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**NOTE FOR THE ATTENTION OF DELEGATES TO THE CUSTOMS EXPERT GROUP –  
SECTION CUSTOMS STATUS AND TRANSIT**

**Subject: Summary record of the 18<sup>th</sup> Customs Expert Group – Section  
Customs Status and Transit, held on 8 December 2020**

Please find herewith the summary record of the 18<sup>th</sup> Customs Expert Group – Section Customs Status and Transit, which was held on 8 December 2020 by web conferencing.

Michele PEROLAT  
Head of Unit

c.c.: Mr. Thomas, Director General DG TAXUD  
Ms. Buchtova, Assistant to Director General DG TAXUD  
Mr. Schnichels, Director TAXUD/A  
Heads of Unit TAXUD/A, B, E4 and E 5  
Delegates and other participants  
Customs Attachés of the Member States  
Expert Group Registry

## **1 Adoption of the agenda**

The agenda was adopted as proposed, with two items added in AOB:

- Formalities of the office of transit;
- Project Group on risk management in transit and proof of Union status.

## **2 Co-ordination of Union position for the EU-CTC Working Group**

### **2.1 Mutual Assistance for the recovery of claims**

COM informed the delegates that item 4 of the agenda regarding the amendment of Appendix IV of the CTC for the mutual assistance for the recovery of claims, is largely acceptable to all the MS. Only one item remains open, between a MS and a CP, regarding the presence of customs authorities in the administrative enquiries of the requested authority. COMs position, on this, is flexible as this provision is rarely used and if need be, authorised customs officials can be present to enquiries upon invitation from customs authorities of another CP, even if this is not expressly stated in Appendix IV of the CTC.

### **2.2 UK accession to Common Transit Convention**

The Chair reminded that the UK will accede the Conventions as of the 1st of January 2021 and according to the rules they have to apply the Common Transit Convention. This item will be discussed under AOB in conjunction with the OoT issue. No deviations were agreed in the accession process so far and there is no indication that the UK will not join the Conventions as of 1<sup>st</sup> of January 2021. This item will be repeated in the JC meeting.

### **2.3 Memorandum of Understanding for the case of Northern Ireland**

The Chair informed the delegates that the need for a Memorandum of Understanding (MoU) arises from the particular political situation. Northern Ireland belongs to the UK and its customs territory, but that there can be no physical border between Ireland and Northern Ireland when the UK left the EU. The Protocol on Ireland/Northern Ireland (NIP) which is an annex to the Withdrawal Agreement (WA), determines in Article 5(3) that the Union customs legislation applies to and in the UK in respect of Northern Ireland, even though Article 4 confirms that NI is part of the customs territory of the UK. In addition, Article 13(1) provides that notwithstanding any other provisions of the NIP, any reference to the customs territory of the Union shall be read as including NI.

Normally, the Office of Transit (OoT) should be installed between IE and NI. As this is politically not feasible, the UK agreed to apply the OoT functions at the external border of the island, at NI ports. No offices of transit are needed later on between IE and NI. The MoU ensures that the implementation of the OoT function is in line with the provisions of the CTC, while fully complying with the requirements of the NIP.

The CTC foresees certain simplifications. In accordance with Article 6 CTC, Contracting Parties are allowed to introduce among themselves simplified procedures, by means of bilateral or multilateral agreements. While the UK sees the MoU as an application of Article 6 CTC, COM does not consider the MoU as a case of Article 6 CTC, for a

number of legal arguments and for the simple fact that there is no linking connection to the “within T1 and T2” clause. For COM, the MoU is covered by Article 41 of the Vienna Convention on the Law of Treaties.

This issue will be repeated to the EU-CTC Working Group meeting so that all CP’s are informed and will be again be repeated for the third time at the Joint Committee meeting.

