

# A Comparative Analysis of Member States' Customs Authorisation Procedures for the Entry of Products into the European Union





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## **Abstract**

Implementation of EU customs legislation with regard to areas such as risk management and impact management measures differs across Member States. National systems also diverge in the extent to which they have been updated in line with the UCC. Furthermore, significant differences in sanctions regimes create barriers to trade and distortions in the Single Market. This study makes recommendations to Member States and the EU to address some of the weaknesses of the current customs controls and sanctions regime.

This document was provided by the Policy Department for Economic, Scientific and Quality of Life Policies at the request of the committee on Internal Market and Consumer Protection (IMCO).

This document was requested by the European Parliament's committee on Internal Market and Consumer Protection (IMCO).

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Original: EN

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Manuscript completed: October 2022

Date of publication: December 2022

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This document is available on the internet at:

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For citation purposes, the publication should be referenced as: Hausemer P., Bosch Chen I. and Patroclou N., 2022, *A Comparative Analysis of Member States' Customs Authorisation Procedures for the Entry of Products into the European Union*, Publication for the committee on Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg.

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## LIST OF ABBREVIATIONS

<b>AAD&amp;A</b>	Belgian Customs Authority “Administratie der Douane en Accijnzen”
<b>AADE</b>	Greek Independent Public Revenue Authority
<b>AAR</b>	Poland’s Automatic Risk Analysis
<b>AEO</b>	Authorised Economic Operators
<b>AES</b>	Automated Export System
<b>AFIS</b>	Anti-Fraud Information System
<b>AIS</b>	Automatic Import System
<b>AEOC</b>	Authorisation For Customs Simplification
<b>AEOS</b>	Authorisation For Safety And Security
<b>ATLAS</b>	Germany’s Automated Tariff and Local Customs Clearance System
<b>BEUC</b>	European Bureau Of Consumers' Unions (Bureau Européen des Consommateurs)
<b>CHED certificates</b>	Common Health Entry Document For Consignments Of Plants, Plant Products And Other Objects Certificates
<b>CELBET</b>	Customs Eastern And South-Eastern Land Border Expert Team
<b>CAP</b>	Common Agricultural Policy
<b>CDS</b>	EU Customs Authorisation Management System
<b>CRM</b>	Road Freight Transport Documents
<b>CRMS</b>	Common Customs Risk Management System
<b>DG SANTE</b>	Directorate-General For Health And Food Safety
<b>DG CLIMA</b>	Directorate-General For Climate Action
<b>DG TAXUD</b>	Directorate-General For Taxation And Customs Union
<b>ECA</b>	European Court Of Auditors
<b>EEA</b>	European Economic Area



<b>EEC</b>	European Economic Community
<b>ENS</b>	Entry Summary Declaration
<b>EORI NUMBER</b>	Economic Operators Registration And Identification Number
<b>EP</b>	European Parliament
<b>EU</b>	European Union
<b>EUR</b>	Euro
<b>EU SWE-C</b>	EU Single Window Environment For Customs
<b>ICS system</b>	Import Control System
<b>ICS2 system</b>	Import Control System 2
<b>IP</b>	Intellectual Property
<b>FRC Decision</b>	Financial Risks Criteria and Standards Implementing Decision
<b>H7</b>	Super Reduced Dataset For Low Value Consignment Form
<b>MSA</b>	Market Surveillance Authorities
<b>MEP</b>	Member of the European Parliament
<b>NCTS2</b>	New Computerized Transit System
<b>OLAF</b>	European Anti-Fraud Office
<b>PLDA</b>	Belgium's 'PaperLess Douane en Accijnzen' IT system
<b>PUESC</b>	Poland's Platform for Electronic Treasury and Customs Services
<b>REACH</b>	Registration, Evaluation, Authorisation And Restriction Of Chemicals
<b>RIFs</b>	Risk Information Forms
<b>SARC</b>	France's National Risk Analysis and Targeting Department
<b>SCA</b>	Poland's Strategic Analysis Centre
<b>SMEs</b>	Small and Medium Sized Enterprises

<b>UCC</b>	Union Customs Code
<b>UK</b>	United Kingdom
<b>US</b>	United States
<b>VAT</b>	Value Added Tax

## EXECUTIVE SUMMARY

### Background

The European Union (EU) is the world's largest trading bloc and the biggest trading partner for 80 countries. In 2020, the EU's imports reached EUR 1,714,224 million in financial value and customs duties levied on these goods amounted to EUR 21,400 million, or 13% of total revenue to the EU budget.

These figures highlight the importance of having an efficient flow of goods entering the Customs Union, as well as the need for robust controls. The European Parliament has stressed multiple times the need to guard against unfair competition resulting from the entry of goods from third-countries that are not compliant with EU legislation.

### Aim

The aim of the study is to:

- compare how current customs control formalities are carried out in the EU Member States;
- explore possibilities to eliminate or mitigate weaknesses in the entry points where these are detected;
- point at best practices that would be beneficial if they were applied throughout the Customs Union; and
- include clear key findings, recommendations and conclusions.

### Key Findings

Divergences in the practices of Member States, including in performing controls, can create non-tariff barriers such as differences in the time needed for a control. This can lead to distortion of trade flows and jeopardise the Single Market. The need for a resilient EU customs border has been further emphasized by recent geopolitical events, such as Brexit or Russia's invasion of Ukraine.

Customs authorities have to balance the need to facilitate fast and seamless import procedures with the requirement to perform robust customs controls. Indeed, the EU's customs border protects the Single Market from risks posed by third country products that are non-compliant with EU standards. Once a good is customs cleared for free circulation in the Single Market, either by duties paid or guarantees provided (as stipulated in Article 195 of the UCC), it can be moved within the EU, without further controls to be performed or duties to be paid.

Effective controls at the EU border are therefore essential to ensure goods that are coming in do not have an unfair competitive advantage over EU industry and labour, are safe for consumers, do not infringe upon EU environmental standards and maintain a level playing field among business across Member States.

This need is also relevant considering the challenges the EU faces as a result of the shifting geopolitical context (e.g. the United Kingdom's withdrawal from the EU (Brexit) and the rise in exports from China and Asia more broadly). The customs border contributes to ensuring that EU standards remain protected despite such shifts and plays an essential role in preventing the entry of banned imports.

There are several ways in which Member States' practices differ when it comes to customs practices:

1. Processing of customs declarations takes place through different national IT systems. While the entry summary declaration (ENS) and notification of arrival are registered in the EU-wide Import

Control System (ICS), the customs declaration itself has to be submitted to Member States' IT system which differs across the EU-27<sup>1</sup>.

2. While there is common overarching EU customs legislation – the Union Customs Code (UCC) and the related Financial Risk Criteria and Standards Implementing Decision (FRC) – implementation differs, in some instances widely, across Member States. The FRC Decision lacks guidance on impact management and on prohibitions and restrictions. There is also limited guidance on Risk Information Forms (RIFs). Furthermore, the FRC Decision is sometimes unclear in its definition of risk, which means Member States make use of risk signals in different ways and do not prioritise some goods identified as risky.
3. The sanctions and infringements regime remains largely a national competence, with EU legislation providing limited guidance on how Member States should implement sanctions. As a result, sanctions regimes and sanctions levels vary significantly across the EU. While some Member States apply a mixed regime of administrative and criminal sanctions depending on the severity of the infringement, others only provide for criminal sanctions.

Market and technology trends, as well as the above differences across Member States lead to weaknesses in the current customs system that need to be addressed.

First of all, the increase in trade overall and the rise in e-commerce (accelerated by the COVID-19 crisis) in particular have meant a larger workload for customs officials which, in turn, leads to difficulties in performing controls adequately.

Second, while a certain degree of flexibility in customs practices is positive considering the different risks that Member States face, it is important that this does not create *weak* entry points into the EU Single Market. For instance, differences in Member States' weight thresholds can be identified by fraudsters who will then import to these entry points below such thresholds to avoid detection. Similarly, as Member States differ in the percent of controls that are performed for certain risk criteria, fraudsters can identify areas where fewer controls are performed as a whole to minimise the risk of being caught.

Third, widely differing national lists of prohibited and restricted goods create costs and legal uncertainty for entities trading in multiple Member States and may lead to jurisdictional arbitrage, where importers choose one Member State over another to avoid administrative burden.

Fourth, there are differences in IT systems used for customs declarations and several Member States have not implemented the import clearance system as specified in the UCC. Relatedly, several Member States do not use advanced data tools to gather a comprehensive picture of the risks involved in customs declarations.

Fifth, there is a lack of appropriate data being collected and analysed. The study found limited data sharing between Member States for risk analysis, particularly through RIFs. On the other hand, RIFs that are provided are often unclear. Another issue highlighting the problem of lack of appropriate information being gathered is related to low-value consignments. As currently foreseen in the UCC, declarations for consignments below EUR 150 do not provide enough data for customs authorities to perform risk analysis.

Finally, when it comes to sanctions, in the absence of clear EU level rules, Member State practices diverge even more significantly. For instance, one infringement can be treated in multiple ways by different Member States, including through administrative sanctions, criminal sanctions, or a mix of

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<sup>1</sup> It should be noted that regardless of Brexit, Northern Ireland still applies EU customs legislation.

both. This can create distortions in the Single Market as economic operators give preference to Member States with less severe punishment for minor mistakes. Indeed, small criminal offences in some Member States can prevent entities from obtaining Authorised Economic Operator (AEO) status or contribute to them losing such status. Furthermore, sanctions differences mean fraudsters can target Member States where they are likely to face less severe sanctions if caught.

### Recommendations

Based on the above findings, the study proposes the following 12 recommendations to improve the current regime and to build on best practices. Each of these recommendations is developed further in the study.

1. Member States should accelerate progress with updating IT systems in line with the Union Customs Code and its implementation plan.
2. The EU should consider implementing a single unified customs control mechanism.
3. The EU should implement a centralised risk analysis system to assess risk across Member States.
4. The EU should ensure information on risk is shared among, and made use of by, Member States' control procedures.
5. The EU should have access to data received by Member States from economic operators.
6. Member States and the EU should integrate data from commercial sources and e-commerce platforms rather than relying solely on customs declarations.
7. The EU should work to harmonise the national lists of prohibitions and restrictions.
8. The EU should consider transitioning away from a transaction based approach to customs towards a system-based approach which includes a reformed AEO status.
9. The EU should reform the UCC to allow more data to be gathered within the 'Super reduced dataset for Low value consignment form (H7)'.
10. The EU should provide further guidance for Member States when it comes to risk management.
11. A renewed effort should be made to harmonise aspects of national sanctions and infringements regimes, with all Member States adopting a mixed system of administrative and criminal punishments.
12. The EU should consider establishing a European Customs Agency to put these recommendations into practice and support even implementation.

## 1. INTRODUCTION

### 1.1. Background

**The EU is the world's largest trading bloc and it is the biggest trading partner for 80 countries**<sup>2</sup>. In 2020, the EU's imports reached EUR 1,714,224 million in financial value and customs duties levied on these goods amounted to EUR 21,400 million, or 13% of total revenue to the EU budget. The largest share of imports into the EU come from China (EUR 383,397 million in 2020, representing 22.4% of total imports) followed by the United States (US) (EUR 202,619 million in 2020, representing 11.8% of total imports).

**These figures highlight both the importance of having an efficient flow of goods entering the Customs Union and the need for robust controls.** The EU Customs Union sets a standard tariff for customs duties for imports entering the EU from any point of entry across all EU Member States and it foresees no duties for trade between EU countries. Once the import clearance has taken place (most often when the good first enters the Single Market), the good can be moved within the EU with no further customs controls to be performed or duties to be paid<sup>3</sup>.

**It should also be borne in mind that Value Added Tax (VAT) rules on imports refer to customs legislation in many respects** (for example, the tax base is the customs value of the goods, with some additions). This means that a failure in customs controls can have implications for VAT on imports, as illustrated by the case brought by the European Commission against the United Kingdom (UK)<sup>4</sup>.

**Prior to release of the goods, customs controls are performed on selected goods** to verify, inter alia, whether they have been correctly declared and to ensure the imports also comply with EU safety and security legislation, prohibitions and restrictions, and Common Agriculture Policy (CAP) rules<sup>5</sup>. Customs authorities have to balance the need to facilitate fast and seamless import procedures with the requirement to perform robust customs controls. In addition to protecting EU consumers from hazardous products, the controls protect EU industry and jobs by ensuring a level playing field for competition between domestic and imported goods.

**The European Parliament (EP) has stressed multiple times the need to guard against unfair competition resulting from the entry of goods from third countries that are not compliant with EU legislation.** For example, noting the need to develop the EU Customs Union and its governance, in a 2019 resolution the EP highlighted the importance of implementing the UCC "to safeguard EU own resources, in particular customs duties, and national fiscal interests, but also to safeguard European consumers and fair competition in the internal market"<sup>6</sup>. Other examples include a 2016 resolution in which MEPs stated the need to protect the EU against unfair competition from imports of low-cost rail

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<sup>2</sup> European Commission, *EU position in world trade*. Available at: [https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/eu-position-world-trade\\_en#:~:text=The%20EU%20is%20the%20world's, trading%20partner%20for%2080%20countries](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/eu-position-world-trade_en#:~:text=The%20EU%20is%20the%20world's, trading%20partner%20for%2080%20countries).

<sup>3</sup> European Commission, 2020, *EU Customs Union – Unique in the world*. Available at: [https://taxation-customs.ec.europa.eu/customs-4/eu-customs-union-facts-and-figures/eu-customs-union-unique-world\\_en](https://taxation-customs.ec.europa.eu/customs-4/eu-customs-union-facts-and-figures/eu-customs-union-unique-world_en).

<sup>4</sup> Judgment of the Court of Justice of the European Union (CJEU) of 8 March 2021, case C-213/19, Commission v United Kingdom of Great Britain and Northern Ireland, ECLI:EU:C:2022:167. Available at: <https://curia.europa.eu/juris/liste.jsf?num=C-213/19>.

<sup>5</sup> European Commission. *Customs Controls: Implementing and enforcing EU legislation on import and export from and to non-EU countries*. Available at: [https://taxation-customs.ec.europa.eu/customs-4/introduction-customs-controls\\_en](https://taxation-customs.ec.europa.eu/customs-4/introduction-customs-controls_en).

<sup>6</sup> European Parliament, 2019, *European Parliament resolution of 14 February 2019 on strengthening the competitiveness of the Internal Market by developing the EU Customs Union and its governance* (2018/2109(INI)), OJ C 449, 23.12.2020, p. 170-175. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52019IP0133>.

supplies, citing issues of third country dumping and government subsidies on such imports<sup>7</sup>, and a resolution in 2017 stressing the need for robust anti-dumping rules to ensure EU industry and jobs are protected against third countries' state interference in industry, and lack of compliance with international labour, environmental and fiscal standards<sup>8</sup>.

**Divergences in the practices of Member States including in performing controls lead to a distortion of trade flows and jeopardise the functioning of the Single Market.** Furthermore, as noted in the EU Customs Action Plan<sup>9</sup>, weaknesses in the customs border can be taken advantage of by unscrupulous economic operators who can channel goods to these entry points to avoid detection. This is an issue that has also been stressed by the EP noting that "divergences in the level and quality of controls, customs procedures, and sanctions policies at the EU's points of entry into the Customs Union often result in distortion of trade flows, feeding the problem of 'forum shopping' and putting at risk the integrity of the Single Market"<sup>10</sup>. These issues can lead to unfair competition with non-compliant third country imports.

**In this context, the EP has highlighted the need to guarantee harmonised and uniform customs controls at all points of entry and to seek to harmonise administrative sanctions**<sup>11</sup>. It has furthermore argued for a more centralised approach to managing customs, suggesting "to consider transferring the responsibilities of customs authorities from national to EU level as regards ensuring harmonised treatment at all EU points of entry, monitoring the performance and activities of customs administrations, and collecting and processing customs data"<sup>12</sup>.

**The need for a resilient EU customs border has been further emphasized considering recent geopolitical events**, such as the UK's withdrawal from the EU ('Brexit') or the Russian invasion of Ukraine. With the UK being a major trading partner of EU Member States, the country's exit from the Customs Union means that a large number of additional imports are now subject to EU customs control. In this context the EP has highlighted the importance of ensuring the customs system has no loopholes that would permit the entry of non-compliant imports<sup>13</sup>. Part of the effort to protect the Single Market resulted in establishing the Northern Ireland Protocol, which means that customs checks for imports coming from Great Britain into Northern Ireland are performed at ports in Northern Ireland, whilst maintaining the status quo of no customs checks between Northern Ireland and the Republic of Ireland<sup>14</sup>.

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<sup>7</sup> European Parliament, 2016, *Press Release: Rail equipment imports: halt unfair competition from non-EU countries, urge MEPs*. Available at: <https://www.europarl.europa.eu/news/en/press-room/20160603IPR30214/rail-equipment-imports-halt-unfair-competition-from-non-eu-countries-urge-meps>.

<sup>8</sup> European Parliament, 2017, *Press Release: More robust anti-dumping rules to defend EU industry and jobs*. Available at: <https://www.europarl.europa.eu/news/en/press-room/20170620IPR77802/more-robust-anti-dumping-rules-to-defend-eu-industry-and-jobs>.

<sup>9</sup> European Commission, 2020, *Action Plan Taking the Customs Union to the Next Level: a Plan for Action*, COM(2020) 581 final. Available at: [https://taxation-customs.ec.europa.eu/document/download/612d7854-7c3f-4bf8-a580-6029fc816024\\_en?filename=customs-action-plan-2020\\_en.pdf](https://taxation-customs.ec.europa.eu/document/download/612d7854-7c3f-4bf8-a580-6029fc816024_en?filename=customs-action-plan-2020_en.pdf).

<sup>10</sup> European Parliament, 2019, *European Parliament resolution of 14 February 2019 on strengthening the competitiveness of the Internal Market by developing the EU Customs Union and its governance* (2018/2109(INI)), OJ C 449, 23.12.2020, p. 170-175. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52019IP0133>.

<sup>11</sup> Ibid.

<sup>12</sup> European Parliament, 2018, *European Parliament resolution of 4 October 2018 on fighting customs fraud and protecting EU own resources*, OJ C 11, 13.1.2020, p. 50-52. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018IP0384>.

