perfumes or toilet waters, coffee or coffee extracts and essences, tea or tea extracts and essences (Article 2 of the Directive).

Consignments of goods up to a value of €150 benefit from a **relief from customs duty**.¹³⁶ **Limitations apply to** tobacco products, alcohols and alcoholic beverages, perfumes or toilet waters.

6.2. The Court of Auditors Special Report 19/2017

The Special Report 19/2017 of the Court of Auditors highlights the following shortcomings:¹³⁷

- The electronic customs release systems in the selected Member States accepted (i) imports applying for a relief of customs duties for goods of negligible value even though their declared value was higher than €150, and (ii) imports of commercial consignments declared as gifts.

¹³¹ According to sub-paragraph 3, by 31 December 2020 the Commission shall review the situation of goods in postal consignments pursuant to that paragraph with a view to making such adaptations as may appear necessary taking into account the use of electronic means by postal operators covering the movement of goods.

¹³² Article 138(2) UCC DA.

¹³³ See Article 23 of Council Directive 2009/132/EC of 19 October 2009 determining the scope of Article 143(b) and (c) of Directive 2006/112/EC as regards exemption from value added tax on the final importation of certain goods, OJ L 292, 10.11.2009. This Directive has been amended with effect from 1 January 2021 by Council Directive (EU) 2017/2455 of 5 December 2017 as regards certain value added tax obligations for distance sales of goods, OJ L 348, 29.12.2017, see Sub-sections 6.3 und 6.4 below.

¹³⁴ Article 63 of Directive 2009/132/EC.

¹³⁵ Article 1 of Council Directive 2006/79/EC of 5 October 2006 on the exemption from taxes of imports of small consignments of goods of a non-commercial character from third countries, OJ L 286, 17.10.2006.

¹³⁶ Article 23 of Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty, OJ L 324, 10.12.2009.

¹³⁷ Points 132 et seq.

- Evidence gathered by the UK on e-commerce points to massive undervaluation of goods imported from the Far East and increasingly the USA, by a factor of anywhere between 10 - 100 times below the correct valuation.
- According to the Belgian customs authorities, goods purchased via certain non-EU websites are systematically declared as goods with a value below €22, while the consumer actually paid more.
- Finally, according a study by Copenhagen Economics, import duties are only levied on 47 % of dutiable postal shipments and this incomplete levying of import duty directly translates into a loss of customs duties in the EU of approximately €0.25 billion.¹³⁸

Therefore, customs duty losses take place in two ways: (i) via undervaluation of goods, whereby the goods are wrongly declared as eligible for the low value consignment relief; and (ii) via application of the relief to non-eligible goods, e.g. goods declared with a value higher than €150 and accepted by the customs release system because there is an error or omission in the release system or commercial consignments (B2C) declared as gifts (P2P) because they are not controlled by customs.

The Court therefore recommends an investigation of the abuse of the low value consignment reliefs on e-commerce trade in goods with non-EU countries.

The Court also requests the following actions by Member States:

- introduce checks in their customs electronic release systems to block the acceptance of import declarations applying for duty relief for low value consignments of goods with a declared intrinsic value higher than €150 or for commercial consignments (B2C) declared as gifts (P2P);
- verify ex-post traders' compliance with customs duty relief for low value consignments, including AEOs;
- set up investigation plans to tackle abuse of these relief on e-commerce trade in goods with non-EU countries.

As the rules on VAT import relief will change for commercial consignments to consumers (B2C) due to Council Directive (EU) 2017/2455 of 5 December 2017¹³⁹ these new provisions will first be explained before the findings and recommendations of the Court of Auditors are assessed. Under the new rules the existing waiver from import declarations and the VAT import relief for goods up to a value of €22 will be abolished and new facilitations for VAT will be introduced for goods up to a value of €150.

For B2C imports up to a value of €150 two simplification models shall be introduced by 1 January 2021: the Import One-Stop Shop (IOSS) and a simplified customs declaration for importers not using the IOSS.¹⁴⁰

6.3. The Import One-Stop Shop

The Import One-Stop Shop (IOSS) will function as follows:

¹³⁸ See: [E-commerce imports into Europe: VAT and customs treatment](#), Study, Copenhagen Economics

¹³⁹ [OJ L 348](#), 29.12.2017.

