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NOTE

From:	General Secretariat of the Council
To:	Working Party on Customs 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 - Title III - Presidency compromise text

Delegations will find enclosed the Presidency compromise text for Title III of the UCC reform proposal. Changes to the Commission proposal (doc. ST 9596/23) are marked in **bold underline** and ~~striketrough~~.

*PL Presidency redrafting proposal on Title III (without Article 31, 32, 34) to be discussed at CUG
28/04*

(the amendments are presented in comparison to the Commission proposal COM(2023) 258 final).

*Please note that the provisions concerning confidentiality of data are now placed in Title I;
provisions concerning data auditor are placed in Title XII.*

Title III

EU CUSTOMS DATA HUB

Article 29

Purposes, functionalities, and purposes and features of the EU Customs Data Hub

1. The EU Customs Data Hub shall ~~provide~~ **be an EU sovereign,** secure and cyber resilient **centralised IT platform,** set **compilation** of electronic services and systems, **data and infrastructure** to use **and store** data including personal data for customs purposes **and other purposes - listed in Article 31 capable of functioning even in a serious crisis. The EU Customs Data Hub shall operate with high security, high performance, high availability of service for economic operators, customs authorities and other authorities, a high level of user support, including a single access point and multilingual technical and business assistance. The EU Customs Data Hub shall allow the reuse of data to the highest extent possible unless otherwise provided for by specific law. It shall be the central point for the delivery of data to the customs authorities in accordance with the schedule specified in the work programme referred to in paragraph 5, unless other regulations provide otherwise..**

The EU Customs Data Hub shall be compliant with the provisions of Regulation (EU) 2016/679, (EU) 2018/1725 and Directive (EU) 2016/680 relating to the processing of personal data as well as with Directive (EU) 2022/2555.

It shall provide the following functionalities and shall have the following features:

- (a) allow for ensure the electronic implementation of customs legislation and other legislation applied by the customs authorities, including services or systems supporting in particular: customs decisions, customs [processes and] procedures, post release control, calculation and notification of the customs debt as well as excise duty and VAT, guarantee management and customs surveillance of goods;
- (b) ensure the quality, integrity, preservation, traceability, confidentiality and non-repudiation of data processed therein, including the amendment, invalidation and deletion of such data;
- (c) ensure compliance with the provisions of Regulation (EU) 2016/679, Regulation (EU) 2018/1725 of the European Parliament and of the Council¹ and Directive (EU) 2016/680 of the European Parliament and of the Council² relating to the processing of personal data;
- (d) enable risk, economic and data analysis, ~~economic analysis and data analysis,~~ including through the use of using in particular artificial intelligence systems in accordance with ~~[the Artificial Intelligence Act 2021/0106 (COD)]~~³ Regulation (EU) 2024/1689;
- (e) enable the interoperability of those services and systems with other electronic systems, platforms or environments ~~for the purpose of cooperation in accordance with Title XIII~~;

¹ ~~Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).~~

² ~~Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision (OJ L 119, 4.5.2016, p. 89).~~

³ ~~Regulation (EU) of the European Parliament and of the Council (OJ L...,../..., p..). [OJ: Please insert in the text the number of the Regulation contained in document COM(2021) 206 final, 2021/0106(COD)) and insert the number, date, title and OJ reference of that Directive in the footnote.]~~

- (f) integrate the European Union Single Window Certificates Exchange System established by Article 4 of Regulation (EU) 2022/2399;
- (g) enable the exchange of information with ~~third countries~~ **customs authorities, other national authorities in Member States, Union authorities and other authorities of third countries and international organisations;**
- (h) enable the ~~customs surveillance~~ **tracking** of goods **subject to customs supervision, including provision of information about their location without delay, no later than the moment when the custom authority requires the information;**
- (i) **enable distribution of data to the recipients referred to in Article 31 without delay no later than the moment when the recipient requires the information;**
- (j) **enable reporting capabilities;**
- (k) **integrate an information security management system to prevent data breaches, based on governance, management of access authorisations and prioritization of potential risks associated, organisation of data including a mechanism of tagging data according to their level of confidentiality, traceability measures and automated controls of access;**
- (l) **[enable data portability mechanism (such as synchronization and downloading). The Commission shall lay down, by means of implementing acts, the data that shall be available by this mechanism].**

2. The acts that the persons, the Commission, the customs authorities, the EU Customs Authority or other authorities perform through the functionalities **and features** listed in paragraph 1 shall remain acts of those persons, of the Commission, of the customs authorities, the EU Customs Authority, or of other authorities, even if they have been automated.

