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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Delegations will find attached document COM(2020) 581 final.

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Brussels, 28.9.2020  
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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE**

**Taking the Customs Union to the Next Level: a Plan for Action**

## I. Introduction

Within the EU Customs Union, EU Member States' customs authorities are responsible for performing a wide range of controls before goods enter into free circulation in the EU customs territory, that are aimed at protecting both EU revenues and the security and safety, health and prosperity of EU citizens and business.

It has become apparent in recent years that Member States' customs authorities are struggling with the challenges of performing their various roles. Despite a major modernisation of EU customs legislation in 2016, there is evidence of problems such as undervaluation of goods to avoid customs duties and VAT<sup>1</sup> and of smuggling of illicit or unsafe goods. There are also concerns about imbalances between Member States in customs controls and of goods being diverted towards the weakest entry and exit points to the EU customs territory to avoid detection. The fast changing world, with the acceleration of digital transformation and new business models such as e-commerce, has added to the challenges that customs face in implementing and enforcing EU legislation on imports and exports. At the same time, customs must always endeavour to ensure that legitimate trade can benefit from facilitation because international trade is vital to the success of the EU. Furthermore, the intensive preparations needed for the departure of the United Kingdom from the EU Customs Union at the end of the transition period have greatly increased the workload of EU customs authorities. In these conditions, there are great risks of losses of revenues for the EU budget, of threats to the safety and security of EU citizens, and of excessive burdens on legitimate trade, if action is not taken to reinforce the activity of national customs authorities across the EU.

Mindful of this, the President of the European Commission, Ursula von der Leyen, stated in her political guidelines for the new Commission's term of office published on 16 July 2019<sup>2</sup> that *"It is time to take the Customs Union to the next level, equipping it with a stronger framework that will allow us to better protect our citizens and our single market"*. She said that the Commission would propose *"an integrated European approach to reinforce customs risk management and support effective controls by the Member States."*

The present Communication lays down an Action Plan to turn President von der Leyen's Political Guidelines into tangible benefits for European citizens, businesses and society.

The significant effect of the Covid-19 pandemic has made it more important than ever to ensure smart management of the EU Customs Union. The Commission's customs services reacted swiftly to the crisis, adopting legislation, issuing guidelines and actively supporting Member States and businesses in particular to ensure flexibilities in relation to customs debt obligations, facilitate the fast and swift clearance of medical/protective equipment and prevent counterfeit or unsafe equipment from entering the EU. This response should help customs operations if there is a generalised resurgence of COVID-19 cases. However, the crisis has made it clear that it is now vital to explore all ways to ensure that the

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<sup>1</sup> For example, the potential losses of customs duties and VAT due to undervaluation of imports of textiles and footwear from China to one Member State were calculated to be close to 5.2 billion euro for the period 2013-16. See the European Court of Auditors report no 19 of 2017: "Import procedures: shortcomings in the legal framework and an ineffective implementation impact the financial interests of the EU"

<sup>2</sup> [https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf)

Customs Union and Member States' customs authorities operate to maximum efficiency, remain flexible and resilient in times of crisis and better anticipate problems. This implies, above all, a new emphasis on ensuring greater availability and use of data and data analysis for customs purposes as well as developing an appropriate set of foresight and common crisis management tools.

Some of the proposed actions will require Member States to allocate the appropriate resources at national level and to support EU level financing for the already-proposed new EU customs programme and new financial instrument for customs equipment. In the case of EU financing, the amounts at stake are modest<sup>3</sup> while the potential is substantial, as customs duties alone account for 14% of total EU budget revenues (without taking into account the knock-on effect on VAT revenues of Member States). About 85% of the funding proposed for the new EU customs programme will go into the operation, maintenance and development of the customs electronic systems that provide the seamless and coherent structure for the smooth functioning of the Customs Union and the protection of the Single Market and EU citizens.

## **II. Context**

The EU Customs Union means that EU Member States apply a common system of customs duties to imports of goods from outside the EU customs territory, there are no customs duties and no customs controls at the borders between the EU Member States. The EU is a member of the World Trade Organisation, has a common commercial policy and acts as one trade bloc in drawing up international trade deals. Member States' customs authorities supervise all goods entering or leaving the EU customs territory, regardless of their mode of entry or exit.

A modernised legal framework of customs rules and procedures is in place since 2016 and work on upgrading and developing electronic systems designed to make the Customs Union a modern, interconnected and fully paperless environment should be completed across the EU before end 2025 at the latest.

Customs authorities nowadays have an enormous range of supervisory and control responsibilities in relation to goods imported into the EU customs territory. They not only collect customs duties and VAT on imported goods, and excise duties where applicable, but they also check those goods for many non-financial purposes, such as to ensure that they meet EU product compliance<sup>4</sup> requirements, food, health and environmental standards and rules, and much more.

They also check the conformity of imported goods with rules on the protection of Intellectual Property Rights, they control the imports of drug precursors to prevent their illegal diversion into the manufacturing of drugs, they control the trade of cultural goods, wildlife trade and waste shipments to prevent illegal exportation and importation, and they enforce rules on illicit cash flows entering or leaving the EU as part of the EU's anti-money laundering legislation. They cooperate in the fight against fraud, terrorism and organised crime together with law enforcement authorities, administrations and agencies responsible for border and internal security. In addition, they are responsible for managing and enforcing an increasing number of preferential trade agreements between the EU and other countries.