<sup>13</sup> European Parliament, 2019, *European Parliament resolution of 14 February 2019 on strengthening the competitiveness of the Internal Market by developing the EU Customs Union and its governance* (2018/2109(INI)), OJ C 449, 23.12.2020, p. 170-175. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52019IP0133>.

<sup>14</sup> Edgington, T., 2020, *Brexit: What is the Northern Ireland Protocol?*, BBC. Available at: <https://www.bbc.com/news/explainers-53724381.amp>.

**The 2022 Russian invasion of Ukraine also presents challenges for the EU customs border system,** including i) management of importing the personal belongings of Ukrainian refugees, and ii) enforcement of economic sanctions against Russia and Belarus.

## 1.2. Aim of the study

The aim of the study is to:

- compare how current customs control formalities are carried out in the EU Member States;
- explore possibilities to eliminate or mitigate weaknesses in the entry points where these are detected;
- propose improvements to the current infringements and sanctions regime;
- point out good practices that would be beneficial if they were applied throughout the Customs Union; and
- include clear key findings, recommendations and conclusions.

It is not the purpose of this document to provide a comprehensive mapping of customs control and sanctions practices in all EU Member States, but rather to highlight key differences across countries, identify some of the weaknesses in how the current customs regime is implemented based on a selection of Member States, and draw conclusions and suggestions for future improvement.

## 1.3. Methodological approach to the study

**The findings of this study are based on a combination of desk research and stakeholder consultation.** The latter included a survey of national authorities and interviews with EU officials, national authorities and representatives of the private sector involved in importing goods into the EU. At national level, the research focused on 9 country cases (Belgium, Lithuania, France, Germany, Greece, Hungary, Netherlands, Poland and Spain), but also included customs officials from other Member States (Ireland, Lithuania and Slovakia) as part of the EU level research. Private sector stakeholders represented the logistics industry involved in moving goods from third countries into the Single Market as well as European industries that frequently import goods from outside the EU.

Several issues were encountered in the stakeholder consultation process:

- **Lack of knowledge among national authorities of difficulties encountered by entities involved in importing into the EU in their country as well as in other EU Member States.** Furthermore, there was a reluctance among some national authorities to openly discuss weaknesses in the customs systems highlighted by experts, literature or private sector stakeholders. To overcome these difficulties, the interview programme was extended to experts and private sector operators, who have practical knowledge of customs formalities.
- **Difficulty in securing interviews due to unavailability of many stakeholders during the summer period.** Nonetheless, the number of interviews ultimately carried out allowed for key trends, issues and good practices to be identified, and the diversity of participants ensures that the study covers a wide range of different perspectives.



## 2. COMPARISON OF CUSTOMS CONTROL FORMALITIES IN THE EU MEMBER STATES

### KEY FINDINGS

When it comes to the customs control procedures, there are several ways in which Member States practices differ. In particular:

- Processing of customs declarations takes place through different national IT systems. While the Entry Summary Declaration (ENS) and notification of arrival are registered in the EU-wide ICS system, the customs declaration itself has to be submitted to the Member States' IT system which differs across the EU-27.
- While there is common overarching EU customs legislation, its implementation differs, in some instances widely, across Member States. The UCC and the related Financial Risk Criteria and Standards Implementing Decision (FRC Decision) lack guidance on impact management and on prohibitions and restrictions. Furthermore, the FRC Decision is sometimes unclear in its definition of risk, which means Member States make use of risk signals in different ways and do not prioritise some goods identified as risky.

Furthermore, national authorities appear to be largely unaware of the differences that exist between Member States.

This chapter presents the legal background for customs control in the EU before analysing how these rules are translated into practice at the EU's customs borders in the Member States.

### 2.1. Customs rules in the EU

**Since the creation of the EU Customs Union, customs legislation is exclusively under EU competence**, and as a consequence, Member States apply a harmonised tariff level for goods entering the Single Market and implement shared rules governing the handling of goods being imported into or exported out of the EU. At the same time, **applying these rules and performing controls to ensure compliance is the Member States' responsibility**.

The first codification of the customs rules (which were previously scattered over many specific Directives and Regulations) occurred in 1992 with **Council Regulation (EEC) No 2913/92** establishing the Community Customs Code. In 2013, the **Union Customs Code (UCC)** was adopted as Regulation (EU) No 952/2013<sup>15</sup>, which established a new framework seeking to harmonise, simplify and reduce the number of customs formalities required for imports into the EU, as well as decrease compliance costs for business. It also envisioned the creation of electronic systems to enhance the efficiency of customs formalities. Important developments arising out of the UCC include the introduction of centralised clearance and a system to recognise Authorised Economic Operators (AEOs)<sup>16</sup>. **Centralised clearance** allows an economic operator to lodge a customs declaration in the Member State in which it is established for the goods which are presented at another customs office within the customs territory of the Union.

<sup>15</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast), OJ L 269, 10.10.2013, p. 1–101. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R0952-20200101>.

<sup>16</sup> Lux, M., 2018, *Union Customs Code: State of play*, European Parliamentary Research Service. Available at: [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_STU\(2018\)621854](https://www.europarl.europa.eu/thinktank/en/document/EPRS_STU(2018)621854).

In line with the UCC's requirements, the European Commission adopted in 2018 the **Financial Risks Criteria and Standards Implementing Decision** (the "FRC Decision") to help harmonise Member States' selection of imports for control. The FRC Decision (which is confidential and has not been published) aims to harmonise national procedures for risk analysis and selection for controls. Alongside the FRC decision, DG TAXUD and a working group of national customs authorities have published a non-binding guidance document<sup>17</sup>. However, the FRC Decision does not specify how Member States should make use of control results, nor the requirements for import declarations presented to Member State customs authorities, and it does not inform the documentary and/or physical inspections carried out by customs authorities.

**Alongside the UCC there is a Work Programme which seeks to further digitalise, enhance the efficiency and effectiveness of, and better connect existing customs IT systems.** Previous reports have found that there have been difficulties with upgrading the clearance systems in several Member States<sup>18, 19, 20</sup>. Implementation of plans, such as the centralised import clearance and the EU Single Window Environment for Customs (EU SWE-C) for declarations and documentation, missed the 2020 deadline (the new deadline is set for 2025)<sup>21</sup>. The EU SWE-C<sup>22</sup> aims at allowing the processing of different non-customs formalities (to ensure compliance with EU legislation beyond customs policy, such as environmental standards and health standards) in a fully digital and automated manner, thus reducing administrative burden on economic operators and harmonising the processes of Member States customs administrations. Centralised clearance and national Single Windows are, however, not currently fully available, as the necessary electronic systems are not yet in place. In the case of the Single Window, it is currently voluntary for Member States but the recently adopted regulation<sup>23</sup> will make it mandatory for a number of non-customs formalities. **These issues were recently highlighted in a Report by the Wise Persons Group on the Reform of the EU Customs Union<sup>24</sup>, which advocates the "urgent need for structural change"<sup>25</sup>.**

<sup>17</sup> European Court of Auditors, 2021, *Special Report 04. Customs Controls : Insufficient Harmonisation Hampers EU Financial Interests*. Available at: <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=58256>.

<sup>18</sup> Lux, M., 2018, *Union Customs Code: State of play*, European Parliamentary Research Service. Available at: [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_STU\(2018\)621854](https://www.europarl.europa.eu/thinktank/en/document/EPRS_STU(2018)621854).

<sup>19</sup> European Court of Auditors, 2018, *Special Report: A series of delays in Customs IT systems: what went wrong?* Available at: <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=47201>.

<sup>20</sup> BusinessEurope, 2020, *BusinessEurope's priorities for EU customs policy*, Position Papers. Available at: <https://www.besnesseurope.eu/publications/besnesseuropes-priorities-eu-customs-policy>.

<sup>21</sup> Lux, M., 2018, *Union Customs Code: State of play*, European Parliamentary Research Service. Available at: [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_STU\(2018\)621854](https://www.europarl.europa.eu/thinktank/en/document/EPRS_STU(2018)621854).

<sup>22</sup> European Commission, 2022, *The EU Single Window Environment for Customs*. Available at: [https://taxation-customs.ec.europa.eu/eu-single-window-environment-customs\\_en#:~:text=The%20%E2%80%9CEU%20Single%20Window%20Environment,regulatory%20authorities%20across%20policy%20domains](https://taxation-customs.ec.europa.eu/eu-single-window-environment-customs_en#:~:text=The%20%E2%80%9CEU%20Single%20Window%20Environment,regulatory%20authorities%20across%20policy%20domains).

<sup>23</sup> Regulation (EU) 2022/2399 of the European Parliament and of the Council of 23 November 2022 establishing the European Union Single Window Environment for Customs and amending Regulation (EU) No 952/2013, OJ L 317, 9.12.2022, p. 1–23. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R2399>.

<sup>24</sup> Wise Persons Group on the Reform of the EU Customs Union, 2022, *Putting more union in the European customs: Ten proposals to make the EU Customs Union fit for a Geopolitical Europe*, Brussels. Available at: [https://taxation-customs.ec.europa.eu/system/files/2022-03/TAX-20-002-Future%20customs-REPORT\\_BIS\\_v5%20\(WEB\).pdf](https://taxation-customs.ec.europa.eu/system/files/2022-03/TAX-20-002-Future%20customs-REPORT_BIS_v5%20(WEB).pdf). It states that "the vast majority of – if not all – stakeholders interviewed for this report complain about a systematic absence of common implementation of customs measures, different control practices across border entry points, both within and across Member States, differences in control priorities, differences in investigative capacities (control deliveries, undercover activities), and differences in methods and sanctions for non-compliance" (at p. 21).

<sup>25</sup> Section 5 of the Report, p. 23-25, describes the areas deemed to be most in need of repair.

Box 1: Recommendations of the Wise Persons Group on the Reform of the EU Customs Union

**Recommendation 1:** “The European Commission should by the end of 2022 table a package of reform proposals, including of the UCC, implementing the recommendations contained in this report”.

**Recommendation 2:** “A new approach to data: rather than relying principally on customs declarations, introduce a new approach to data, focussed on obtaining better quality data based on commercial sources, ensuring it is cross-validated along the chain, better shared among administrations, and better used for EU risk management. Clarify which private actors – including e-commerce platforms - must provide data, with costs for non-compliance. Provide businesses with a single data entry point for customs formalities and a single window/portal.”

**Recommendation 3:** “Set up a comprehensive framework for cooperation, including data sharing between European Customs, with Market Surveillance Authorities, other Law Enforcement bodies and tax authorities for a comprehensive management of risks at EU level.”

**Recommendation 4:** “A European Customs Agency should be set up to provide EU value-added services to the Commission and the Member States. Its governance should respect the existing allocation of competences.”

**Recommendation 5:** “Introduce a System-Based Approach centred on a reformed Authorised Economic Operator scheme expanded in scope, multi-layered and more effective, to better facilitate trade with confidence.”

**Recommendation 6:** “Introduce a new ABC model (Authorised, Bonded or subject to greater Control), in which operators would seek Authorised Economic Operators status to gain commercial access to the EU market. Failing this, a bond provided to an AEO, against which the EU authorities may levy a significant charge for mis-declaration or rule breaches, may allow access to the market. Small non-commercial consignments would continue to be sent through the usual processes, but without priority and subject to a level of controls that reflects their “non-trusted” status.”

**Recommendation 7:** “Remove the customs duty exemption threshold of EUR 150 for e-commerce and provide some simplification for the application of Customs duties rates for low value shipments.”

**Recommendation 8:** “Implement a package of measures to green EU Customs”

**Recommendation 9:** “Properly resource, skill and equip Customs to ensure their capacity to fulfil their missions.”

**Recommendation 10:** “Introduce an annual Customs Revenue Gap Report based on an agreed methodology and data framework to better manage Customs revenues collection.”

Source: Report by the Wise Persons Group on the Reform of the EU Customs Union: PUTTING MORE UNION IN THE EUROPEAN CUSTOMS Ten proposals to make the EU Customs Union fit for a Geopolitical Europe.

**As part of the Multiannual Financial Framework 2021-2027, EUR 2 billion is allocated to improve IT systems** (as well as provide new equipment for customs authorities)<sup>26</sup>. In addition, the EU Customs Action Plan from 2020 outlined several key initiatives under four areas of focus:

<sup>26</sup> Wise Persons Group, 2022, *PUTTING MORE UNION IN THE EUROPEAN CUSTOMS Ten proposals to make the EU Customs Union fit for a Geopolitical Europe*, European Commission. Available at: [https://taxation-customs.ec.europa.eu/system/files/2022-03/TAX-20-002-Future%20customs-REPORT\\_BIS\\_v5%20\(WEB\).pdf](https://taxation-customs.ec.europa.eu/system/files/2022-03/TAX-20-002-Future%20customs-REPORT_BIS_v5%20(WEB).pdf).

- Risk Management,
- Managing e-commerce,
- Promoting compliance, and
- Customs authorities acting as one.

In the framework of these initiatives, **the European Commission highlighted its plans for a 'new analytics hub' to improve the availability and use of data in customs**, which would improve risk management, customs clearance, anti-fraud efforts and allow the European Commission to identify issues in the customs procedures of the Member States. Similarly, the Commission proposed an **EU Single Window Environment for Customs**, which is intended to allow exchange and joint processing of customs information between customs authorities, to improve their risk assessment activities and give access to traders to verification of non-customs formalities related to imports (e.g. non-customs formalities related to compliance with safety and environmental standards). Furthermore, in line with the goals of the UCC, the action plan highlights the Commission's aim to provide customs authorities with **up-to-date customs control equipment**, including financial assistance for training of officials and development of electronic systems. Amongst other proposed initiatives, a 'reflection group' consisting of national authorities and business stakeholders is envisaged to assess the training of customs authorities, review the data and electronic systems in use and prepare for potential future crises.

## 2.2. How customs controls are performed

**In order for a company to import a good as an economic operator, it must apply for an Economic Operators Registration and Identification number (EORI number).** Goods intended to enter the EU face customs clearance checks which verify, inter alia, whether there are restrictions or prohibitions on the good for import, whether there are applicable customs duties, and whether they meet environmental, health and safety standards<sup>27</sup>.

**As noted above, according to the UCC economic operators can apply to be recognised as AEOs to be able to import goods under simpler administrative requirements.** There are two AEO authorisations that traders can apply for: authorisation for customs simplification (AEOC), and authorisation for safety and security (AEOS).

**In accordance with Article 39 of the UCC, in order to apply for AEO status, traders need to demonstrate inter alia previous compliance with customs legislation, absence of criminal records, and financial solvency.** The benefits of obtaining AEO status include simplified declarations, fewer physical and documentary controls, and priority treatment if selected for control amongst others<sup>28, 29</sup>.

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<sup>27</sup> Hamburg Chamber of Commerce, *Import of goods from third countries*. Available at: <https://www.hk24.de/en/produktmarken/international/import-export/import-goods-third-countries-1159308>.

<sup>28</sup> European Commission, *What is AEO?* Available at: [https://taxation-customs.ec.europa.eu/customs-4/aeo-authorised-economic-operator/what-aeo\\_en](https://taxation-customs.ec.europa.eu/customs-4/aeo-authorised-economic-operator/what-aeo_en).

<sup>29</sup> Wise Persons Group, 2022, *PUTTING MORE UNION IN THE EUROPEAN CUSTOMS Ten proposals to make the EU Customs Union fit for a Geopolitical Europe*, European Commission. Available at: [https://taxation-customs.ec.europa.eu/system/files/2022-03/TAX-20-002-Future%20customs-REPORT\\_BIS\\_v5%20\(WEB\).pdf](https://taxation-customs.ec.europa.eu/system/files/2022-03/TAX-20-002-Future%20customs-REPORT_BIS_v5%20(WEB).pdf).

Table 1: Conditions and Criteria to register as an AEOC and an AEOS

Conditions and criteria	AEOC	AEOS
Compliance with customs legislation and taxation rules and absence of criminal offences related to the economic activity	X	X
Appropriate record keeping	X	X
Financial solvency	X	X
Proven practical standards of competence or professional qualifications.	X	
Appropriate security and safety measures		X

Source: European Commission<sup>30</sup>.

**The figure below shows the typical customs journey prior to the customs control.** After a good has been dispatched from a third country for import into the EU, economic operators are required to perform a number of steps.

**First an Entry Summary Declaration (ENS) needs to be filed** – prior to, or at, entry – which gives information on the carrier's cargo. This is provided to the customs office of the Member State receiving the good and is submitted via the EU's Import Control System (ICS)<sup>31</sup>.

**This system collects data on the security and safety of goods.** Customs officials then use this data to identify high-risk consignments, create risk signals and intervene with controls where necessary. The economic operator is then required to inform customs officials of the arrival of goods at the customs border via a notification of arrival via the ICS system.

**Once the good has arrived at the customs office or another authorised place, it is presented to customs,** together with a temporary storage declaration (for goods from outside the EU), and subsequently a customs declaration, or a proof of Union status (if the good is coming from another Member State via a third country or through international waters).

**If the good is intended for import, it needs to be declared for a customs procedure.** The economic operator's customs declaration is submitted into the national customs IT system where it can be cleared or selected for control. The data to be provided in the declaration is determined by the specific customs procedures applying to the type of good, the transport mode (e.g. air, rail, or shipping), and the value of the good, amongst others.

**Furthermore, as noted above, if the good is imported by an AEO, simpler customs declarations apply.** Based on the declared good's code, origin and value, the customs IT system calculates the duties and taxes owed.

