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NOTE

From:	Presidency
To:	Delegations
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Subject:	Update of the powers of customs officials in EU Member States

Introduction

Following the introduction of this subject in the LEWP (Customs) meeting of March 16, 2022 and contributions from Members States, delegations will find below an updated overview of the powers of customs officials in Member States.

This document is an update of document ST 13606/2/06 and DS 1467/16, which summarised the previous surveys on the powers of European customs officials.

The objective is to produce an updated clean version of the document DS 1467/16 which may be useful in the follow-up of customs activities both in the framework of the search for synergies between the customs cooperation action plan and EMPACT, as well as for the cooperation of customs with border guards and Frontex, reflecting the new mandate of the agency.

AT, BE, CY, DE, DK, ES, FR, HR, IE, IT, LV, MT, PL, and PT provided information on one or more changes in either the competences for controls or the legal situation. BG indicated that there were no changes.

AT, BE, CY, DE, DK, ES, FR, HR, IE, IT, LV, MT, PL, PT provided information on 1 or more changes in either the competences for controls or the legal situation.

It should be noted that this overview reflects the situation in each Member State in June 2022 and are likely to change depending on legislative projects under way.

The abbreviations relating to the Member States concerned may be consulted in the Annex.

A breakdown by degree of prevalence of the various powers, starting with those most commonly held, was adopted at that time, enabling three categories to be identified:

I. Powers shared by all the administrations

II. Points of occurrence, from which it is possible to single out:

- a *very frequent occurrence*: powers common to 22 to 27 administrations (=at least 80% to be considered very frequent occurrence).
- a *frequent occurrence*: powers common to 17 to 21 administrations (= at least 60 % to be considered frequent occurrence)

III. Special situations identifying characteristics common to fewer than 17 administrations.

(A large part of the document from 2006 remained intact. But several Member States indicated that definitions in the document are incorrect, outdated or possibly misleading without clear distinction of specific situations and cases). Even though a degree of generalizing in a document as this is necessary, several delegations indicated that the indicated fields and definitions do not always reflect the national definitions and therefore the indication of competences may not always be precise.

Suggested follow-up

Member States are invited to:

- to notify the Presidency of any possible changes in their powers included in this document
- agree that this document should be updated regularly, at least once in 2 years
- this should be the last update. The footnotes prove that the document can no longer be updated but should be rewritten so that the remarks are integrated into the body of the document

PRELIMINARY SECTION

The survey allowed to identify certain organisational characteristics common to the European customs administrations.

Given the way the customs administration is integrated into the government framework, it clearly pursues fiscal aims. It is virtually always attached to, or operates under the supervision of, the Ministry of Finance or the Treasury and is sometimes merged, as in Denmark, Portugal, Slovakia, Slovenia and Spain, with the tax administration by sharing structures. For Ireland, the Revenue Commissioners is an integrated tax and customs administration which is independent of but works closely with the Ministry of Finance.

To carry out the tasks of tax collection and the control of duties and taxes, national law has at times endowed the customs administration with special powers (random traffic controls to fight excise fraud in Ireland, controlled deliveries of alcohol and tobacco in Luxembourg, possibility of inspections of premises in France in connection with the Manual of Tax Procedure, etc.).

As regards sources of law, constitutions, do not confer any power on customs administrations. General provisions, such as the fundamental rights of the individual, may nevertheless have repercussions on customs legislation.

Customs powers are governed by laws in all the States, supplemented as appropriate by administrative regulations and case law interpretation.

For the same Member State, legislative sources may vary to a greater or lesser degree: laws on customs powers but also on products subject to excise, tax laws or even laws on the powers of criminal investigation.¹

Most countries have a national customs code².

As for the action of the customs authorities, it has effect throughout the territory³ in the case of virtually all the administrations concerned.

The table below indicates competence to carry out controls in the fields listed.

FIELD	SOLE COMPETENCE	SHARED COMPETENCE	NO COMPETENCE
Commercial traffic: licences, certificates of origin, transit, value, etc.	AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LV, LU, NL, PT, RO, SE, SI, SK	LT, MT, PL	
Travellers (duty-free and tax-free goods)	AT, BE, BG, CY, CZ, DE, DK, EL, ES, FI, FR, HR, HU, IE, IT, LV, LU, MT, NL, PL, PT, RO, SE, SI, SK	EE, LT	
Capital: obligation to declare sums of money or securities	AT, BE, BG, CY, CZ, DE, DK, EE, EL, FI, FR, IE, IT, LV, LU, MT, NL, PT, RO, SE, SI, SK	ES, HR, HU, LT, PL	
Capital: money laundering ⁴		AT, BG, CY, DK, DE, EE, IE, EL, ES, FI, FR, HU, IT, LT, MT, NL, PL, RO, SI	AT, BE, CZ, HR, (only police forces), LU, LV, PT, SE, SK

¹ All States except EE.

