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From: Irish Houses of the Oireachtas
date of receipt: 5 October 2023
To: Ms Thérèse BLANCHET, Secretary-General of the Council of the
European Union

Subject: 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
[9596/23 - COM(2023)258 final - 2023/0156(COD)]
- Opinion on the application of the Principles of Subsidiarity and
Proportionality

Delegations will find attached the opinion¹ of the Irish Houses of the Oireachtas on the above.

¹ The translation(s) of the opinion may be available on the Interparliamentary EU Information Exchange website (IPEX) at the following address: <https://secure.ipex.eu/IPEXL-WEB/document/COM-2023-0258>



**Tithe an
Oireachtais**
Houses of the
Oireachtas

**An Comhchoiste Um Airgeadas, Caiteachas Poibli Agus Athchóiriú, Agus
Taoiseach**

An Cion Polaitiúil i ndáil leis an

COM (2023) 258 Togra le haghaidh RIALACHÁN Ó PHARLAIMINT NA hEORPA
AGUS ÓN gCOMHAIRLE lena mbunaítear Cód Custaim an Aontais agus Údarás
Custaim an Aontais Eorpaigh, agus lena n-aisghairtear Rialachán (AE) Uimh.
952/2013

Deireadh Fómhair 2023

Joint Committee On Finance, Public Expenditure And Reform, And Taoiseach

Political Contribution on

COM (2023) 258 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

October 2023

33/F/13

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1. Introduction

- 1.1 The Oireachtas Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach ("the Committee") considers the proposal:

COM (2023) 258 *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* to be of significant importance to Ireland and the EU.

2. Scrutiny by the Committee

- 2.1 The Committee first considered this proposal at a private meeting on 5 July 2023. Following this meeting and on foot of concerns expressed within the information provided by Revenue, the Committee agreed to seek further detail from Revenue Officials in the form of a briefing note. Following receipt of the briefing note, the Committee considered the proposal again at a private meeting on 20 September 2023. It was agreed by the Committee at this meeting to write a Political Contribution on this proposal.

3. Decision of the Committee

- 3.1 On 27 September 2023 the Committee agreed to forward a copy of this Political Contribution to Michael McGrath T.D., Minister for Finance, Ursula von der Leyen, President of the European Commission, Roberta Metsola MEP, President of the European Parliament, and the President of the Council of the European Union.

4. Opinion of the Joint Committee

- 4.1 Ireland supports the ongoing consideration of the future of customs and has been an active participant and contributor to the work on the Customs Action Plan. Ireland recognises that the exponential growth in eCommerce in recent years is a significant challenge for most Member States and that a different approach to this model is warranted given the volumes involved. Further, Ireland agrees that Customs is best placed to deliver on an expanding role given the role and place of Customs at the frontier.
- 4.2 Having considered the proposal in detail, the Committee makes the following observations:

EU Data Hub

- 4.3 While in support of the concept of building IT systems once and from the centre, the Committee is concerned that dependencies on new and emerging technologies, provision of data by traders and data quality, all need to be more clearly articulated. It is crucial that the complementary EU risk management layer does not result in duplication of effort between MS and the Data Hub.

Balance of Competences

- 4.4 Under the Proposal, the EU Customs Authority (EUCA) will perform much of the risk analysis and will, it appears, have the ability to instruct Member States to carry out control interventions. At the same time, it appears that Member States retain the ability to decide not to conduct an intervention but must provide a reasoned response to the EUCA as to why the control was not conducted. The Committee notes that at present, it is unclear how the engagement between the EUCA and the Members States will play out and how differences of view as to the appropriateness of the action taken by the Member State in any given instance will be resolved.
- 4.5 Additionally, if the instance occurs whereby the EUCA have conducted an analysis and have not determined that a risk arises in terms of a particular consignment ultimately, Member States will be responsible for ensuring the

correct amount of customs duty associated with an import is collected. In such a case, will the EU Auditors accept that a Member State was acting on foot of a risk assessment carried out by the EUCA and if customs duty is ultimately determined as being due in relation to a particular consignment that was not subject to a control, how will the responsibility of the Member State be addressed in the context of an audit?