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<sup>3</sup> The amount proposed is under 1 billion euros spread over 7 years

<sup>4</sup> Product compliance covers not only compliance with product harmonisation legislation but also other requirements such as product safety and accessibility for persons with disabilities

The EU's Internal Market, which established an area without internal frontiers to the movement of goods, has made it more important than ever to ensure the uniform application of rules at external borders to goods that can move freely once inside the customs territory. Customs must balance these controls with the facilitation of international trade and global supply chains; exports to the rest of the world have in recent decades become an increasingly significant source of business for European companies and of jobs for Europeans<sup>5</sup> while 80% of EU imports provide raw materials for EU production activities. New legislation on EU-wide action in non-customs policy areas often brings new responsibilities for customs and this is likely to continue. For example, customs are already facing requests to collect data and share it with other authorities. Each time new responsibilities are imposed on customs, a new electronic system must be developed and managed, involving additional human resource and financial costs for the Commission and Member States' customs authorities.

Against this background, the Commission launched an exercise in 2018 aimed at helping policy makers ensure that EU customs remains effective for the long-term. This innovative foresight project on "The Future of Customs in the EU 2040"<sup>6</sup> worked to create a shared and strategic understanding among key stakeholders of ways to deal with current and future challenges for customs and to generate a vision for how EU customs should look in 2040.

The outcome of this foresight exercise painted a picture of an EU Customs Union of the future in which customs authorities operate in a fully integrated way to:

- Protect society, the environment and the EU economy through effective facilitation of legitimate trade and intelligent, risk-based supervision of supply chains;
- Be proactive, working seamlessly with stakeholders, be committed to innovation and sustainability and be the reference for customs worldwide;
- Be seen to act as one.

To achieve this vision, participants underlined steps such as more data mining and better use of data resources; more interoperability between customs and other border information systems; stronger governance of the Customs Union; a better system for training customs officials; and improved cooperation between the EU and other countries at multilateral and bilateral level.

### **III. The way ahead**

In line with the Commission's Better Regulation efforts, the foresight exercise brought value to the Commission both through the vision that it has generated of an EU customs for the future and through its reinforcement of the important links with the broad stakeholder community. The Commission now proposes a series of actions for the period of its mandate to take the Customs Union to the next level that aim to have regard to the results of the foresight exercise to the consultations of EU Member States and stakeholders<sup>7</sup>, and to the need to draw some conclusions for customs purposes from the recent Covid-19 pandemic. As a first step towards achieving the vision generated in the foresight exercise, the actions focus in particular on ensuring greater availability and use of data and data

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<sup>5</sup> Since 2000, extra-EU exports have on average grown by 6% per year in value and by 3% in tonnage; the number of items exported to non-EU countries has increased by 12% on a yearly basis since 2010.

<sup>6</sup> <https://blogs.ec.europa.eu/eupolicylab/?s=future+of+customs>

<sup>7</sup> <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12305-Action-Plan-on-the-Customs-Union>

analysis for customs purposes and intelligent, risk-based supervision of supply chains. The actions are grouped under four headings as follows:

**a) Risk management** is pivotal to customs controls, given the substantial volumes of goods coming into and leaving the customs territory that customs authorities cannot always examine on an individual basis and given the need to facilitate legitimate trade. Customs authorities already perform risk management on the basis of an EU-wide common risk management framework comprising common risk criteria<sup>8</sup> and standards, measures to exchange risk information and the performance of electronic risk analysis. The central principle is articulated around two lines of defence: (i) assessing in advance, and (ii) controlling when and where required, before or after the release of the goods into the EU customs territory. However, there are concerns that the risk management framework is not implemented in the same way in all Member States. Furthermore, Member States' risk assessment systems may not encompass important information either because the information is not collected or shared between Member States or because Member States lack Union-wide comparative data that would allow them to interpret their own national data. Data analysis at EU level is needed to drive a better and more extensive use of data from all sources, including through international customs cooperation, and facilitate interlinkages in risk management, customs controls and anti-fraud actions.

**b) Managing e-commerce.** E-commerce is to be welcomed for the benefits it brings for businesses, in particular for SMEs, and consumers, and facilitating this activity is a cornerstone of the Digital Single Market Strategy. However, tax and customs authorities have serious difficulties in ensuring the tax and customs compliance of goods purchased online. Customs authorities have the additional obligation of checking goods for the wide range of non-financial purposes already described, including EU safety, security, intellectual property rights and other standards. The VAT e-commerce package<sup>9</sup> adopted on 5 December 2017 and to be implemented as from 1 July 2021 aims to combat VAT fraud and ensure a level playing field for EU businesses while facilitating cross-border trade. Customs legislation and IT systems are being adapted to cater for these new VAT rules. New reporting obligations on postal services from 15 March 2021 will contribute to ensuring the safety and security of e-commerce imports. However, additional actions are needed, including international cooperation, to ensure that customs can control these imports effectively.