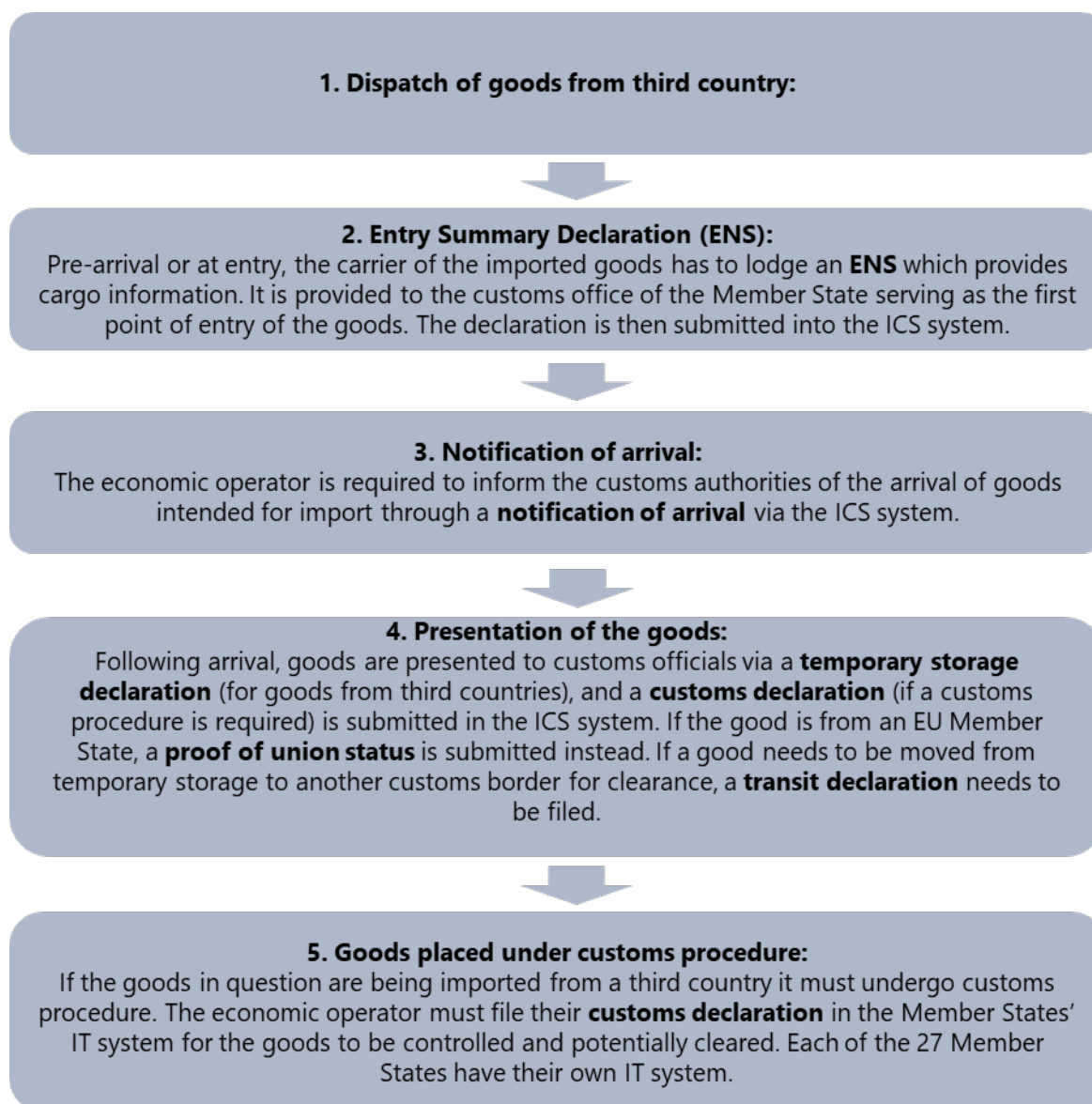
**Each of the EU 27 Member States has its own IT system for clearance and selection of control** and these IT systems are often not interconnected with the ICS system or the IT systems used by other

<sup>30</sup> European Commission, *What is AEO?* Available at: <https://taxation-customs.ec.europa.eu/customs-4/aeo-authorized-economic-operator/what-aeo-en>.

<sup>31</sup> The EU's ICS2 system is not operational yet but will replace the ICS system currently in use.

authorities involved in monitoring goods entering the Single Market, such as Market Surveillance Authorities (MSA)<sup>32, 33, 34</sup>.

Figure 1: Typical customs journey prior to control



Source: Authors' own elaboration based on the Wise Persons Group report.

**Several steps are involved in the customs control procedure.** Following the presentation of the import declaration in the Member State of arrival, a risk analysis is performed and goods are then selected (or not) for control. If selected, they undergo further documentary or physical controls. The risk analysis process typically performed by Member States is illustrated in the figure below.

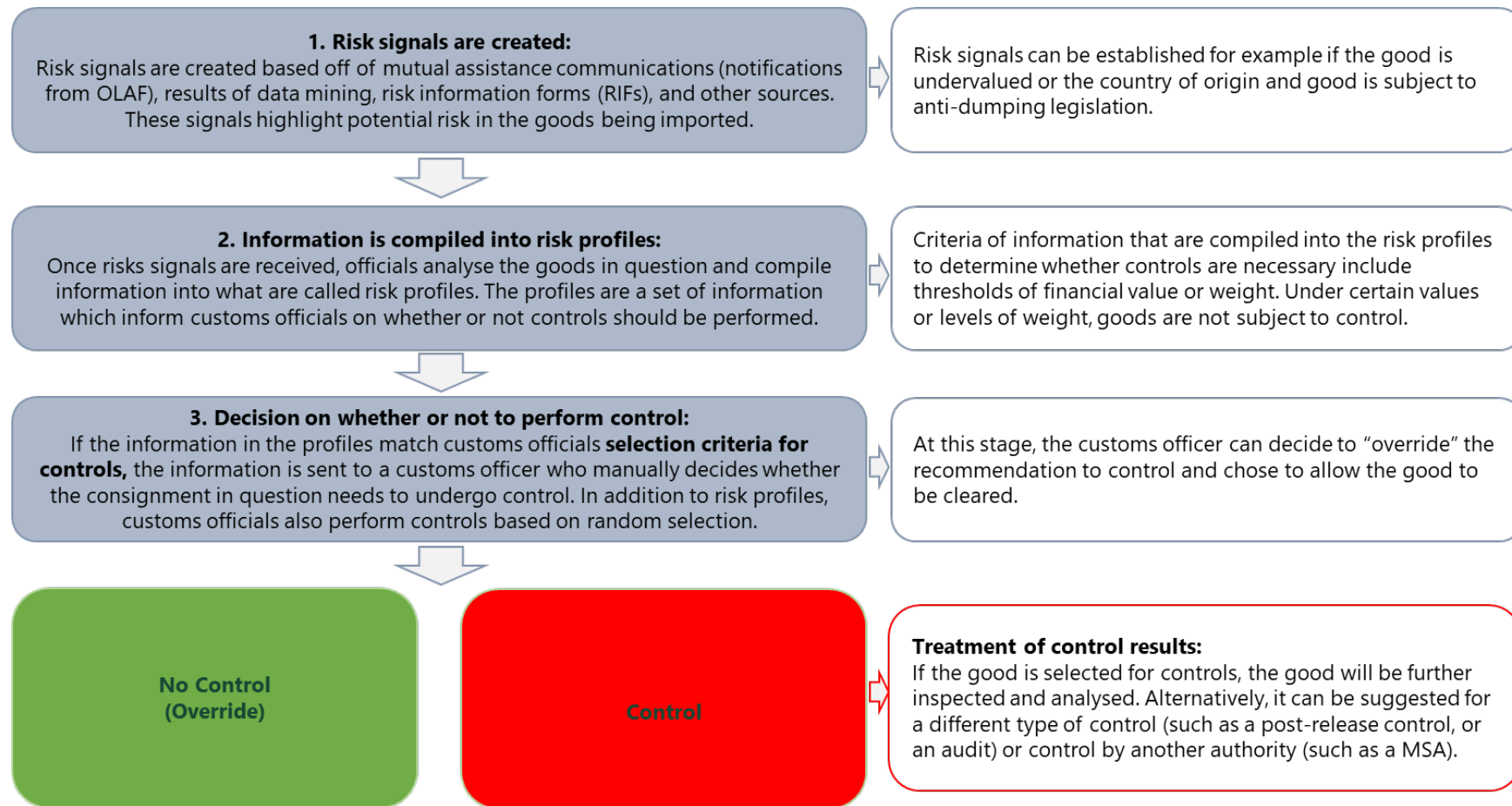
<sup>32</sup> European Commission, *Import Control System 2 (ICS2)*. Available at: [https://taxation-customs.ec.europa.eu/customs-4/customs-security/import-control-system-2-ics2-0\\_en](https://taxation-customs.ec.europa.eu/customs-4/customs-security/import-control-system-2-ics2-0_en).

<sup>33</sup> Wise Persons Group, 2022, *PUTTING MORE UNION IN THE EUROPEAN CUSTOMS Ten proposals to make the EU Customs Union fit for a Geopolitical Europe*, European Commission. Available at: [https://taxation-customs.ec.europa.eu/system/files/2022-03/TAX-20-002-Future%20customs-REPORT\\_BIS\\_v5%20\(WEB\).pdf](https://taxation-customs.ec.europa.eu/system/files/2022-03/TAX-20-002-Future%20customs-REPORT_BIS_v5%20(WEB).pdf).

<sup>34</sup> TULLI, 2020, *Temporary storage declarations for sea and air traffic at the end of 2021*. Available at: <https://tulli.fi/en/-/temporary-storage-declarations-for-sea-and-air-traffic-at-the-end-of-2021>.



Figure 2: Typical risk management process



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<sup>35</sup> European Court of Auditors, 2021, *Special Report 04. Customs Controls : Insufficient Harmonisation Hampers EU Financial Interests*. Available at: <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=58256>.

**Controls can be overridden on the basis of what is called “impact management”, which allows customs authorities to make a decision to perform fewer controls and avoid being overburdened.** If a significant number of goods have to be checked, but there is not enough staff capacity to perform the checks, customs authorities can choose to allow certain goods to be cleared without checks being performed on them. For example, when it comes to controls for the risk of undervaluation, in different Member States there are thresholds in weight below which controls are not performed. For this particular risk, if a consignment is under a certain weight threshold, it is considered to have a lower likelihood of being undervalued. Another example of impact management is where only a certain share of goods in a specific risk profile is selected for control. For example, if customs authorities lack the capacity to control all the goods that fall in the particular risk profile of suspected cases of undervaluation for goods imported from China, then they can limit controls to 30% of the goods in that risk profile.

**Customs officers also cooperate with other officials to ensure imports comply with EU legislation.** The control of goods can be divided into two categories: food and health products and non-food products controls. MSAs typically perform controls of food and health products, notifying customs authorities of any identified issue (such as an import not meeting EU sanitary and phytosanitary requirements) or indicating that the products can be cleared. On the other hand, customs authorities usually perform controls over non-food goods (notifying MSA of possible non-compliance or risks). It was highlighted in the Wise Persons Group report that surveillance of food and health products is typically more centralised (involving central IT systems and EU-level inspectors in addition to national sanitary authorities) whilst non-food controls are less uniform and centralised (see also chapter 4)<sup>36</sup>.

## 2.3. Differences across Member States

As noted above, **customs policy is governed by EU legislation but the responsibility for implementation lies solely with the Member States.** The overarching EU legislation, the UCC, as well as the subsequent guidance and FRC Decision are seen as important steps in terms of modernising customs procedures in the EU. More specifically, under Article 46(7), the UCC states that common risk standards and criteria should comprise of i) risk description; ii) indicators or factors of risk employed to select economic operators or goods for custom controls; iii) the type of customs control applied by the customs authority, and iv) the length of its application<sup>37</sup>. Nonetheless, stakeholders and literature have indicated that there are gaps in these frameworks that allow for differences in national application, which in turn can lead to weaknesses in controls. Indeed, the concept of risk is not sufficiently defined by the FRC Decision. Additionally, rules regarding the controls that should be performed are not clearly established and detailed allowing for leeway when it comes to national implementation. Furthermore, as elaborated upon below, the current framework does not provide rules to ensure consistency in overriding. Member State customs authorities therefore decide on the verification or control measures to be applied, the acceptable level of overriding and any reductions in the number of controls (such weaknesses are further discussed in chapter 4)<sup>38</sup>.

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<sup>36</sup> Wise Persons Group, 2022, *PUTTING MORE UNION IN THE EUROPEAN CUSTOMS Ten proposals to make the EU Customs Union fit for a Geopolitical Europe*, European Commission. Available at: [https://taxation-customs.ec.europa.eu/system/files/2022-03/TAX-20-002-Future%20customs-REPORT\\_BIS\\_v5%20\(WEB\).pdf](https://taxation-customs.ec.europa.eu/system/files/2022-03/TAX-20-002-Future%20customs-REPORT_BIS_v5%20(WEB).pdf).

<sup>37</sup> European Court of Auditors, 2021, *Special Report 04. Customs Controls: Insufficient Harmonisation Hampers EU Financial Interests*. Available at: <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=58256>.

<sup>38</sup> Ibid.



The **lack of clarity in the definition of risk and the flexibility provided to Member States in making use of risk signals** means the way in which risk analysis is performed differs from one Member State to another, and national authorities may in some instances not prioritise controls of goods that should be identified as highly risky. Furthermore, a recent report by the European Court of Auditors (ECA) indicates that the FRC Decision provides a list of indicators which can inform Member States' choices to perform controls, but it does not provide firm rules on the actions that should be taken in response to these indicators. Member States, as a consequence, create different risk profiles and do not perform the same controls in response to the same indicators of risk. This is exacerbated by the fact that, when creating risk profiles, customs authorities appear not to include all indicators of risk recommended by the FRC Decision<sup>39, 40</sup>.

At the same time, several authorities consulted for this study noted that **a certain degree of difference between Member States in the use of risk profiles is acceptable as the contexts in which customs operate mean different controls may be required**. For example, officials in Member States with large sea ports receive significantly higher volumes of goods compared to land-locked Member States. Furthermore, the former receive these goods via large containers while the latter are more likely to receive small consignments via air, rail or land, which entail different risks. Drug trafficking, for example, is a much higher risk in sea ports receiving large containers, while customs offices in airports, rail stations and land borders receiving small consignments (most notably from Asia and most significantly from China) are more likely to face the risk of undervaluation and non-compliance with product safety standards. For instance, Cyprus only has sea borders and its risks (security risks due to relative proximity to war zones in the Middle East, first port of entry for many goods from the Middle East, etc.) are different from those faced by other Member States. Greek authorities noted that, due to the multiple access points via ports and sea borders, they face an issue of goods smuggling via ships and private yachts, whereby ship operators may not declare cargo when arriving at ports. They noted that goods smuggling is less likely to occur on aeroplanes as the airport security systems are stronger. Nonetheless, they find cases of smuggling via aerial shipments when performed via private jets or helicopters for which there are fewer security controls.

**A second area where significant divergences in practices can be seen is the impact management that customs authorities can perform.** While the FRC Decision allows Member State authorities to decrease the number of controls to ensure customs officials are not overburdened, the Decision does not set any limits on how much controls can be reduced. If such limits were introduced, the question of how to deal with consequential delays in import clearance (release times) and traffic jams would need to be addressed.

**National practices therefore vary significantly in terms of how impact management is implemented and how many overrides occur in different Member States**<sup>41</sup>. For example, for certain criteria of risk, Member States can choose to perform controls only on a certain percentage (e.g. 20%) of the consignments or based on the weight (e.g. 1,000 kg) and they have discretion over the thresholds they apply.

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<sup>39</sup> Ibid.

<sup>40</sup> Furthermore, it should be noted that the ECA report highlighted that in the Member States investigated, risk analysis using profiles from the FRC Decision was restricted to pre-release controls. Risk profiles detailed in the guidance did not inform post-release risk analysis.

<sup>41</sup> European Court of Auditors, 2021, *Special Report 04. Customs Controls: Insufficient Harmonisation Hampers EU Financial Interests*. Available at: <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=58256>.

**This is confirmed by the abovementioned ECA report which found that customs authorities differ greatly in the extent to which they use overrides as well as the justifications for doing so.** Member States investigated varied from 1.6% to 60% regarding the number of times this measure was taken in response to recommendations to perform controls. Furthermore, Member States vary in terms of the requirements customs authorities must meet to perform overrides. Examples of such requirements include the need for hierarchical approval, the need to lodge a justification in the Member State's IT system, and other pre-determined characteristics of the goods (which are confidential)<sup>42</sup>.

**In addition to controls performed on the basis of risk profiles, national customs authorities also perform controls on the basis of random selection,** i.e. a certain percentage of all goods being imported is randomly chosen for analysis. Random controls are not just useful for identifying risky goods that escape initial risk analysis but also to identify potential new indicators of risk. However, **the FRC Decision and subsequent guidance do not detail how Member States should implement random selection.** The percentages applied for random selection can vary between 0.0067 % to 0.5 % across Member States<sup>43</sup>.

Several economic operators consulted highlighted that, since there is no guidance in legislation over the prohibitions and restrictions, **there are significant differences in terms of what Member States consider to be prohibited goods as well as goods that require additional documentation to prove their safety compliance.** EU legislation does not prevent Member States from supplementing the list of banned goods set by the EU and these lists vary across countries. Legal certainty could be improved through EU-wide concepts and definitions to be used by Member States when applying both EU-wide and national prohibitions and restrictions. This could also include basic rules on prohibitions and restrictions in the UCC<sup>44</sup>.

**Finally, it should be noted that Member State authorities seem to be largely unaware of national differences in the Single Market.** In interviews, national authorities were frequently unable to comment on practices in other Member States. The results of the survey conducted for this study show that a plurality of respondents had no opinion or knowledge as to how much Member States differ from each other and only seven respondents indicated that they were aware of differences. While the responsibilities of Member State authorities are limited to their national jurisdiction, lack of awareness of how customs controls are carried out in other Member States suggests that weaknesses and strengths of the EU customs system are not fully taken into consideration by authorities when designing their own practices and there is a limited exchange of good practices between Member States (even if they may face similar risks).

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<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> These remarks were made by the German authorities in the interview for this study.

