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### 'I' ITEM NOTE

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From: General Secretariat of the Council  
To: Permanent Representatives Committee

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Subject: Council Conclusions regarding Taking the Customs Union to the Next Level: a Plan for Action  
- Approval  
- Decision to use the written procedure

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1. On 28 September 2020 the Commission presented its Communication regarding Taking the Customs Union to the Next Level: a Plan for Action<sup>1</sup>. The Presidency has decided to prepare Conclusions based on this Communication which have been presented to delegations in the Council on 21 October 2020.
2. In the absence of a meeting of the Working Party on Customs Union due to the current travel restrictions, the delegates examined the Conclusions in an informal setting on 27 October , 9 and 17 November 2020 and an agreement was reached at the High Level Working Party of the Directors General of Customs on 30 November 2020.
3. Against this background, the Permanent Representatives Committee is invited to:
  - confirm the agreement on the Council Conclusions reached at the level of the Working Party, and,
  - decide, given the current exceptional situation, in accordance with the first subparagraph of Article 12(1) of the Council's Rules of Procedure and Article 1 of Council Decision (EU) 2020/430, as extended by Council Decision (EU) 2020/1659, that the Council uses the written procedure for the approval of the Council Conclusions

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<sup>1</sup> Doc. 11231/20.

regarding Taking the Customs Union to the Next Level: a Plan for Action, as set out in the Annex to this document.

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**Draft Council Conclusions regarding Taking the Customs Union to the Next Level: a Plan for Action**

**I. Introductory part**

The Council of the European Union

RECALLS

- Council Conclusions on Developing the EU Customs Union and its Governance<sup>2</sup>, in which the Council invited Member States and the Commission to implement the Union Customs Code (hereinafter referred to as the UCC) as a top-priority and to develop a comprehensive mid- and long-term strategy for customs IT systems;
- Council Conclusions on the First Biennial Report on Progress in Developing the EU Customs Union and its Governance inviting to develop further on the Customs Union performance measurement and its use<sup>3</sup>;
- Council Conclusions on the Second Progress Report on the Implementation of the EU Strategy and Action Plan for Customs Risk Management<sup>4</sup> stressing the need to deliver the electronic systems as foreseen by the UCC in a timely manner in order to allow customs administrations to manage financial and security risks while facilitating trade;
- Council Conclusions on the way forward to improve information exchange and ensure the interoperability of EU information systems<sup>5</sup>, in which the highest political priority has been given to interoperability of the security and border management systems with the customs systems;

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<sup>2</sup> Doc. 7585/1/17 REV 1

<sup>3</sup> Doc. 5650/19.

<sup>4</sup> Doc. 15497/18.

<sup>5</sup> Doc. 10151/17

- Council Conclusions on the follow-up of the Union Customs Code<sup>6</sup>, in which the Council stressed the importance that the work to be completed should be based on realistic costs and time planning and underlined the need to continue work in developing further trade facilitation and simplification;
- Council Conclusions on the Governance Reform of the EU Customs Union<sup>7</sup> stating that the EU Customs Union is one of the most successful examples of European integration and European policy;
- ACKNOWLEDGES the work of the foresight project on “The Future of Customs in the EU 2040” aiming at creating a shared and strategic understanding among the 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;
- NOTES that Member States' Customs authorities successfully implement the UCC and UNDERLINES that they have an extensive range of control responsibilities for fiscal and for non-fiscal purposes;
- RECOGNISES
  - that the fast changing world, the acceleration of digital transformation and the emergence of new business models, such as e-commerce and, in addition, the effects of Brexit and the Covid-19 crisis are challenging for all stakeholders;
  - that despite these challenges the Customs Union proved its successful operation in these demanding times and the customs authorities have continued to secure the smooth flow and security of the international supply chain and continued to protect the financial interests of the EU and its Member States as well as safety and security of its citizens;

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<sup>6</sup> OJ C 357, 29.9.2016, p. 2

<sup>7</sup> Doc. ST 9688/14.

- WELCOMES the Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee which envisions taking the Customs Union to the next level and proposes ambitious actions aimed at strengthening the Customs Union that protects society, operates proactively and facilitates compliant trade;

## **II. More effective customs risk management to allow more effective controls**

- INVITES the Commission to elaborate on a detailed description of the tasks, the role, the business model and positioning of the EU Joint Analytics Capabilities in order to further strengthen the efficiency and create an added value to the risk management strategy; and providing a legal and financial assessment including issues of data protection and data security, BEARING IN MIND the respective competencies and resources of the Member States and the Commission in the area of risk management and controls;
- UNDERLINES the importance of close cooperation with Member States when developing the EU Joint Analytics Capabilities;
- ENCOURAGES the Commission and the Member States to assess the possible use of certain Passenger Name Record data for specific purposes of customs controls and related risk analysis, taking into account the work currently carried out within the WCO and ICAO in this area and in respect of fundamental rights and data protection;
- ENCOURAGES the Commission to consider the integration of new technologies, especially artificial intelligence, in data analysis;
- LOOKS FORWARD to the 3rd progress report<sup>8</sup> in order to assess the need for a New Risk Management Strategy and STRESSES the overall importance of strengthening cooperation between the Member States as well as the need of preserving their flexibility; and INVITES the Commission to take into account the expertise and the existing structures implemented by Member States in this respect;

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<sup>8</sup> Doc. 15497/18.

