

Cefic position on the revision of the Union Customs Code

Customs play a vital role for the European Union (EU). They are the first line of defence to ensure a level playing field. Cefic agrees that the current customs system requires a reform to ensure it is fit for purpose in the 21st century. This is mainly due to the ever-growing body of non-financial regulation that needs to be enforced at the border and the exponential growth of e-commerce. This is particularly important for a highly regulated sector such as the European chemical industry.

To ensure the reform meets 21st century requirements, it is essential that it delivers the promised harmonisation of national regimes to ensure an effective European Customs Union. This needs to be coupled with the stated aim to simplify the current framework and reduce the administrative burden for users. Therefore, it is key that duplications are avoided and the interoperability and interconnection of different IT systems like the Single Window Environment for Customs is implemented. Moreover, to ensure the protection of privacy and commercially sensitive data, the reformed Union Customs Code (UCC) needs to foresee sufficient safeguards in the EU Data Hub.

It is important that the benefits for businesses of the new reform is accessible to all, including large multinational companies as well as Small and Medium-sized Enterprises. Given their limited resources, SMEs should receive sufficient capacity building and guidance to participate in the new schemes on an equal footing. Finally, the reform should be implemented in a speedy manner, avoiding the delays and difficulties of the current system. We therefore call to include clear and realistic implementation timelines.

In the following, we have detailed our views on the specific elements of the UCC reform proposal.

- 1. Implement the new Trust & Check Trader (T&CT) status uniformly across the EU** and give sufficient support to economic operators to achieve it.
- 2. Maintain the Authorised Economic Operator for Customs Simplifications (AEO-C) status** next to the AEO for Security and Safety (AEO-S) and the T&CT.
- 3. Ensure the interoperability of the EU Data Hub with the Single Window Environment for Customs** and other IT systems, such as the REACH IT and RAPEX.
- 4. Unambiguously regulate the details** over which authorities have access to which data and how this access is granted.
- 5. Establish a regular structured dialogue with stakeholders, including industry,** to advise on the implementation of the reform.

1. AEOs & T&CT

With the Trust & Check Trader (T&CT) scheme, the reform proposes a new relationship between customs and economic operators. On paper it can bring substantial benefits for companies such as the proposed “self-assessment” possibility for companies holding the T&CT status. There are however questions about how the implementation will work in practice. In this context, more clarity is needed on how the T&CT scheme differs from existing Authorised Economic Operators (AEO) schemes both in requirements and benefits. This should be clearly set out in the main text.

Moreover, there is the risk that companies will face great difficulties to benefit from this well-intended proposal, given the difficulties encountered under the current UCC to achieve the AEO for Security and Safety (AEO-S) status. The issue is that some companies (not only SMEs) find it in practice very complicated if not prohibitive to meet the AEO-S requirements due to the location of their operations in multi-company business parks (i.e. usage of shared warehouses) or other geographical issues (i.e. rivers). As the requirements for achieving the T&CT status integrate and go beyond the individual criteria for the AEO-C and AEO-S, the issues related to the AEO-S status would also occur for the T&CT status. However, different to the current system the respective companies would be left with most likely no status as the AEO-C is proposed to be abolished. Another important reason why companies might be hesitant to apply for a T&CT relate to concerns regarding cyber security and data privacy threats (See argument about article 25 (3) of the proposal, on page 3, under “Data Hub & Data Security”). Therefore, we propose to explore whether the AEO-C status could not be maintained next to the AEO-S and T&CT status including the simplifications currently available for AEO-C. Namely, those ones detailed in the official AEO Guidelines adopted by the Customs Code Committee GEN Subsection AEO on 11 March 2016.¹ In case that is not be possible, solutions are needed to help the companies to obtain the T&CT status.

In any event, Cefic stresses that the differences between the current AEO statuses and the proposed T&CT should be clearly distinguishable both in rights and requirements. This would ensure clarity for users and avoid duplication of requirements. Furthermore, it is essential to ensure that the T&CT status provides concrete additional benefits in comparison to what is currently implemented for the existing AEO schemes. Against this backdrop, it is important that the simplifications are implemented in due time before the reform is fully implemented. To this end, the Commission should design and put in place measurable indicators to assess the effectiveness of the new simplifications in practice. Another concern are the proposed changes in the T&CT scheme regarding the direct and indirect representation, as this risks having unintended impacts on companies using such arrangements.