Table 2: Summary of national case study findings on key features of customs processes

Country	Key features of the country with respect to customs
Belgium	<ul style="list-style-type: none"> <li>• Belgian customs authorities make use of data mining in their risk analysis systems (tools that not all Member States implement) to assess declarations submitted via their automated IT system, the PLDA (PaperLess Douane en Accijnzen).</li> <li>• Belgium Customs participated in the Single Window pilot (EU-SW-CERTEX) and express support for the implementation of an EU-wide Single Window.</li> <li>• Currently, three Belgian customs officers make use of a programme called "Force" which applies AI when scanning images. The Belgian customs authority plans to increase the number of staff managing this programme to 20.</li> <li>• Belgian private sector representatives indicated that customs declarations are submitted digitally in Belgium, but it is not possible to structurally submit the accompanying documents to customs in a digital manner. Certain licences still have to be submitted in the original on paper and they are also manually debited. In case of failure of the automated declaration system, manual declarations must be submitted as part of emergency procedures.</li> </ul>
France	<ul style="list-style-type: none"> <li>• The French Customs office includes a National Risk Analysis and Targeting Department (SARC), which makes use of data mining tools.</li> </ul>
Germany	<ul style="list-style-type: none"> <li>• Germany is working on developing its national Single Window but has not yet implemented the system.</li> <li>• German Länder are competent over various prohibitions and restrictions (sanitary, veterinary &amp; phytosanitary controls) which has made implementing the Single Window difficult as coordination has to occur with regional authorities.</li> <li>• German national authorities argued that prohibitions and restrictions should be clarified and harmonised throughout the EU.</li> <li>• A Lithuanian trader provided an example of national differences between Germany and the Netherlands. If a customs brokerage company, with an AEO, applies for authorised consignee status in Hamburg, German customs requires applicants to have an office in Germany, where they can perform physical checks on the company and connect to the IT systems to verify the online records, despite all the records (i.e. customs declarations and related documents) being available online and accessible to authorities. The same status of authorised consignee is granted in Rotterdam without such requirements.</li> <li>• In Germany the ATLAS (Automated Tariff and Local Customs Clearance System) is a digital system also processing low value consignments (with an intrinsic value up to 150 EUR), which will be subject to risk analysis. A significant portion of e-commerce consignments fall under this threshold, but in many Member States IT systems are unable to process these transactions for risk analysis.</li> </ul>

Country	Key features of the country with respect to customs
Greece	<ul style="list-style-type: none"> <li>• The risk analysis used by Greece focuses on specific factors, such as the country in which the good was manufactured and was imported from, whether the documentation presents errors in the information provided, who is the declarant, if there is evidence of any previous customs or criminal offences. Information provided by other customs borders of the EU are fed into the risk analysis (e.g. through RIFs).</li> <li>• The UCC has not been fully implemented in Greece. Greece has implemented the ICS2, but has not completed the national Single Window.</li> <li>• Customs procedures are mainly regulated through administrative orders and ministerial decrees. Such acts are often substituted and amended, and this can create complications and lack of transparency in the regulatory framework<sup>45</sup>.</li> <li>• The Greek Independent Public Revenue Authority (AADE) publishes an annual national customs operational plan, which sets qualitative and quantitative targets for customs controls, and is forwarded to all the relevant regional customs authorities. Current practices are guided by the AADE Strategic Plan 2020-2024.</li> <li>• Greece has increased the number of controls performed and the number of employees working within the customs authority. New equipment has also been introduced, including modern X-ray scanners for cargo, as well as for passengers' control.</li> <li>• Because of its geographical position as an entry point into the EU and its multiple port access points, Greece faces a higher risk of customs fraud and smuggling. Fraud in these areas tends to involve excise goods, such as alcohol, fuel and cigarettes. It is relatively easy to smuggle goods in ships and private yachts and it is common for smuggling to occur in ships that do not declare their cargo, or for trade with other ships to happen in the middle of the sea.</li> <li>• In 2020, Greece was one of 5 EU countries (alongside Italy, Hungary, France, and Bulgaria) that accounted for 89%-93% of suspected counterfeit goods entering the EU Single Market<sup>46, 47</sup>.</li> </ul>
Hungary	<ul style="list-style-type: none"> <li>• Hungary has been using the central EU CDS system (Customs Authorisation Management System) since it was launched. This digital solution allows for digital processing of licenses and has greatly facilitated the move towards paperless customs procedures in Hungary.</li> </ul>

<sup>45</sup> Tsourouflis, A., 2018, *Exports /Imports /Customs Introduction*, Greek Law Digest. Available at: <http://www.greeklawdigest.gr/topics/exports-imports-customs/item/256-exports-imports-customs>.

<sup>46</sup> Kardiopoulis, F., and Politi, S., 2022, *Greece: sea ports remain a key route for counterfeits*, World Trademark Review. Available at: <https://www.worldtrademarkreview.com/global-guide/anti-counterfeiting-and-online-brand-enforcement/2022/article/greece>.

<sup>47</sup> European Commission, 2021, *EU enforcement of intellectual Property rights: results at the EU border in the EU internal market 2020*, EUIPO. Available at: [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2021\\_EU\\_enforcement\\_intellectual\\_property\\_rights/2021\\_EU\\_enforcement\\_intellectual\\_property\\_rights%20\\_FullR\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2021_EU_enforcement_intellectual_property_rights/2021_EU_enforcement_intellectual_property_rights%20_FullR_en.pdf).

Country	Key features of the country with respect to customs
<b>Poland</b>	<ul style="list-style-type: none"> <li>Poland's Customs Department includes a Strategic Analysis Centre (SCA) with direct access to EU systems such as the Customs Risk Management System (CRMS) and the Anti-Fraud Information System (AFIS), which allows to perform risk management and cooperate with other Member States. In addition, staff employed at SCA make use of modern data mining techniques in their risk analysis.</li> <li>Customs officials in Poland make use of Automatic Risk Analysis (AAR) to assess customs declaration controls. AAR indicators are supplemented by other indicators resulting from manual risk analysis (i.e. where the decision to control is made on the initiative of the officer).</li> <li>Customs offices in Poland also have national recommendations on the percentage of controls to be carried out before release for free circulation. These recommendations are normally based on observations from the previous 2 years period (average numbers for this period are used as an indicator).</li> <li>Customs clearance procedures have been fully digitised. Acceptance and handling of customs declarations in the import, export and transit of goods to/from EU Member States are carried out in electronic form in the dedicated EU IT systems: Automatic Import System (AIS), Automatic Export System (AES) and New Computerized Transit System (NCTS2).</li> <li>At all border crossings on the Polish side, the process of handling vehicles crossing the border is fully automated. This is done with the help of the Digital Border System (a Polish service, part of the larger project Platform for Electronic Treasury and Customs Services (PUESC) ensuring efficient customer service at border crossings using automatic data exchange mechanisms and automatic vehicle identification and traffic control). The National Revenue Administration manages the technical infrastructure at border crossing points. The Digital Border System is adapted to the specificities of a particular type of traffic, the type of border crossing point, the infrastructure located there, the technology of checks used and the resulting sequence of activities of control services.</li> </ul>
<b>Spain</b>	<ul style="list-style-type: none"> <li>Spain has implemented the national Single Window and is cooperating with other Member States to ensure interoperability. The Spanish Single Window includes a tool for anticipated customs declarations that allows traders to lodge a full customs declaration from the beginning and thus avoid additional declarations during the entry process (the initial customs declaration has a validity period of 30 days).</li> <li>Spanish authorities are developing the Single Window to carry out all customs formalities, including those regarding prohibitions and restrictions.</li> <li>Spain operates a national Centralised Clearance System and has bilateral agreements for centralised clearance with several Member States. This allows traders to lodge a customs declaration at the customs office where the trader is established even when the goods enter the EU through a different customs office.</li> <li>Nevertheless, Spanish authorities noted that under centralised clearance there is some lack of clarity over the enforcement of prohibitions and restrictions. It is for example unclear which Member State has to issue the certificate.</li> <li>Spanish customs authorities are working on identifying national data points included in the customs declaration with reduced data elements (customs declaration used for e-commerce, better known as "H7") in order to improve risk analysis.</li> </ul>

Source: Authors' own elaboration.

### 3. SANCTIONS AND INFRINGEMENTS IN THE EU

#### KEY FINDINGS

The sanctions and infringements regime remains largely a national competence with EU legislation providing limited guidance on how Member States should implement sanctions.

As a result, sanctions regimes and sanctions levels vary significantly across the EU. While some Member States apply a mixed regime of administrative and criminal sanctions depending on the severity of the infringement, others only provide for criminal sanctions.

Without a common EU sanctions framework, sanctions systems also vary in the thresholds applied, liabilities regimes, time limitations as well as types of sanctions imposed (confiscation of goods, disqualification from operating, refusal to grant authorisation, etc.).

In 2013, the European Commission proposed a Directive on a Union Legal Framework for Customs Infringements and Sanctions, which sought to harmonise sanctions on customs infringements. The proposal faced significant opposition from the Council. Difficulties in reforming the sanctions regime arise because, as they involve both administrative and criminal elements, Member States would have to modify not only customs legislation, but also administrative and criminal law. Previous reports have, therefore, recommended that harmonisation be achieved through gradual convergence rather than a proposal for an EU legislative act.

#### 3.1. Sanctions and infringement rules in the EU

**Sanctions and infringements are largely a national competence with limited guidance provided at EU level.** Under the UCC there is only one legal provision in relation to sanctions, i.e. Article 42, according to which:

- i) Each Member State will impose a penalty if there is a failure in customs legislation compliance, whereby the penalty shall be proportionate, effective and dissuasive.
- ii) If administrative penalties are applied, one or both of the following forms could be chosen:
  - Customs authorities may implement a pecuniary charge, if appropriate, including a settlement applied in place of a criminal penalty;
  - An amendment, suspension or revocation of an authorisation that a person concerned holds.
- iii) Notification by the Member States to the European Commission needs to be done within 180 days from the day that this article was applied by the national customs authority. This includes a prompt notification of any changes of the provisions affected<sup>48</sup>.

**The sanctioning systems are based on national policy and legislation (customs law, as well as administrative and criminal law) and thus they remain largely non-harmonised.** The extent to which Member States make use of national criminal or administrative proceedings, and what infractions are categorised under either the former or the latter, diverge significantly. This is because

<sup>48</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast), OJ L 269, 10.10.2013, p. 1–101. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R0952-20200101>.



some Member States only apply criminal sanctions, whilst others have a mixed regime involving both administrative and criminal sanctions.

**In 2013, the European Commission proposed a Directive on a Union Legal Framework for Customs Infringements and Sanctions supported by an impact assessment<sup>49</sup>.** The purpose of this proposal was to harmonise sanctions on customs infringements based on the conclusions of the 'Project Group on Customs Penalties'<sup>50</sup>. The ultimate goal was to create a more secure and level playing field within the EU Single Market for both businesses and citizens, and a more uniform and efficient Customs Union<sup>51</sup>. However, the proposal was put on hold as it faced significant opposition from the Council.

**The proposal set out the actions that would be considered violations under a European customs rule,** which included the failure to pay custom duties, to declare goods to customs, or to provide the correct documents. In accordance with the proposal:

- a) there should be harmonisation of sanctionable offences in cases of strict liability, of negligence or misconduct, and of intent. This is particularly linked to the UCC provisions that foster the obligations for economic operators;
- b) sanctions imposed should be in the range of 1% to 30% of the value of the goods. If the infringement, however, follows certain authorisations then a flat rate should be used;
- c) to address any discrepancies, there should be a time limit of 4 years from the day of the illicit behaviour or continuation of an infringement to the day it ends;
- d) there should be an incentive for cooperation and exchange of information among Member States;
- e) in the event of a criminal proceeding, mechanisms should exist to refrain from any administrative procedures, and
- f) approximated sanctions that are "effective, proportionate and dissuasive" should be based upon the case law of the European Court of Justice and include minimum and maximum fines.

**While there was significant criticism of the Commission proposal at the time, it was also noted that the "present state of affairs cannot be allowed to continue"<sup>52</sup>.** Indeed, experts advised that the primary goal of an intervention should be to harmonise the criminal and non-criminal sanctions which are employed<sup>53</sup>. A possible option is to use both criminal and administrative sanctions and enforce audits or inspections at EU level to help minimise differences across Member States. However, the

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<sup>49</sup> European Commission, 2013, Proposal for a Directive of the European Parliament and of the Council on the Union legal framework for customs infringements and sanctions, COM(2013) 884 final/4. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52013PC0884R%2803%29&qid=1670950928515>.

<sup>50</sup> The Project Group on Customs Penalties was established, on a voluntary basis, by the Commission with 24 Member States, under the Customs 2013 Program. In July 2010 it adopted its final report, which was published as an annex to the Commission Impact Assessment to the proposal for a Directive on the Union legal framework for customs infringement and sanctions. Available at: <https://eur-lex.europa.eu/legal-content/GA/ALL/?uri=CELEX%3A52013SC0514>.

<sup>51</sup> Anaboli, P., 2018, *Customs Law Violations and Penalties in Europe/Where Do We Stand After fifty Years of Customs Union?*, Global Trade and Customs Journal, Volume 13, Issue 7&8, Kluwer Law International BV, The Netherlands. Available at: <https://kluwerlawonline.com/api/Product/CitationPDFURL?file=Journals\GTCJ\GTCJ2018032.pdf>.

<sup>52</sup> Ibid.

<sup>53</sup> Muniz, P., 2018, *EU Harmonization of Customs Infringements and Sanctions Is Needed but the EU Must Proceed with Caution*, Global Trade and Customs Journal, Volume 13, Issue 7&8, Kluwer Law International BV, The Netherlands. Available at: <https://kluwerlawonline.com/journalarticle/Global+Trade+and+Customs+Journal/13.7/GTCJ2018031>.

complexity and opposition to ceding national responsibility would likely make such an approach very difficult to be accepted and adopted.

According to Willems & Theodorakis<sup>54</sup>, **one way to achieve harmonisation is through an 'approximation approach'**, which would lead to gradual convergence among Member States. A supervisory body (such as a European Customs Agency) could ensure that the implementation of the UCC and the proposed approximations are followed by all Member States. In addition, an official public consultation could be held, which did not happen before the 2013 proposal<sup>55</sup>. Other experts have indicated that the US sanctions regime may offer lessons and good practices that could be adopted in the EU<sup>56</sup>.

### 3.2. How infringements are sanctioned and differences across Member States

**Without a common EU sanctions framework, sanctions systems vary when it comes to aspects such as the thresholds applied, liabilities imposed, and time limitations.** Some Member States' legal systems provide for both criminal and non-criminal sanctions, whilst others only include the former. The types of sanctions applied, such as confiscation of goods, disqualification from operating, refusal to grant authorisation etc., also vary<sup>57</sup>.

**A number of studies have pointed out that sanctions and infringements differ significantly across the EU<sup>58,59</sup>.** As shown in the Figure and Table below, the Tusveld study indicates that, out of 23 countries (excluding the UK):

- 15 provide both non-criminal (i.e. administrative) and criminal sanctions (Bulgaria, Estonia, Finland, Germany, Greece, Hungary, Italy, Latvia, Lithuania, the Netherlands, Portugal, Romania, Slovakia, Slovenia, and Spain),
- 8 only offer criminal proceedings (Austria, Belgium, Cyprus, France, Ireland, Luxembourg, Malta, and Poland), and
- no Member State uses only non-criminal sanctions.

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<sup>54</sup> Ibid.

<sup>55</sup> Muniz, P., 2018, *EU Harmonization of Customs Infringements and Sanctions Is Needed but the EU Must Proceed with Caution*, Global Trade and Customs Journal, Volume 13, Issue 7&8, Kluwer Law International BV, The Netherlands. Available at: <https://kluwerlawonline.com/journalIssue/Global+Trade+and+Customs+Journal/13.7/17388>.

<sup>56</sup> TUSVELD, R., et al., 2016, *Analysis and effects of the different Member States' customs sanctioning systems*, Publication for the committee on Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg. Available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2016/569990/IPOL\\_STU\(2016\)569990\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2016/569990/IPOL_STU(2016)569990_EN.pdf).

<sup>57</sup> Ibid. See also *Global Trade and Customs Journal (GTCJ)*, Kluwer, vol. 13, issue 7&8, 2018, which is devoted to a comparative analysis of the infringements and penalties in customs matters provided in different Member States, which also offers some reflections deriving from that analysis. Available at: <https://kluwerlawonline.com/journalIssue/Global+Trade+and+Customs+Journal/13.7/17388>.

<sup>58</sup> European Commission, 2013, Proposal for a Directive of the European Parliament and of the Council on the Union legal framework for customs infringements and sanctions, COM(2013) 884 final/4. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52013PC0884R%2803%29&qid=1670950928515>.

<sup>59</sup> TUSVELD, R., et al., 2016, *Analysis and effects of the different Member States' customs sanctioning systems*, Publication for the committee on Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg. Available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2016/569990/IPOL\\_STU\(2016\)569990\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2016/569990/IPOL_STU(2016)569990_EN.pdf).



Table 3: Legal systems used across Member States

Member State	Criminal and non-criminal sanctions	Criminal sanctions only
Austria		X
Belgium		X
Bulgaria	X	
Cyprus		X
Estonia	X	
Finland	X	
France		X
Germany	X	
Greece	X	
Hungary	X	
Ireland		X
Italy	X	
Latvia	X	
Lithuania	X	
Luxembourg		X
Malta		X
Netherlands	X	
Poland		X
Portugal	X	
Romania	X	
Slovakia	X	
Slovenia	X	
Spain	X	

Source: Authors' own elaboration based upon the information published by TUSVELD. R., et al., (2016).

**Member States that use both criminal and administrative proceedings have greater flexibility to adapt the type of legal action to the severity of the infringement.** For less severe infringements, a criminal proceeding may be considered unnecessary, not cost efficient or too burdensome for courts.

**Among the Member States that use both type of legal procedures, 12 apply thresholds to decide on the nature of the customs infringement.** Such thresholds vary between EUR 266 and EUR 50,000<sup>60</sup> and are mostly applied on evaded import duties. If the threshold is exceeded, then the customs infringement is prosecuted through criminal proceedings, while non-criminal proceedings will be used if the threshold is not exceeded<sup>61</sup>. However, some countries like Finland, Slovakia and Hungary have very low thresholds (i.e. Slovakia has a threshold of EUR 266), which means that non-criminal proceedings are rare in these countries<sup>62</sup>.

**Fines and imprisonment are applied by all Member States. However, looking at the 5 most commonly used sanctions, Table 3 shows that not all EU countries apply the same sanctions<sup>63</sup>.**

Table 4: Type of sanctions applied in each Member State

COUNTRY	TYPE OF SANCTION				
	<i>Confiscation of goods</i>	<i>Disqualification from the practice of industrial or commercial activities</i>	<i>Judicial winding up order</i>	<i>Disqualification from engaging in activity requiring authorisation</i>	<i>Publication of judicial decisions</i>
Austria	✓	✗	✗	✗	✗
Belgium	✗	✓	✓	✓	✓
Bulgaria	✓	✗	✗	✗	✗
Cyprus	✓	✗	✓	✓	✗
Estonia	✓	✓	✓	✓	✓
Finland	✗	✓	✓	✓	✗
France	✗	✗	✗	✗	✗

<sup>60</sup> Anaboli P., 2018, *Customs Law Violations and Penalties in Europe/Where Do We Stand After fifty Years of Customs Union?*, Global Trade and Customs Journal, Volume 13, Issue 7&8, Kluwer Law International BV, The Netherlands. Available at: <https://kluwerlawonline.com/api/Product/CitationPDFURL?file=Journals\GTCJ\GTCJ2018032.pdf>.

