

Position of the Union of Entrepreneurs and Employers (ZPP) on the revision of the Union Customs Code

The Union of Entrepreneurs and Employers (ZPP) welcomes the initiative of the European Commission to make customs regulations better adapted to the challenges of digital transformation and the pro-climate agenda of the European Union. The presented initiative contains several key areas to be revised in order to strengthen the current legal framework, such as e-commerce operations, risk management, data analytics capacity and the protection of the single market against non-EU compliant imports from third countries.

UCC regulations may be hard to put into practice for small and medium-sized enterprises. Therefore, it should be kept in mind that the proposed changes do not worsen the situation of SMEs, which, especially in the e-commerce sector, are young entities and find it more challenging to adapt to legal changes.

The Union Customs Code revision is one of several pieces of legislation that will majorly impact importing products to the single market, including those sold and purchased through e-commerce. Speaking of which, the Market Surveillance Regulation entered into force in July 2022, and currently, the European Commission is working on revising the General Product Safety Directive. The above legislative changes will significantly affect both traditional and online trading. In order to ensure further e-commerce development, it is necessary to properly assess the effects of the regulation and its impact on the trading conditions in the European Union. In addition, it is needed to ensure sufficient time for entities actively involved in trade to familiarize themselves with the proposed changes and ensure proper and equal enforcement of the adopted provisions.

Based on the expertise and experience of companies associated in the ZPP, we have developed recommendations for the European legislator to revise the Union Customs Code that best meets the needs of all trade participants and stakeholders. The paragraphs below describe the most important thematic issues.

Cooperation between customs authorities

The biggest challenge for the European Union is establishing efficient cooperation between customs and non-customs authorities. To effectively implement and enforce the new regulations, there is a need to tighten the joint action between the Member States' customs services and the tax authorities collecting VAT. The future could lead to creating a unified customs process that could take place through a single official communication channel with the public administration.

Creating a single framework for customs clearance would be beneficial for the single market and would make international trade safer. For this reason, we consider it equitable to use data already possessed by the public authorities and foster mutual exchange between relevant administrative units. Such simplification of procedures would benefit honest merchants,

whose regular and compliant business operations would be easier to conduct. It would also be easier for customs authorities to reduce the workload due to more straightforward procedures.

We recommend simplifying the process for both public authorities and entrepreneurs by effectively using the collected data that has already been made available to public authorities. At the same time, this will ensure an adequate level playing field and market protection against dishonest entities that may threaten consumers and entrepreneurs who conduct business honestly.

Entities that trade fairly within the single market create positive added value for the European Union. Therefore, they should not be burdened with additional obligations hindering their activities. The threat that should be counteracted by the UCC revision is the entities introducing products to the block, disregarding the fulfilment of tax obligations. Additionally, the products introduced by these entities may be dangerous to end consumers as they may not meet European safety standards.

The reform of the e-commerce package carried out in 2021 introduced a number of improvements in the functioning of customs procedures. An important tool contributing to this is the Import One Stop Shop (IOSS), which introduced a central reporting and collection mechanism for import parcels worth up to EUR 150.

Given the above, we consider it appropriate to improve the efficiency of customs clearance by using the data already held by the office, efficient data transfer and adopting better procedures that will effectively implement cooperation between the customs services of the Member States and fiscal authorities. We recommend considering the possibility of verifying data that are collected by customs as "data of comparable quality". The ultimate desired effect will be the unification of procedures for honest traders and increased detection of irregularities for dishonest market actors.

Trusted traders as beneficiaries of simpler rules

To increase the performance of the EU Customs Union, the legislator should consider supporting well-established businesses proven to be compliant with regulations and shift the focus of the customs authorities to fraud and other risk areas.

For small and medium-sized enterprises, compliance with UCC may present challenges and require hardship to respect customs conditions to retain secure and honest trade for their clients. Paring the requirements down should consider the position of diligent merchants.

UCC improvements need to concentrate on forming cohesive, performant processes and instruments for authorities as well as awareness of outcomes on business. Currently, the most distinguished challenge for the European Union is the collaboration between customs and non-customs authorities across the Member States. Improving cooperation between those as well as further development of mechanisms (i.e. Import One Stop Shop) will benefit all parties.

The beneficiaries of these changes shall not only be Authorized Economic Operators. Performant, simplified processes of centralized clearance and capability for reconciliation of

the entries in Import One Stop Shop for legitimate business owners, as well as small and medium enterprises, self-clearance in a similar way as VAT reporting and settlement, would smoothen the trade processes and reduce actions required from customs authorities at the border.

The approach to data exchange

To further back customs enforcement, we need to extend the quality and quantity of currently available data. Providing a single-window system that will ease customs processes, improve risk management, and improve data input, reusing it for authorities, vendors, and consumers is a good strategy. This is the key to effectively tackle down challenges brought to the light by modern e-commerce.

