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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
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 - Preparation for the trilogue on 10 December 2025

I. STATE OF PLAY

1. Negotiations between the co-legislators on the proposal for a Regulation of the European Parliament and of the Council establishing the Union Customs Code and the European Union Customs Authority[1] (UCC) are in a decisive phase.

2. The purpose of this note is to continue the preparation for the trilogue of 10 December 2025, following the first round of preparation that took place at the Coreper meeting of 28 November and at the meeting of the Customs Union Group on 27 November 2025.[2]

3. The agenda of the trilogue of 10 December 2025 is expected to cover the key issues set out in Part II of this note.

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1 Doc. 9596/23 + ADD 1 to 4.
2 See doc. 15767/25 (Presidency note) and doc. 15895/25 (4-column table).

4. The Presidency maintains the intention to reach an agreement on the key parameters of these issues at the trilogue of 10 December 2025. Such an agreement would then pave the way to advancing, and to the extent possible, finalising technical work on the text of the draft UCC Regulation on that basis.

5. At the Coreper meeting on 28 November 2025, delegations endorsed the provisional agreement on the key parameters of the governance of EUCA reached by the Presidency at the trilogue on 20 November 2025. Furthermore, good progress was made on access rights, penalties and on the entry into force and application of the UCC. Nevertheless, as the negotiations between the co-legislators are continuing intensively, it is necessary to revisit, at the Coreper meeting on 5 December 2025, some aspects of these issues, as explained in Part II of this note.

6. Meanwhile, the technical work on the text of the UCC Regulation is advancing in parallel, and the latest available draft of the 4-column table is set out in doc. 16023/25.

II. KEY ISSUES

a) EUCA and its governance: remaining aspects

7. Following the endorsement at the Coreper meeting on 28 November 2025 of the provisional agreement on key aspects of EUCA governance reached at the trilogue of 20 November,[3] further technical work is required to transform the agreed parameters into the compromise text of the relevant provisions of the draft UCC Regulation.

8. Besides the provisional agreement in the trilogue of 20 November 2025, there are a number of other aspects related to EUCA governance that remain to be finalised. This particularly concerns the following list of provisions, which also contains a description of the suggested solution:

   a) Customs Advisory Board (EP position Article 221a, rows 2232a-2232k): the EP wish to establish the Customs Advisory Board could be accepted, and the base text for an agreement on this issue could be the text of Article 221a set out in the Annex I to this note;

[3] See doc. 15767/25, Annex I.

b) Data Auditor (Council general approach, Articles 221a and 221b, rows 2232l-2232s): the provisions on Data Auditor inserted into the Council general approach would remain part of the compromise, and the possible wording of these two Articles is set out in the Annex I to this note;

c) Confidentiality/professional secrecy (Council general approach, Article 221c, rows 2232t-2232y): the possible compromise text is set out in Annex I to this note.

9. The Presidency holds the view that such an agreement on the remaining aspects of EUCA governance would be a balanced compromise and pave the way for further negotiations on the UCC Regulation.

b) Trust and Check trader/AEO

10. While both legislators agree to the concept of Trust and Check (T&C) traders, they also keep the previously established and well-known concept of authorised economic operator for simplifications (AEO-s); therefore, the status of AEO-s will continue to run in parallel to the status of T&C trader.

11. During the negotiations, it was clarified that the same legal entity can hold both statuses – T&C trader and AEO, depending on the level of trust established with different categories of partners/clients. This is especially relevant for representatives representing several economic operators, where some can have the AEO status and others the T&C trader status.

12. However, the EP has identified a potential loophole in the Council text (which maintains the Commission proposal) that only the customs authority of the Member State that granted the initial authorisation may suspend the status of the T&C trader and see no rules proposed to ensure a proper consultation with other Member States. In order to prevent any possibility of the misuse, the EP would like to ensure that not only the Member State of establishment but also the other Member States (or even the EUCA) can suspend the T&C trader status.