¹⁴⁰ The following two sub-sections are based on Commission presentations [VEG 26 February 2018 Import scheme.pdf](#) and [VEG 26 February 2018 ImportSpecialArrangements.pdf](#).

- The vendor (directly or via an intermediary) registers for the IOSS in a Member State (the MS of Identification or MSI). The vendor charges the VAT to the customer at the time of supply, defined as the time when the payment is accepted.
- These consignments are VAT exempt upon import; the IOSS EU VAT ID No is to be communicated to customs at the latest upon lodging of the import declaration.
- The vendor or his intermediary declares and pays VAT to the MSI on the basis of a monthly One Stop-Shop VAT return; the MSI transfers the VAT to all MS of Consumption (MSC).

The likely consequences with regard to customs are:

- The **IOSS VAT** ID No needs to be inserted in the import declaration; a new additional procedure code needs to be created allowing the declarant to claim the exemption from import VAT when the IOSS is used. The UCC DA and IA need to be amended in this respect.
- A database of IOSS VAT ID Nos with high availability and quick response times for electronic verification of these ID numbers at the time of importation needs to be created.
- Monthly listings of all imports in a MS under the IOSS must be produced containing the IOSS VAT ID Nos mentioned in import declarations during the month (of any MSI) and the total value of imports exempted during the month for each VAT ID No.
- For this purpose, Member States shall enter the information in an electronic system and shall grant automated access to other Member States. The MSI can check the consistency between the total value of sales declared in the monthly IOSS VAT return and the total value of imports during that month on this basis.
- The requirement to have an import declaration for all small parcels requires the availability of electronic source data and possibly the use of simplified customs declarations.

For imports above the value of €150 customs duties are due and a normal customs declaration (including available simplifications) is required under the existing rules.

6.4. Special arrangements when the One-Stop shop is not used

As of 1 January 2021 the VAT import exemption for consignments of a value up to €22 will also be abolished for importers not using the IOSS. A global monthly declaration and payment of import VAT will be permitted for consignments of goods up to a value of €150 besides the application of the normal rules on customs declarations.

The arrangement shall operate as follows and the UCC DA and IA must be amended to accommodate the following legal changes:

- Member States systematically allow the use of simplified customs declarations only containing data required for VAT collection (Article 166 UCC); the submission of the supplementary declaration can be waived (Article 167(2)(b) UCC). As an alternative, entry into the declarants records (Article 182 UCC) can be authorised.
- The Member State of importation allows the use of simplified customs procedures for monthly global declaration and payment of import VAT.
- Electronic information will have to be submitted to Customs before the consignments enter into the EU (this requires an amendment of Article 104 UCC DA).

- The waiver from the obligation to lodge a customs declaration (Article 141 UCC DA) will have to be removed as a consequence.¹⁴¹
- The scope of Article 220(2) UCC IA, which currently covers only postal consignments, could be extended to all consignments to allow that only VAT effectively collected is reported and paid under the VAT special arrangement.
- Member States allow systematically the use of deferred payment under Articles 110 and 111 UCC.
- VAT remains payable to the customs office of importation. This facilitation only applies when the customer is in the Member State of importation.
- The customer is liable to pay the import VAT. Such VAT shall be collected from the customer by the declarant (mainly the post or express couriers) who presents the goods to customs.
- The person lodging the declaration on behalf of the buyer must only pay VAT to the customs office of importation if VAT has effectively been collected from the consignee, i.e. to avoid burdensome refund procedures in case of refusal of the goods by the customer.
- Member States may allow the systematic use of the standard rate of VAT in order to facilitate the declaration process for the declarants (mainly the post or express couriers) and to prevent potential difficulties applying reduced VAT rates on a high number of small consignments.¹⁴²
- Returns of goods after delivery will follow a similar procedure as today (e.g. directly between the final consumer and the customs office).