The Chair informed the delegates that no text could be published earlier due to the ongoing Brexit negotiations. For transit issues, a pragmatic solution was needed that respected both the CTC and the NIP. Furthermore, the solution sought would have to respect the rights of other contracting parties. The MoU will be adopted by COM without prior consultation of the MS, because it is simply recording the common understanding of the EU and the UK on the interplay between the Convention and the Protocol without changing them. Nevertheless, COM will inform the Council (CUG) very soon.

A MS raised a question regarding its understanding in the event that goods are transported to NI via GB, then a customs procedure is required, but for movements from NI to EU, no customs procedure is required. The Chair explained that NI will be treated as part of the EU for customs purposes. Therefore, for a movement from NI via the UK to another EU MS, common transit will be used, but it will not be obligatory. Other solutions could apply and transit (incl. TIR) would be an option.

A MS asked if the goods from NI to EU would be covered under the T2 or the T1 procedure. The Chair replied that goods from NI are regarded as Union goods even though NI remains part of the UK.

Several MSs called for clear examples to be developed for trade and customs. The Chair welcomed the suggestion and offered the MSs to compile their examples. The publication will be discussed with the Brexit team.

(Note after the meeting: a selection of examples has been integrated in the [updated Guidance Note on the WA.rev 4](#). The full list is available on [Circabc](#).)

Another MS asked if the NI customs authorities can issue T2Ls and COM replied that the UCC applies, therefore it can.

### **3 AOB**

#### **3.1 Formalities of the office of transit**

A MS questioned if the Border Operating Model (BOM) is in line with the CTC. The MS explained that the UK has published its BOM, which describes how to deal with formalities when entering and exiting the UK. According to the BOM, to enter the UK via certain ports, certain formalities must be completed in the Goods Vehicle Management System (GVMS) before boarding the ferry at the EU port of departure, otherwise the goods are not allowed to be loaded on the ferry. The MS expressed its concern that this would lead to congestion on the EU side and questioned whether this condition is in line with the CTC. It is of opinion that this condition shifts part of the OoT function to the EU side, although it should be done when entering a CP. The MS sought the opinion of COM and other MSs.

The Chair thanked the MS for sharing its concerns and informing COM in advance. COM looked into the issue and understood that the BOM did indeed require something

from the transporter, i.e. the ferry operators or lorry drivers: they must register the relevant MRN numbers in the UK's goods vehicle movement system (GVMS).

COM confirmed that the OoT function should remain in the UK for movements that start in the EU. Most of these movements will have already started before arriving at the port. Then, when the Channel is crossed and the goods arrive in the UK, any documentary or physical controls must take place there in accordance with Article 43, Appendix I, CTC. MSs did not oppose to this point of view. Unlike other transit procedures, such as TIR where the transit operation starts and ends at the entry and exit of each CP, the common transit procedure is lighter. When goods pass from one CP to another, it is agreed that transit formalities are not required when leaving the CP, but only when entering the next CP.

COM's preliminary analyses have revealed that, firstly, the GVMS will work as a pre-lodgement of information. One could argue that all the transit information is already available and pre-lodged. However, the OoT would not know when the goods would arrive, or the goods could not arrive at all. In the interest of efficient handling, COM understands this requirement. Secondly, the analysis also showed that the OoT function was not shifted from the UK to the EU. Risk analysis, monitoring, registration of passage, sending IE118 messages and any data check or physical examination will all take place in the UK. On the basis of all these elements, COM considered that the requirement to simply register the MRN number in the GVMS is not excessive. Thirdly, COM recognised that the purpose of the requirement is to avoid congestion at the UK ports. COM admitted that shifting the risk of congestion from the UK to the EU ports is not a desirable move. However, COM doubts that the requirement to register the MRN would cause congestion. COM understood this is a light notification that can be done by mobile device while waiting for boarding of the ship or when other administrative tasks such as booking the ferry are done in advance. COM also looked into the Trade Facilitation Agreement, Article 11, on the freedom of transit. No evidence to the contrary has been found as it takes a wider view suggesting working together rather than shifting issues.

The Chair noted that another Member State has also applied a similar system of pre-lodgement for inbound traffic. Learning from countries that have implemented such a system can help other CP to find efficient solutions. The Chair asked if other MS applied similar systems and would be prepared to explain how that works.