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c) Risk management cycle

13. The EP maintains its position that further work is needed in order to reach a compromise on the risk management provisions. In particular, the Presidency expects to agree to a compromise along these lines:

    a) for the purposes of customs risk management activities, the handling of relevant data from other sources should not be restricted explicitly to sources identified in national and Union law in order to ensure that a wide range of information sources can be used for risk management;

    b) the Commission should have the flexibility to establish priority control areas and common risk criteria and standards, by taking into account, where available, EUCA recommendations and Council position; and

    c) The Commission shall be able to add its policy view on the recommendation developed by the EUCA and to propose priorities. If decided by Council these can then be established.

d) Digital Sovereignty (Article 28c)

14. The Council provisions relating to digital sovereignty and control over the EU Customs Data Hub infrastructure aim to enforce strict data protection and security standards, thus protecting customs data from unauthorised access.

15. During the negotiations with EP, it appeared that a compromise can be reached if further specifications are implemented on the Council positions, while preserving the main aims, namely:

    a) to ensure that data in the EU Data Hub remains protected within the EU, free from external influence;

    b) the infrastructure and security of the EU Customs Data Hub to be carefully regulated to ensure reliability and independence of suppliers, minimizing risks of unauthorized access or data breaches;

    c) strict control to be retained over data transfers to third parties or outside the EU, with stringent conditions to ensure transparency and accountability.

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16. The Commission was during the negotiations tasked with drafting a compromise proposal that would accommodate both Council and EP concerns. In this regard, the Commission's compromise proposal is set out in Annex II to this note.

The Presidency holds the view that the Commission draft compromise needs further technical adjustments but can form the basis for finding a compromise.

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e) Confidentiality of data (Article 18c)

17. In the negotiations with the EP, the Council position on data confidentiality was further improved to address the following key elements:

a) strict confidentiality - the core aim is to ensure that confidential customs data, such as trade information, business secrets, or any sensitive data, remains secure unless there is a legal or judicial reason for disclosure;

b) national security exceptions - Member States retain the ability to safeguard data that is particularly sensitive to their national security, reflecting the recognition that some data may have broader implications for a country's sovereignty and security;

c) controlled access - the data housed in the EU Data Hub may be restricted in certain cases based on its sensitivity, particularly when it could affect a country's national security;

d) data protection standards - when certain data is disclosed or accessed, there are strict obligations to ensure adequate protection of that data, ensuring that security standards are maintained at all times.

18. Additional drafting suggestions are expected from EP, as this topic is planned to be discussed at the trilogue.

f) Access rights

19. The Commission proposes privileged access to the EU Data Hub for national customs authorities, the EU Customs Agency (EUCA), the Commission and the European Anti-Fraud Office (OLAF). As these bodies are the primary consumers of the data, they require direct processing rights in order for the EU Data Hub to fulfil its essential functions, such as implementing customs processes, entering and releasing (or not releasing) goods and collecting duties. While the Commission envisages unconditional access without any implementing act, it suggests the possibility of a delegated act to clarify and complement certain purposes in light of the evolving needs for the implementation of customs or other legislation. The EP position is aligned with the Commission proposal.

20. For the Council, the EU Data Hub's main purpose is to support and facilitate customs operations. Therefore, the national customs authorities, EUCA, the Commission and OLAF are considered the main entry points for accessing the data stored in this customs database. Taking into account the general view that access to data in the EU Data Hub by all relevant national and EU bodies should be legally sound and proportionate, the Council proposes that the privileged access should be regulated via implementing rules.

21. At the trilogue on 20 November 2025, the EP and the Commission (who reiterated the same position in Coreper on 28 November 2025) strongly argued for unconditional privileged access. Therefore, the Presidency considers that common ground could be found if EUCA, the Commission and OLAF's processing rights are not subject to any conditions laid down in an implementing act.