6.5. Assessment and recommendations

The two problems identified by the Court of Auditors exist and will continue to exist, both under the current and, albeit to a lesser degree, under the future rules, namely declaring a wrong (i.e. too low) value and claiming an arrangement which is not applicable to the goods concerned. What will change is that mail order goods will always have to be explicitly declared and that the import VAT relief for commercial consignments will be abolished, so that some amount of VAT will always have to be paid. Furthermore, the need for an electronic declaration will reduce the amount of fraud currently taking place because automated risk analysis can be used, though the enormous import volume will make it impossible to control a high number of small consignments. From a financial risk perspective, small consignments should anyway not be subjected to a higher rate of controls than high value consignments. To some extent unscrupulous traders, who have so far treated the goods as if their value was below the €22 threshold, might now be tempted to declare them to be below the €150 threshold, as this avoids the payment of customs duties and reduces the amount of data to be declared in comparison to a normal customs declaration.

The risk that goods are declared as having been sent by a private person (though they have been sent by a commercial vendor) to a private person will continue to exist.

The cost of implementing these changes for the Commission, Member States, national administrations and economic operators are quite high and might exceed the additional customs

¹⁴¹ This is an example of legislation outside the customs area which makes it necessary to change customs provisions, and subsequently customs IT systems.

¹⁴² One could see this as a violation of Article III:2 GATT according to which WTO Members may not charge higher taxes on importation than on the domestic market. But the importer is, of course, free to lodge a regular customs declaration identifying each item, so that any reduced VAT rate can be applied to the item concerned.

duties and import VAT collected, at least in the short or medium term.¹⁴³ The introduction of the IT adjustments and systems generated by Council Directive (EU) 2017/2455 creates pressure and additional workload on top of the projects which are included in the current UCC IT work programme and the MASP. This might lead to delays for other projects and raises the issue of overall coordination beyond the committees and expert groups dealing with customs matters.

¹⁴³ Surprisingly, the [impact assessment](#) (SWD(2016) 379 final), p. 74, arrives at the conclusion that current costs are not increased or even reduced for economic operators. The additional costs to administrations and traders for setting up the necessary IT systems are not assessed.

7. Uniform application and other improvements of the UCC

Key findings

There are still a number of obstacles to a uniform application of the UCC, notably the use of the word 'may' instead of 'shall' in many instances in which the legislator did not intend to grant to Member States the discretion to refuse the use of a facilitation or option without assessing the merits of a request.

Furthermore, some UCC provisions need to be clarified, and transparency can be improved.

The impact assessment to the new customs programme¹⁴⁴ highlights problems of **insufficient uniformity** and efficiency underpinning the functioning of the Customs Union. The drivers at the root of this problem are:

- unequal capacity of customs administrations: unequal skills, which entails that some may be more advanced or agile than others to respond to the identified trends;
- unequal functionalities, which entails inconsistencies in the quality of processes and operations, with some having better performance than others;
- unequal electronic systems, which entails that some may be better equipped with electronic systems than others;
- uneven interpretation and implementation of the customs legislation and other legislation affecting customs;
- limited data visibility for customs data analysis carried out at national level;
- obstacles for cooperation between customs administrations and other stakeholders: strategic obstacles (divergence in terms of priorities and strategic objectives, competition, etc.), geographical obstacles (proximity to other Member States and ease of access in respect of third countries), legal obstacles (absence or inadequacy of a legal cooperation framework, uneven interpretation of customs rules, etc.) and administrative obstacles (different processes, interoperability, etc.).

The gradual introduction of common data elements, business models and system specifications will certainly lead to a more uniform application of the UCC insofar as authorisations, declarations and notifications are concerned. Nevertheless, a number of issues remain where traders in the EU have to face divergent practices or interpretations. Moreover, the experience with the new rules shows that further legal improvements should be considered. The following explanations should not be taken as a complete picture of all possible improvements.

7.1. Obstacles to uniform application

In drafting the UCC the attempt was made to clarify provisions which allow traders to lodge a request but the UCC provides a margin of discretion to national authorities, so that no divergent national legal provisions or practices can be maintained or enacted.¹⁴⁵ For example [emphasis added by the author], while Article 155(2)(2nd subparagraph) of the former Community Customs Code (hereafter: CC) reads: 'The customs authorities **may**, however, grant derogations from this rule if the replacement product has been supplied free of charge either because of a contractual or statutory obligation arising from a guarantee or because of a manufacturing defect', Article 261(4)(2nd subparagraph) UCC now reads: 'The customs authorities **shall**, however, waive the

¹⁴⁴ See [better regulation website](#).