The Chair invited a MS to explain how its Smart Border System works. The MS confirmed that its system works in the same way as the GVMS. The operator must ensure that the transit declaration is lodged in advance in NCTS. Then, the MRN and TAD are scanned and connected to the truck registration number at the port of departure before boarding. The main difference is that the operator in the UK does not have to register in its national system. Its Smart Border System is fully transparent to haulers and is designed to avoid congestions. The Chair thanked the MS and concluded that there is an obligation to give the MRN to the company before boarding which is very similar to the UK system.

Another MS informed it was also made aware about the BOM. However, it believes the system will help decongest the ports. From the EU to the UK, the MRN will be provided in advance. In the other direction, the MRNs will be readily available to the OoT upon disembarkation, which will help them to perform the OoT function efficiently.

Another MS raised the question of whether when goods leave the EU to the UK and cross international waters, e.g. from Gothenburg to Immingham, if in this case the OoT is required on both sides of the international waters, i.e. at the exit of the EU and entry into the UK. COM confirmed that under certain conditions two OoT may be required, one at exit and one at entry. One MS confirmed it defined only one OoT when crossing the sea between the EU and the UK. Another MS recalled that so far international waters are not considered third countries. Therefore, the OoT was only required for cases where there was an actual third country. The Chair suggested taking this as a provisional answer based on Article 3(h), Appendix I, CTC.

The Chair gave the last word to the MS that raised the issue. The MS acknowledged that the GVMS requirement is in line with the CTC. However, it asked to monitor the impact of the GVMS and re-open the discussion in January if necessary. COM suggested that MS to contact the UK to explore how the relevant (port) systems can be connected to optimise the registration requirements.

### **3.2 Project Group on Risk Management in Transit and Proof of Union Status**

A MS asked for clarification when the Project Group on risk management in transit and proof of Union status will resume its activities. COM replied that a note was issued confirming the participants to the Project Group and that the Project Group will resume its activities as of March 2021. COM will publish that note on [Circabc](#).

## **List of Participants – Liste des participants - Teilnehmerliste**

### **Delegations of the Member States; les représentants des Etats membres; Vertreter der Mitgliedstaaten**

#### **BELGIE/BELGIQUE**

SPF Finances (Administration generale des douanes et accises)

#### **BULGARIA**

Bulgarian National Customs Agency

#### **CROATIA**

Customs Administration Central Office

#### **CYPRUS**

Customs and Excise department, Ministry of Finance

#### **CZECH REPUBLIC**

Czech Customs Administration

#### **DENMARK**

Danish Customs Agency

#### **GERMANY**

Central Customs Authority

#### **ESTONIA**

Tax and Customs Board

#### **ELLAS**

Independent Authority For Public Revenue

#### **ESPAGNE**

Tax Agency - Customs & Excise Department

#### **FRANCE**

Direction generale des douanes et droits indirects (DGDDI)

#### **ITALIA**

Agenzia delle Dogane

#### **LATVIA**

State Revenue Service – National Customs Board

#### **LITHUANIA**

Customs Department

#### **LUXEMBOURG**

Administration des douanes et accises

#### **HUNGARY**

National Tax and Customs Administration

#### **NEDERLAND**

Customs Administration

#### **POLAND**

Ministry of Finance

#### **PORTUGAL**

Autoridade Tributária e Aduaneira

#### **ROMANIA**

General Customs Directorate

#### **SLOVENIA**

Financial Administration of the Republic of Slovenia

#### **SUOMI / FINLAND**

Finnish Customs

#### **SWEDEN**

Swedish Customs

#### **SLOVAKIA**

Slovak Customs

#### **European Commission:**

TAXUD/A1: Mr M. RATHJE (Chair), Ms A. LEROY, Ms E. GENIKOMSAKI, Mr P.J. LABORIE, Mr E.

CIAPPARA

TAXUD/B1: Mr G. MESZAROS