² All States except ES, PT, SE.

³ All States except DK, where action is limited to frontier zones and customs offices.

⁴ The Hungarian financial intelligence unit (HFIU) is a separate, independent department located within the structure of Central Management of the National Tax and Customs administration of Hungary since 1 January 2012.

FIELD	SOLE COMPETENCE	SHARED COMPETENCE	NO COMPETENCE
Intra-Community VAT	DK, EE, HU, IE, SI, SK	AT, BG, CZ, EL, FR, HR, IT, LU, LV, PT	BE, DE, ES, CY, LT, MT, NL, PL, RO, FI, SE
Excise, indirect taxation: alcohol and alcoholic beverages, manufactured tobacco, mineral oils	AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FR, HR, HU, IE, LU, MT, NL, PL, PT, RO, SI, SK	FI, IT, LT, LV, SE	
Illicit traffic in narcotic drugs and psychotropic substances		AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK	
Permitted drugs		AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK	
Drugs precursors	DK, PT	AT, BE, BG, CY, CZ, DE, EE, IE, EL, ES, FI, FR, HR, HU, IT, LT, LU, LV, MT, NL, PL, RO, SE, SI, SK	
Oestrogens and anabolic substances		AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK	

FIELD	SOLE COMPETENCE	SHARED COMPETENCE	NO COMPETENCE
Arms and ammunition		AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK	
War material		AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK	
Chemical weapons precursors		AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK	
Dual-use goods	FI, PT	AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, RO, SE, SI, SK	
Protection of intellectual property rights (counterfeiting)	CY, DK, HR, MT	AT, BE, BG, CZ, DE, EE, EL, ES, FI, FR, HU, IE, IT, LT, LU, LV, NL, PL, PT, RO, SE, SI, SK	
Cultural property		AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK	
Pornography, paedophilia, goods harmful to public morality in general		AT, BE, CY, CZ, DE, EE, EL, FI, FR, HR, IE, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK	BG, DK, ES, HU, IT
Transfrontier movement of waste	FI, EL	AT, BE, BG, CY, CZ, DE, DK, EE, ES, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK	
Nuclear material		AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK	

FIELD	SOLE COMPETENCE	SHARED COMPETENCE	NO COMPETENCE
Environmental protection		AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK	
Washington Convention (CITES)		AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK	
Consumer protection		AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LV, LU, MT, NL, PL, PT, SE, SI, SK	LT, RO
Control of plant and animal health requirements		AT, BE, BG, CY, CZ, DE, DK, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK	EE
Common agricultural policy (e.g. withdrawal of fruit and vegetables)	LU	AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LV, MT, NL, PL, PT, RO, SE, SI, SK	LT
Immigration		BE, DE, EL, FR, IE, HU	AT, BG, CY, CZ, DK, EE, ES, FI, HR, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK
"Black" labour		BE, CZ, DE, DK, FR, HU, LU, SI	AT, BG, CY, EE, EL, ES, FI, HR, IE, IT, LT, LV, MT, NL, PL, PT, RO, SE, SK

FIELD	SOLE COMPETENCE	SHARED COMPETENCE	NO COMPETENCE
Protection of persons (airport security, etc.)		DE, FR, HU, LU, NL ⁵	AT, BE, BG, CY, CZ, DK, EE, EL, ES, FI, HR, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK
Controls on hauliers (driving time, etc.)		BE, BG, CZ, FI, FR, HR, HU, IE, IT, LU, MT, PL, SE, SI, SK	AT, CY, DE, DK, EE, EL, ES, LT, LV, NL, PT, RO

⁵ In case of joint teams.

I. COMMON POWERS

Reminder: The following statements refer to all Member States.

1. CONTROLS ON GOODS

Customs officials have the power to control or inspect goods, for the purposes of investigating and detecting customs offences, during and after customs clearance throughout the territory.

This control may take place during transport on means of transport by land or sea or aircraft, for commercial or private use, whatever the type of goods. Such controls may take place on the spot or on any appropriate premises designated by officials.