**c) The promotion of compliance.** Strengthening and facilitating compliance is vital in order to free up customs resources to focus on suspicious movements of goods. A scheme for providing benefits to trusted traders in return for their compliance with criteria laid down in EU customs legislation already exists and is widely used but it must be managed better to prevent abuse. At the same time, efforts must continue to facilitate compliant low-risk traders, in particular by ensuring that the simplifications of customs procedures provided for in customs legislation actually work in practice. Continuing to develop cooperation with key international partners, at bilateral and multilateral level, while monitoring the implementation of the EU's existing

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<sup>8</sup> Accessible only to experts in risk management in Member States

<sup>9</sup> [https://ec.europa.eu/taxation\\_customs/business/vat/modernising-vat-cross-border-ecommerce\\_en](https://ec.europa.eu/taxation_customs/business/vat/modernising-vat-cross-border-ecommerce_en)

preferential arrangements with third countries and enforcing their rules, is another important element of compliance.

**d) Customs authorities acting as one.** While Member States already cooperate with each other in many areas, there must be broader and more operational cooperation among customs authorities on a thematic or geographical basis in order to ensure delivery of the core priorities of customs. Cooperation between customs authorities and other national authorities must also be improved and the EU must act as one on customs matters at international level. It is necessary to address imbalances between Member States in customs controls in particular by ensuring that all Member States have sufficient, trained human resources and modern and reliable customs control equipment. Equivalence of results in carrying out controls at the external borders must also be ensured by measuring accurately the performance of customs activities and tasks. Above all, it is necessary to address more fundamental questions such as how to handle crises like the recent Covid-19 pandemic; how to manage the costs of the customs electronic systems; how to ensure that customs tools, training and methods and organisational structures are adequate and appropriate; and how to ensure visibility for the role of customs in society and attract talented and motivated people to work for customs.

Under these four main headings, the Commission announces several actions in the following chapter. Preliminary work on some actions has already commenced but the actions deserve a mention because of their importance for the plan for taking the Customs Union to the next level. The Commission will support the implementation of these actions to take the Customs Union to the next level through its technical support programmes. The actions announced below do not preclude the possibility of customs being required to implement additional EU policies at the EU's borders, subject to availability of human and financial resources, to an assessment of the policy and IT impact and to appropriate planning.

#### **IV. Actions**

##### **a) More effective customs risk management to allow more effective controls**

###### **1) EU Joint Analytics Capabilities (JAC)**

It has become evident from discussions on customs controls that customs authorities would benefit greatly, for a wide range of customs purposes, from more data and data analysis. Better data analysis would help with risk management, customs clearance and post-clearance, and anti-fraud actions. In the longer term, the monitoring of trends and patterns via data analysis could, for example, help the Commission and customs authorities to identify shortcomings and vulnerabilities and to make policy decisions in a more informed way.

There is a wealth of data in a wide variety of EU and Member States' databases and data platforms that is already utilised to some extent for risk management purposes, and more data are becoming available for EU level work as new Union Customs Code (UCC) electronic systems and upgrades come on line. However, this wealth of data has never been properly interlinked or tapped into and customs authorities and the Commission need better accessibility to this data, including for antifraud purposes.

The Commission therefore proposes to launch an EU "Joint Analytics Capabilities" initiative within its own services to facilitate the collection of data and the better use of data from customs and non-



customs sources and to provide tools for better sharing and interlinkage of the data. The work will be carried out in close cooperation with Member States and the results of the work will be shared with them, complementing Member States' own information and tools. The data analysis will also be made available for anti-fraud and enforcement actions, including for purposes related to preventing the loss of Traditional Own Resources (TOR).

The starting point for the joint analytics initiative will be improving risk management and, in line with the present risk management strategy, it will give first priority to ensuring better protection of the financial interests of the Union and greater security and safety of the EU and its citizens. The results will help customs authorities to identify risky trade flows, including in crisis situations. As a result, they will be able to undertake more focused, efficient and cost-effective controls and optimise the use of scarce resources that should be reflected in better results under the Customs Union Performance indicators (see below).

Within this framework, the work will focus initially on exploiting data already available within the EU Customs Surveillance database of import and export data in order to analyse trade flows. The analysis of Surveillance data will also help to ensure the correct and uniform implementation of the Union tariff in the customs clearance systems of the Member States.

The new Customs Import Control electronic system (ICS2) that is being deployed in three phases between 2021 and 2024 to identify safety and security threats before they arrive into the EU will provide further data and capabilities for data analytics. Pilot work to explore those ICS2 shared analytics capabilities will start in 2020 and the Customs Policy Group will be asked to endorse the analytics tool for ICS2 in December 2020.

Later on, and depending on the availability of resources, the Commission services will expand the scope of their data analytics work by considering whether and how data from additional sources could complement the JAC analysis. This could include combining data from the Customs Surveillance system with data concerning Intellectual Property (IPR) infringements included in the "COPIS" anti-counterfeiting and piracy system), utilizing data in the Anti-Fraud Information System ("AFIS") and capitalizing on new data sources including data that could be collected under several of the actions described further on in this Communication (VAT payment data, online platforms, Customs Union Performance, Union Customs Code electronic systems and others). The JAC analysis could also, over time and if feasible, encompass artificial intelligence/machine learning.

Appropriate governance solutions will be developed for the results of the analysis and data protection and confidentiality issues will be taken into account. In the medium term, if necessary and subject to an impact assessment, an EU architecture for data storage and management could be developed within existing structures or in a new agency to be established (see also below).