¹⁴⁵ See on this point Limbach, pp. 147 et seq.

requirement set out in the first subparagraph if the replacement product has been supplied free of charge, either because of a contractual or statutory obligation arising from a guarantee or because of a material or manufacturing defect.'

Unfortunately, this approach has not been consistently followed with the result that certain Member States claim that they can avoid applying certain provisions which refer to decisions which the customs authorities 'may' take following a request. For example, Article 89 (3) UCC reads [emphasis added by the author]:

*'Where the customs authorities require a guarantee to be provided, it shall be required from the debtor or the person who may become the debtor. They **may** also permit the guarantee to be provided by a person other than the person from whom it is required.'*

When customs agents have complained that customs authorities in their country do not apply this possibility to customs agents and force them to use indirect representation, so that they become debtor, and thus only the first sentence of Article 89 (3) UCC is applied, the Commission has replied as follows:¹⁴⁶

'While the Union Customs Code (UCC) also foresees the possibility for a guarantee to be provided by a person other than the person from whom the guarantee is required (e.g. from the direct representative), it is for the relevant customs authority to decide whether to authorise this in accordance with national law. The guarantee is not intended to determine the type of customs representation. The latter is agreed between the importer and representative.'

This answer raises two issues:

- Can Member States really restrict or prohibit by national law options provided in the UCC in favour of economic operators?
- The choice between direct and indirect representation is greatly restricted if only the declarant and no other person can provide the guarantee, given that the question of who provides the required guarantee is an important criterion for the choice of the type of representation. It also affects the cost of representation (representatives normally charge a higher fee when they provide the guarantee for customs duties and taxes).

A similar problem exists for Austrian customs representatives which are forced by the customs authorities to use indirect representation when they declare goods for release for free circulation under customs procedure code 42; under this procedure import VAT is suspended because the goods are immediately moved to another Member State where VAT will be paid by the recipient who must be a company with a VAT ID No. A complaint by Austrian customs representatives has been rejected by the Commission with the argument that Austria was entitled to adopt national provisions restricting the use of this procedure to indirect representatives, thus forcing the customs representative to become a debtor.¹⁴⁷

Further examples of facilitations not authorised by certain Member States are:

- Article 148(5) UCC (movements of goods under temporary storage),¹⁴⁸
- Article 185(1) UCC (self-assessment),¹⁴⁹

¹⁴⁶ Answer to Parliamentary Question [E-004142/2017](#).

¹⁴⁷ Complaint CHAP(2014), reply TAXUD A1/AJ/mm D(2015) 4666436.

¹⁴⁸ 'Von der Möglichkeit, ab dem. 1. Mai 2016 - national oder mitgliedstaatenübergreifend - Beförderungen in der vorübergehenden Verwahrung zu bewilligen, wird in Deutschland vorerst kein Gebrauch gemacht.' E-VSF-Nachrichten N 11 2016 Nr. 46 of 11 March 2016, p. 11.

¹⁴⁹ 'Diese Verfahrensvereinfachung sieht vor, dass dem Zoll originär zustehende Aufgaben auf den Wirtschaftsbeteiligten übertragen werden können. Weder für die Einfuhr noch für die Ausfuhr konnte die Kommission bisher Anwendungsfälle identifizieren.' E-VSF-Nachrichten N 11 2016 Nr. 46 of 11 March 2016, p. 13.

- Article 20 UCC TDA (rejection of applications for centralised clearance due to a 'disproportionate administrative burden').¹⁵⁰

Again, it is doubtful whether a Member State is entitled to refuse the use of a customs simplification completely or partially without assessing the merits of an application solely because Union legislation uses the words 'customs authorities may authorise' (or 'reject'), apart from the fact that traders in the Member State concerned are treated worse than those in other Member States.