Following inspection, goods may be rendered unavailable if it is established that an offence has been committed, with a view to confiscation, as a financial security or as evidence.

Customs administrations may punish refusal to submit to this kind of control.

Customs officials are entitled, throughout the territory, to enter business premises used for commercial or industrial activity. This right of access concerns business premises or sites used for production, manufacturing, packaging, handling, storage, or marketing activities and sites situated within the confines of an undertaking.

It enables officials to inspect and search premises and goods. They may take samples and render goods unavailable if it is established that an offence has been committed.

During the inspection, the customs officials are entitled to carry out documentary checks. These refer to the general accounts and stock records of the undertaking (manual and computerised) and business and customs documents relating to goods involved in a customs operation. These documents may be rendered unavailable under all circumstances or where an offence has been committed.

2. CONTROLS ON MEANS OF TRANSPORT

In all Member States customs officials have the power to carry out controls on means of transport by land and sea and aircraft.

Officials may render the means of transport and any goods transported unavailable where it is established that an offence has been committed (with a view to confiscation, as a financial security or as evidence).

3. CONTROLS ON PERSONS

Officials of all European customs services have the power to carry out controls on persons for the purposes of investigating and detecting offences. They may carry out identity checks, question persons and search them and their luggage⁶.

4. TYPES OF CUSTOMS OFFENCES

Infringements or breaches of customs legislation detected by customs officials are liable to criminal penalties imposed by a court or similar body, involving fines and/or imprisonment.

⁶ IE (in customs area only).

II. POINTS OF OCCURRENCE

Reminder: The following statements refer only to a certain number of Member States (in year 2016, very frequent occurrence involved 22 to 27 Member States; frequent occurrence 17 to 21 Member States).

1. CONTROLS ON GOODS

a) Very frequent occurrence

The inspection or control of goods may take place under all circumstances⁷. The consent or notification of the judicial authority is never required⁸.

Customs officers may use force⁹ to carry out controls¹⁰ and to render goods unavailable¹¹.

During the inspection, customs officials are entitled to carry out documentary checks. These refer to the general accounts and stock records of the undertaking (manual and computerised) and business and customs documents relating to goods involved in a customs operation. These documents may be rendered unavailable under all circumstances or where an offence has been committed.

During the inspection of business premises, customs officials may have access to databases¹².

Officials may carry out a search of private premises throughout the territory¹³ and subject to certain conditions. Right of access to private premises is subject to the consent, notification or presence of a judge or public prosecutor¹⁴.

⁷ All States except CZ. For IE information (reasonable grounds) is required in respect of goods entering/departing from or to another MS.

⁸ All States except ES. (Notification is required if the control is carried out in the framework of a judicial investigation).

⁹ IE: "reasonable force" Request from IT and other MS to define "reasonable force".

¹⁰ All States except DK.

¹¹ All States except DK/RO.

¹² FR, IT: during the inspection of business premises, customs officers do not have an automatic access to databases (no possibility of search).

¹³ All States except DK.

¹⁴ All States except DK/EE/FI. In Finland, a court decides on a so-called special search of a domicile. A special search of a domicile refers to a search of premises in which it can be assumed that the object of the search would reveal information in respect of which a person, under the Code of Judicial Procedure, has an obligation or right to refuse to testify, and in respect of which, under the Coercive Measures Act, no confiscation or copying of a document may be undertaken.) /RO. IE: A search warrant issued by a judicial authority is required to search premises.

Where the conditions governing the search of public premises are met, officials may overrule the refusal of the owner of the premises¹⁵.

During both these kinds of inspection, officials may, where it is established that an offence has been committed, seize goods and documents. In addition, they have the right to take measures against persons, inter alia to arrest¹⁶ or detain¹⁷ them.

b) Frequent occurrence

In the course of an inspection of business premises, customs officials have a right of access to premises or parts of premises also used as a private residence¹⁸.

Right of access to private premises depends on the gravity of the customs offence¹⁹.

¹⁵ All States except DK/EL/FI(The person in whose domicile the search is conducted or, in his or her absence, a person residing, working or otherwise authorised to be present there, shall be reserved an opportunity to be present during the search and to summon a witness. Such opportunity need not be provided if this would significantly delay the measure.) /RO/SK.

¹⁶ All States except DK/FR/MT/RO.