**Action: 2020 - 2024:**

- **From 2020 onwards:** Work is ongoing on developing tools within the EU Surveillance electronic system to utilise its comprehensive set of import and export data to extract trends affecting the financial interests of the Union. For ICS2, Member States should endorse the proposed ICS2 analytics tool in December.
- **From end 2021,** the Commission services will use Surveillance data analytics to support the correct and uniform implementation of the Union tariff.
- **By end 2023,** following the planned expansion of the Surveillance dataset to include additional data elements, and subject to availability of resources, the Commission services will expand analytics to combine data from that system with data in other systems related for



example to seizures of counterfeit goods (COPIS), anti-fraud information (AFIS), VAT payments data, online platforms, Customs Union Performance and in the Union Customs Code electronic systems. In addition, following the development of the ICS2 analytics tool and following the implementation of two of the three phases of ICS2, the Commission and Member States will commence analytics on pre-loading and pre-arrival advance data for postal, express and cargo air carriers.

- **By end 2024**, following the implementation of the final phase of ICS2, the Commission and Member States will carry out analytics of pre-loading and pre-arrival advance data provided by all maritime, road and air carriers and logistic providers.

## 2) *Revised risk management strategy*

The Commission plans to reshape and strengthen the current Risk Management framework in order to achieve an even more responsive and structured approach to risk management. Risk management work focuses on security, safety and financial risks. The Commission wishes to strengthen the framework by leveraging on the proposed new joint analytics capabilities. In addition, it wishes to develop a sound and efficient governance for addressing financial risks in the context of the implementation of the Commission's decision of 2018 on Financial Risk Criteria<sup>10</sup>.

The Commission will also, in order to protect the EU Internal Market and its citizens, aim to strengthen the current risk management process for the wide range of non-financial risks that customs are responsible for controlling, as outlined above. In this respect, the new tools for real-time cooperation between customs and for identifying risks that will be put in place under the Customs Import Control electronic system (ICS2) should provide great assistance to customs authorities in managing pre-arrival security and safety risks, by enabling customs to work together in real time to target risk consignments even before they are loaded in third countries. Improvements must also be made to the processes for identifying and managing risks that may arise after the arrival of goods into the EU customs territory. Finally, the new risk management framework will aim to respond to new challenges such as those arising from the increasing amount of e-commerce entering the customs territory.

### **Action: 2021**

- New Risk Management Strategy in the form of a Commission Communication (to leverage on joint analytics work, develop governance for financial risks, strengthen risk management for non-financial risks and address the rapid increase in e-commerce) to be adopted in **Q2 2021**

## **b) Managing e-Commerce**

### 3) *Using VAT data for customs purposes*

As announced in its Action Plan for fairer and simpler taxation supporting the recovery strategy<sup>11</sup>, the Commission intends to explore the possibility of establishing within the Eurofisc tax anti-fraud network<sup>12</sup> an EU hub for tax information serving not only VAT administrations but also customs and anti-fraud services, and of providing a direct connection to Eurofisc for customs. Some exchanges

<sup>10</sup> C(2018) 3293 (access restricted to risk management experts of Member States)

<sup>11</sup> COM (2020) 312 of 15/7/2020

<sup>12</sup> Eurofisc is a network for the swift exchange between Member States, processing and analysis of targeted information on cross-border tax fraud and for the coordination of follow-up actions.

between these services already exist<sup>13</sup> but they need to be streamlined and structured via the creation of a direct access to taxation information for customs authorities.

In addition, the Commission aims to ensure that customs will be able to leverage the new payment data reporting obligations to be imposed as of 1 January 2024 on payment service providers for VAT purposes<sup>14</sup>. These payment data will identify recipients of those payments and provide information on amounts and dates of payments and the Member State of origin of the payment/payer. Access to these data would help customs to trace goods back to their source and thus to detect undervaluation of imported goods in particular. Such access should also ensure greater synergies between customs and tax authorities that would reinforce the efforts to fight against fraud.

**Actions: 2020 to 2024**

- Creation of direct customs access to the Eurofisc tax information hub<sup>15</sup> by **2022**
- The Commission will assess as from **Q3 2020** the possible arrangements to ensure access by customs to VAT payment data and, subject to that assessment, will propose a final solution by **1/1/2024**

**4) *Revisit role and obligations of e-commerce actors notably platforms***

The VAT e-commerce package adopted on 5 December 2017 and to be implemented as from 1 July 2021 abolishes the current €10/22 threshold under which imported goods are exempted from VAT. This means that, from the day the package enters into force, customs will have to levy VAT on all goods on their arrival into the EU unless the seller already collected the VAT at the time of purchase under the Import One-Stop Shop (IOSS) scheme. From the same date, online marketplaces (“platforms”) will also have the obligation to keep certain information for VAT purposes and provide it to the tax authority upon request.

Building on these tax reporting requirements, the Commission will explore the imposition of customs reporting obligations on platforms in order to address the challenges of e-commerce. While platforms are not typically involved in arranging the customs clearance of goods bought online, they have and could share data showing entire sales chains, from the original seller, via the transactional value, to the final-end buyer. This data would supplement information provided in customs declarations and could enhance customs and tax actions against fraudulent activities such as undervaluation, misdescription of goods and false declarations of origin, VAT and customs fraud, and against the range of non-financial risks. The provision of data by platforms would also benefit trade in that it would allow the identification and speedier release of low risk consignments that are below the customs duty exemption threshold, where VAT has already been paid under the IOSS scheme. The Commission will also examine the effects of e-commerce on customs duty collection and on the level playing field for EU operators. This will include exploring arrangements for customs duty collection on the lines of the new VAT collection approach.