Sanctions

- 4.6 The proposal envisages the establishment of a set of common customs infringements and sanctions for breach of same across the EU. This approach is justified by the reasoning that non-compliant businesses are influenced by the scale of potential sanction they would face if found to be in breach of customs legislation. Currently, both administrative and criminal penalties for breach of customs legislation are provided for in national legislation in the Customs Act 2015. Crucially, the level of administrative and criminal penalties is reflective of the approach taken across the broad range of national legislation in relation to sanctions and penalties.
- 4.7 The Committee is concerned that a move away from nationally determined penalties could result in some penalties in the customs sphere being out of line with penalties for similar offences in the tax and indeed customs sphere (the latter as regards national legislative prohibitions). The Committee is of the view that this matter raises concerns as regards proportionality and consistency.

e-Commerce

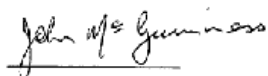
- 4.8 The proposal aims to put more responsibility on online platforms by introducing the concept of a deemed importer. This would see platforms collecting customs duty at the point of sale, paying over the customs duty to customs authorities periodically, and ensuring compliance with sectoral legislation. The Committee notes that while this may be possible for platforms who assume responsibility for the entire chain, it is unclear how smaller platforms or those which offer a marketplace for smaller companies will be catered for under the proposed model.

4.9 The Committee further notes that it is unclear which Member State will be responsible for monitoring the compliance of platforms. As such, the Committee takes the view that clarification is required around the process if goods are imported to a Member State other than where the platform is established, if goods are found to be non-compliant, and the level of monitoring and control required.

Consumer to Consumer Flows

4.10 The Committee notes that the proposal does not address consumer-to-consumer flows including postal items sent by private individuals to private individuals e.g. gifts. As such, the Committee observes that it is unclear how the current gift relief threshold will be maintained or how gifts with a value greater than €45 will be treated. The concept of deemed importer, as explained in relation to eCommerce movements, aims to remove all responsibility for customs from private individuals but there appears to be a gap in relation to gifts.

Yours sincerely,

A handwritten signature in black ink that reads "John McGuinness". The signature is written in a cursive style and is positioned above a thin horizontal line.

John McGuinness, T.D.

Chair to the Committee



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Taoiseach**

An Cion Polaitiúil i ndáil le:

COM (2023) 258 Togra le haghaidh RIALACHÁN Ó PHARLAIMINT NA hEORPA
AGUS ÓN gCOMHAIRLE lena mbunaítear Cód Custaim an Aontais agus Údarás
Custaim an Aontais Eorpaigh, agus lena n-aisghairtear Rialachán (AE) Uimh. 952/
2013

Houses Of The Oireachtas

Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach

Political Contribution on

COM (2023) 258 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL establishing the Union Customs Code and the European
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1. Réamhrá

- 1.1 Measann an Comhchoiste um Airgeadas, Caiteachas Poiblí agus Athchóiriú, agus an Taoiseach ("an Coiste") maidir leis an togra:

COM (2023) 258 *Togra le haghaidh RIALACHÁN Ó PHARLAIMINT NA hEORPA AGUS ÓN gCOMHAIRLE lena mbunaítear Cód Custaim an Aontais agus Údarás Custaim an Aontais Eorpaigh, agus lena n-aisghairtear Rialachán (AE) Uimh 952/2013, go bhfuil tábhacht shuntasach leis d'Éirinn agus don Aontas Eorpach.*

2. Grinnscrúdú ag an gComhchoiste um Airgeadas, Caiteachas Poiblí agus Athchóiriú, agus an Taoiseach

- 2.1 Bhreithnigh an Coiste an togra seo den chéad uair ag cruinniú príobháideach ar an 5 Iúil 2023. Tar éis an chruinnithe sin agus ar scór inní a léiríodh san fhaisnéis a chuir na Coimisinéirí Ioncaim ar fáil, chomhaontaigh an Coiste tuilleadh faisnéise a iarraidh ar na Coimisinéirí Ioncaim i bhfoirm nóta eolais. Tar éis dó an nóta eolais a fháil, bhreithnigh an Coiste an togra arís ag cruinniú príobháideach ar an 20 Meán Fómhair 2023. Chomhaontaigh an Coiste ag an gcruinniú sin Cion Polaitiúil a scríobh maidir leis an togra seo.