<sup>61</sup> TUSVELD R., et al., 2016, *Analysis and effects of the different Member States' customs sanctioning systems*, Publication for the committee on Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies European Parliament, Luxembourg. Available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2016/569990/IPOL\\_STU\(2016\)569990\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2016/569990/IPOL_STU(2016)569990_EN.pdf).

<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

COUNTRY	TYPE OF SANCTION				
	<i>Confiscation of goods</i>	<i>Disqualification from the practice of industrial or commercial activities</i>	<i>Judicial winding up order</i>	<i>Disqualification from engaging in activity requiring authorisation</i>	<i>Publication of judicial decisions</i>
Germany	✓	✓	✗	✗	✓
Greece	✓	✗	✗	✗	✗
Hungary	✗	✓	✓	✓	✗
Ireland	✗	✗	✗	✗	✗
Italy	✓	✗	✗	✓	✗
Latvia	✓	✗	✗	✗	✗
Lithuania	✓	✓	✓	✓	✗
Luxembourg	✓	✓	✓	✓	✗
Malta	✓	✗	✗	✗	✗
Netherlands	✗	✗	✗	✓	✗
Poland	✗	✓	✗	✓	✓
Portugal	✓	✓	✓	✗	✓
Romania	✓	✓	✓	✗	✓
Slovakia	✓	✓	✓	✓	✓
Slovenia	✓	✓		✓	✓
Spain	✓	✗	✗	✓	✗

Source: Authors' own elaboration based upon the information published by TUSVELD R., et al. (2016).

**Among the 23 Member States that participated in the Project Group on Customs Penalty, 11<sup>64</sup> allow for customs authorities to settle disputes with economic operators.** They consider that this method is reliable and effective, especially for specific infringements (i.e. strict liability infringement<sup>65</sup>), when there is a breach in customs law<sup>66</sup>.

**15 Member States have a sanctioning system in place where legal persons can be held liable for a customs infringement.** In contrast, in 8 Member States only a natural person representing or controlling the legal person can be considered responsible for perpetrating custom infringements.

**Furthermore, Tusveld et al. point out that there are 19 different mitigating factors and 17 aggravating factors applied across Member States<sup>67</sup>.** For example, under criminal proceedings, 19 Member States consider that an infringement executed by members of organised crime groups is an aggravating factor.

**All Member States use time limitations in their sanctioning system to initiate a procedure, impose (that is the decision to penalise and the notification of that decision) or execute (that is the carrying out of the sentence or attempted collection of the financial penalty) a penalty.** This ensures legal certainty for economic operators. However, the time limit varies across Member States. A time limit for initiating a procedure (whether this be classed as starting an investigation, bringing charges or some other action) is used by most Member States, with the exception of Estonia and Cyprus. This type of limit prevents customs or judicial authorities from imposing a penalty on an economic operator for an infringement after a certain time period. When it comes to imposing penalties, countries like Belgium, Germany, Greece and Romania<sup>68</sup> use the same time limit as for initiating a procedure. This means that any penalty needs to be imposed within the time limit for initiating the procedure. Latvia, Ireland, Spain and Malta are the only countries that do not impose a time limit for the execution of a penalty. All other Member States apply either a fixed or a varying time limit, or both. Belgium, Estonia, Finland, Germany, Hungary, Lithuania, the Netherlands, Poland, Portugal, Romania and Slovenia have a varying time limit ranging from 1 to 30 years, while the fixed time limit ranges from 5 to 20 years<sup>69</sup>.

**The literature consulted for this study did not identify any particular Member State that could serve as a model of good practice for others.** While experts agree that a harmonised system on sanctions and infringements is needed, the stakeholder consultation for this study has highlighted the complexity of achieving this. More specifically, since sanctions involve both administrative and criminal elements, Member States would have to modify not only customs legislation but also administrative and criminal law, which would have impacts beyond the customs area. Furthermore, if any EU harmonising provisions were found incompatible with the constitutional principles in the area of criminal law in each Member State, then some constitutional amendments would be necessary as well.

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<sup>64</sup> The specific set of countries was not identified in the original source.

<sup>65</sup> Such as negligence, intent or reckless behaviour.

<sup>66</sup> Anaboli P., 2018, *Customs Law Violations and Penalties in Europe/Where Do We Stand After fifty Years of Customs Union?*, Global Trade and Customs Journal, Volume 13, Issue 7&8, Kluwer Law International BV, The Netherlands. Available at: <https://kluwerlawonline.com/api/Product/CitationPDFURL?file=Journals\GTCJ\GTCJ2018032.pdf>.

<sup>67</sup> TUSVELD R., et al., 2016, *Analysis and effects of the different Member States' customs sanctioning systems*, Policy Department A: Economic and Scientific Policy European Parliament. Available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2016/569990/IPOL\\_STU\(2016\)569990\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2016/569990/IPOL_STU(2016)569990_EN.pdf).

<sup>68</sup> This also includes Austria, Latvia, Portugal, Romania and Slovenia.

<sup>69</sup> More specifically, 5 for non-criminal procedures and 20 for criminal.

Table 5: Summary of national case study findings on key features of infringements and sanctions regime

Member State	Key features of the infringements and sanctions regime
Belgium	<ul style="list-style-type: none"> <li>• Belgian national authorities consulted believe that confiscation of goods and withdrawal of authorisations are the most effective sanctions to dissuade further infringement. In particular, the withdrawal of authorisation, especially concerning an AEO status, should be applied more broadly to ensure the holder is compliant with customs regulations. The possibility of losing an authorisation creates powerful economic incentives to prevent further irregularities in the future.</li> <li>• In Belgium all infringements are punishable with criminal sanctions. The Belgian customs law however provides for the possibility of replacing the criminal sanction by an amicable settlement in the case of unintentional violations.</li> <li>• Trade associations from Belgium consulted for this study expressed concern with the inability to distinguish between criminal and administrative sanctions in Belgian customs law. It was argued that the requirement that all infringements, regardless of severity, be punishable by criminal penalties creates an unfavourable business climate and hinders the goal of facilitating trade.</li> <li>• The trade associations also argued that the fact that only criminal sanctions are foreseen in Belgium creates an un-level playing field vis-a-vis other Member States that allow for both criminal and administrative sanctions. It was furthermore noted that Member States having solely criminal sanctions go against recital 38 of the UCC, which states that "It is appropriate to take into account the good faith of the person concerned where a customs debt has been incurred through non-compliance with customs legislation, and to minimize the consequences of carelessness on the part of the debtor.". It is argued that by only providing for criminal sanctions, Member States are not taking into account the 'good faith' of honest traders.</li> <li>• In Belgium, the AAD&amp;A (the Belgian Customs authority: "administratie der douane en accijnzen") has the power to initiate and adjudicate criminal proceedings. Representatives of the Belgian private sector involved in imports argued that this means they are both judge and prosecution. These representatives were of the opinion that the power to prosecute should be transferred to the Public Prosecution Service.</li> </ul>

Member State	Key features of the infringements and sanctions regime
France	<ul style="list-style-type: none"> <li>From France's point of view, the current system of sanctions in France is suitable because it is dissuasive and proportionate. The nature of the sanction has no effect on its proportionality, it also includes '<i>contraventions</i>' (an offence which falls under the jurisdiction of the police courts and which is sanctioned by a fine, or a penalty depriving or restricting certain rights<sup>70</sup>). Such offences are categorised as criminal sanctions but are less severe than for example prison sentences, and can be used for less significant types of fraud.</li> <li>Other sanctions that can be employed in France include the prohibition to practise the economic activity in question. It was therefore argued that a system with such elements allows for proportionality and for flexibility, as there is a settlement system that economic operators have access to. This includes recognition of the infringement, recovery of the right to operate and financial compensation for the sanction. This sanctions regime is consistent with the general penal policy in France. It was argued that changing this sanctions regime would be to the detriment of the dissuasive and proportionate character of sanctions applied in France.</li> </ul>
Greece	<ul style="list-style-type: none"> <li>The administrative fine ranges from three to five times the evaded customs debt and cannot be less than EUR 750.</li> <li>Regarding time limitations, the general rule in respect to imposing an administrative sanction provides for 3 years for a "simple" customs offence, or 7 years for customs fraud or smuggling.</li> <li>Sanctions laws established by Article 42 of the UCC are transposed into Article 155 of the national customs code (law 2950/01). Experts consulted argued that the Greek customs law has a vague definition of what constitutes 'smuggling of goods' and 'customs fraud', and this means even minor violations can be considered as customs fraud.</li> </ul>
Poland	<ul style="list-style-type: none"> <li>It is possible to impose a cumulative penalty in the form of simultaneously being subject to a fine and imprisonment. In the case of a minor offence, the perpetrator is liable to a fine for a tax offence.</li> <li>In 2017 new regulations tightened the sanctions for fiscal offences concerning falsification or use of false financial documents. As a result, mistakes in the information or the calculation of duties may lead to higher sanctions, and it has been argued that this has meant a higher fiscal burden for entrepreneurs engaged in international trade in goods.</li> </ul>

Source: Authors' own elaboration.

<sup>70</sup> See Larousse, Contravention. Available at: <https://www.larousse.fr/dictionnaires/francais-anglais/contravention/18590;https://www.larousse.fr/dictionnaires/francais/contravention/18695#:~:text=Infraction%20qui%20rel%C3%A8ve%20des%20tribunaux,privatives%20ou%20restrictives%20de%20droits.>

## 4. IDENTIFICATION OF KEY ISSUES

### KEY FINDINGS

Recent market and technology trends in addition to differences across Member States lead to weaknesses in the current customs system.

Differences in Member State weight thresholds can be identified by fraudsters who will then import to entry points below such thresholds to avoid detection. Similarly, as Member States differ in the percent of controls that are performed for certain risk criteria, fraudsters can identify areas where fewer controls are performed as a whole to minimise the risk of being caught.

Widely differing national lists of prohibited and restricted goods create costs and legal uncertainty for entities trading in multiple Member States and can lead to distortions in the Single Market. Similarly, distortions can be a consequence of differing requirements of the varying IT systems used for customs declarations. Furthermore, not all Member States use advanced data tools for risk analysis and several have not implemented the IT tools specified in the UCC that would reduce weaknesses.

There is limited data sharing between Member States for risk analysis and declarations for consignments below EUR 150 do not provide enough data for risk analysis.

Widely diverging sanctions regimes mean one infringement can be treated in different ways by different Member States. In some Member States that do not provide for administrative sanctions, minor offences can be punished with criminal sanctions. Furthermore, the differing severity of sanctions across Member States creates distortions in the Single Market as traders avoid some Member States over others.

The overview of customs and sanctions rules and practices in the previous chapters has highlighted six core issues that need to be addressed to mitigate weaknesses in EU entry points and to improve the current infringements and sanctions regime.

### 4.1. Current trends in trade mean customs officials are overburdened

**Recent trends in international trade and consumer behaviour have meant an increased workload that customs authorities have difficulties managing.** As noted by the Wise Persons Group, between 2010 and 2020 imports saw a rise of 16.5% in volume, with most of this increase coming from Asia, led by China. This increase in imports means customs officials are having to manage a larger flow of goods to be potentially controlled. In addition, considering the volume of trade between the EU and the UK, Brexit has led to checks to be performed on such trade and consequently increased the customs workload<sup>71</sup>.

**Brexit has increased the burden on both entities trading and customs officials. Goods transiting between two EU Member States via the UK** are now required to undergo customs formalities, including a customs declaration. It was highlighted by one stakeholder that currently, when a good transits in this way, the consignment loses Union status even if the transit through the UK is short. An example was given of a good travelling from Ireland to Belgium but transiting through the UK at

<sup>71</sup> European Express Association, 2022, *Subject: EEA position on the recommendations of the Wise Persons Group on the Reform of the EU Customs Union*. Available at: <https://www.euroexpress.org/uploads/ELibrary/EEA%20letter%20-%20Wise%20Persons%20Group%20Report%20on%20the%20Reform%20of%20the%20EU%20Customs%20Union.pdf>.

Heathrow airport. Such an import is considered to be of little risk and therefore not in need of an import declaration in addition to proof of Union status.

**Furthermore, the rise in e-commerce (further exacerbated by the COVID-19 pandemic) has meant a shift in the type of imports that customs officials have to manage.** Traditionally, imports into the EU came in large containers via major ports, while e-commerce has increased the amount of small packages (consignments) being imported. Large containers are easier to manage for customs officials, as risky goods can be an indicator for potential risk in the whole container. Where risks are not found, a larger volume of goods can pass customs clearance. As identified in the Wise Persons Group report and confirmed by interviewees, customs officials need to perform more controls over goods arriving in small consignments, but, because of the volume, are unable to adequately execute the necessary checks. To deal with this flow, several customs offices have had to increase their staff, such as in Bierset, Belgium, where in the past three years the work force has grown from 40 civil servants to 180 in order to manage e-commerce goods arriving by air. It was added by Greek authorities that the rise in e-commerce has also meant a rise in the import of counterfeit goods. Their detection of such goods increased by 21% in 2020 compared to the previous year.

**Interviewees have also noted that with small consignments there are greater difficulties in assessing the true value of the goods being imported.** In the EU, there is currently a “de minimis” threshold of EUR 150 under which no customs duty but only VAT is required to be paid and customs clearance requirements are minimal<sup>72</sup>. With this threshold, Polish authorities noted that many e-commerce firms avoid paying duties by breaking up goods into multiple packages under this value and shipping them into the EU for subsequent commercial purposes. In addition, smaller e-commerce consignments are associated with a higher level of risk of irregularities and non-compliance with EU legislation. Combined with the inability to perform controls on all these consignments, the issue is likely to have a high impact particularly on the EU's financial interests (through undervalued customs declarations and duties not collected) and in terms of consumer safety (unsafe goods entering the Single Market)<sup>73</sup>. It was specified by Polish authorities that the pressure arising out of e-commerce has created difficulties in performing effective verifications of the transaction value of consignments, which has an effect on the level of import duties collected. It was noted that many goods are likely being imported with undervalued declarations but authorities do not have the capacity to perform controls on all of these goods. Experts also indicated that focusing on small consignments where there are little duties to be paid takes up resources that could be used to check large containers, where high duties are at stake.

It was added by stakeholders consulted that another route for fraud is to disguise commercial packages as non-commercial (i.e. between private persons<sup>74</sup>). The latter enjoy a customs relief up to EUR 45 and

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<sup>72</sup> International Post Corporation, *State of de minimis threshold (DMT) globally – VAT and customs duties*. Available at: <https://www.ipc.be/sector-data/e-commerce/articles/de-minimis-overview#:~:text=ceiling%20for%20imports,-.With%20tariffs%20largely%20negotiated%20away%2C%20one%20important%20trade%20facilitation%20issue,the%20clearance%20procedures%20are%20minimal.>

<sup>73</sup> Wise Persons Group, 2022, *PUTTING MORE UNION IN THE EUROPEAN CUSTOMS Ten proposals to make the EU Customs Union fit for a Geopolitical Europe*, European Commission. Available at: [https://taxation-customs.ec.europa.eu/system/files/2022-03/TAX-20-002-Future%20customs-REPORT\\_BIS\\_v5%20\(WEB\).pdf](https://taxation-customs.ec.europa.eu/system/files/2022-03/TAX-20-002-Future%20customs-REPORT_BIS_v5%20(WEB).pdf).

<sup>74</sup> See 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 (codified version), OJ L 286, 17.10.2006, p. 15–18. Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32006L0079>. See also Articles 25 to 28 of Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty (codified version), OJ L 324, 10.12.2009, p. 23–57. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009R1186#:~:text=Council%20Regulation%20%28EC%29%20No%201186%2F2009%20of%2016%20November,Having%20regard%20to%20the%20proposal%20from%20the%20Commission%2C.>



also are VAT exempt up to that same amount. This means that if a value below EUR 45 is declared, the goods will not pay customs duties nor VAT.

**Furthermore, the study found that the tasks of customs authorities have broadened as a result of EU legislation that strengthens environmental standards.** As EU citizens demand higher social and environmental standards, customs officials are faced with the performing of new forms of control. A recent example is the European Carbon Adjustment Mechanism, which imposes a levy on certain goods<sup>75</sup> imported from third countries. The levy is similar to the charge that would be applied under the EU's Emission Trade System (ETS) if the good had been produced in the EU<sup>76</sup>. Other examples include the ban on imports of products made with child or forced labour. These changes require customs officials to take into account a greater range of legislation restricting imports and to increase coordination with MSAs<sup>77</sup>. All in all, more than 300 prohibitions and restrictions are currently in force (including both EU and national prohibitions and restrictions), and their number keeps increasing over time.

#### 4.2. A significant share of imports are non-compliant and/or not subject to the correct import duties

**While there is no EU estimation of the “customs gap” (the difference between the customs duties that should be collected by Member States and the actual level collected), there is evidence that a significant share of customs duties are not collected as a result of a lack of knowledge by suppliers or consumers or as a result of fraud.** First of all, consumers and suppliers using e-commerce platforms often do not have extensive knowledge of their customs obligations. As a consequence, consignments are regularly shipped with undeclared value (i.e. under the “de minimis” threshold of EUR 150 established to ensure that individual citizens importing for non-commercial purposes are not penalised or have to face disproportionate administrative burden)<sup>78</sup>.

**Second, the de minimis threshold is also vulnerable to fraud with false declarations of value or split shipments** to ensure that the value remains below the minimum value for customs obligations. OLAF investigations in 2021 uncovered a scheme involving imports from China which led to around 11 Member States being defrauded of a total of EUR 14 million in underpaid customs duties as well as EUR 93 million in VAT<sup>79</sup>.