These questions could, of course, be clarified by the European Court of Justice (ECJ) which might, in specific cases, come to the conclusion that 'may' in fact means 'shall', but given the multitude of such provisions, it would take a long time to clarify all such cases in Court. The jurisprudence of the Court supports the view that, where Union legislation uses the term 'the customs authorities may' and a request is made, the authorities cannot outright refuse even to consider the request but are at least obliged to examine it, as the Court stated in Case C-430/08:¹⁵¹ (emphasis added):

*'Where the declarant applies for a revision, its application **must** be examined by the customs authorities, at least in relation to the question whether or not there is cause to carry out such a revision.'*

In this context the European Parliament has regretted that 'there is no system in place for identifying and monitoring differences in how customs authorities treat economic operators'.¹⁵²

In conclusion, **the Commission should analyse the cases of a non-uniform treatment of economic operators with regard to the rejection of applications or the reduction of available options, and take appropriate action.**

7.2. Unfinished business

Articles 35 and 37 UCC empower the Commission to introduce **binding valuation information** (BVI). A public consultation has led to the conclusion that the business community was in support of the introduction of BVI, and the next step will be an impact assessment in line with the better regulation principles. If a database is to be created along the lines of the BTI database, the resources and timeframe should be carefully analysed.

Article 124 UCC creates the possibility that a customs debt incurred due to an error can be extinguished under certain conditions. This is one of the highlights of the reform. Unfortunately, Article 124(1)(h) UCC does not cover the period prior to the time the goods were placed under a customs procedure. This provision therefore needs to be amended in order to also cover irregularities during the time when the goods were brought into the customs territory or while they were in temporary storage. This corresponds to point 7 of the EP resolution of 19 January 2017¹⁵³ in which it suggested that the Commission clarify that a customs debt incurred through non-compliance can also be extinguished in cases where it may be established by appropriate evidence that there is no attempt at deception, e.g. in the cases of temporary storage and the introduction of

¹⁵⁰ See, for example, the service instruction of the German General Customs Directorate of 2 May 2016, E-VSF-Nachrichten N 18 2016 Nr. 73 2: 'Die Zentrale Zollabwicklung wird bis auf Weiteres nur in dem Umfang umgesetzt, wie bereits jetzt das Verfahren der einzigen Bewilligung zulässig ist. Die bisherige Bewilligungspraxis bleibt unverändert. Auf S. 12, Kapitel B XVIII. und den Erlass des Bundesministeriums der Finanzen vom 19. Dezember 2008 GZ III B 1 - Z 1210/06/0001 DOK 2008/0701369 wird hingewiesen. Die Zentrale Zollabwicklung bleibt bis auf Weiteres nur mitgliedstaatenübergreifend zulässig.' The instruction from 2008 requests to reject applications for centralised import clearance lodged in Germany.

¹⁵¹ European Court of Justice, judgment of 14 January 2010, C-430/08, Terex Equipment, ECLI:EU:C:2010:15, paragraph 58.

¹⁵² Point 2 of [resolution of 16 May 2017](#) on the evaluation of external aspects of the customs performance and management as a tool to facilitate trade and fight illicit trade (2016/2075(INI)), OJ C 307, 30.8.2018.

¹⁵³ EP resolution of 19 January 2017 on tackling the challenges of the Union Customs Code implementation (2016/3024(RSP)), OJ C 242, 10.7.2018.

non-Union goods into the customs territory of the Union. The proposal of the Commission¹⁵⁴ falls short of this objective because it does not include irregularities which occurred before the goods were in temporary storage, i.e. during the time between entry in the customs territory and the presentation of the goods to customs.¹⁵⁵ Case C-414/02¹⁵⁶ illustrates such a situation:

An employee of Spedition Ulustrans introduced four textile winding machines into the Community customs territory. Arriving from Switzerland and driving a lorry registered in the name of Spedition Ulustrans, he went through the customs post at Höchst (Austria) without presenting to the customs the documents for the goods being carried.

In such a case the unlawful introduction of non-Union goods leads to the incurrance of a customs debt (Article 79(1)(a) UCC). But should there be no possibility to correct such an irregularity if there was no attempt at deception? Fortunately, there is still time to correct this omission. **The amendment of Article 124(1)(h) UCC should include irregularities which occurred during the time between entry in the customs territory and the presentation of the goods to customs.**¹⁵⁷

Practical experience will show that there is a need to extend the **possibilities of correcting errors** which did not constitute an attempt at deception; for example, the following situations are currently not, or not completely, covered by Art 86(6) or 124 UCC:

- the time limit for temporary storage (Article 149 UCC) is missed;
- an error occurred with regard to goods which were placed under inward or outward processing.