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<sup>13</sup> These exchanges have taken place, for example, under the European Multidisciplinary Platform Against Criminal Threats (EMPACT). Under that scheme, there was practical, operational cooperation between EU tax administrations, via Eurofisc, customs administrations and both Europol and OLAF in the field of VAT fraud detection and prevention.

<sup>14</sup> Council Directive (EU) 2020/284 of 18 February 2020 (OJ L 62, 2.3.2020, p. 7) and Council Regulation (EU) 2020/283 of 18 February 2020 (OJ L 62, 2.3.2020, p. 1)

<sup>15</sup> See action 9 of the Action Plan for fairer and simpler taxation supporting the recovery strategy (footnote 10 above)

**Actions: 2021 to 2023**

- Following pilot testing, and subject to the results of an impact assessment, legal amendment to UCC package to impose customs reporting obligation on platforms: **Q1 2023**.
- Analysis of the impact of e-commerce on customs duty collection and on the level playing field for EU operators: to be launched in **2021**.

**c) Strengthening and facilitating compliance****5) *Stepping up the AEO programme***

The EU Authorised Economic Operator (AEO) programme that is in place since 2008 aims to enhance the security of international supply chains while facilitating legitimate trade. It allows traders to benefit from a range of simplifications of customs formalities if they in return take strengthened measures to ensure compliance and cooperation with customs. The Commission has developed a comprehensive strategy and methodology to improve the robust implementation of the programme, including by strengthening links to customs risk management and increasing traders' understanding of the programme.

The Commission will, subject to the results of fact finding visits to Member States, consider introducing legislation that will impose more precise obligations on Member States to monitor AEOs to ensure their continued fulfilment of the AEO criteria. Separately, the Commission will update the AEO guidelines that are designed to provide assistance to Member States and economic operators in the application of the AEO programme.

**Actions: 2021**

- Legislative proposal to set out more precise monitoring obligations (if necessary): **Q2/3 2021**
- Update to AEO guidelines: **Q2/3 2021**

**6) *Develop and deploy the EU Single Window environment for Customs***

The Commission is working on a proposal for an EU Single Window environment for Customs that would offer both stronger control possibilities and trade facilitation.

Businesses would benefit by being able to complete all border formalities, for customs and for other purposes such as health, environment, product and food safety and security, in one electronic action and enjoy a speedier border clearance of goods at import and export. For government agencies, the measure would allow collaborative processing, sharing and exchange of information and better risk assessment. A pilot exercise along these lines between customs and partner authorities competent for the agri-food chain, import of timber and phyto-sanitary formalities is already operational and in use in nine Member States<sup>16</sup>.

**Actions: 2020**

<sup>16</sup> Bulgaria, Cyprus, Czechia, Estonia, Ireland, Latvia, Poland, Portugal and Slovenia

- Legislative proposal for a Single Window environment for Customs by **Q4 2020**

### **7) *Union Customs Code evaluation***

A modernised legal framework of customs rules and procedures is in place since 2016, in the form of the Union Customs Code (UCC). More than half of the UCC's seventeen electronic systems designed to make the Customs Union a modern, fully paperless environment are already in operation and the remaining systems will be completed before end 2025 at the latest. The Commission will, by end 2021, complete an interim evaluation to establish whether the Union Customs Code and the electronic systems completed by that date are still fit for purpose having regard to the objective which was to ensure modernised, streamlined and simplified processes for the assistance of compliant traders and customs authorities. The evaluation will support decisions on whether the Code and its implementing and delegated acts should be revised. It will in particular consider whether the Code is sufficiently flexible to deal with the management of customs formalities during crises such as Covid-19 and new business models such as e-commerce.

#### **Action: 2021**

- Interim evaluation of the Union Customs Code – **Q4 2021**

### **8) *Common system of customs sanctions***

Although customs legislation is harmonised, its enforcement varies as it is the task for Member States' national authorities. The absence of a common system of infringements and sanctions creates legal uncertainty for businesses and possible competitive distortions in the Internal Market. It means in particular vulnerabilities in revenue collection and weaknesses in enforcing policies. Under World Trade Organisation rules, the EU is obliged to ensure a uniform application of customs legislation, including in regard to sanctions for non-compliance.

The Commission will, therefore, propose another approach to this subject following the lack of agreement on the Commission's 2013 proposal for a Union legal framework for customs infringements and sanctions<sup>17</sup>.

The Commission proposes with the support of Member States in a project group to draw up an updated comprehensive report on the individual systems of penalties in each Member State in accordance with Article 42 of the Union Customs Code. On the basis of that report, the Commission will establish guidelines for the application of the criteria set out in Article 42 (1) to such national systems, namely that the sanctions must be "effective, proportionate and dissuasive". This work may lead in due course to another legislative proposal in place of the 2013 proposal.

#### **Actions: 2020 to 2022**

- Guidelines on criteria for national sanctions regimes – **Q4 2021**
- Based on experience with the Guidelines, the Commission will consider whether it is necessary to propose legislation concerning sanctions for non-compliance - **2022**

### **9) *Legal framework to combat customs fraud***

At Union level, Regulation (EC) No 515/97<sup>18</sup> is the main legal tool to combat customs fraud through cooperation and the exchange of information between Member States and with the Commission. The

<sup>17</sup> COM(2013) 884 final of 13.12.2013

Commission is currently carrying out a thorough evaluation of this Regulation with the main purpose of assessing whether the Regulation is still suitable and relevant for tackling challenges brought about by new customs fraud patterns. On the basis of the outcome of this evaluation, the Commission will decide whether there is a need to revise the Regulation.