**Other evidence points to weaknesses in the controls of Member States leading to non-compliant goods entering the Single Market.** The Wise Persons Group for example highlights that many goods tested for non-compliance with safety legislation come from imports. Analysis by BEUC of 250 electrical products sold on large e-commerce platforms showed that 66% of the purchased goods did not comply with EU safety legislation, with risks including electric shock, fire and suffocation in products

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<sup>75</sup> Such as cement, iron and steel, aluminium, fertilizers, and electricity.

<sup>76</sup> Deloitte, 2021, *EU Carbon Border Adjustment Mechanism (CBAM)*. Available at: <https://www2.deloitte.com/nl/nl/pages/tax/articles/eu-carbon-border-adjustment-mechanism-cbam.html>.

<sup>77</sup> Wise Persons Group, 2022, *PUTTING MORE UNION IN THE EUROPEAN CUSTOMS Ten proposals to make the EU Customs Union fit for a Geopolitical Europe*, European Commission. Available at: [https://taxation-customs.ec.europa.eu/system/files/2022-03/TAX-20-002-Future%20customs-REPORT\\_BIS\\_v5%20\(WEB\).pdf](https://taxation-customs.ec.europa.eu/system/files/2022-03/TAX-20-002-Future%20customs-REPORT_BIS_v5%20(WEB).pdf).

<sup>78</sup> International Post Corporation, *State of de minimis threshold (DMT) globally – VAT and customs duties*. Available at: <https://www.ipc.be/sector-data/e-commerce/articles/de-minimis-overview#:~:text=ceiling%20for%20imports,-.With%20tariffs%20largely%20negotiated%20away%2C%20one%20important%20trade%20facilitation%20issue,the%20clearance%20procedures%20are%20minimal>.

<sup>79</sup> Wise Persons Group, 2022, *PUTTING MORE UNION IN THE EUROPEAN CUSTOMS Ten proposals to make the EU Customs Union fit for a Geopolitical Europe*, European Commission. Available at: [https://taxation-customs.ec.europa.eu/system/files/2022-03/TAX-20-002-Future%20customs-REPORT\\_BIS\\_v5%20\(WEB\).pdf](https://taxation-customs.ec.europa.eu/system/files/2022-03/TAX-20-002-Future%20customs-REPORT_BIS_v5%20(WEB).pdf).

such as toys, smoke detectors and phone chargers. The study notes that a large portion of these goods tested were imported, and in particular 92% of chemicals found to be in breach of REACH Regulation ((EC) No 1907/2006 ("Registration, Evaluation, Authorisation and Restriction of Chemicals")) were imported from non-EEA third countries. It was highlighted that the highest number of infringements (25% of cases) concerned the use of banned phthalates, with many being observed in toys<sup>80</sup>.

#### 4.3. National differences in impact management practices and in the requirements at the customs border create weak entry points

**It was highlighted by interviewees that fraudulent economic operators sometimes become aware of differences in impact management thresholds across Member States and adapt their behaviour accordingly.** This can mean directing imports towards Member States that are more likely to resort to impact management and shipping goods in batches of less than the weight or financial threshold (e.g. 1,000 kg in the case of a weight threshold). According to interviewees, minimum thresholds can be justified for the purpose of impact management, but there should be more rules over the extent to which such thresholds can be applied and the use of such thresholds should be balanced against risk assessment, so that goods with high likelihood of infringing EU legislation or standards are not imported under such thresholds.

**Differences in lists of prohibited or restricted goods across Member States create uncertainty for businesses and can lead to action to circumvent stricter entry points.** For instance, perfume or toys can be subject to different levels of burdens at the customs entry point depending on the Member State. Some Member States require more proof of safety than others, while other Member States have different items and ingredients listed as part of their prohibited or restricted goods. This creates unnecessary administrative burden, business uncertainty, and costs (i.e. to perform research or hire consultancy services to be up-to-date on differences across Member States) for importers whose goods will often have already been approved by other regulatory authorities. It also creates difficulties for smaller companies that are unaware of differences between Member States. In addition to infringing upon the goal of ensuring seamless trade, the differences in requirements can have an effect in terms of the integrity of the Single Market as traders may choose to direct their products towards points of entry at which there are less restrictions and prohibitions. Furthermore, experts consulted noted that the content and interpretation of the EU's prohibitions and restrictions varies among Member States because they are not sufficiently defined: Member States can have different views about the meaning of a specific prohibition or restriction, which is troubling from the perspective of legal certainty for traders but also from the perspective of their effective implementation EU-wide.

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<sup>80</sup> Ibid.

#### 4.4. Delays in upgrading IT systems and practices and a lack of IT system integration between authorities create burdens for customs authorities and importers

**Economic operators must submit their customs declarations via different IT systems with different requirements across Member States.** This creates a significant burden for importers and does not match with the EU's goal of a single Customs Union.

**All Member States appear to have digitalised their customs systems,** thus meeting the objective of the UCC to bring customs processes into a paperless environment for trade, but many of their IT systems are not interoperable and do not facilitate trade to the intended extent.

**There have been significant delays in the implementation of IT tools, some of which were envisioned as part of the UCC.** The national Single Windows (IT systems which allow for the verification of several types of import related non-customs formalities e.g. for the European Commission DG SANTE and DG CLIMA, and will allow for the implementation of an EU SWE-C) – that are not currently within the UCC but will be included following recent amendments to the legislation<sup>81</sup> – has been delayed to 2025. Similarly, not all Member States have implemented Centralised Customs Clearance in their national IT systems, thus preventing economic operators from being able to make use of this simplification on their territory. Spain is an example of a Member State that has implemented centralised clearance, which has required bilateral agreements with other Member States to allow traders not to make declarations at the entry point of the goods being imported but rather at the Member State where they are based. Nevertheless, the fact that such a system is not available EU-wide remains a key issue.

**The reasons for these delays vary between Member States.** For instance, one customs official noted that delays in the modernisation of the national transit control system occurred because the procurement process encountered problems. In this specific case, the winning bidder presented a proposal which exceeded the planned budget allocated for the development of the system. The procurement process therefore had to be repeated with a larger proposed budget. Another customs official highlighted that the need to adjust to changes introduced by the 2021 rules on e-commerce VAT<sup>82, 83</sup> meant that work on upgrading the customs IT systems was put on hold.

**The extent to which customs authorities have updated their IT systems in line with the UCC, particularly their import clearance systems, impacts significantly on whether they are able to manage the large flow of goods in the modern economy** (i.e. increase in trade flows, rise in e-commerce, etc.). It was noted that, though Irish authorities faced significant import flows as a result of the rise of e-commerce and the increase in trade, as well as the need to perform more checks due to Brexit, the introduction of an Automated Import System (Ireland's import clearance system required by the EU) enabled effective management of the flow of goods and eliminated the need for impact management.

**Furthermore, while it appears that all Member States have digital IT systems, not all are using modern data mining tools for their control procedures.** Member States that do use such tools

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<sup>81</sup> For further explanation see Section 2.1.

<sup>82</sup> The new rules removed the VAT exemption for the importation of goods with a value below EUR 22. The legislation also introduced two EU-wide online platforms for businesses to declare and pay VAT on imports and exports: the VAT One Stop Shop (OSS) and the Import One Stop Shop (IOSS).

<sup>83</sup> Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods, OJ L 348, 29.12.2017, p. 7–22. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L2455&qid=1623686257044>.

benefit from additional indicators of risk developed by algorithms based on deep analysis of large datasets, which allow them to perform less but more focused controls that are more successful in identifying goods in fact posing a risk to the Single Market. This, in turn, helps reduce the burden placed on customs officials and the disruption to logistics chains. For instance, the Dutch customs administration receives a significant portion of the shipments destined for the rest of the EU, particularly through the port of Rotterdam and the airport of Schiphol, and it had to implement efficient IT data risk analysis systems to ensure trade disruption was kept at a minimum. It has also been added that there are different levels of technological capabilities in this area, as the expertise and skills of customs staff when it comes to being able to use such data mining systems differ across Member States.

**Finally, several stakeholders highlighted the need to integrate customs risk analysis systems with other databases and systems of other government agencies (e.g. MSA, authorities responsible for preventing VAT fraud, law enforcement or security agencies, etc.) and ensuring interoperability.** Currently issues appear to exist with regard to the lack of interoperability of data systems for processing goods for customs purposes and for market surveillance purposes. Customs declarations contain information that allows officials to determine the level of customs duties that need to be collected on a particular good, but they do not contain information that could be matched with risk information collected by MSA. EU authorities interviewed noted that there is a need for greater interconnection between the data systems of MSA and customs authorities, which would allow the latter to perform analysis and identify risks related to prohibited or restricted goods. Interconnectivity in this regard means that information originally stored by one IT system can be accessed and analysed using the IT system of another authority. This is deemed important as preventing the entrance of prohibited or restricted goods also falls under the responsibility of customs officials. Good practices related to this issue can be seen in Spain, where the national Single Window allows for a coordinated clearance process allowing customs authorities to automatically verify compliance with a number of non-customs formalities. It was noted that this enables information to be exchanged between the customs system and the respective non customs systems managing non-customs formalities by partner competent authorities (for example CHED certificates - Common Health Entry Document for consignments of plants, plant products and other objects certificates). Similarly, in Poland, the Single Window has allowed for data sharing among customs authorities, on the one hand, and authorities involved in veterinary inspection, sanitary inspection, plant protection and seed inspection, trade policy, monitoring of sea fisheries, and agriculture and rural development, on the other. German authorities noted that work towards implementing a single window is in progress but has faced difficulties as the different Länder are competent for control in the realm of prohibitions and restrictions. As customs officials have the task of ensuring imports comply not only with customs legislation, but also other types of EU legislation, smooth cooperation with other agencies is seen as vital to ensure minimal disruption of trade as well as effective controls on the Single Market. Furthermore, in this way, risks signals that are identified by another type of authority would be automatically included in the customs control process. Where possible such systems should also be interoperable and connected to databases held by EU institutions, such as Europol and OLAF. This would allow for risks identified at EU level to inform the analysis at national level (which may not pick up signals identified through EU-wide data mining).

#### 4.5. Lack of appropriate data being collected and analysed

Another key weakness in the customs control systems relates to a lack of robust sharing and analysis of data in different Member States.

**The absence of data sharing is evident for example for risk information.** Member States have access to the Common Customs Risk Management System (CRMS) which allows for users to share risk information with other Member States' customs authorities via RIFs. Similarly, Member States have access to the Anti-Fraud Information System (AFIS) managed by OLAF, which provides risk information. Member States should incorporate into their own IT systems, and to Europol data to inform risk analysis.

**RIFs can be used for risk signals that later inform decisions on whether to make control procedures over a consignment.** Some interviewees for this study stressed that Member States need to share risk profiles and indicators more often as fraudsters eventually are able to identify where their goods are controlled and where they are not, and make use of these loopholes.

**However, some national authorities have argued that the information provided through RIFs is often unclear and therefore not incorporated into their risk management process.** One example indicated that RIFs had highlighted to Member States that controls could be reduced on consignments coming from a particular third country that had specific characteristics (specific information on these characteristics are confidential), but several Member States did not change their practices accordingly<sup>84</sup>.

**Where information sharing does not occur, risk profiles are created on the basis of the national authorities' own data only, which means the same shipment can face different risk control procedures in different Member States.** Interviewees also highlighted that the lack of risk information sharing means that if one company is identified by one Member State as being a frequent offender, this company can continue importing into the EU via other Member States as the latter will not have incorporated this information into their own IT systems. In addition to information sharing, it was argued that a centralised EU agency as well as EU risk analysis performed at EU level for all Member States, with common EU databases, would help prevent such loopholes from occurring. In this regard it should be noted that in the 2020 Customs Action Plan the Commission has recognised that EU level analysis of customs data is required<sup>85,86</sup>.

EU authorities mentioned that the fact that risk analysis is only performed on national systems means that there are limits in the ability to detect illicit trade that is organised, operates across borders within and outside of the EU, and exploits weak entry points of the EU Single Market. It was added that although the European Commission has developed systems to collect trade data at EU level (such as the ICS system and the 'Surveillance' database<sup>87</sup>), the current legislation does not explicitly identify the Commission's role in being able to use data for risk analysis. The European Commission therefore does not have the ability to flag risks to Member States and oblige them to take action and report back about the controls performed in response to EU-level risk analysis. If risk analysis were conducted in this way it could be used to tackle financial and non-financial risks in the area of security and safety, as well as

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<sup>84</sup> European Court of Auditors, 2021, *Special Report 04. Customs Controls : Insufficient Harmonisation Hampers EU Financial Interests*. Available at: <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=58256>.

<sup>85</sup> European Commission, 2020, *Action Plan Taking the Customs Union to the Next Level: a Plan for Action*, COM(2020) 581 final. Available at: [https://taxation-customs.ec.europa.eu/document/download/612d7854-7c3f-4bf8-a580-6029fc816024\\_en?filename=customs-action-plan-2020\\_en.pdf](https://taxation-customs.ec.europa.eu/document/download/612d7854-7c3f-4bf8-a580-6029fc816024_en?filename=customs-action-plan-2020_en.pdf).

<sup>86</sup> European Court of Auditors, 2021, *Special Report 04. Customs Controls : Insufficient Harmonisation Hampers EU Financial Interests*. Available at: <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=58256>.

<sup>87</sup> 'Surveillance' is a database managed by DG TAXUD which monitors imports into the EU. It registers the total number of a type of item that has entered into the EU. It also collects data on the volume and origin of the consignment.

to help ensuring compliance with other prohibitions and restrictions, intellectual property rights, standards related to the environment, product and food safety, or economic sanctions.

Relatedly, interviews indicated that EU authorities believe they do not have sufficient access to information received by customs officials and this prevents EU authorities from performing EU level risk analysis. It was noted that information on safety and security is provided through the ENS lodged into the ICS system, which is managed by the European Commission, but that EU officials are not able to access that information. This is similarly the case with import, export or transit declarations filed in national or trans-European IT systems, which does not allow EU authorities to cross check the information with any other source.

**Stakeholders also noted that there is a lack of appropriate data collection to manage the inflow of goods in the modern e-commerce environment.** Irish and Spanish national authorities highlighted that, under the UCC, goods under the *de minimis* threshold of EUR 150 (and therefore exempt from customs duties) are declared with H7, which allows economic operators to import such goods with a simplified customs declaration requiring less information. It was argued that this provision is not adapted to modern e-commerce, as the limited amount of data provided in these customs declarations means authorities are unable to perform post-control data mining analysis on these consignments. This is significant as the threshold impacts on e-commerce related risks such as economic operators splitting consignments to avoid paying customs duties. In the case of Spain, authorities reported that they are currently in the process of identifying what information is needed to allow them to perform such risk analysis.

A further issue concerns the allocation of responsibilities in customs declarations, particularly as regards e-commerce. As noted in interviews with EU authorities, carriers, who are responsible for making customs declarations, do not always have the correct information regarding the goods being imported, leading to false or poor quality data being transmitted to authorities. Currently, carriers are tasked with providing information on the goods being transported through customs declarations, but they rely on information provided to them by the individuals or companies importing the good. This can be an issue as the information provided to carriers may not be accurate (either due to errors or intentional fraud).



Box 2: 2022 Russian invasion of Ukraine and the EU Customs Border

Individuals spoken to as part of this study indicated that the EU customs system has been effectively able to manage potential crises arising as a result of the 2022 Russian invasion of Ukraine. EU authorities, national customs officials and representatives of the private sector indicated that, despite possible concerns, the crisis has not created difficulties for the customs border. Nevertheless, as described below, certain bottlenecks at present have prevented the EU from being able to better respond to the crisis.

To help manage the flow of imported personal belongings of Ukrainian refugees customs authorities have the opportunity to make use of EU laws to grant relief. Articles 4 to 11 of Regulation (EC) No 1186/2009 of 16 November 2009 allows customs authorities to grant relief from customs duties and value added tax on personal belongings if an individual is moving from the normal place of residence in a third country to the EU as a “result of exceptional political circumstances”. Personal goods can, therefore, be brought into the EU by refugees without the need for paying duties or VAT. Furthermore, customs declarations can be simplified, for example by making such declarations orally. In addition, it is worth noting that the Commission provided operational guidelines for external border management to facilitate border crossings at the EU-Ukraine borders in a communication on 4th March 2022, which includes guidelines in relation to personal belongings and valuable items of displaced persons from Ukraine.

Nevertheless, one national customs authority indicated that the road freight transport documents (CMR) often do not include sufficient information on the importer, exporter and the good itself for officials to determine whether an import from Russia or Belarus should not be allowed entry under sanctions. Currently, the CMR contain information on the place from which goods were loaded and are to be unloaded, the carrier of the good, information about the person sending the goods (not the exporter), the total weight of the consignment and the number of containers, but this was not enough to verify the actual individual or company exporting the good into the EU.

As noted previously, the EU lacks access to key information held by customs authorities. Such concerns also apply considering EU authorities ability to monitor compliance with economic sanctions imposed in response to Russia’s invasion of Ukraine. Lack of access to ENS and customs declarations means they are unable to help national authorities with identifying whether a good is being imported by a sanctioned individual in Russia.

Furthermore, German customs officials pointed out that there are procedural constraints on national authorities which prevent efficient management of crises. When taking decisions on customs matters – for example on the entry of a good of a trader or an individual – the UCC requires national customs authorities to make case-by-case assessments. Accordingly, in the context of a crisis such as the Russian invasion of Ukraine, customs officials have to decide on a case-by-case basis that each of the Ukrainian refugees is in a situation of force majeure. This was considered to be not efficient in situations of large disruptions, where the same determination should apply to thousands of individuals or traders as a whole, rather than making the determination for each of them individually. This creates an inefficient burden on customs authorities in circumstances where speed is most needed.

Source: Authors’ own elaboration.