~~3. The Commission shall develop, implement and maintain the EU Customs Data Hub, including making publicly available the technical specifications to process data within it, and shall establish a data quality framework.~~

4. The Commission is empowered to adopt delegated acts in accordance with Article 261 to **supplement and** amend the functionalities **and features** referred to in paragraph 1 **of this**

Article to take account of new tasks conferred on the authorities referred to in Article 31 of this Regulation by Union legislation or to adapt those functionalities to the evolving needs of those authorities in implementing the customs legislation or other legislation applied by customs authorities.

4a. Infrastructure and data processing within of the EU Customs Data Hub shall comply with the digital sovereignty and data sovereignty, ensuring the ability to enforce the European Union rights over the data stored in EU Customs Data Hub. The infrastructure , excluding telecommunication transmission resources, within the EU Customs Data Hub shall be owned by the Commission and located within the European Union.

As soon as the EU Customs Authority is fully operational the Commission may transfer the ownership of the infrastructure within the EU Customs Data Hub to the EU Customs Authority.

5. The Commission shall lay down, by means of implementing acts:
- (a) the technical arrangements for maintaining and employing the electronic systems that the Member States and the Commission have developed pursuant to Article 16(1) of Regulation (EU) No 952/2013;
 - (b) a work programme for the progressive phase out of ~~the those~~ systems **referred to in point a), and for the progressive phase in of the EU Customs Data Hub. The work programme shall be designed to ensure a seamless transition.**

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

5a. In exceptional and duly justified circumstances linked to the correct implementation of this Regulation the Commission may, on a request made by one or several Member States, adopt implementing decisions authorising those Member States to use functionally equivalent electronic services or systems other than those implemented in the EU Customs Data Hub.

Such a decision:

- (a) shall not affect the functioning of EU Customs Data Hub and the completeness of the stored data;**
- (b) shall be justified by the specific situation of the Member State or Member States requesting it;**
- (c) shall be limited in time, reviewed periodically and revoked where no longer justified;**
- (d) shall be granted only if it does not affect the exchange of information between the requesting Member State and other Member States and the EU Customs Authority or the exchange and storage of information in other Member States for the purpose of the application of the customs legislation;**
- (e) shall not in any case allow the withdrawal of the requesting Member State or Member States from using the EU Customs Data Hub.**

A derogation may be extended in duly justified cases on the request made by the Member State or Member States concerned.

Article 29a

Responsibility for the EU Customs Data Hub

- 1. The Commission shall be responsible for the development, operation and maintenance of the EU Customs Data Hub. As soon as the EU Customs Authority is fully operational the Commission in coordination with the Member States may entrust the responsibilities for the EU Customs Data Hub to the EU Customs Authority.**
- 2. The responsibilities for EU Customs Data Hub in paragraph 1 include:**
 - (a) the establishment of technical requirements for the performance of the EU Customs Data Hub, which shall include service levels of performance, availability and resilience;**
 - (b) the establishment of a data quality framework;**
 - (c) the development and maintenance of the EU Customs Data Hub;**

- (d) the implementation of the EU Customs Data Hub functionalities and features provided for in Article 29(1);**
- (e) the elaboration, in cooperation with the Member States, of the technical specifications to process data within the EU Customs Data Hub and access data from it;**
- (f) the training of EU Customs Data Hub users;**
- (g) the elaboration, in cooperation with the Member States, of the principles and measures of digital sovereignty and data sovereignty according to Article 29(4a).**

Article 29b

Business continuity

- 1. The Commission shall ensure business continuity measures including redundancy, failover mechanisms and data recovery protocols, in accordance with relevant cybersecurity regulations.**

Infrastructure sites of EU Customs Data Hub shall be geographically distributed to ensure the operation of the EU Customs Data Hub in the event of failure of one of its sites.

- 2. The Commission shall implement procedures and technical solutions to reinforce the uninterrupted availability of the EU Customs Data Hub.**

When the Commission entrusts the responsibility for the EU Customs Data Hub to the EU Customs Authority, the implementation of those procedures and technical solutions shall be carried out by the latter.

- 3. The Commission shall adopt implementing acts providing for the procedures to follow in the event of the unavailability, failure or serious crisis situation of the EU Customs Data Hub. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).**

National applications to use data complementing from the EU Customs Data Hub or dedicated highly secure IT space within the EU Customs Data Hub

1. Member States may develop: ~~applications necessary to connect to the EU Customs Data Hub in order to provide data to and process data from the EU Customs Data Hub.~~
 - (a) **additional applications within the EU Customs Data Hub in coordination with the EU Customs Authority according to technical specifications jointly defined with the EU Customs Authority;**
 - (b) **external applications for connection to and processing data in and from the EU Customs Data Hub.**
2. Member States may request the EU Customs Authority to develop the applications referred to in paragraph 1 **point (a) and (b).** In that case, **this request is submitted to the EU Customs Authority to coordinate the co-financing opportunities among those Member States shall finance. This the development can be partially funded by the EU Customs Authority.**
3. Where the EU Customs Authority develops an application in accordance with paragraph 2, **that application it shall be made make it available to all Member States that co-finance it or free of charge to other Member States upon agreement of all co-financing Member States. Further development of these applications shall be managed on the basis of an agreement between the co-financing Member States and the EU Customs Authority.**

