



## EU – UKRAINE ASSOCIATION AGREEMENT

### FOURTH MEETING OF THE EU-UKRAINE CUSTOMS SUB-COMMITTEE

23 SEPTEMBER 2020

#### REPORT

The 4<sup>th</sup> EU-Ukraine Customs Sub-Committee was held in virtual format, with wide participation from the Commission services, Ukraine and EU Presidency Germany, having over 40 participants. Major agenda points are summarised below.

#### **Developments in EU customs legislation and procedures (EU)**

EU presented the changes made in the UCC in 2019 and the beginning of 2020 related to the e-commerce, EU Customs pre-arrival security and safety programme supported by the Import Control System 2 (ICS2). The European Commission also presented number of measures related to COVID 19, one of them is a decision allowing Member States affected by the coronavirus pandemic to temporarily suspend customs duties and VAT on protective equipment, testing kits or medical devices such as ventilators.

On the Ukrainian side the major developments have been following:

- The State Customs Service approved the Strategic Plan of the State Customs Service for 2020.
- The Law of Ukraine “On Amendments to the Customs Code of Ukraine and Certain Other Laws of Ukraine in Connection with Administrative Reform” was adopted. The law creates a legislative basis for the implementation of the concept of functioning of the State Customs Service of Ukraine as one legal entity and determining the conditions for its proper functioning.
- The Action Plan for reforming and developing the system of bodies implementing customs policy was approved on May 13, 2020. This Plan, in particular, provides for the implementation of measures in such areas as: optimization of organizational and functional structure; staff development, integrity reforms and anti-corruption measures; promoting security and international trade, including the simplification and harmonization of customs procedures; promoting the effective collection of customs payments; increasing the efficiency of international customs cooperation. Proposed next actions:

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## **Approximation of Ukrainian legislation in customs issues to the EU Customs Code, Annex XV of the Association Agreement (UA)**

Under this agenda point, the amendment to Annex XV to the Association Agreement were discussed. Annex XV sets out a list of the EU customs regulations to which Ukraine should approximate its customs law. The Annex must be updated to the Union Customs Code because it includes extensive references to EU legislation that are out of date: the Modernised Customs Code (MCC).

### **Authorised Economic Operator (AEO) Programme developments**

Following the adoption in December 2019 of an EU compliant AEO law, now the major challenge is its implementation. A draft resolution of the Cabinet of Ministers of Ukraine "On some issues of functioning of authorized economic operators" has been prepared and is currently undergoing legal examination by the Ministry of Justice. Adoption of this draft resolution will allow approving the documents required for the start of AEO authorisation procedures. Work on the development of regulations is also continuing (procedure for planning and conducting monitoring by customs authorities, procedure for maintaining the Unified State Register of Authorized Economic Operators, form, description and rules of using the national AEO logo, AEO certificate form, application form for granting a special simplification permit and a special simplification permit form) necessary for the full functioning of the AEO program in Ukraine. Following the implementation of the AEO programme after one year the EU could consider its assessment in view of the Mutual Recognition of the AEO programmes.

### **Duty relief regulations – state of play**

UA drafted a law to align their legislation with the Regulation 1186/2009. COM has raised several divergences which were spotted during evaluation process. Ukraine will draft new law taking into account EU comments.

### **EU-CTC Convention on a common transit Procedure and Convention on the simplification of formalities in trade in goods:**

The accession of UA to the CTC is one of the most important issues that would bring UA legislation, practices and IT solutions closer to the EU's. The EU assistance programme on Support to Public Finance Management reform of Ukraine (EU4PFM) launched in 2018 is providing necessary support to Ukraine in the area of CTC/NCTS. The conditions and requirements to accede to the Convention on a common transit procedure (CTC) and to the Convention on simplification of formalities in trade in goods (SAD) are stipulated in the 2010 COM Communication 668, setting out the strategy to prepare 3rd countries to join the Conventions.

In general, Ukraine needs to incorporate the necessary Common Transit Convention and Convention on simplification of formalities in trade in goods rules into domestic law, set up operational administrative structures and implement the necessary IT system.

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Latest developments from Ukraine side on this subject are draft resolutions of the Cabinet of Ministers of Ukraine such as:

- Certain issues related to the activities of independent financial intermediaries (submitted to the Government, pending adoption);
- On some issues of granting permission for the use of special transit simplification (undergoing the procedure of coordination with the interested authorities);
- Some issues related to the use of certain types of customs declarations (undergoing a procedure with the relevant authorities).

Development and implementation of the software is carried out together with the support of international experts within the framework of the European Union Programme for Public Financial Management in Ukraine (EU4PFM). Ukraine transit system needs to be compatible with the NCTS phase 5 (to be deployed in the EU in Q1 2021). Ukraine was advised to run one transit system only (not several at the same time) and when ready, to switch to NCTS 5 only.