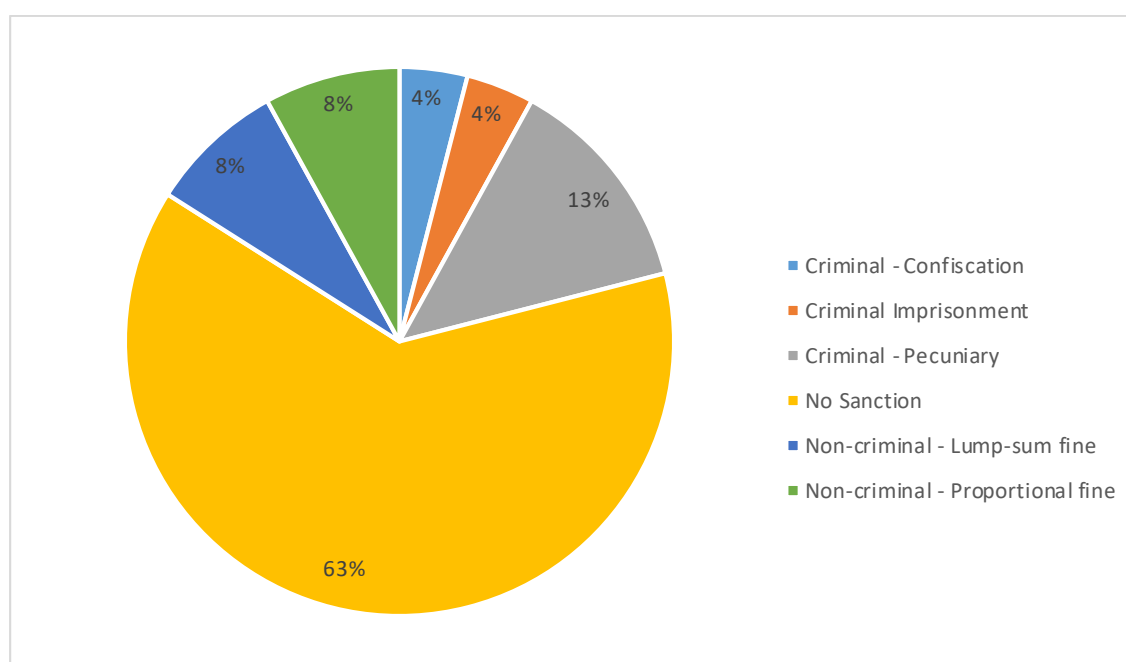


#### 4.6. Diverging national sanctions regimes create legal uncertainty, jeopardise the Single Market and the principle of a level playing field.

**Differences in sanctions and infringement procedures across the EU can jeopardise the Single Market and the principle of a level playing field across the EU, hamper businesses' ability to trade within and into the EU and increase costs as a result of legal uncertainty.**

**In practice, the absence of a harmonised sanctions regime means that one type of infraction can be punished in several different ways depending on the Member State.** For instance the Commission's Project Group highlighted the case of an infringement involving the "lodging of an export declaration at a customs office in a Member State other than that where an export declaration should have been lodged". As the figure below shows, among the 24 Member States investigated, 15 would not initiate any sanctions procedure, while 5 would impose a criminal sanction and 4 would apply an administrative sanction (i.e. non-criminal)<sup>88</sup>.

Figure 3: Type of sanction applied for 'Lodging of an export declaration at a customs office in a Member State other than that where an export declaration should have been lodged.'



Source: European Commission's Project Group on Customs Penalty report<sup>89</sup>.

**As part of the research for this study, some interviewees argued that the severity of customs sanctions imposed by certain Member States are out of proportion with the seriousness of the infringement,** especially as several Member States can only categorise such offences as criminal. In some cases, involuntary administrative errors can lead to individuals having criminal records or having to pay additional legal fees to hire lawyers to manage criminal proceedings; in order to avoid such disproportionate consequences, national legal systems should treat incorrect declarations made in good faith differently to false information provided with intent to commit fraud. Furthermore, in some

<sup>88</sup> European Commission, 2013, Commission Staff Working Document Impact Assessment Accompanying the document Proposal for a Directive of the European Parliament and of the Council on the Union legal framework for customs infringements and sanctions, SWD/2013/0514 final. Available at: <https://eur-lex.europa.eu/legal-content/GA/ALL/?uri=CELEX%3A52013SC0514>.

<sup>89</sup> Ibid.

cases logistics operators provide information in customs declarations based on data provided to them by the exporter. Where such information is incorrect, the logistics operator is held responsible for the error despite not being aware that the information was false.

**The analysis presented by the Commission with its proposal on the Union legal framework on customs infringements and sanctions also shows that the possibility of traders being sanctioned criminally for minor infringements can affect the access they have to simplified customs procedures such as the ability to register as an AEO<sup>90</sup>.** In this respect, Article 39 of the UCC indicates that to obtain AEO status the entity must demonstrate “absence of any serious infringement or repeated infringements of customs legislation and taxation rules, including no record of serious criminal offences relating to the economic activity of the applicant”<sup>91</sup>. It was noted by the European Commission that whether an infringement is considered serious or not is determined by national authorities, and that economic operators applying in jurisdictions of Member States only providing for criminal sanctions may face more difficulties in obtaining this status or have their status revoked with more ease<sup>92</sup>.

**The table below shows that these differences in national regimes have an impact on the number of operators applying for AEO status.** As France imposes only criminal sanctions, application for AEO status are more often rejected, which in turn makes it less likely for operators to apply for the status. It should be noted that the figures are from 2011 but the sanctions regime has not changed in either Member State, so that the findings are likely to remain relevant.

Table 6: Number of economic operators applying for AEO status in Germany and France in 2011

Member State	EORI	AEO Applications	EORIs applying for AEO status (%)	AEO Granted	EORIs Granted AEO status (%)
Germany	216,415	3,280	1.52%	3,200	1.48%
France	245,231	250	0.10%	218	0.09%

Source: European Commission's Staff Working Document Impact Assessment<sup>93</sup>.

**These differences could also distort the level playing field across the Single Market.** First of all, entities committing an infringement in a Member State with less severe legislation have an unfair advantage compared to entities operating in a Member State where the same action can involve much heavier sanctions. Second, entities wishing to import goods into the EU will seek to direct their goods towards jurisdictions with less severe sanctions, creating trade distortion among Member States. Finally, intelligence shows that organised crime groups have at times factored in the possibility of more

<sup>90</sup> Ibid.

<sup>91</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast), OJ L 269, 10.10.2013, p. 1–101. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R0952-20200101>.

<sup>92</sup> European Commission, 2013, Commission Staff Working Document Impact Assessment Accompanying the document Proposal for a Directive of the European Parliament and of the Council on the Union legal framework for customs infringements and sanctions, SWD/2013/0514 final. Available at: <https://eur-lex.europa.eu/legal-content/GA/ALL/?uri=CELEX%3A52013SC0514>.

<sup>93</sup> Ibid.

lenient fines in their calculation of risk and reward for cigarette smuggling and other forms of customs fraud<sup>94</sup>.

**Finally, widely differing infringements and sanctions regimes mean that economic operators face legal uncertainty when engaging in trade in different Member States.** Businesses face the possibility of unknowingly infringing national laws when importing unless they are aware of the specifics of the 27 different legal systems of the Member States. This legal uncertainty also entails costs as some businesses will either have to perform their own analysis to be aware of differences or to pay for legal advice services, and these costs are likely to be more burdensome for SMEs (Small and Medium Sized Enterprises)<sup>95</sup>. Experts consulted have also indicated that in the area of prohibitions and restrictions, the lack of proper and specific definitions for the legal terms used is a source of legal uncertainty, as different Member States may have diverging views on their meaning and content.

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<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

### Box 3: Good practices

Through our research, a set of good practices was identified which could help solve some of the issues presented above:

- **Netherlands' System-based approach:** A stakeholder involved in importing products into the EU highlighted good practice in the control procedures undertaken by customs authorities in the Netherlands. In this Member State, customs authorities have a system whereby reputable companies are exempt from detailed controls. Under this system, customs authorities are able to focus on traders who are less known to officials and more likely to be non-compliant. These practices are similar to the system-based approach recommended by the Wise Persons Group report.
- **Ireland's Automated Import System:** The extent to which customs officials have updated their IT systems in line with the UCC, particularly their import clearance systems, impacts significantly on whether they are able to manage the large flow of goods that have arisen in the modern economy (i.e. increase in trade flows, rise in e-commerce, etc.). It was noted that Ireland faced significant import flows as a result of the rise of e-commerce and the increase in trade, as well as the need to perform more checks due to Brexit, but the introduction of an Automated Import System (Ireland's import clearance system required by the EU) enabled effective management of the flow of goods and eliminated the need for import management.
- **Poland's Digital Border System:** In the survey conducted for this study, a Latvian customs authority highlighted Poland's Digital Border System as good practice. It was indicated that as a result of this system, at all border crossings into Poland the process of handling vehicles is fully automated. The Digital Border System is adapted to the specific types of traffic received at these crossings, the type of border crossing point, the infrastructure located in these areas, the technology of checks used and the resulting sequence of activities of control services. The Digital Border System is part of the larger project Platform for Electronic Treasury and Customs Services (PUESC) which seeks to ensure efficient customer service at border crossings using automatic data exchange mechanisms and automatic vehicle identification and traffic control. The Polish National Revenue Administration manages the technical infrastructure at border crossing points.
- **CELBET (Finland, Estonia, Latvia, Lithuania, Poland, Hungary, Slovakia, Croatia, Romania, Bulgaria and Greece): the Customs Eastern and South-Eastern Land Border Expert Team (CELBET),** established in 2016, is a structured cooperation network between 11 Member States situated at the EU's eastern land border. It is financed mostly under the EU Customs programme and works under the supervision of DG TAXUD<sup>96</sup>. A key aspect of this good practice, as highlighted by experts consulted, is the fact that the Member States share IT systems for risk analysis. Furthermore, the network allows for the exchange of good practices and experiences, the development of new methods to tackle customs risks, and supports coordination between customs and border guards, as well as with the services of neighbouring third countries. According to national authorities interviewed, CELBET is also working on solutions in areas where customs are struggling with insufficient resources, such as risk management or shortages of control equipment. CELBET also explores opportunities

<sup>96</sup> Wise Persons Group, 2022, *PUTTING MORE UNION IN THE EUROPEAN CUSTOMS Ten proposals to make the EU Customs Union fit for a Geopolitical Europe*, European Commission. Available at: [https://taxation-customs.ec.europa.eu/system/files/2022-03/TAX-20-002-Future%20customs-REPORT\\_BIS\\_v5%20\(WEB\).pdf](https://taxation-customs.ec.europa.eu/system/files/2022-03/TAX-20-002-Future%20customs-REPORT_BIS_v5%20(WEB).pdf).

to develop cooperation and coordination, as well as carrying out joint activities with law enforcement agencies (FRONTEX, EUROPOL, OLAF). It should be noted however that CELBET has competence only for cooperation in the field of customs activities at land borders. Authorities consulted have indicated that the project has been largely seen as effective and useful for national customs officials. Participating Member States have therefore expressed their willingness to expand the current project collaboration into a permanent structure with dedicated resources and financing.

- **Poland's and Spain's National Single Windows:** As noted above, good practice involves Member States' customs officials having their risk analysis systems linked with other systems that check compliance with other legislation besides customs laws. Implementing the national Single Windows is a key way in which Member States can apply this good practice as it allows for connectivity between IT systems of different relevant national authorities.

In Poland, the Single Window facilitates the cooperation of customs authorities with officials involved in: 1) Veterinary Inspection, 2) Sanitary Inspection, 3) Chief Inspectorate of Sea Fisheries, 4) the Ministry of Agriculture and Rural Development, 5) Trade Inspection, 6) Plant Protection and Seeds Inspection. Furthermore, as part of the further development of the national Single Window system, Poland plans to include the Inspection of Commercial Quality of Agricultural and Food Products in the Single Window system and to connect with the EU CSW-CERTEX (EU Customs Single Window Certificates Exchange) system. Polish authorities consider this tool to be effective for these reasons but also because it allows for quick exchange of information with other Member States using such tools and EU institutions such as Commission DG TAXUD and OLAF. For national authorities within Poland, the IT tool allows for better coordination of activities rather than distribution of tasks between different units within the country.

Similarly, in Spain, the authorities indicated that the national Single Window allows for coordinated clearance processes, which grants customs authorities the possibility of automatically verify compliance with a number of non-customs formalities. It was noted that this enables information to be exchanged between the customs system and the respective non-customs systems managing non-customs formalities by partner competent authorities (for example CHED certificates). Furthermore, the Single Window includes the data held by other border authorities and the Tax Administration as a whole (not just the customs department) which feed into risk analysis. This is complemented by a legal framework allowing for the exchange of data between such authorities.

- **Spain's Centralised Clearance:** As noted above, not all Member States allow for centralised clearance, meaning that only in some Member States entities have access to this customs simplification. Delays have been seen in many Member States with implementing this tool in line with the UCC requirements. Spain is one of those Member States that have implemented this tool. To do so, it has also established agreements with other Member States to allow economic operators based in Spain to lodge a customs declaration in Spain rather than at the point of entry at which the good is presented.

Source: Authors' own elaboration.

## 5. CONCLUSIONS AND RECOMMENDATIONS

This chapter summarises the key findings of the study and presents recommendations.

### 5.1. Conclusions

Customs authorities have to balance the need to facilitate fast and seamless import procedures with the requirement to perform robust customs controls.

At the same time the EU customs border protects the Single Market from risks posed by third country products that are non-compliant with EU standards. Once a good is cleared to enter the EU Single Market, it can be moved within the EU, without further controls to be performed or duties to be paid.

Effective controls at the EU border are, therefore, essential to ensure goods that are coming in do not have an unfair competitive advantage over EU industry and labour, are safe for consumers, do not infringe upon EU environmental standards and maintain a level playing field among business across Member States.

This need for effective controls is also relevant considering the challenges the EU faces as a result of the shifting geopolitical context. The customs border contributes to ensuring that EU standards remain protected despite such shifts and plays an essential role in preventing the entry of banned imports.

There are several ways in which Member States' practices differ when it comes to customs practices:

1. **Processing of customs declarations takes place through different national IT systems.** While ENS and notifications of arrival are registered in the EU-wide ICS system, the customs declaration itself has to be submitted to the Member States' IT system, which differs across the EU-27.
2. **While there is common overarching EU customs legislation, the implementation of such laws differs,** in some instances widely, across Member States. The UCC and the related FRC Decision lack guidance on impact management and on prohibitions and restrictions. Furthermore, the FRC Decision is sometimes unclear in its definition of risk, which means Member States make use of risk signals in different ways and do not prioritise some goods identified as risky.
3. **The sanctions and infringements regime remains largely a national competence with EU legislation providing limited guidance on how Member States should implement sanctions.** As a result, sanctions regimes and sanctions levels vary significantly across the EU. While some Member States apply a mixed regime of administrative and criminal sanctions depending on the severity of the infringement, others only provide for criminal sanctions.

Market and technology trends, as well as the above differences across Member States, lead to weaknesses in the current custom system that need to be addressed.

**First of all, the increase in trade overall and the rise in e-commerce (accelerated by the COVID-19 crisis) have meant a larger workload for customs officials** which, in turn, leads to difficulties in performing controls adequately.

**Second, while a certain degree of flexibility in customs practices is positive considering the different risks that Member States face, it is important that this does not create weak entry points into the EU Single Market.** For instance, differences in Member State weight thresholds can be identified by fraudsters who will then import to different entry points below such thresholds to avoid detection. Similarly, as Member States differ in the percent of controls that are performed for

certain risk criteria, fraudsters can identify areas where fewer controls are performed as a whole to minimise the risk of being caught.

**Third, widely differing national lists of prohibited and restricted goods create costs and legal uncertainty for entities trading in multiple Member States** and may lead to jurisdictional arbitrage, where importers choose one Member State over another to avoid administrative burden.

**Fourth, there are differences in IT systems used for customs declarations and several Member States have not implemented the import clearance system as specified in the UCC.** Relatedly, several Member States do not use advanced data tools to gather a comprehensive picture of the risks involved in customs declarations.

**Fifth, there is a lack of appropriate data being collected and analysed.** The study found limited data sharing between Member States for risk analysis, particularly through RIFs. On the other hand, RIFs that are provided are often unclear. Another issue highlighting the problem of lack of appropriate information being gathered is related to low-value consignments. As currently foreseen in the UCC, declarations for consignments below EUR 150 do not provide enough data for customs authorities to perform risk analysis.

**Finally, when it comes to sanctions, in the absence of clear EU level rules, Member State practices diverge even more significantly.** For instance, one infringement can be treated in multiple ways by different Member States, including through administrative sanctions, criminal sanctions, or a mix of both. This can create distortions in the Single Market as economic operators give preference to Member States with less severe punishment for minor mistakes. Indeed, small criminal offences in some Member States can prevent entities from obtaining AEO status or contribute to them losing their status. Furthermore, sanctions differences mean fraudsters can target Member States where they are likely to face less severe sanctions if caught.

The next section highlights a number of recommendations that could help to address the weaknesses identified in this study.

## 5.2. Recommendations

Based on the above conclusions, the study proposes the following recommendations to improve the management of import controls and the current infringements and sanctions regime and build on best practices.

### 5.2.1. Member States should accelerate progress with updating IT systems in line with the Union Customs Code (UCC)

While our research has found that all Member States appear to have fully, or nearly fully, digitalised customs systems, there is variability in terms of how advanced their IT systems are for processing customs declarations and other customs procedures. This is particularly the case in light of delays in the implementation of IT systems in line with the requirements of the UCC.

As highlighted above, delays have been seen for the implementation of import clearance systems, centralised clearance and the national Single Windows. While difficulties due to workload have been noted, the implementation of such IT tools is essential to ensure that risk analysis is performed using state of the art systems. The study has found that the use of centralised import clearance is an effective way in which Member States have been able to manage the large flow of low value e-commerce consignments, limiting the need for impact management.



Furthermore, advanced IT systems allow for more effective risk analysis, as customs authorities can make use of state of the art data mining tools to decide whether consignments should be subject to controls.

Centralised clearance and the Single Windows have also been highlighted as essential by entities involved in importing. The former would allow for entities to make customs declarations in the Member State in which they are based rather than at the point at which the good enters the Single Market, and in the latter case, this would allow for traders to make use of a single IT system to provide data to demonstrate compliance with non-duty customs formalities, for example related to EU environmental, labour and security standards.

#### 5.2.2. The EU should consider implementing a single unified customs control mechanism

As previously highlighted by the EP, and stressed in particular by representatives of entities involved in importing into the EU, there is a need for a single unified customs control mechanism which covers all EU Member States.