22. In the Council mandate, the part on access rights of the EU law enforcement bodies to the EU Data Hub was moved from Article 31 to Article 240 (Title XIII – Customs cooperation). However, in order to find a common ground with the EP, the Presidency compromise text to address EPPO access rights in a new Article 31a, was broadly supported. Regarding the access rights of the remaining EU law enforcement bodies, such as Europol and Frontex, the Presidency intends to remain within the limits of the Council position: their access rights would be covered by Article 240 (Title XIII – Customs cooperation). Nevertheless, for visibility purposes and as a part of a possible overall compromise with the EP, the Presidency may be asked to consider moving all access rights to Chapter IV of Title III, which includes Article 31 and the proposed new Article 31a.

g) Bilateral agreements with third countries (Article 243a)

23. The Council position introduces a new Article 243a that recognise the right of Member States to maintain or enter bilateral agreements with third countries, including neighbouring countries regarding shared border-crossing points. Such agreements will be permitted upon notification to the Commission and must be limited to the implementation of Union law. Article 243a also permits Member States to conclude non-binding working arrangements with third countries without prior notification to the Commission.

24. Over the years, these agreements have helped to streamline cooperation while ensuring the alignment of the legal framework of neighbouring third countries to the EU law. When Members States conclude bilateral agreements limited to the implementation of EU law there is no need for prior approval by the Commission.

25. Neither the EP nor the Commission proposal acknowledges the right of Member States to conclude such bilateral agreements on the implementation of Union law or non-binding working arrangements.

26. Against this background, the Presidency drafted the text set out in Annex III to this note, to further specify that the content of existing and new bilateral agreements will be subject to a notification to the Commission.

h) Penalties (Title XIV)

27. On 2 December 2025, the Presidency received a text with the suggestions by the EP for a possible compromise on this issue (Annex IV to this note). This text is drafted showing the amendments to the text on penalties discussed by Coreper on 28 November and does not yet reflect the concerns raised by delegations at Coreper meeting on 28 November and Customs Union Group on 27 November.

28. While it is clear that the framework of the Presidency compromise text is generally accepted as a basis for further work, the EP raises a number of important points on which the Presidency needs to seek further guidance from Coreper.

29. The EP continues to hold its position that a more extensive compromise text on the provisions concerning penalties is needed. Generally, the main concern of the EP on the

issue of penalties is that of potential "jurisdiction shopping", given the degree of discrepancy of penalty levels for infringements of customs legislation across the EU.

30. In particular, the EP maintains that the following is required:

a) larger non-exhaustive list of customs infringements (Article 252(1));

b) larger non-exhaustive list of mitigating or aggravating circumstances (Article 254(1);

c) larger non-exhaustive list of types of penalties (Article 254(2);

d) provisions on amounts of pecuniary charges: percentages (based on amounts of customs duties or value of goods) for cases of infringements where customs duties are eluded (Article 254(3)(a) and (b)), and a minimal amount for cases when an infringement is not related to any specific goods (Article 254(3)(c);

e) a general article on co-operation of customs authorities in the area of infringements (new Article 255), and

f) a set of basic rules on limitation periods (new Article 256).

31. While most of the suggestions by the EP still need further technical work (also in order to eliminate any potential inconsistencies), the Presidency aims to determine whether any of these suggestions would block Member States from accepting the overall compromise.

32. In this context, the provisions on levels (amounts) of pecuniary charges are particularly important (Article 245(3)). Essentially, it seems difficult to argue that differing penalty levels may be the main decisive factor leading for a business choice of a jurisdiction for its activities in the area of customs. Nevertheless, based on the examples of existing EU *acquis* in other areas, and with regard to the specifics of customs, it could be explored whether the draft compromise text on penalties in the UCC could be further extended in this regard, as indicated by the EP in the technical meetings.

33. The Presidency intends to continue working on this part of the UCC Regulation in advance of the trilogue of 10 December, with due consideration of positions that Member States will express on these provisions. The future compromise text should strike the right balance in addressing the concerns raised by Member States and the EP on the issue of penalties.

i) Handling fee

34. While the Council position provides for the establishment of a Union handling fee as a principle, its amount and the procedure for collecting it will be determined in delegated and implementing acts. Article 18 (3) gives a broad range within which the amount of the handling fee could fall: *'amount ensuring that* ***at least part but not more than all of the costs*** *of services rendered'*, which may need to be further clarified. Thus, an adjustment in that paragraph, in line with Article 18 (1b), could read the following: *'the amount of the Union handling fee shall* ***correspond to the approximate costs*** *of services rendered'*.