Rather than specifying individual situations in the UCC, it is recommended to **enhance the empowerment provisions** for delegated acts, in particular **Articles 88 and 126 UCC** in order to facilitate legal adaptations when practical problems become known.¹⁵⁸ This would be in the interest of legitimate business.

A further, related issue, concerns Article 173(3) UCC which reads:

'Upon application by the declarant, within three years of the date of acceptance of the customs declaration, the amendment of the customs declaration may be permitted after release of the goods in order for the declarant to comply with his or her obligations relating to the placing of the goods under the customs procedure concerned.'

Article 176(c) UCC empowers the Commission to adopt an implementing act laying down the procedural rules for the application of this provision. As such rules have not been adopted, Member

¹⁵⁴ [COM\(2018\) 259 final](#) 2018/0123 (COD).

¹⁵⁵ Recital 4 reads: 'Temporary storage should be added to the list of customs formalities covered by the provision that extinguishes a debt due to non-compliance in cases where there was no significant negative effect, no attempt at deception and the situation was subsequently regularised. For the purposes of extinguishment of debt in those cases, temporary storage should not be treated any different than a customs procedure. The corresponding delegation of power to the Commission to supplement the provision should also be amended to include temporary storage.'

¹⁵⁶ European Court of Justice, Judgment of 23 September 2004, Report 2004, I-8633, ECLI:EU:C:2004:551.

¹⁵⁷ It should also be analysed whether there is a need to extend this provision to irregularities which occur during the process of bringing goods out of the customs territory, given that Article 124(1)(k) UCC covers only situations in which the goods have actually left the customs territory; there may be other situations in which the goods do not leave that territory.

¹⁵⁸ See, for example, pending case C-226/18, OJ 2018 No C 268, p. 21, in which the European Court of Justice is asked whether Article 212a CCC (now: Article 86(6) UCC) encompasses the exemption from an anti-dumping and countervailing duty. Furthermore, the favourable treatment under inward procession is currently not covered by Article 86(6) UCC.

States are in doubt whether, and if so under which conditions, Article 173(3) UCC can be applied.¹⁵⁹ This provision is an important part of the customs modernisation intended by the UCC because it allows the declarant to correct errors (whether they have an impact on customs duties or not), whereas the previous rule (Article 78 CCC) left such corrections, even if they were requested by the declarant, to the discretion of customs authorities.¹⁶⁰ **The Commission** should therefore be encouraged to **prepare the necessary implementing act to Article 176(c) UCC**.

7.3. Transparency

With the introduction of the UCC it has become more difficult to find the relevant provisions:

- Before its introduction only two Regulations needed to be consulted, i.e. the Customs Code and the Customs Code implementing provisions.
- Since the entry into force of the UCC four Regulations and one Decision need to be consulted, i.e. the UCC, the UCC DA, the UCC TDA, the UCC IA and the IT work programme.

In order to support economic operators and national customs administrations, the Commission has provided on its website¹⁶¹ the following information:

- a summary of, and links to, the different legal acts,
- an overview of, and details on, the UCC IT work programme,
- guidance documents to various aspects of the legislation,
- an explanation of, and links to, the Business Process Models (BPM),
- an explanation of, and links to, the EU customs data model (EUCDM),
- UCC e-learning modules,
- links to Member States customs websites.

The eur-lex database provides regularly updated consolidated texts when one of these legal acts has been amended, though there is a certain time gap between the entry into force of an amendment and the publication of the consolidated text. Given the importance of these texts for economic operators and customs administrations, **the date of application of new rules should be postponed in such a way that there is sufficient time to make a new consolidated text available for the date on which the new rules become applicable, unless there is an urgency (which then would have to be justified)**.

All those working with the UCC rules will admit that perusing the different legal acts is cumbersome and time consuming and it may happen that a specific provision is overlooked because it is in a place where the reader did not expect it. Publishers have therefore created integrated versions in which a specific UCC Article is followed by the relevant UCC DA, TDA and IA provisions.¹⁶² This is certainly helpful, but there are sometimes provisions attached to a different UCC Article which are also relevant and might therefore be overlooked. The risk of missing a relevant provision can be further reduced by using an integrated database with a good search function. Such systems are, though not yet perfect, already on the market.¹⁶³ **The Commission should consider whether it can**

¹⁵⁹ The German Ministry of Finance has come to the conclusion that this provision cannot be applied: 'Mangels einer Durchführungsvorschrift der Kommission gilt der Erlass vom 30.Juli.2014 III B 1 - Z 0706/12/10001 DOK 2014/0360085 sinngemäß fort.' E-VSF-Nachrichten N 11 2016 Nr. 46 of 11 March 2016, p. 12.