[Article 31

Purposes of the processing of personal data and other data in the EU Customs Data Hub]

[Article 32

Personal data in the EU Customs Data Hub]

Article 33

Retention period of personal data in the EU Customs Data Hub

1. Personal data in the EU Customs Data Hub may be stored by means of a specific service for a maximum period of 10 years, starting from the date on which that data is recorded in the service. The cases provided for in Article 48 and investigations launched by OLAF, EPPO or by Member States' authorities, infringement procedures launched by the Commission and administrative and judicial proceedings involving personal data **in the categories referred to in Article 32(2) points a) and c)** shall have a suspensive effect on the retention period with regard to that data.
2. After the period of time provided for in paragraph 1, personal data shall be erased or anonymised, according to the circumstances.
- 2a. Prior to the expiry of the retention period, [the Commission/the data auditor] shall carry out periodical reviews of the need for the storage of the personal data in the EU Customs Data Hub, including in the context of situations having a suspensive effect on the retention period.**
- 2b. The Commission is empowered to adopt delegated acts in accordance with Article 261 to amend the starting date referred to in paragraph 1 of this Article for specific sets of personal data and taking into account the specific situations where a date other than the one where the data is recorded is reasonable for the calculation of the retention period, especially in the case of EORI registration and of the decisions referred to in Article 6.**
3. The Commission shall lay down, by means of implementing acts, the **circumstances referred to in paragraph (2) and the** rules for anonymising the personal data after the

expiry of the retention period. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

Article 33a

Retention period of data other than personal data in the EU Customs Data Hub

The Commission shall lay down, by means of implementing acts, the data retention rules for data other than personal data in the EU Customs Data Hub. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

[Article 34

Roles and responsibilities for personal data processed in the EU Customs Data Hub]

Article 35

Restriction of data subject's rights

1. Where the exercise by a data subject of the right of access and right to restriction of processing referred to in Articles 15 and 18 of Regulation (EU) 2016/679 and Articles 17 and 20 of Regulation (EU) 2018/1725, or the communication of a data breach referred to in Article 34(1) of Regulation (EU) 2016/679 and Article 35(1) of Regulation (EU) 2018/1725, would jeopardise an ongoing investigation **or preparatory proceedings** concerning a natural person in the field of customs, the performance of customs controls or the management of a specific risk identified in relation to a natural person in the field of customs, the customs authorities, ~~the EU Customs Authority and the Commission~~ may, in accordance with Article 23(1), points ~~(a), (b), (c), (d)~~, (e), (f) and (h), of Regulation (EU) 2016/679, and the Commission and the EU Customs Authority may, in accordance with

Article 25(1), points (a), **(b), (c), (d)**, (e), and (g), of Regulation (EU) 2018/1725, restrict wholly or partly those rights as long as the restriction is necessary and proportionate.

2. The customs authorities, the Commission and the EU Customs Authority shall assess the necessity and proportionality of the restrictions referred to in paragraph 1 on a case-by-case basis before they are applied, considering the potential risks to the rights and freedoms of the data subject.
3. When processing personal data received from other organisations in the context of its tasks, the customs authorities, the EU Customs Authority or the Commission, when acting as a controller or a joint controller, shall consult those organisations on potential grounds for ~~imposing the~~ restrictions as referred to in paragraph 1, and the necessity and proportionality of such restrictions before applying a restriction referred to in paragraph 1.
4. Where the customs authorities, the Commission or the EU Customs Authority restrict, wholly or partly, the rights referred to in paragraph 1, they shall take the following steps:
 - (a) inform the data subject concerned, in ~~its~~ **their** reply to the request, of the restriction applied and of the ~~principal reasons therefore~~ **motivation of the restriction**, and of the possibility of lodging a complaint with the national data protection authorities or the European Data Protection Supervisor or of seeking a judicial remedy in a national court or the Court of Justice of the European Union; and
 - (b) record the reasons for the restriction, including an assessment of the necessity for and proportionality of the restriction, and the reasons why providing access would jeopardise risk management and customs controls.

The provision of information referred to in point (a) of the first subparagraph may be deferred, omitted or denied in accordance with Article 25(8) of Regulation (EU) 2018/1725, or where the provision of that information would be prejudicial to the purposes of the restriction.

- 5.** The customs authorities, the Commission or the EU Customs Authority shall include a section in the data protection notices published on its website/intranet providing general information to data subjects on the ~~potential for~~ **possibility of** restriction of data subjects' rights.