35. In the negotiations so far, EP has asked for further clarifications as to the budgetary nature of the handling fee and the allocation of the funds. Whilst this topic is to be addressed in the broader MFF negotiations, the Presidency acknowledges that it would be useful to clarify in the context of UCC what the situation will be until the new MFF package is finalised. The Presidency would like to invite the Commission to clarify the current legal situation as well as how it will change with the entry into force of the UCC and the MFF package.

36. The Presidency would also like to gather Member States' views on Commission's suggestion for a change to Council's mandate in Article 18 (1d) below:

1d. The debtor of the ~~*customs debt at import shall pay the*~~ *Union handling fee* ***shall be the person facilitating the distance sales and, where this does not exist, the deemed importer. The fee shall be paid at least once a month to the Member State competent for the release for free circulation of the goods in accordance with Article 42 in accordance with the corresponding Union handling fee notification*** ~~*at the moment of payment of the customs debt in accordance with Article 186*~~*.* ***[****Where there is no customs debt, the time-limit for paying the Union handling fee shall be the same as it would have been if there had been a customs debt to pay.****]*** *In matters not regulated, the provisions on customs debt shall apply mutatis mutandis to the Union handling fee.*

In Commission's view, to facilitate the collection of the Union handling fee, the debtor should be the person facilitating the sale (intermediary platform), although the deemed importer may also be considered the debtor where there is no intermediary platform. Also, to make the Union handling fee implementation by 1 November 2026 possible, an appropriate IT solution at EU level for the calculation of the fee should be used, adding the possibility to pay the Union handling fee at least only once a month, precising that the Member State releasing the goods must collect the fee, and defining the debtor of the Union

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handling fee (primarily platforms and only where these do not take part in the transaction, the deemed importer).

j) E-commerce provisions

37. At the trilogue on 15 October 2025, both legislators reached an agreement in principle on the e-commerce provisions as set down in the Council position. This was followed by additional technical work. As a result, a number of technical adjustments were implemented which did not entail any substantive amendments. The Customs Union Working Party strongly supported the Presidency approach.

38. It is the Presidency view is that a common ground with EP is about to be reached on the e-commerce provisions at technical level, so the compromise text should be ready to be confirmed at the trilogue. In this regard, the Presidency does not intend to re-open the negotiations on the e-commerce provisions.

k) Entry into force and application

39. Due to the volume and complexity of the text, a period of time is needed between the conclusion of negotiations and the final adoption for legal-linguistic revision of the text. Most likely final adoption will take place at the end of Q2 of 2026. The Presidency is currently working on and will distribute an addendum to this this note reproducing for comparison purposes, the position of the Commission, EP and the Council on timelines following. The updated timeline proposed by the Presidency can be found in the Council column.

l) Mandate for the remaining technical work on the draft UCC Regulation

40. It is clear, that once a provisional agreement is reached at the trilogue of 10 December 2025, a significant amount of technical work will be required to finalise the full text of the draft UCC Regulation. Therefore, it is expected that a part of the provisional agreement in the trilogue on 10 December 2025 would be an arrangement that permits technical work to continue at the informal technical meetings between the co-legislators.

41. This technical work will extend to the beginning of 2026 and would be carried out in consultation with the Customs Union Group and Coreper, as appropriate. Essentially, the objective of this work would be to transpose the parameters agreed in the trilogues into the

legislative text, before the Council could send a letter to the EP confirming the provisional agreement on the overall text.

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III. WAY FORWARD

42. With a view to the forthcoming round of negotiations with the European Parliament on 10 December 2025, the Presidency is seeking further guidance from Coreper on the key issues outlined in Part II of this note. Against this background, delegations are invited to:

    i) exchange views on the way forward in the interinstitutional negotiations on this dossier, and

    ii) indicate, where relevant, whether any of the aspects set out in the present note would constitute a red line, blocking them from accepting the overall compromise.

ANNEX I

EUCA GOVERNANCE: REMAINING ASPECTS

Rows 2232a-2232k

Article 221a

Customs Advisory Board

1. The EU Customs Authority shall establish a Customs Advisory Board to assist ~~the Executive Board~~ the Authority.

2. The Customs Advisory Board shall serve as a consultation mechanism with the business sector within the Authority's responsibilities.