#### **Action 2020-2021**

- Report on evaluation of Regulation (EC) No 515/97 by **Q4 2020**
- Assess the need to update Regulation (EC) No 515/97 to address modern customs fraud challenges – **Q1 2021**

#### ***10) Involvement of customs in protecting the single market against the import of non-compliant and unsafe products***

A new regulation<sup>19</sup> on market surveillance and compliance of products that will enter into application in 2021 will allow more effective controls on products entering the EU. The COVID crisis has again highlighted the threat posed by illegal products, with multiple cases of dangerous, non-compliant or counterfeit protective equipment shipped from third countries that reached the Member States. The Commission will adopt implementing legislation aimed at rendering customs intervention and cooperation more effective, including through a strengthened risk management framework, and will develop a new interface between customs and market surveillance systems at EU level in order to support sharing of information.

#### **Actions: 2021 - 2025**

- The Commission will adopt implementing acts for the market surveillance regulation, aimed at addressing customs-related aspects, from **2021** onwards.
- The Commission will, by **2025**, develop a new interface at EU level between the Information and Communication System for pan-European Market Surveillance (ICSMS) and the EU Single Window environment for customs.

#### ***11) Monitor the functioning of preferential trade arrangements***

The EU's preferential trade arrangements with other countries are essential to support access to external markets for EU producers and exporters but they can give rise to trade circumvention, through non-compliance with rules on preferential origin. The Commission will continue to monitor the implementation of preferential origin rules and procedures and will extend the scope of its monitoring activities to Free Trade Agreements to cover imports from main partner countries and EU export interests. This monitoring will be used to identify areas where the rules could be improved and updated. In addition, the Commission will enhance the tools at its disposal to improve cooperation with all actors in particular beneficiary countries' authorities and exporters, while considering how best to enforce commitments in this regard. The tools will include enhanced access to information, detailed guidance, technical assistance and training.

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<sup>18</sup> Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters. OJ L 082 22.3.1997, p. 1, as amended.

<sup>19</sup> Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011. OJ L 169, 25.6.2019, p. 1–44

The ultimate objective is to safeguard the EU's own resources by ensuring that preferences are granted only to products genuinely entitled to them while guaranteeing the preferential access of EU products to partner countries' markets.

**Action: 2021 onwards**

- The Commission services will **from 2021** extend their monitoring of the application of preferential origin rules and procedures to Free Trade Agreements and will aim to resolve with the countries involved issues arising related to weaknesses and shortcomings in the implementation of these rules and procedures.
- In case of a clear violation of the rules of origin in force and procedures, the Commission will launch discussions with the country involved and use the mechanisms provided for in the context of the preferential arrangement at stake to restore compliance and protect the EU's financial interests.

***12) Analyse and, where appropriate, enhance the Union's international systems of cooperation in customs matters with important trade partners, in particular China***

The Commission will analyse and, where appropriate, enhance the Union's international systems of cooperation and mutual administrative assistance in customs matters with important trade partners and in multilateral fora. Improving cooperation and mutual administrative assistance with China is the first priority given the size of our bilateral trade and, in particular, the exponential growth of e-commerce shipments.

As a second priority, the Commission will consider developing or enhancing cooperation with other trading partners taking into account criteria such as EU accession perspective, geographical proximity and neighbourhood, transit lanes and EU trading interests. This cooperation will include, where appropriate, the development of initiatives such as facilitating the electronic exchange of customs documents, implementing the action plan on product safety in online sales, the support of risk management and supply chain security (such as customs-to-customs information exchanges, mutual recognition of Authorised Economic Operators and customs controls). The work may include a review of existing bilateral agreements with a view to strengthening elements concerning enforcement.

Finally, reinforced customs cooperation may also benefit partner countries by facilitating better domestic resource mobilisation in these countries.

**Action: 2020 - 2021**

- China: The EU is due to agree on a new Strategic Framework for Customs Cooperation 2021–2024 with China before **the end of 2020**. In parallel, the Commission is evaluating the present customs cooperation and mutual administrative assistance agreement with China in order to determine whether to seek negotiating directives to review the agreement.
- The Commission will at the end of 2020 launch a comprehensive analysis of the Union's system of international cooperation and mutual administrative cooperation in customs matters, with a view to proposing possible enhancements of a general or specific nature/scope in **2021**.

**d) Customs working as one**

***13) Enhance cooperation between customs and security and border management authorities and synergies between their information systems***



It is imperative to close the gaps between customs information systems and other information systems designed to protect the EU's external borders and enhance internal security. The aim will be to counter security and other risks at borders, for the benefit of all citizens, by supporting new cooperation methods and cross-referencing of data aimed at ensuring coherent, future-proof actions across various competent authorities and avoid duplications of reporting arrangements.