¹⁶⁰ On the interpretation of this provision see European Court of Justice of 20 October 2005, C-468/03, Overland Footwear, ECLI:EU:C:2005:624.

¹⁶¹ See [TAXUD website](#).

¹⁶² For example UCC Practitioner's Edition, Mendel Verlag; UZK kompakt & praxisnah strukturiert, Bundesanzeiger Verlag.

¹⁶³ E.g. <https://www.custleg.eu> and <https://www.uccnavigator.com>.

make an integrated and immediately updated database of all UCC-related legal acts available for free on its website, as it does with the market access¹⁶⁴ and the TARIC database.¹⁶⁵

Drafts of future legislation are made available to economic operators through the European federations represented in the Trade Contact Group (TCG). For economic operators, including service providers, who do not have access to a trade federation (such as most customs attorneys and customs consultants, and many small and medium sized companies) it is difficult to be informed about future legal developments. However, they have to plan how to organise their, or their clients', customs business for the future. Referring them to the comitology and expert groups register or to the register of delegated acts¹⁶⁶ is no practical solution since a search in these registers is cumbersome and businesses might not even have any reason to be aware that a legal change could be forthcoming. Their work would be greatly facilitated if **DG TAXUD** would **place draft legal acts and meeting reports on its website or create a link to the relevant register for each document.**

¹⁶⁴ See [Commission website](#)

¹⁶⁵ See [TAXUD website](#)

¹⁶⁶ See [Commission website](#).

8. Conclusion and main recommendations

The UCC in combination with the delegated and implementing acts thereto as well as the Customs 2020 programme and its successor pave the way for the introduction of harmonised national systems and uniform pan-European IT systems. The complexity of the task and the time needed for the implementation of all the changes have been underestimated.

The lessons learned can avoid making the same mistakes in the future. This means looking for a way in which customs modernisation can be handled rather than merely extending the period for the introduction of the missing UCC IT systems and the upgrades of existing UCC IT systems. This is especially so given that, even beyond 2025, new customs IT systems will be introduced and existing systems will be upgraded. At the same time, the way in which the rules applicable before and after the deployment of a new system or the upgrade of an existing system are drafted should be improved, and proposals for legal changes affecting existing or future IT systems should be accompanied by a cost-benefit analysis and a realistic planning of the implementation time needed.

Furthermore, there are many other IT systems which are not based on the UCC but on other customs legislation. It is important to maintain a common view of all these systems, as they might be inter-related and they all call on limited available resources. The single window project is an example of an IT system which includes customs legislation and agencies other than customs and is thus particularly complex. All this requires proper planning and governance.

Developing 28 national import and export declaration systems in parallel based primarily on uniform Union legislation cannot be justified in economic terms. The Commission and Member States should therefore seek a better business model under which the work is shared or centralised.

Also, the possibility of doing less but more efficiently should seriously be considered, given that available resources are limited. This raises the issue of determining the priority of the various projects. Traders will reap benefits in particular from the implementation of centralised clearance and a single window. When traders are denied benefits envisaged in Union legislation due to national policy considerations, the Commission should take the necessary steps in order to ensure uniform treatment in the single market.

Given the multitude of expert groups and committees dealing with customs issues, the Commission should facilitate the access to the minutes of, and documents submitted to, these groups and committees in the interest of transparency.

Economic operators need up-to-date consolidated legal texts which should be made available at the latest when new provisions become applicable. As the UCC and the related delegated and implemented acts are scattered over various regulations, ideally an integrated database interlinking Articles of the UCC and related legal acts as well as guidance documents explaining the meaning of a specific Article should be made available. This would facilitate both the correct and the uniform application of Union customs legislation.

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This European Implementation Assessment examines the implementation of the Union Customs Code, which entered into force in May 2016. While taking into account the transitional arrangements and delays related to IT systems, it assesses whether the Union Customs Code is being properly implemented for the benefit of European consumers, businesses and budgets.

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