3. Breith an Choiste

- 3.1 Ar an 27 Meán Fómhair 2023, chomhaontaigh an Coiste cóip den Chion Polaitiúil seo a chur ar aghaidh chuig Micheál Mac Craith, T.D., an tAire Airgeadais, Ursula von der Leyen, Uachtarán an Choimisiúin Eorpaigh, Roberta Metsola CPE, Uachtarán Pharlaimint na hEorpa, agus Uachtarán Chomhairle an Aontais Eorpaigh.

4. Tuairim an Choiste

- 4.1 Tacaíonn Éire le breithniú leanúnach a dhéanamh ar thodhchaí na gcustam agus tá sí tar éis a bheith ina rannpháirtí gníomhach sa Phlean Gníomhaíochta Custam agus cur go mór leis an bPlean sin. Aithníonn Éire maidir leis an bhfás easpóntúil faoin ríomhthráchtáil le blianta beaga anuas, gur dúshlán mór é d'fhormhór na mBallstát agus go bhfuil cur chuige éagsúil i leith an mhúnla seo ag teastáil i bhfianaise an mhéid mór na heamála atá i gceist. Ina theannta sin, comhaontaíonn Éire gurb iad Custaim is mó atá ábalta torthaí a bhaint amach i ról atá ag méadú i bhfianaise ról agus áit na gCustam ar an teorainn.
- 4.2 Tar éis di an togra a bhreithniú go mion, nochtann an Coiste na tuairimí seo a leanas:

Mol Sonraí an Aontais Eorpaigh

- 4.3 Cé go dtacaíonn sé leis an gcoincheap arb é córais TF a thógáil uair amháin agus ón lár, tá inní ar an gCoiste gur gá spleáchas ar theicneolaíochtaí nua agus ar theicneolaíochtaí atá ag teacht chun cinn, soláthar sonraí ag trádálaithe agus cáilíocht sonraí a chur in iúl ar bhonn níos soiléire. Tá sé ríthábhachtach nach mbeidh an tsraith bainistithe priacail chomhlántach ar leibhéal AE ina cúis le dúbláil iarrachtaí idir na Ballstáit agus an Mol Sonraí.

Cothromaíocht Inniúlachtaí

- 4.4 Faoin Togra, is é Údarás Custaim an Aontais Eorpaigh (ÚCAE) a dhéanfaidh roinnt mhaith den anailís ar phriacail, agus is cosúil go mbeidh sé in ann treoir a thabhairt do Bhallstáit idirghabhálacha rialaithe a dhéanamh. Ag an am céanna, is cosúil go mbeidh sé fós ar chumas na mBallstát breith a thabhairt gan idirghabháil a dhéanamh, ach ní mór dó freagra réasúnaithe a thabhairt do ÚCAE i dtaobh cén fáth nach ndéanadh an rialú. Tugann an Coiste dá aire, nach léir faoi láthair cén chuma a bheidh ar an gcaidreamh idir ÚCAE agus na Ballstáit, ná cén chaoi a réiteofar tuairimí éagsúla maidir le beart ama dhéanamh ag an mBallstát a bheith cuí in aon ásc ar leith.

- 4.5 Ina theannta sin, má tharlaíonn sé go mbeidh anailís déanta ag ÚCAE agus nach mbeidh siad tar éis a chinneadh go bhfuil priacal ann i dtéarmaí coinsíneacht áirithe, is faoi na Ballstáit a bheidh sé, ag deireadh na dála, a chinntiú go mbailítear an méid ceart dleachta custam a bhaineann le hallmhaire. I gcás mar sin, an nglacfaidh na hiniúcháirí AE leis go raibh Ballstát ag gníomhú ar scór measúnacht priacail a rinne ÚCAE, agus má chinntear, ag deireadh na dála, go bhfuil dleacht custam dlite i ndáil le coinsíneacht ar leith nach raibh faoi réir a rialaithe, conas a thabharfar aghaidh ar fhreagracht an Bhallstáit i gcomhthéacs iniúchta?