Currently, while ENS, notifications of arrival, temporary storage declarations, and proof of Union status are registered in the EU-wide ICS system, customs declarations have to be submitted to one of the differing IT systems used by each Member State for customs control procedures. This creates major difficulties for traders who import in more than one Member State, as they have to manage the different requirements of each national system.

Having a single system that covers all EU Member States would harmonise requirements for economic operators when making declarations and eliminate the costs created by the presence of differing systems as well as distortions in trade, since entities choose to import via the Member State where IT requirements and control mechanisms are less burdensome.

Furthermore, there is a need for such a single system to be interoperable with other systems held by other authorities involved in imports, such as MSAs assessing the safety of products. This has been highlighted as good practice as it allows, first of all, for traders to provide declarations and information in one system, as well as for risks identified in one of the tools to inform other tools managed by other authorities, thus ensuring examinations of goods are not repeated.

Combined with centralised clearance, such an interoperable system would allow for fewer administrative procedures at the border itself, thus reducing the burden on customs officials.

#### 5.2.3. The EU should implement a centralised risk analysis system to assess risk across its Member States

The EU should complement national risk analysis systems with an EU-wide system that performs data mining on information derived from all Member States. This is especially important in light of the fact that not all Member States make use of state of the art data mining tools at present.

At the same time, stakeholders have highlighted that Member States face different risks due to the geographical contexts in which they find themselves (e.g. whether they have major ports or receive most of their imports via air or land-based transport). For instance, a Member State that receives most of its imports via ports will face different risks than a land-locked Member State.

This shows the importance for Member States to retain their own risk analysis procedures alongside an EU system. Nonetheless, a system that assesses risk with information derived from all over the EU would allow Member States to draw a more comprehensive risk picture, reduce costs for Member State authorities and foster convergence in practices around risk indicators where this may be necessary.

#### 5.2.4. The EU should have access to data received by Member States from economic operators

Relatedly, to complement national risk analysis, the EU should have access to data provided to Member States by economic operators when making customs declarations. It was highlighted, for example, that though information on safety and security provided through the ENS is lodged into the EU managed ICS system, EU officials do not have access to the information provided. This is also the case with import, export or transit declarations filed in national or trans-European IT systems. Having access to this information would allow EU authorities to perform data analysis on these tools to identify risks that Member States are not picking up by analysing solely national data.

#### 5.2.5. The EU should ensure information on risk is shared among and made use of by Member States' control procedures

It is also essential that risk indicators identified by a possible overarching EU tool or by individual Member States' own tools are shared effectively and made use of by customs authorities.

At the same time, it is important that any information produced at EU level is usable in the national context. For instance, the study found that Member States often do not make use of risk indicators shared by OLAF (via AFIS) or through RIFs from the European Commission or other Member States, as these are sometimes seen as insufficiently suitable as risk indicators. To avoid this, one national authority indicated that pre-analysis of the RIFs should occur to ensure Member States can make use of the information provided.

Furthermore, Member States do not systematically share information on risk, which means that traders identified by one Member State as risky can continue trading into another Member State without the latter's risk analysis system identifying them as a risky economic operator.

Procedures should be put in place to ensure systematic data sharing among Member States. A central EU IT system that is interoperable with national systems could allow for effective risk information sharing.

#### 5.2.6. Member States and the EU should integrate data from commercial sources and e-commerce platforms rather than rely solely on customs declarations

As highlighted in the Wise Persons Group report, there is a need to gather data from different sources besides customs declarations, including commercial sources and e-commerce platforms. Such data would allow for more accurate information for the duty and tax assessment and could better inform risk management processes.

Logistics industry representatives noted that they make customs declarations on the basis of information provided by the companies seeking to export into the EU. The companies providing the information can at times provide misdeclarations of value or other incorrect information. More interaction with e-commerce platforms that have information on the real values exchanged for the goods purchased (rather than the potentially false undervalued prices declared on the shipments) could also help distribute liability more fairly when it comes to sanctions.

#### 5.2.7. The EU should work to harmonise the national lists of prohibitions and restrictions

Entities involved in the importation of goods into the EU highlighted divergent lists of prohibitions and restrictions used by Member States with additional requirements that go beyond the EU list. These divergences create significant difficulties for entities (especially SMEs) importing into multiple Member States, and they can be costly for businesses, as they have to familiarise themselves with restrictions and certificates needed by different customs authorities (or hire external consultants).

Representatives consulted for this study have argued that there is a need for one single EU list to be adopted by all Member States. Should such a measure not be possible, gradual harmonisation of lists should occur through dialogue between the European Commission and Member States. Furthermore, harmonised definitions of the legal terms used in providing for prohibitions and restrictions should be adopted, in order to avoid diverging interpretations by Member States.

#### 5.2.8. The EU should consider transitioning away from a transaction based approach to customs towards a system based approach which includes a reformed AEO status

E-commerce has imposed a large burden on customs authorities due to a shift away from large shipping containers towards a significant number of low value and small consignments arriving at EU borders. Previously, customs systems could assess risk on a single container to obtain information on a large number of goods. As control procedures are currently formulated, the rise of e-commerce has meant customs authorities have to process a large number of individual consignments, which creates a significant burden and often leads to high rates of overriding.

As recommended by the Wise Persons Group report, moving from a transaction oriented approach to a system based approach would mean a transition away from assessing individual parcels for control. Instead, customs authorities would only have to perform controls if the trader itself is not considered reliable. The reliability of the trader would be determined based on whether it has AEO status. This would, however, require a reformed AEO system with stricter requirements. Under such a system, reliable economic operators that share information with customs authorities would face fewer controls and have smoother trade flows than those who do not share information.

Reflecting on this recommendation, stakeholders from the logistics industry argued that the AEO system should provide greater incentives for operators (this is in line with the recommendations made by the Wise Persons Group report). Under a reformed AEO status, entities that hold this status would no longer face high amounts of controls, thus removing barriers in a supply chain often characterised by the need for quick and timely delivery, as well as in some cases just-in-time inventory systems. In addition, the Wise Persons Group recommendation that non-AEOs be allowed to trade by issuing a bond guaranteed by AEOs was welcomed by logistics industry representatives.

In terms of good practices, in the Netherlands customs authorities have a system whereby reputable companies are exempt from detailed controls. Under this system, customs authorities are able to focus on traders who are less known to officials and more likely to be non-compliant. This system-based approach means fewer controls on economic operators that have a track record with limited to no customs offences.

**5.2.9. The EU should reform the UCC to allow more data to be gathered within the 'Super reduced dataset for Low value consignment' form ('H7')**

The study has found that the H7 used for customs declarations under the EUR 150 de minimis threshold needs to include more information for customs authorities to be able to perform risk analysis. The European Commission should work with national authorities to understand what data requirements would be needed to ensure such risk analysis is possible.

**5.2.10. The EU should provide further guidance for Member States when it comes to risk management**

The study has found instances in which national authorities have not adopted recommended risk management procedures due to lack of clarity in the FRC Decision accompanying the UCC.

It was noted, for example, that the FRC Decision was unclear on the definition of risk, therefore leading to authorities not prioritising controls on goods identified as risky. Furthermore, the FRC Decision provides a list of indicators of risk but there is little direction in terms of what actions should be followed in response to these risks by Member State authorities.

To address this, either through a revision of the UCC or a dialogue with Member States in order to ensure risks are understood, further guidance should be provided to authorities on definitions of risk and how to act upon these risks once identified.

**5.2.11. A renewed effort should be made to harmonise aspects of national sanctions and infringement regimes with all Member States adopting a mixed system of administrative and criminal punishments**

Current differences in national sanctions and infringements regimes create significant issues for traders as there is legal uncertainty for those operating in multiple Member States and significant costs of familiarisation with different systems.

Furthermore, in some Member States even minor infringements are considered criminal offences which can have an effect on a trader's ability to obtain or maintain AEO status. The differences can also lead to a distortion of trade as both fraudsters and honest traders choose more lenient jurisdictions to import their goods.

A more harmonised system involving both administrative and criminal sanctions would reduce divergence and ensure penalties are more proportionate to the infringement committed. Criminal law should be restricted to penalising severe offences involving attempts of fraud, while administrative law should be applied to errors made in good faith.

Learning the lessons from the previous attempt to harmonise sanctions regimes, a gradual approach should be adopted involving continued dialogue with Member States in order to try to slowly converge practices across Member States and eliminate the existing differences to the greatest extent possible.

**5.2.12. The EU should consider establishing a European Customs Agency**

In line with the recommendation made by the Wise Persons Group report, this study points to the need to establish a European Customs Agency. Such an agency could play the role of directing resources (financial and human) towards areas of need where customs authorities are facing relatively large upswings in imports.

It was noted that large ports at the sea borders of the EU and large airports for commercial traffic receive a large share of the goods entering the Single Market, many of them directed towards other Member States inland (the port of Rotterdam was highlighted as a prime example). Customs authorities in these locations are in effect performing controls for other Member States and the European Customs Agency could play a role in deploying resources to areas where there is significant pressure on national authorities.

Furthermore, the EU capacity to respond to major geopolitical events would be enhanced if there was a central body (either a central customs agency, the European Commission itself, or an ad-hoc cooperation network between the EU and Member States) that could devote dedicated resources and be mandated to design and implement the customs policy to respond to such events. In the example of the Russian invasion of Ukraine, following the enactment of economic sanctions against targeted individuals, such a central body could have directed resources towards land borders with Russia to ensure customs officials are able to perform additional checks necessary to prevent actors banned from importing goods from doing so.

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## ANNEX

### Survey questionnaire

Part A: Member State authorities' authorisation procedures and good practices
<b>What country do you represent?</b>
<b>What type of stakeholder are you?</b>
<p>1. To what extent do ALL Member States' practices differ when it comes to implementing EU customs legislation? In what ways do their customs controls (risk analysis, customs authorisation, customs control, enforcement etc.) differ from each other? Note: Please rate on a scale of 1 to 5, with 5 meaning Member States' practices differ substantially, 3 meaning Member States practices are neither similar nor different and 1 meaning Member States practices are very similar.</p> <ul style="list-style-type: none"> <li>a. 1</li> <li>b. 2</li> <li>c. 3</li> <li>d. 4</li> <li>e. 5</li> <li>f. I do not know</li> <li>i. Textbox for more details</li> </ul>
<p>2. To what extent does YOUR Member States' practices differ when it comes to implementing EU customs legislation? In what ways do YOUR Member States' customs controls (risk analysis, customs authorisation, customs control, enforcement etc.) differ from others? Note: Please rate on a scale of 1 to 5, with 5 meaning Member States' practices differ substantially, 3 meaning Member States practices are neither similar nor different and 1 meaning Member States practices are very similar.</p> <ul style="list-style-type: none"> <li>a. 1</li> <li>b. 2</li> <li>c. 3</li> <li>d. 4</li> <li>e. 5</li> <li>f. I do not know</li> <li>i. Textbox for more details</li> </ul>
<p>3. To what extent are customs formalities and controls in place in ALL Member States across the EU effective in protecting the interests of the EU (unfair competition, health and safety standards, etc.)? Note: Please rate on a scale of 1 to 5, with 5 meaning the customs formalities and controls are very effective, 3 meaning that customs formalities and controls are neither effective or ineffective, and 1 meaning they are not effective at all.</p> <ul style="list-style-type: none"> <li>a. 1</li> <li>b. 2</li> <li>c. 3</li> <li>d. 4</li> <li>e. 5</li> <li>f. I do not know</li> <li>i. Textbox</li> </ul>

<p>4. To what extent are the tools (e.g. data mining tools, risk analysis tools, and etc.) at the disposal of customs authorities in YOUR Member State effective at managing risks arising out of the modern trade environment (e.g. ecommerce)? Note: Please rate on a scale of 1 to 5, with 5 meaning the tools are very effective, 3 meaning the tools are neither effective nor ineffective and 1 meaning they are not effective at all.</p> <p>a. 1</p> <p>b. 2</p> <p>c. 3</p> <p>d. 4</p> <p>e. 5</p> <p>f. I do not know</p> <p>i. Textbox</p>
<p>5. Are YOUR Member State authorities using modern and up to date data mining tools to analyse risks?</p> <p>a. Yes</p> <p>b. No</p> <p>c. I do not know</p> <p>i. Textbox</p>
<p>6. To what extent has YOUR Member State digitalised customs authorisation procedures (paperless and automated procedures)? Please rate on a scale of 1 to 5, with 5 meaning your Member State has to a large extent digitalised authorisation procedures, 3 meaning your Member State has neither to a large extent nor to a small extent digitalised authorisation procedures and 1 meaning your Member State has not digitalised authorisation procedures.</p> <p>a. 1</p> <p>b. 2</p> <p>c. 3</p> <p>d. 4</p> <p>e. 5</p> <p>f. I do not know</p> <p>i. Textbox</p>
<p>7. Are there any good practices being implemented in YOUR Member State that should be replicated in other Member States? Are there any good practices in other Member States that you believe should be replicated?</p> <p>a. Text box</p>

Part B: Scale of deficiencies and the current EU framework	
8. Are the controls established by the EU's regulatory framework fit for purpose in the modern trade environment (e.g. can they manage risks from e-commerce)? Please rate on a scale of 1 to 5, with 5 meaning the EU's regulatory framework is very fit for purpose, and 1 meaning the EU's regulatory framework is not fit for purpose at all.	<p>a. 1</p> <p>b. 2</p> <p>c. 3</p> <p>d. 4</p> <p>e. 5</p> <p>i. Textbox</p>
9. Are there gaps in the EU's regulatory framework which allow for unharmonised customs controls amongst ANY Member States?	<p>a. Text box</p>
10. Do Member States' customs procedures create any non-tariff barriers or other distortions in the Single Market (e.g. because of disharmonised legislation)?	<p>a. Text box</p>
Part C: Sanctions and infringements regime	
11. To what extent do YOUR Member States' sanctions and infringements differ across the EU? To what extent do these differences exist when it comes to the types of infringements and sanctions (e.g. confiscation of goods, disqualification from operating etc.) and the nature of sanctions (thresholds applied, liabilities, time limitations etc.)? Note: Please rate on a scale of 1 to 5, with 5 meaning Member States' practices differ substantially, 3 meaning Member States' practices are neither similar nor different and 1 meaning Member States practices are very similar.	<p>a. 1</p> <p>b. 2</p> <p>c. 3</p> <p>d. 4</p> <p>e. 5</p> <p>f. I do not know</p> <p>i. Textbox for more details</p>
12. Are there any good practices in YOUR Member States' sanctions and infringements that should be applied in other Member States? Are there any good practices in OTHER Member States that should be applied your Member State?	<p>a. Text box</p>

Part D: Cooperation
<p>13. How effective is cooperation between Member States across the EU? Please rate on a scale of 1 to 5, with 5 meaning cooperation is very effective and 1 meaning it is not effective at all.</p> <p>a. 1</p> <p>b. 2</p> <p>c. 3</p> <p>d. 4</p> <p>e. 5</p> <p>f. I do not know</p> <p>i. Textbox for more details</p>

### Interview questionnaire

Part A: Member State authorities' authorisation procedures and good practices
<p>14. To what extent do Member States' practices differ when it comes to implementing EU customs legislation? In what ways do their customs controls (risk analysis, customs authorisation, customs control, enforcement etc.) differ from each other?</p> <p>a. ECA identified that Risk analysis and Selection procedures to perform controls are covered by the FRC Decision. Import declarations to be presented to Customs in Member States, Documentary or physical controls and control results are not covered by the FRC Decision. Are there divergences in these elements as well?</p>
<p>15. To what extent are customs formalities and controls in place in Member States effective in protecting the interests of the EU (unfair competition, health and safety standards, etc.)? Are there weak points in the entry of goods into the Single Market that are taken advantage of by fraudsters?</p>
<p>16. To what extent are the tools at the disposal of customs authorities appropriate to manage risks arising out of the modern trade environment (e.g. e-commerce)? Are authorities using up to date data mining tools to analyse risks?</p>
<p>17. To what extent have national authorities digitalised their customs authorisation procedures? Are customs authorities operating in a paperless and automated environment?</p>
<p>18. What good practices exist in EU Member States in managing customs? Can these practices be harmonised, replicated, and scaled-up? What are their benefits/drawbacks?</p>
Part B: Scale of deficiencies and the current EU framework
<p>19. How serious are the deficiencies (if any) in the customs controls of the EU Member States? Are they effectively able to protect the Single Market from unfair trade practices, fraud, health and safety risks, and environmental concerns?</p>
<p>20. To what extent is the EU's regulatory framework (e.g. Union Customs Code and its Financial Risks Criteria and Standards Implementing Decision 'FRC Decision' and accompanying guidance, the Customs Union Action Plan) able to establish high quality customs controls in the Member States?</p>
<p>21. Are the controls established by the EU's regulatory framework fit for purpose in the modern trade environment (e.g. can they manage risks from e-commerce)?</p>
<p>22. Are there gaps in the EU's regulatory framework which allow for unharmonised customs controls amongst the Member States?</p>

23. Does the lack of harmonisation in Member States' customs procedures create any non-tariff barriers or other distortions in the Single Market?
<b>Part C: Sanctions and infringements regime</b>
24. How do Member States' sanctions and infringements differ? What differences exist when it comes to the types of infringements and sanctions (e.g. confiscation of goods, disqualification from operating etc.) and the nature of sanctions (thresholds applied, liabilities, time limitations etc.)?
25. Are there any good practices in Member States' sanctions and infringements that should be applied in other Member States? Can these practices be harmonised, replicated, and scaled-up? What are their benefits/drawbacks?
26. Is the proposed Union Legal Framework for Customs Infringements and Sanctions appropriate to dissuade violations and encourage compliance?
<b>Part D: Cooperation</b>
27. How effectively do Member States cooperate with each other when it comes to Customs activities? How well do network such as CELBET function?
28. How well does the EU Single Window for Customs function?
29. How effectively do the EU institutions and national authorities cooperate in the field of Customs?

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Implementation of EU customs legislation with regard to areas such as risk management and impact management measures differs across Member States. National systems also diverge in the extent to which they have been updated in line with the UCC. Furthermore, significant differences in sanctions regimes create barriers to trade and distortions in the Single Market. This study makes recommendations to Member States and the EU to address some of the weaknesses of the current customs controls and sanctions regime.

This document was provided by the Policy Department for Economic, Scientific and Quality of Life Policies at the request of the committee on Internal Market and Consumer Protection (IMCO).

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