Furthermore, Cefic asks that the involved authorities ensure that economic operators receive sufficient support to achieve in particular the T&CT status. This is especially important for SMEs, which find it more difficult given their limited resources. Finally, the proposal on T&CT leaves too much room for non-uniform implementation. This risks replicating the situation where the simplifications provided to AEOs by the current text of the UCC differ from the experience of

¹ [Authorised Economic Operators Guidelines - DG TAXUD \(03/2016\)](#)

companies in practice. Therefore, Cefic asks for the word “may” in Article 25(7) to be changed to “shall”, to ensure that T&CT scheme is implemented in a uniform way across the EU. This will increase the attractiveness of the proposed scheme for companies and thus the effectiveness of the reform.

2. Data Hub & Data Security

Cefic welcomes the development of a new centralised EU Data Hub. Indeed, digitalisation is crucial to promote simplification and acceleration of processes while also ensuring the effectiveness of the proposed new customs. Therefore, Cefic calls for the continued use of the latest available technologies in the design of the new IT system. The design of the new system should include sufficient flexibility to account for future technologies and application possibilities. This, in turn, would prolong the built-in added value of the proposed instrument.

Cefic strongly supports the ambition to ensure the interoperability and integration between the Data Hub, the Single Window Environment for Customs and other IT systems, such as the REACH IT and RAPEX. To future-proof the system, it should integrate all current and future (non-)financial reporting requirements, turning it into a one-stop-shop, rather than a multitude of independent systems. It would also be beneficial to strengthen administrative cooperation between customs authorities and all other authorities responsible for official controls and for import/export authorisation and licences. It is important in this context to clearly identify all the relevant authorities to ensure consistency and accountability. This will help to ensure a high-level of enforcement and protect EU consumers and the environment while maintaining a level playing field.

Data security is paramount for our industry. Article 25(3) of the proposed reform details the criteria for granting the T&CT status. Sub-paragraph (f) of the Article states that traders should *inter alia* “have an electronic system providing or making available to the custom authorities real-time all data on the movement of goods and [their compliance] with all requirements applicable on those goods”.² These include very commercially sensitive information, such as customs and commercial records, accounting and logistics systems, licenses and authorisations. Cefic therefore proposes that the co-legislators unambiguously detail within the UCC regulation which authorities have access to which data and how this access is granted. By working closely with industry, clear provisions could be set regarding data ownership and safeguards, ensuring data security and minimising the risk of cyber security breaches and potential backdoors. There should be clear provisions regarding data ownership and safeguards, ensuring continuous data security and minimising the risk of cyber security breaches and potential backdoors. This should be done in close consultation with industry, and particular attention should be given to Confidential Business Information. To this end, the regulation itself should already define the main outlines of these safeguards and the requested data elements. Moreover, companies should be notified about who accessed their data and for what purpose.

² [Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the Union Customs Code and the European Union Customs Authority, and repealing Regulation \(EU\) No 952/2013](#)

Additionally, to ensure harmonisation of processes across the EU, co-legislators would benefit from close cooperation with businesses to detail the design of the Data Hub and its features. For instance, Article 30 of the proposed reform allows Member States to develop national applications necessary to provide and process data from the Data Hub. However, it also allows them to request the new EU Customs Authority to develop such applications. In the latter case, the application would then be made available to all Member States but its use not made compulsory. Cefic believes that the new Code should envision a uniform design and usage of applications, to expedite processes and increase harmonisation in connecting to the Data Hub.

3. Temporary Storage

Non-Union goods brought into the Union's customs territory are considered in temporary storage from the notification of their arrival until their placement under a customs procedure. However, while the currently applicable UCC allows temporary storage to last for a maximum of 90 days, the new Article 86(5) proposes to reduce this deadline to 3 days after the notification. This time limit could only be extended under exceptional circumstances.

Cefic understands that the new timeline is intended to ensure appropriate customs supervision while reducing risks related to theft and other illegal practices. However, Cefic believes that such a drastic reduction could have a significant negative impact on European businesses. Not all of them would have the capacity and resources to adjust their internal processes, built upon the current timelines, enough to meet such a shortened deadline. Cefic therefore calls for an extension of this timeline to include at least a 30-day period for temporary storage of non-Union goods. This could be coupled with the possibility to extend it to the 45-day limit currently contained in the UCC for maritime transport.