### III. Managing e-Commerce

- UNDERLINES the need for close cooperation between Member States in the field of e-commerce and a better synergy in terms of risk analysis due to the challenges posed by increasing volumes in this area;
- ENCOURAGES the Commission in close cooperation with the Member States to further examine the use of VAT collected data for customs purposes, addressing both trade facilitation and risk based controls, and what are the legal and technical implications thereof, including issues of data protection and data security as well as the possible burdens and costs for the economy and administrations;
- LOOKS FORWARD to the Commission's assessment of the role and obligations of e-commerce actors including:
  - whether and how electronically available data of online marketplaces could streamline the customs clearance of an increasing number of e-commerce goods and jointly tackle customs and tax risks, while facilitating more effective controls;
  - the possible effects on limited IT capacities of the Member States' customs authorities;

and CALLS ON the Commission to maintain the envisaged timing to propose possible required legal amendments to the UCC following the assessment.

### IV. Strengthening and facilitating compliance

- UNDERLINES the importance of continuing to work on the further innovation of the UCC package and to further facilitate trade, including by adopting measures to enhance benefits for authorised economic operators;

- ENCOURAGES the Commission to step up the efforts regarding the AEO-programme, which calls for as similar as possible practices between the Member States with a view of harmonised implementation concerning the granting and managing of the AEO authorisations including-continued monitoring of this status, and to expand and improve our AEO mutual recognition agreements with third countries to enhance the security of the supply chain and to facilitate legitimate trade;
- LOOKS FORWARD to the envisaged establishment of an EU-Single Window environment for customs and UNDERLINES that a sufficient harmonization of declaration requirements in non-customs policy areas is a precondition for the successful implementation of the Single Window environment for customs and that sufficient time for the implementation should be envisaged for all parties involved;
- ENCOURAGES the Commission together with the Member States, in the light of the experiences gained so far from the Covid-19 crisis, to explore the possibilities of a crisis management plan in the field of customs, including the respective legal amendments, which could be temporarily applied and for example offer payment and procedural facilities as well as specific customs duty reliefs in a uniform and general manner in case of future crisis;
- LOOKS FORWARD to an interim evaluation of the UCC, especially regarding the IT systems, completed by the end of 2021 and ENCOURAGES the Commission to perform a comprehensive evaluation after the full implementation of the UCC;
- RECALLS the challenges in previous efforts for a legal framework for harmonisation of customs infringements and sanctions; therefore ENCOURAGES the Commission to involve Member States already in its initial considerations in order to ensure that possible results will guarantee pragmatic solutions that respect national competences and are compatible with the legal framework in the Member States;
- ENCOURAGES the Commission to present 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 as soon as possible, at the latest by Q4 2021;

## V. Customs working as one

- ENCOURAGES the Commission to publish the study of feasibility of developing interoperability between the Schengen Information System and Europol data with the customs Import Control System (ICS 2) as soon as possible, which should assess the opportunities involved in interoperability between these three systems and also the related financial, operational, technical and legal challenges, including questions of data protection and confidentiality;
- STRESSES that cooperation between customs authorities, police and other law enforcement services needs to be enhanced. This includes to fully involve customs authorities as well as relevant Commission Services in the planning and actions related to the EU Serious and Organised Crime Threat Assessment in order to achieve a high level of synergy and avoid duplications;
- TAKES NOTE of the engagement of the Commission in reflection on how to enhance the use of key performance indicators and EMPHASIZES that the intended evaluation of the need for a legal framework should include possible alternative options;
- STRESSES that it is important that the Member States deploy modern and reliable equipment in order to improve the effectiveness of the controls and to achieve equivalent results of controls in the medium term;
- CONFIRMS that cooperation among the Member States is an essential part of the EU Customs Union in order to protect the financial interest of the EU and with regard to safety and security and INVITES the Commission to promote an efficient and needs-based cooperation for an enhanced alignment of practices among the Member States, including by specific cooperation formats under the customs programmes, such as for Member States with similar geographical-driven or thematic challenges;



- WELCOMES the launch of a reflection group in order to continue the work initiated by the Foresight Project and to consider further crisis management solutions; the reflection should also touch on the possibility of enhancing the human capacity building and training of customs officials including the possibility of mobility programmes on a voluntary basis and CALLS ON the Commission to agree together with the Member States on a clear mandate of the group;
- NOTES that the action on an impact assessment on the future governance of the EU Customs Union could involve major structural transformations for the future functioning of the Customs Union, including as one of various options the possibility to create an EU customs agency; therefore STRESSES that the assessment should take into account the expertise of the Member States, should include all possible alternative solutions and should foresee a timeframe allowing for an in-depth reflection.

## **VI. Concluding statements**

- EMPHASISES that complex challenges in the customs area are best tackled by cooperating while fully respecting the competences and the responsibilities of the EU Institutions and the Member States and that the Customs Union should continue to be able to reflect the specific circumstances of the Member States;
- STRESSES that measures taken to improve the functioning of the EU Customs Union should, in the light of the fact that the EU Customs Union is, in general, functioning well, in the first instance build on the existing resources, structures and procedures; but at the same time pay attention to innovation and changing circumstances in which customs operates in order to bring the Customs Union to the next level;
- NOTES that the actions for developing of the Customs Union should also include, where appropriate, elements of environmental sustainability in order to contribute in particular to fight climate change;

- UNDERLINES that given the limited resources, in particular in the area of IT, all actions need to be prioritized according to their impact on strengthening the economic competitiveness while protecting the people, the financial interests and the internal market of the EU from threats posed by illicit and non-compliant trade, must be based on a thorough cross-benefit-analysis, have to offer a clear added value to adequately address emerging crises or challenges and need to foresee workable implementation timelines, while working on new actions should not impede the full implementation of the UCC;
  - UNDERLINES the importance of the High Level Working Party of the Directors General of Customs and ASKS it to examine the implementation of the actions of strategic relevance and their coherence with these conclusions, including the evaluation of the outcome of the impact assessment on the future governance of the EU Customs Union in due course;
  - INVITES the Commission to include the state of play of the actions in the Biennial Report on Progress in Developing the EU Customs Union and its Governance.
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