The Commission services are already working on the development of an interoperability framework for information systems for security, border and migration management. A group of security, border management and customs experts from Member States, convened by the Commission, has completed a preliminary assessment of the interoperability of those systems with customs systems in the field of security and security risk assessment. This assessment recommends in particular a link-up of the Schengen Information System (SIS) and Europol data with the customs Import Control System (ICS2) that will be deployed in three phases between 2021 and 2024. According to the experts, interoperability between these systems could enhance the management of security risks. Following the recommendation of the experts, the Commission will contract out a feasibility study to assess the opportunities involved in interoperability between these three systems and the related financial, operational, technical and legal challenges, including data protection and confidentiality issues. Synergies between customs electronic systems other than ICS2 and systems operated by security and border management authorities should also be explored.

**Action: 2021- 2024**

- Completion of study on feasibility of developing interoperability between the Schengen Information System and Europol data with the customs Import Control System (ICS2) by **end 2021** with a view to completing any link ups by the time of final deployment of ICS2 (**2024**)

***14) Customs Union Performance***

The Commission is working to formalise its tool for collecting annual and quarterly information from Member States on data of customs-related processes, while avoiding duplication with reporting obligations in other policy areas relevant for customs. The voluntary basis for the current operation of the collection of "Customs Union Performance" data causes certain deficiencies for the process and also raises questions about data quality. More comprehensive reporting would improve benchmarking and eventually approximation of practices between different jurisdictions; it would also provide important aggregated information contributing to analytical capabilities for risk assessments. A legal framework could help to homogenise practices in data collection at national level, consequently enhancing the use of key performance indicators and helping in assessing the impacts of customs policy decisions. However, the need for a legal framework and possible alternative options must first be carefully considered.

**Action: 2021**

- Evaluation of whether the Customs Union has been hampered by the lack of a specific legal basis for periodic reporting on the Customs Union Performance to be addressed as part of the interim evaluation of the implementation of the Union Customs Code by **end 2021**

***15) Better equip Member States with modern and reliable customs control equipment***

The Commission has proposed a financial instrument<sup>20</sup> to allow the purchase, maintenance and upgrade of relevant, state-of-the-art and reliable customs control equipment (such as x-rays, scanners, handheld devices and automated recognition of number plates and laboratory equipment) under the next Multiannual Financial Framework (MFF) that should be adopted by end 2020.

The availability of modern and reliable customs control equipment would help to address weak points of entry/exit of goods into the customs territory that are detrimental to the protection of the EU's financial interests, safety and security and to ensure equivalent levels of customs controls in the future. The proposed instrument is a response to the frequent calls from many Member States for financial support for the purchase of such equipment. It is therefore essential that the European Parliament and the Council agree as soon as possible to the Commission proposal to create an instrument for funding customs controls equipment so as to ensure equivalent results of customs controls among Member States.

**Action: 2021**

- If the financial instrument is adopted, the Commission and Member States will, **from 2021**, use the programme to contribute to ensuring equivalent results of customs controls.

***16) Deploy and deepen cooperation mechanisms under the Customs programme (MFF 2021-2027)***

Under the next Multiannual Financial Framework (MFF) which should be adopted at the latest by end of 2020, the objective<sup>21</sup> of the Customs programme is to support the functioning and modernisation of the Customs Union, also in order to strengthen the internal market. It aims at facilitating cooperation between participating countries, their customs authorities and their officials. It is vital that this cooperation be improved and increased.

In recent years, Member States have shown an increasing interest in enhanced operational cooperation between customs authorities on a geographical or thematic basis in the form of expert teams, one of the tools of the programme. There seems to be a true appetite and need for an extension of such operational cooperation to more areas such as e-commerce and to more participating countries.

There is also a need to strengthen the profile of the customs profession in order to attract the best people to work for customs and for common approaches to training including for the purpose of reducing costs. Ideas to be considered in this respect could include a “mobility” programme enabling customs officers to work anywhere in the EU with mutual recognition of qualifications and the development of EU-wide common training and human capacity building for customs officials, in cooperation where warranted with other agencies such as CEPOL<sup>22</sup>.

Actions under the Customs programme may be complemented by technical support to Member States' customs administrations under the Technical Support Instrument 2021-2027.

**Action: 2021 onwards**

- The Commission will from **2021 (up to 2028)** encourage Member States to make increased

<sup>20</sup> COM(2018) 474 final of 12.6.2018

<sup>21</sup> COM(2018) 442 final of 8.6.2018

<sup>22</sup> The European Agency for Law Enforcement Training

use of the operational cooperation and human capacity building facilities under the Customs programme tools in as many areas as possible.

### *17) Smarter management of the customs union*

In the past few months, in response to the Covid-19 pandemic, the Commission has adopted several legislative actions and issued guidelines interpreting legislation to assist customs authorities and traders during the crisis. In addition, the upcoming evaluation of the Union Customs Code will aim to establish whether the Code is sufficiently flexible to deal with the management of customs formalities during times of crisis. However, there have been suggestions that there is a need for solutions that go beyond the Code. There is also an appetite for a continuation of discussions, following the foresight exercise, on the related subject of ensuring that the Customs Union is better prepared for the future.

In the light of these developments, the Commission proposes to establish a reflection group of Member States and stakeholders under the customs programme to consider how to make the Customs Union smarter, more agile, more technologically advanced and more crisis-proof. Ideas to be considered could include ways to better forecast and anticipate problems, rapid reaction mechanisms, lessons to be learnt from the Covid-19 crisis and exploring how best to ensure that the Customs Union fulfils its objectives.