4. Importer & Exporter definitions

Articles 20 to 22 of the reform detail the obligations for the new categories of importers and exporters, one of which is to be established in the customs territory of the Union. While Cefic understands the need to improve the efficiency and effectiveness of customs procedures, we would like to raise some concerns with regards to the mandate for importers to be established within the EU. The proposed change has the potential to introduce significant challenges for foreign companies currently operating as importers in the EU as flexibility of the current approach allows importers to be located outside of the EU. Multiple companies have designed their supply chains around that rule. The proposed revision of the importer definition could disrupt the existing title chain structures, and would require companies to redesign their flows.

Moreover, the proposed change risks resulting in a split between the concept of "importer" for customs purposes and the concept of "importer" for VAT purposes. This could create additional complexity and administrative burden for both economic operators and customs authorities. Such a split would happen in scenarios where the "importer" for VAT purposes is a non-EU based company while, for customs purposes, the importer must be an EU-based company. To avoid such unintended consequences, Cefic asks for businesses to be consulted in the design of such criteria or in the case-by-case decision-making process – in case the latter would be the preferred option

of the Commission. In any case, the proposal does foresee some exceptions to the requirement of the importer to be based in the EU. This includes actors who occasionally place goods under customs procedures, provided that the customs authorities consider it justified. If the requirement for importers to be based on the EU is maintained, Cefic believes it is important to clarify what is meant with “justified” and which criteria the justification would be based on. This clarification should be done either in the reform text itself or in subsequent delegated or implementing acts.

5. Improved transparency

Cefic welcomes the aim of the reform to improve transparency and accountability in the Customs Union, yet transparency requirements could be further improved with regards to the official application processes for *inter alia* the special procedures. We recommend exploring how to increase the procedural transparency for applicants and EU producers while providing for relevant industry associations to be heard in the process. Moreover, Cefic would support the establishment of transparency enhancing instruments, i.e. databases, This should be developed in line with the respective guidelines by the World Customs Organisation (WCO).³ It is key however that any additional steps are implemented without creating additional bureaucracy and longer implementation deadlines.

6. Implementation

Implementation is key to ensure the effectiveness of the proposed reform. Cefic would first like to highlight that some of the difficulties with the currently applicable UCC have emerged via the delegated and implementing acts. This should be avoided with this reform as much as possible, especially, as the UCC reform also proposes to detail many important elements via delegated and implementing acts. Therefore, it is essential that the Commission establishes a regular structured dialogue with stakeholders, including industry. Such a dialogue allows stakeholders to advise early on the design of implementing and delegated acts, helping to make them clear and easily applicable. Moreover, Cefic believes that unnecessary delays in implementation can be avoided if implementing and delegated acts enter into force with sufficient lead time. This will enhance legal certainty and predictability for both Member States and companies. In this regard, it is essential that Member States implement the reform simultaneously and uniformly. It is also important for Cefic that the implementation of the current UCC is continued while the new Code is finalised and gradually phased in.

Finally, evidence suggests that there is a lack of coordination and harmonised implementation of customs rules by the Member States.⁴ This risks creating inefficiency and gaps through which non-compliance goods may find their way to the EU. Therefore, Cefic welcomes the creation of an EU Customs Authority (EUCA) and supports its role in coordinating the implementation and enforcement of the day-to-day customs. Indeed, the new EUCA is fundamental to ensure harmonisation and equal treatment across the Union.

³ [GUIDELINES ON THE DEVELOPMENT AND USE OF A NATIONAL VALUATION DATABASE AS A RISK ASSESSMENT TOOL.](#)

⁴ [Wise Persons Group on Challenges Facing the Customs Union](#)

We see the creation of the new Authority as an opportunity to improve coordination of the work of customs and increase the effectiveness of the system for businesses. To ensure it, the Commission should establish a dedicated dialogue between the new Authority and stakeholders, including industry. This could help understand sector specificities, identifying high-risk profiles so that enforcement and customs can put their resources where they are most needed.

For more information please contact:

Philipp Sauer
Manager Trade and Customs Policy
phs@cefic.be

Davide Bertot
Trade Policy Intern

About Cefic

Cefic, the European Chemical Industry Council, founded in 1972, is the voice of large, medium and small chemical companies across Europe, which provide 1.2 million jobs and account for 15 % of world chemicals production.