Nevertheless, convergent and standardized interfaces between new and existing systems shall be established to avoid redundant reporting. Platforms are already reporting VAT data for third-party sales conducted on their marketplaces via the IOSS. Moreover, Payment Service Providers will share data via the Central Electronic System of Payment Information, beginning in 2024. Data sharing, data exchange between systems, and shares of data provided by the other actors in the supply chain will surely improve the detection of fraud, non-financial risks, and undervaluation.

Of course, enforcement measures and appropriate liability must exist along with the beforementioned data exchange improvements. It is worth noting that despite taking steps regarding the exchange of customs data, not all carriers are accountable for customs declarations in regard to Article 23.3 of the UPU Convention.

Furthermore, the European Commission shall watch for privacy and data security issues regarding sensitive information and whether the exchange is done in secure environments unavailable to malicious third parties. Special attention shall be paid to the exchange of information on shipping labels, tax references or IOSS registration numbers.

Caution should be paid during the regulation of responsibility for the data shared in those systems. Marketplaces, for example, depend on data provided by the merchants as-is and may not have measures to verify the accuracy of most of the indicators.

Development of the e-commerce market and challenges related to the effective collection of VAT and customs duties

The experience gained by the participants of the IOSS reporting mechanism allows for the formulation of several proposals for improvements that may make it easier for entities to report the emergence of such obligations and pay the tax amount to meet the tax obligation. Moreover, the recommended changes will allow for more effective tax collection.

Strengthening the functioning of the IOSS by removing the inconsistencies between national customs authorities and the discrepancies between customs and VAT legislation will remove the current legal uncertainty about the procedures in use.

We believe efficient data reconciliation between customs and tax authorities (VAT) will allow for mutual verification of data already held by public administration entities. A practical

example of the lack of such cooperation is the inability of customs authorities in several key countries unloading imported goods to recognize IOSS numbers in H1 customs declarations. Such an inconvenience leads to the necessity of double VAT taxation, despite the fact that they qualify for the procedure under the IOSS.

We recognize the Member States' actions within the VAT Committee that agreed on a temporary solution for the return of double-paid VAT under the IOSS procedure. However, this is a temporary solution and does not address the problem's root cause, incompatibility with the customs IT system.

Another aspect that requires improvement is the lack of security for IOSS numbers. Currently, it is impossible to verify entities registered in the system by the tax authority and merchants. It is only possible to check whether the given IOSS number is valid without the possibility of specifying the entity using the given number.

In addition, the system supporting the IOSS procedure does not have a comprehensive link between the vendor ID and the shipment transaction level. That means the misuse of IOSS numbers can be either accidental or deliberate because the tax payment at the border is then charged to the entity registering the IOSS number and not the one shipping the parcel. The IOSS registrant becomes burdened with the need to reconcile the differences between IOSS declarations and EU customs data. This is a deliberate action to mislead the tax authorities. In such a situation, the IOSS registrant is charged and must prove the unauthorized use of the code. The treasury loses VAT revenue.

In view of the above, we listed several recommendations introducing changes to the functioning of the IOSS system to make it complementary to the EU customs policy.

Firstly, a permanent mechanism should be implemented to prevent double taxation of shipments. The temporary solution introduced should be considered positive. However, to maintain the system's coherent operation, comprehensive solutions are necessary.

Secondly, national customs administrations should be strengthened so that they can verify all shipments eligible for IOSS, including those covered by the H1 customs declaration. It will remove the need for multi-channel sellers to maintain a dual import regime for low-value shipments. Additionally, this will also benefit the administration as it will not have to manage a double system for low-value imports.

Thirdly, the protection and security of IOSS-based verification should be strengthened. The system shall ensure the safety and protection of IOSS registrants from the potential consequences of tax extortion. In our opinion, this will ensure a level playing field by preventing misuse of IOSS numbers.

Fourthly, it is necessary to resolve the existing discrepancies between VAT and customs regulations. An example of such a solution is the IOSS VAT scope and the new customs competent office rule under article 221 (4) the UCC / IA leading to non-IOSS eligible shipment <150 EUR, such as B2B and excisable products, requiring immediate clearance in the final delivery country leading to capability issues with brokers and customs logistics partners.

Fifthly, we think the most optimal solution is to transfer responsibility for non-financial risks to importers. The importers in the supply chain generally have the best knowledge of the product purchased.

The party with the best access to customs data shall be selected to calculate customs fees if the legislator considers the expansion of the aggregator's responsibility. Mostly, Business-To-Consumer sales take place under the DDU/DAP Incoterms' well-established rules, so the customs clearance responsibility is on the final customer. From our view, in the process of DDP sale, the merchant shall be responsible for custom duties since they have insights regarding the country of the import as well as the customs clearance process.