Smachtbhannaí

- 4.6 Samhlaítear, sa togra, go mbunófar tacar de shárúithe custam coiteanna agus de smachtbhannaí coiteanna, má sháraítear an céanna, ar fud an Aontais Eorpaigh. Is é an bunús atá leis an réasúnaíocht sin ná go dtéann scála na smachtbhannaí a bhféadfaidís a bheith faoina réir, dá bhfaighfí amach gur sháraigh siad reachtaíocht chustam, i bhfeidhm ar ghnóthaí neamhchomhlíontacha. Faoi láthair na huaire, is san Acht Custam, 2015 a dhéantar foráil maidir le smachtbhannaí riaracháin agus coiriúla mar gheall ar reachtaíocht chustam a shárú. Is díol suntais é go léiríonn leibhéal na bpionós riaracháin agus coiriúla an cur chuige a ghlactar ar fud raon leathan na reachtaíochta náisiúnta i ndáil le smachtbhannaí agus pionóis.
- 4.7 Tá imní ar an gCoiste gurb amhlaidh, má imítear ó phionóis a chinntear go náisiúnta, go bhféadfadh sé nach mbeadh roinnt pionós i réimse na gcustam ag teacht le pionóis mar gheall ar chionta dá samhail sa réimse cánach, agus go deimhin, i réimse na gcustam (an ceann deiridh mar a bhaineann sé le toirmisc náisiúnta reachtaíochta). Is é tuairim an Choiste gur ábhar imní atá sa mhéid sin ó thaobh na comhréireachta agus na comhsheasmhachta de.

Ríomhthráchtáil

- 4.8 Tá sé mar aidhm ag an togra tuilleadh freagrachta a chur ar ardáin ar líne trí choincheap an allmhaireora mheasta a thabhairt isteach. Mar thoradh air sin, d'fheicfí na hardáin ag bailiú dleacht chustam ag pointe an díola, ag íoc na dleachta custam le húdaráis chustam go tréimhsiúil, agus á chinntiú go bhfuil

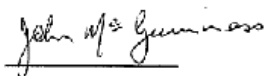
reachtaíocht eárnála á comhlíonadh. Tugann an Coiste dá aire gurb amhlaidh, cé go bhféadfadh ardáin a ghlacann freagracht as an slabhra iomlán é sin a dhéanamh, nach bhfuil sé soiléir cén chaoi a bhfreastalófar ar ardáin níos lú, nó ar ardáin a thairgeann áit mhargaidh do chuideachtaí níos lú, faoin múnla atá beartaithe.

- 4.9 Tugann an Coiste dá aire, thairis sin, nach bhfuil sé soiléir cén Ballstát a bheidh freagrach as faireachán a dhéanamh ar chomhlíonadh ag na hardáin. Is amhlaidh dá bhrí sin, go bhfuil an Coiste den tuairim go bhfuil soiléiriú ag teastáil maidir leis an bpróiseas má dhéantar earraí a allmhairiú chuig Ballstát seachas Ballstát ina bhfuil an t-ardán bunaithe, má fhaightear amach go bhfuil earraí neamhchomhlíontach, agus maidir leis an leibhéal faireacháin agus rialaithe atá riachtanach.

Sreafaí Tomhaltóir go Tomhaltóir

- 4.10 Tugann an Coiste dá aire nach dtugtar aghaidh sa togra ar shreafaí tomhaltóir go tomhaltóir, lena n-áirítear ítimí poist a chuireann daoine príobháideacha chuig daoine príobháideacha e.g. bronnánais. Is amhlaidh dá bhrí sin, go bhfuil an Coiste den tuairim nach bhfuil sé soiléir conas a dhéanfar an tairseach reatha le haghaidh bronnánais a choinneáil nó conas a dhéileálfar le bronnánais ar a bhfuil luach níos airde ná €45. Tá sé mar aidhm ag coincheap an allmhaireora mheasta, mar a mhínítear i ndáil le gluaiseachtaí ríomhthráchtála, an fhreagracht uile as custaim a bhaint ó dhaoine aonair príobháideacha, ach is cosúil go bhfuil bearna ann i ndáil le bronnánais.

Le dea-ghuí,



Seán Mac Aonghusa, T.D.

Cathaoirleach an Choiste