6. The Commission shall lay down, by means of implementing acts, the safeguards to prevent the abuse and unlawful access or transmission of the personal data in respect of which restrictions apply or could be applied. Such safeguards shall include the definition of roles, responsibilities and procedural steps, and due monitoring of restrictions and a periodic review of their application, which shall take place at least every 6 months. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 262(4).

Article 35a

Coordinated supervision by the European Data Protection Supervisor and national supervisory authorities

The European Data Protection Supervisor and the national supervisory authorities, acting within the scope of their respective competences, shall cooperate actively within the framework of their responsibilities to ensure coordinated supervision of the operation of the EU Customs Data Hub in accordance with Article 62 of Regulation (EU) 2018/1725.

Article 36

EU Customs Data Model

The Commission is empowered to adopt **implementing** acts in accordance with Article 262(4) to supplement this Regulation in order to determine the **data, including its format and code,** required for the fulfilment of the purposes referred to in Article 31(1) to (4). Those data requirements shall constitute the EU Customs Data Model.

Member States may specifically mark, within the EU Customs Data Model, information of goods which disclosure would harm their essential national security interests, in accordance with Article 346 of the TFEU.

This data is transmitted to the EU Customs Data Hub according to the same technical requirements, but access to it is strictly limited to the competent national authorities of the Member States concerned, only for the implementation of customs legislation.

Article 37

Technical means for cooperation

1. The Commission, the EU Customs Authority and the customs authorities shall use the EU Customs Data Hub when exchanging **data** with the authorities and Union bodies ~~referred to in Article 31(6) to (11)~~ in accordance with this Regulation.
2. ~~[For the Union other formalities and systems listed in the Annex to Regulation (EU) 2022/2399, the EU Customs Data Hub shall ensure interoperability through the EU Single Window Environment for Customs established by that Regulation.]~~
[covered by Article 29 (f)]
3. Where authorities other than customs authorities or Union bodies make use of electronic means established by, used to achieve the objectives of, or referred to in Union legislation, the cooperation may take place by means of interoperability of those electronic means with the EU Customs Data Hub.
4. Where authorities other than customs authorities do not make use of electronic means established by, used to achieve the objectives of, or referred to in, Union legislation, those authorities may use the specific services and systems of the EU Customs Data Hub in accordance with Article 31.
5. The Commission shall adopt, by means of implementing acts, the rules for technical modalities for interoperability and connection referred to in paragraphs 3 and 4. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 262(4).

Article 38

Exchange of additional information between customs authorities and economic operators

[moved to Title I, Article 17a]

Article 39

Provision of information by the customs authorities

[moved to Title I, Article 17b]

Article 40

Information and supporting documents

1. When providing or making available the data and information required for the specific customs procedure under which goods are placed or intended to be placed, persons shall provide or make available digital copies of original paper documents, where such paper originals exist, used to obtain that data and information.
2. Until the date set out in Article ~~266~~265(3), when a customs declaration is lodged, the supporting documents required for the application of the provisions governing the customs procedure for which the goods are declared shall be in the declarant's possession and at the disposal of the customs authorities at the time of lodgement.
3. The supporting documents for the applicable Union non-customs formalities listed in the Annex to Regulation (EU) 2022/2399 shall be deemed to have been provided or made available or to be in the possession of the declarant if the customs authorities are able to obtain the necessary data from the corresponding Union non-customs systems through the European Union Customs Single Window Certificates Exchange System in accordance with Article 10(1), points (a) and (c), of that Regulation.
4. Supporting documents shall also be provided by persons where necessary for customs risk management and controls.
5. Without prejudice to other legislation applied by the customs authorities, customs authorities may authorise economic operators to draw up the supporting documents referred to in paragraph 3.
6. Unless otherwise stated for specific documents, the person concerned shall, for the purposes of customs controls, keep the documents and information for at least ~~3~~10 years,

by any means accessible by and acceptable to the customs authorities. That period shall run:

- (a) from the end of the year in which the goods are released;
- (b) from the end of the year in which they cease to be subject to customs supervision, in the case of goods released for free circulation duty-free or at a reduced rate of import duty on account of their end-use;
- (c) from the end of the year in which the customs procedure concerned has been discharged or temporary storage has ended, in the case of goods placed under ~~another~~ **a special** customs procedure or of goods in temporary storage.

7. Without prejudice to Article 182(4), where a customs control in respect of a customs debt shows that the relevant entry in the accounts has to be corrected and the person concerned has been notified of this, the documents and information shall be kept for 3 years beyond the time limit provided for in paragraph 6 of this Article.
8. Where an appeal has been lodged or where administrative or judicial proceedings have begun, the documents and information shall be kept for the period provided for in paragraph ~~46~~ or until the appeals procedure or the administrative or judicial proceedings are terminated, whichever is the latest.