   It is tasked to provide advice:

   (a) on the implementation of technical actions and decisions, ~~including risk management and priority areas of control~~;

   (b) on implementation and standardisation issues, including harmonisation activities ~~or the need for the adaptation of the rules~~;

   (c) on the ~~customs dimensions~~ operational aspects of other legislation applied by customs;

   (d) as appropriate in the context of any other activities of the Authority upon request.

3. The Customs Advisory Board shall be comprised of representatives and associations for relevant stakeholders to the work of the EU Customs Authority. The Management Board shall determine its composition.

4. ~~The Management Board shall appoint four of the members of the Customs Advisory Board, one of which its chair, to participate with observer status in the Management Board. They shall represent, as broadly as possible, the different views represented in the Customs Advisory Board. The initial term of office shall be 48 months and shall be extendable.~~

5. ~~The Customs Advisory Board shall be consulted regularly prior to decisions of the Management Board. This may take place via the use of ad-hoc expert working groups. The Management Board shall not, in any case, be bound by the opinion of the Customs Advisory Board.~~

6. The Customs Advisory Board shall hold at least one ordinary meeting every six months. In addition, it may meet at the request of the ~~EU Customs~~ Authority's Executive Director, Management Board or Executive Board.

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Rows 2232l-s (Art. 221a-b)

Article 221a

Appointment, status and independence of the Data Auditor

1. The Data Auditor shall be appointed by the Management Board on grounds of merit and documented professional skills, as well as relevant competence and experience in the fields of data security, cybersecurity and data protection.

2. The Data Auditor is a member of the staff of the EU Customs Authority and shall act independently.

3. The Data Auditor shall act in full respect of Union law on confidentiality and secrecy.

Article 221b

Responsibilities and tasks of the Data Auditor

1. The Data Auditor shall ~~independently~~ monitor and assess the lawfulness of access to ~~and protection of data processed through~~ the EU Customs Data Hub, in accordance with the applicable Union law.

2. The Data Auditor shall report on his or her activities on an annual basis to the Management Board.

3. The Data Auditor shall perform his or her tasks in coordination with the Data Protection Officer and without prejudice to ~~respect~~ the responsibilities of other Union or national oversight bodies.

4. The Commission shall specify, by means of implementing acts, the independent status, the detailed tasks, and the responsibilities of the Data Auditor. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 262(2).

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Rows 2232t-2232y

Article 221c will be moved to Chapter 6 (General and final provisions), and become a new Article 232a

Article 232a

Obligation of professional secrecy

1. Members of the Management Board and the Executive Board, the Executive Director, the Deputy Executive Director, the Data Auditor and all members of staff of the EU Customs Authority, including officials seconded by Member States on a temporary basis, as well as all other persons carrying out tasks for the Authority on a contractual basis, shall be subject to the requirements of professional secrecy pursuant to Article 339 TFEU and Article 67 of Directive (EU) 2024/1640, including after their duties have ceased.

2. ~~The Executive Board shall ensure that~~ Individuals who provide any service, directly or indirectly, permanently or occasionally, relating to the tasks of the EU Customs Authority~~,~~ are subject to requirements of professional secrecy equivalent to those provided for in paragraph 1.

3. For the purpose of carrying out the tasks conferred on it by this Regulation, the EU Customs Authority shall be authorised, within the limits and under the conditions set out in this Regulation, to exchange information with Union or national authorities and bodies.

4. The Authority shall establish practical arrangements for implementing the confidentiality rules referred to in paragraphs 1 and 2.

Article 233(3) – Row 2297 – will be deleted, as overlapping with new Article 232a.