#### **Intellectual Property rights regulations – state of play**

Ukraine presented to the EU the implementation of the law "On Amendments to the Customs Code of Ukraine on the Protection of Intellectual Property Rights during the Movement of Goods across the Customs Border of Ukraine" adopted in the light of the harmonisation with EU Regulation No 608/2013 on IPR border enforcement. UA IT systems are still to be finalised. EU enquired about the fall in UA seizures of IPR infringing goods. UA explained that this is due to the increased use of e-commerce. UA informed the EU that a specific IT system to tackle this in under preparation and agreed to keep EU informed also sharing the new software they are developing. EU agreed to provide UA with an overview of what EU does to fight e-commerce sale of IPR infringing goods.

#### **Implementation of Protocol II on Mutual Administrative Assistance in Customs Matters; fight against fraud and criminalisation of smuggling (EU and UA)**

Although the situation with fight against illicit tobacco trade has improved in 2019 according to the latest Project Stella Report, it confirms that in 2019 Ukraine still remained the largest source country for illicit cigarettes in the EU market, amounting to 2,4 billion cigarettes. One of the drivers is the price difference. In addition, smuggling is not a criminal offence in Ukraine. This creates powerful stimuli for smugglers, as the financial benefits are high, while the level of risk is relatively low.

Tackling this problem requires a variety of measures. Ukraine has commitments towards the EU in terms of gradual excise approximation. Criminalising smuggling would have a deterrent effect and would allow the Ukrainian authorities to deal with illicit trade more efficiently.

Therefore, the EU encouraged Ukraine to join the Protocol to Eliminate Illicit Trade in Tobacco Products, as the country could then benefit from improved international cooperation in this

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field. Tracking and tracing provisions are a key pillar of the Protocol. The traceability system of the EU, established under the Tobacco Products Directive, fully implements Art. 8 FCTC Protocol. If Ukraine ratifies the Protocol, it will need to implement provisions on tracking and tracing (Article 8 FCTC Protocol). The EU encouraged Ukraine to consider a traceability system which would allow for interoperability with the EU system.

The State Customs Service has developed a draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Criminalization of Illegal Movement of Goods and Increasing the Customs Institutional Capacity". The draft law is now being considered by Ukrainian state bodies. The draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning the Criminalization of Export (Shipment) Across the Customs Border of Ukraine of Anti-Epidemic Goods" was adopted in the first reading (№ 3271, dated March 27, 2020). In addition, work continues to prepare a draft law to amend the Customs Code of Ukraine, the Criminal Procedure Code of Ukraine and the Law of Ukraine "On Investigative Activities" in terms of eliminating gaps in legislation for the practical application of the existing scope of powers.

#### **EU customs assistance projects for Ukraine (EU)**

Major EU ongoing assistance projects to Ukraine are: EU4PFM, EU4IBM, EUBAM, EU Advisory Mission. Since January 2019, the EU supported Ukraine with a High Level Advisory Team on Integrated Border Management (IBM) that assisted Ukraine in developing an overarching IBM strategy and Implementation Action Plan. Under the ENI 2019, the EU supports strengthening of the IBM with a 5 million EU4IBM Phase I Project, which provides assistance also for UA Customs. The project started in December 2019 and aims to enhance the efficiency of the processing of the cross border movements of persons and goods in line with EU IBM good practices.

The EU Public Finance Management Support Programme for Ukraine (EU4PFM), with a total budget of EUR 55.5 million, provides assistance also for UA Customs. The assistance actions focus on further legislative alignment with the UCC and CTC/NCTS and enhancing capacities of authorities in customs control and clearance processes. The EU4PFM has been launched in Ukraine on 18 June 2019.

In 2020, the EU envisages to provide assistance in the continuation of structural and organisational changes: finalizing the transition to the single legal entity, re-attestation of staff in tax and customs and enhanced anti-corruption policies, IT centralisation in PFM. An effective criminalisation of smuggling of all commodities, not just excise goods, remains a top priority as well as a prerequisite for any potential further support programme on IBM, which would include support for customs. An EU-funded project aiming at establishing joint border controls at the Ukraine-Moldova Border should be finalised and joint operations launched at the Border Crossing Points Reni and Kuchurghan. The EU invited the State Customs Service to fulfil their obligations and provide the necessary renovation works and support infrastructure, in line with the co-financing agreed and with no further delays.

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The TAIEX instrument is also available and can support the Ukrainian authorities in the area of customs matters. A number of TAIEX events were already organized and other activities are currently under preparation. However, due to the COVID pandemic, the organising TAIEX missions in 2020 was put on hold.

**Next meeting is envisaged in summer 2021, if possible in Kyiv.**