In addition, it may be time to consider a more operational framework for customs activities. Taking into account the limits imposed by the Treaty on conferring certain powers to an agency, an agency structure could be explored. To that end, the Commission will in due course launch an impact assessment to determine whether an EU customs agency (either a new one or part of an existing agency) with appropriate powers could allow a better and more coordinated operational customs response to crises and allow monitoring of trends and patterns and identification of vulnerabilities.

In addition, the impact assessment will endeavour to establish whether an agency could allow the management, storage, greater development and effective sharing of data analytics for the assistance of all Member States in their risk management and anti-fraud activities and could also help to ensure the application of an effective and uniform approach to risk-management through the EU customs territory. The assessment would also determine whether the management, development and maintenance of customs electronic systems would be improved if they were handled by an EU agency, reducing the costs that Member States face if they fund those systems individually. The Commission would also assess whether an agency could provide a formal structure for cooperation between Member States in customs controls and for rapid reaction cross-national expert teams when the need arises, help to promote the customs profession and reduce training costs for Member States, via mobility programmes and common training. In deciding whether an agency is the way forward, careful consideration would need to be given to the synergies and potential for overlap with existing law enforcement agencies.

#### **Action: 2021 - 2023**

- Reflection group of Member States and stakeholders on foresight/crisis management – launch in early **2021**
- In 2022, the Commission will launch an impact assessment, with an outcome by **2023**, on the pros and cons of an agency approach covering a number of customs cooperation domains, so as to decide whether to propose such an agency under the next Multiannual Financial Framework

## V. Conclusion

This Action Plan has set out an ambitious series of actions aimed at ensuring a more coherent and stronger Customs Union responding to four areas of intervention: risk management, e-commerce, compliance, and the Customs Union acting as one. The Commission has drawn up this plan for work for the period up to 2025 having regard to the views of Member States and stakeholders in the various consultation formats described throughout the Communication. It is in line with the long-term vision of the Customs Union established in the foresight exercise and it acknowledges the impact that the Covid-19 crisis has had on customs authorities and economic operators.

A central focus of the activity will be the addition of an EU layer of data analytics capabilities to support all Member States in risk analysis and by extension in control effectiveness. The aim is to support and strengthen different risk and control aspects in order to reinforce the whole structure, reduce costs for Member States and further facilitate legitimate trade.

It is essential to underline that the sizing and feasibility of some, although not all, of the proposed actions will be determined by the final outcome of the negotiations for the next Multiannual Financial Framework, from both the administrative and operational budget angle. It is also essential to note that Member States will have a significant role to play and will need to make available the necessary resources at national level. Should these conditions not be met, it will not be possible to develop all of these actions.

The Commission wishes to continue discussing with Member States ways to make the Customs Union smarter, more agile and more crisis-proof. In the medium term, the Commission wishes to explore the idea of establishing a customs agency to make the management of the Customs Union more cost-effective and efficient, eliminate duplications of costs between the Member States and ensure more effective and rapid reactions to crises.

The Commission invites the European Parliament and the Council to support this Action Plan.

## **APPENDIX: list of actions and timelines**

### **2020**

1. Joint analytics capabilities: data analysis to extract trends, using EU Surveillance: ongoing
2. Single Window environment for Customs - Legislative proposal: Q4 2020
3. Review of Regulation 515/97 on customs fraud: Q4 2020
4. China: International cooperation: New strategic framework with China: end 2020
5. Launch analysis of Union's system of international cooperation in customs matters: end 2020

### **2021**

1. Joint analytics capabilities: use of Surveillance data to support correct implementation of the Union tariff
2. Revised risk management strategy: Q2 2021
3. Assess need to update Regulation 515/97 to address customs fraud challenges: Q1 2021
4. AEO programme: possible legislative proposal for more precise monitoring obligations Q2/3 2021
5. AEO programme: Updated guidelines: Q2/3 2021
6. Interim evaluation of the Union Customs Code: Q4 2021
7. Market surveillance regulation – implementing acts for customs aspects: from 2021
8. Preferential trade arrangements – step up monitoring : from 2021 onwards
9. Possible enhancements to international cooperation and mutual administrative assistance in customs matters, based on the results of the analysis : to start in 2021
10. Customs Union Performance – evaluation of problems of no legal base: end 2021
11. Common system of sanctions – guidelines: Q4 2021
12. Customs control equipment: work on financing equipment to start from 2021
13. New customs programme: enhanced cooperation to start from 2021
14. Launch analysis of impact of e-commerce on customs duty collection/level playing field
15. Study on interoperability between customs and border systems: end 2021
16. Reflection group on foresight/crisis management – launch in early 2021

### **2022**

1. Customs access to Eurofisc tax data hub
2. Common system of sanctions – reflection on legislation

### **2023**

1. Joint analytics capabilities: start combining data from Surveillance with data from other new and existing electronic systems; ICS2 analytics on pre-loading and pre arrival data for postal, express and cargo air carriers.
2. Customs obligations for e-commerce platforms – proposal for reporting: Q1 2023
3. Customs agency - completion of impact assessment

### **2024**

1. Joint analytics capabilities: ICS2 analytics of pre-loading and pre-arrival data for maritime, road and air carriers & logistic providers
2. Cooperation & interoperability with security and border management authorities –timeline for link ups (in line with final deployment of ICS2)
3. Customs access to VAT payment data

### **2025**

1. New interface between the Market Surveillance system (ICSMS) and the EU Single Window environment for customs.