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DIGITAL SOVEREGNITY - DRAFT COMMISSION COMPROMISE

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Rows 553g to 553s - Art. 28c Digital sovereignty

Between row 27 and 27a – new recital:

(18a) Having regard to the role of the EU Customs Data Hub in ensuring the integrity and security of data treated in the Union for customs purposes, which is a fundamental interest of society, it is the duty of the competent authorities to take all measures necessary to protect the data managed in the EU Customs Data Hub, including personal data and other sensitive data relating to the flow of goods and the implementation of EU and national laws, from unauthorised access and any other genuine and sufficiently serious threats to the integrity and security of such data. It is therefore necessary that the infrastructure and services through which the EU Customs Data Hub operates are made subject to certain conditions to ensure Union sovereignty in this respect. Respect of these conditions should be demonstrated through evidence, which may be complemented by security screening of natural and legal persons which is provided for under the law of the Union or a Member State. Furthermore, the EU Customs Data Hub should be designed as far as possible to avoid vendor lock-in situations.

Article 28c - Digital Sovereignty

1. The EU Customs Data Hub shall be designed to ensure that European Union data is protected from unauthorised access and other genuine and sufficiently serious threats to its integrity and security, which constitutes a fundamental interest of society.

2. The EU Customs Data Hub infrastructure, excluding telecommunication transmission infrastructure, shall be solely controlled and administered by the Commission or the EU Customs Authority and shall be located within the territory of the European Union.

3. In the context of EU Customs Data Hub procurement and contracted tasks,

    a. Any suppliers, including sub-contractors and any other service providers, entrusted with tasks in relation to the EU Customs Data Hub by the contracting authority, shall satisfy the highest standards of reliability and independence from influence of governments of third countries and shall not be directly or indirectly required to disclose, in any manner, any data from the EU Customs Data Hub without the prior explicit consent of the contracting authority for the EU Customs Data Hub.

    b. The contracting authority for the EU Customs Data Hub may at any time require any suppliers, including sub-contractors and any other service providers, to provide evidence of the measures that they have in place to prevent any unauthorised disclosure of data from the EU Customs Data Hub.

c. The security of the supply-chain of all IT components, hardware and software shall be ensured, to the greatest extent possible. Any suppliers, including sub-contractors and any other service providers may be required by the contracting authority for the EU Customs Data Hub to provide evidence in this regard.

d. Where the contracting authority for the EU Customs Data Hub has reason to believe that the measures taken by any suppliers, subcontractors or any other service providers to ensure their obligations under this Article, are insufficient, or that the evidence provided by them under this Article is not wholly reliable, the contracting authority for the EU Customs Data Hub may take measures under the contract it deems necessary to remedy the situation, including the suspension or termination in part or in full of the contract. This shall be without prejudice to other additional remedial rights the contracting authority for the EU Customs Data Hub may have established under the relevant contract or under other provisions in force.

7. Unless provided for in or by Title XIII or an international agreement by which the Union is bound, data processed in the EU Customs Data Hub shall not be transferred or made available to a third country, to an international organization or to natural or legal persons established outside the territory of the Union. Transfers shall not take place without the prior knowledge and explicit agreement of the contracting authority for the EU Customs Data Hub.

8. The EU Customs Data Hub shall be designed to avoid pre-commercial, commercial, technical, contractual and organisational obstacles that discourage, impede or prevent the contracting authority from transferring or porting data, applications, or digital assets to another service provider, or their use in an interoperable environment.

Explanation: The principles of data sovereignty brought by Council are to be kept in the Basic Act, having in mind it is important that the provisions on data sovereignty do not hinder the feasibility of the EU Customs Data Hub. In order to be able to establish the EU Customs Data Hub infrastructure not by a third country provider, there is a need to lay down in the act a 'fundamental interest of society', to allow the derogation from procurement rules.

This is also explained in a recital. The references to fundamental interest of society address in summary the broad range of sensitive use-cases in the Hub. It is understood that unlawful access to the Hub could threaten, for example, the free flow of essential goods, the customs implementation of strategic sanctions and trade policy, commercial and industrial secrets, military movements of material, the implementation of targeting for serious security risks (including organised crime, traffic related to terrorism, potential deployment of explosive devices in air cargo, etc.), the implementation of sanitary and phytosanitary measures, the implementation of crisis response measures, the correct calculation of duties and taxes at Union and national level, and the management of compliance with hundreds of non-customs policy instruments at Union and national level. A comprehensive list is not necessary in this recital as the use cases follow from the overall contribution of customs activities to implementing Union and national priorities.

Regarding the exclusion of non-EU citizens, it might not be the most appropriate condition, as it could occasion some 'golden passports' behaviours; so this should not be a qualification. The criteria of having suppliers under the control of persons fulfilling higher standards of reliability in interest of society is be more important in practice than the nationality. Instead of 'vendor lock-in', COM proposes a wider redraft to cover more cases that shall be prevented in the frame of the procurements. The overall structure of the Article provides the contracting authority (the European Commission or the EU Customs Authority as the case may be) with the necessary discretion to require evidence of sufficiency of measures and to withdraw and take other remedies where it is not satisfied, including in the case that unforeseen issues emerge after conclusion of a contract.

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ANNEX III

BILATERAL AGREEMENTS WITH THIRD COUNTRIES –

DRAFT PRESIDENCY COMPROMISE

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Article 243a

Bilateral agreements with third countries

1. **Member States may~~, upon notification to the Commission,~~ maintain or enter into negotiations with a third country with a view to conclude bilateral agreements, ~~including agreements with neighboring third countries regarding shared border crossing points, which are~~ limited to the implementation of Union law obligations. They shall without undue delay notify the Commission of both existing agreements they intend to maintain and those they intend to sign.**

   This provision shall not apply to bilateral agreements on the exchange of data referred to in Article 240.

2. **Member States may conclude non-binding working arrangements with customs authorities and other competent authorities of third countries.**

PENALTIES - EP COMPROMISE PROPOSAL

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Recital 61 replaced by the following:

(61) A common framework establishing a minimum core of infringements of customs legislation and of penalties should be laid down, for Member States to implement. Penalties for infringements of customs legislation should be effective, proportionate and dissuasive.

Addition of a new Recital 61a:

(61a) This Regulation should foresee that the rules on penalties can be applied in such a manner that the penalty is initiated by a competent authority and imposed by a judicial authority, while ensuring that the penalty is effective, proportionate and dissuasive, and have an effect equivalent to the penalties imposed by competent authorities. When imposing such penalties, judicial authorities should take into account the recommendation by the competent authority initiating the penalty.

Article 165(3)

3. For the purposes of penalties, as applicable ~~under the law of a Member State~~, for infringements of customs legislation, the customs debt shall nevertheless be deemed to have been incurred where, under this Regulation or under the law of a Member State, import or export duty or the existence of a customs debt provide the basis for determining penalties.

Article 200

Application of penalties

Where the customs debt is extinguished on the basis of Article 199(1), point (h), Member States shall not be precluded from the application of penalties for infringements of customs legislation.

Title XIV

INFRINGEMENTS OF CUSTOMS LEGISLATION AND PENALTIES

[Commission proposal text deleted till Article 245]

Article 245

Subject matter and general provisions

1. **This Title provides for a minimum list of** ~~Member States shall provide for the~~ infringements of customs legislation and penalties for such infringements ~~in accordance with this Title~~.

2. This Title does not prevent Member States from **having additional customs infringements set at national level and** taking more stringent measures, by providing for penalties**. Penalties for infringements of customs legislation should be effective, proportionate and dissuasive**.

3. Member States shall notify to the Commission the provisions of their national law which they adopt pursuant to this Title by [**within 180 days from the date of application of this Article**] and, without delay, any subsequent amendment affecting such provisions.

[all further text of the Commission proposal deleted till Article 252]

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Article 252

Infringements of customs legislation

1. Without prejudice to Article 200, 245 and 254, Member States shall ensure that at least the following constitute an infringement of customs legislation:

(a) [deleted] **failure of the holder of a decision relating to the application of customs legislation to comply with the obligations resulting from that decision**

(b) failure to comply with the obligation to provide the required information to customs authorities in accordance with this **customs legislation** ~~Regulation~~;

(ba) failure to comply with the obligation to lodge a customs declaration;

(c) failure to comply with the obligation to provide complete, accurate valid and authentic information or documents to customs authorities;

(d) failure to comply with the applicable rules providing for the obligation to keep record of compliance with customs legislation, such as keeping documents or information demonstrating the accomplishment of customs formalities;

(e) failure to comply with the rules on removal of goods from customs supervision;

(f) ~~[deleted]~~ **failure to comply with the obligations related to customs procedures, in accordance with customs legislation;**

(g) failure to comply with an obligation to pay import or export duties;

(ga) failure to comply with the obligations of an importer, a deemed importer or an exporter under Articles 20 to 22 of this Regulation.

(gb) (new) the deemed importer has, by act or omission, systematically provided incorrect, incomplete, or misleading information in customs declarations or related data required under this Regulation, or such conduct has resulted in the placing on the Union market of goods posing a serious risk to health, safety, or the environment, or a serious distortion of competition on the internal market.

2. Paragraph 1 is without prejudice to the right of Member States to provide for further conduct, acts or omissions that constitute infringements of customs legislation.

2a Clerical or minor errors shall not constitute a customs infringement unless the customs authority can establish an intentional or negligent character to that infringement.

3. [deleted]

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[Art 253 of the Commission proposal deleted; and proposed Article 254 replaced by the following]

Article 254

Penalties

1. Member States shall provide for penalties for infringements of customs legislation, including those referred to in Article 252, **in line with the rules of this Article** and shall ensure that such penalties are effective, proportionate and dissuasive.

Member States shall ensure that penalties are applied ~~with regard to at least~~ **taking onto account** the following **circumstances**~~, as set out in national law~~:

a) whether customs infringements are committed intentionally, negligently, or by manifest error;

b) the nature, gravity and duration of the customs infringement.

c) the goods involved are subject to the other legislation applied by the customs authorities.

d) the financial impact of the customs duties and other charges eluded

e) the person responsible for the customs infringement cooperates with the customs authority.

f) the customs infringement poses a threat to the security and safety of the Union and its residents.

g) any other factor applicable to the circumstances of the case or in accordance with national laws

2. The penalties referred to in paragraph 1 ~~may~~ **shall** take at least one of the following forms:

a) a pecuniary charge by the customs authorities, including, where appropriate, a settlement applied in place of and in lieu of a criminal penalty;

b) the revocation, suspension or amendment of any authorisation held by the person concerned.

c) the confiscation of the goods involved in the infringement

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3. The pecuniary charge shall be calculated taking into account the following:

a) In cases where customs duties or other charges are eluded, the pecuniary charge, ~~where provided under national law,~~ shall be determined **based on the amount of customs duties and other charges eluded with regards to the goods involved in the infringement. The pecuniary charge shall comprise an amount between [25% and 100%] of the amount of customs duties and other charges eluded. Member States may apply higher pecuniary charges, without exceeding 200% of the amount of customs duties and other charges eluded** ~~taking into account the amount of such duties or other charges.~~

b) Where determining such an eluded amount is not possible, the pecuniary charge shall be determined **based on** ~~taking into account~~ the customs value of the goods ~~.~~**involved in the infringements and shall comprise an amount between [3% and 30%] of the customs value of the goods involved in the infringements.**

c) where the customs infringement is not related to any specific goods, the pecuniary charge shall be an amount of no less than EUR 150

4. This Article may be applied in such a manner that the penalty is initiated by the competent authority and imposed by a judicial authority, while ensuring that the penalty is effective, proportionate and dissuasive, and has an effect equivalent to the penalties imposed by competent authorities.

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Article 255

Cooperation between Member States

1. Member States shall exercise jurisdiction over the infringements with customs legislation referred to in this title in accordance with national law.
2. Where customs infringements are committed in more than one Member States, the competent authority of the Member State which exercises jurisdiction pursuant to paragraph 1 of this Article, shall cooperate with the competent authorities of the Member States involved in the same customs infringement.
3. The EU Customs Authority shall coordinate the cooperation between the Member States.

Article 256

General rules for limitation periods

1. Member States shall determine the limitation period for initiating proceedings for failures to comply with this regulation referred to in Article 252 between a minimum of 5 and a maximum of 10 years from the date on which the act or its omission was committed.
2. Member States shall ensure that the limitation period for the enforcement of a decision imposing a non-criminal penalty is maximum three years, starting with the day on which that decision becomes final.

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