¹⁷ BE/FR, IT: only in flagrante delicto cases. IE: Only where reasonable grounds to suspect the person are in possession of an internally concealed drug. MT: detained a person and place such person in the custody of the police within 2 hours.

¹⁸ All States except AT/DK/EE/EL/IE/IT/PT/RO. BE, ES, CY and MT (with judicial warrant). In FR only with the express consent of the occupant or his/her representative.

¹⁹ All States except BE/BG/DK/EE/ES/HU/IE/IT/NL/PL/PT/RO/SI/SK. In FR the right of access to private premises depends on the seriousness of the customs offence, the existence of a flagrante delicto or, when not in flagrante delicto, on the authorisation of the judicial authority.

2. CONTROLS ON MEANS OF TRANSPORT

a) Very frequent occurrence

Inspections of means of transport may be carried out throughout the territory on land (public highway), sea and rivers²⁰. When such inspections are conducted in the frontier zone, they are generally not subject to any conditions²¹.

Customs officials may order vehicles to stop²². To order vehicles to stop, customs officials may use force²³. Refusal to undergo the control is then punishable²⁴.

Customs officers may use force²⁵ to inspect means of transport²⁶.

The use of force²⁷ is also possible, where it is established that an offence has been committed, to render the means of transport and any goods unavailable²⁸.

b) Frequent occurrence

Inspections of means of transport are not subject to any conditions²⁹.

²⁰ All States except IT excise only. IE: No. Unconditional inspections may take place at customs ports and airports. Generally, there are powers to board and search conveyances at points of entry and departure but where conveyances have entered from or are departing to another Member State, information (reasonable grounds) is required. At other places within the State, there is no general power to board and search as, information (reasonable grounds) is required.

²¹ All States except BG/BE/EL/CZ. IE: No. Conditions apply. Unconditional inspections may take place at customs ports and airports. Generally, there are powers to board and search conveyances at points of entry and departure but where conveyances have entered from or are departing to another Member State, information (reasonable grounds) is required. In FR Inspections of means of transport are not subject to any conditions, except in the case of boats, for which the control, particularly of private areas, is regulated.

²² All States except PT, IT excise only- IE: No. Conditions apply. Generally, there are powers to stop conveyances at point of entry and departure but as regards conveyances entering from or departing from another Member State, information (reasonable grounds) is required. At other places within the State, there is no general power to stop unless information (reasonable grounds) is available to the officer.

²³ All States except DK/FI/ IE(reasonable force)/IT(excise only)/MT/PT/SI.

²⁴ All States except PT.

²⁵ For IE: « reasonable force ».

²⁶ All States except DK/FR/IT (only in customs areas, for exercise is permitted anywhere)/MT/RO.

²⁷ For IE: « reasonable force ».

²⁸ All States except DK/MT/IE (reasonable force).

²⁹ All States except BE/CZ/EL/IE/IT (only in customs areas)/SE. Conditions apply. Unconditional inspections may take place at customs ports and airports. Generally, there are powers to board and search conveyances at points of entry and departure but where conveyances have entered from or are departing to another Member State, information (reasonable grounds) is required. At other places within the State, there is no general power to board and search as information (reasonable grounds) is required.

3. CONTROLS ON PERSONS

a) Very frequent occurrence

Customs officials have the power to check the identity of persons without the intervention of the judicial authority³⁰ and may detain them³¹.

Refusal to undergo an identity check is punishable³².

Officials are entitled to question persons throughout the territory³³.

Customs officials may search persons throughout the territory³⁴ without the intervention of the judicial authority³⁵. When a person is searched, his consent is not required³⁶.

Information (risk analysis, reason to suspect offences) is also required before searching persons³⁷.

Where it is established that an offence has been committed, customs officials are authorised to arrest/apprehend the person³⁸. This arrest is generally determined by the gravity (or type) of the offence.

Customs officials may detain persons for the purpose of conducting medical examinations³⁹, either in cases where they have advance information⁴⁰ or where it is established that an offence has been committed⁴¹.

In the zones where it is authorised, luggage may be searched in all circumstances⁴².

³⁰ All States except EL/FR/ IE (this power exists only in customs areas) /IT/LU (this power exists only in customs areas) /RO.

³¹ All States except DK (only with intervention of judicial authority)/ IT (this power exists only in customs areas)/LU/PL/RO IE: Detention can take place where it is suspected that the person is in possession of a controlled drug concealed internally.

³² All States except BE/CY/LU.

³³ All States except DK/MT/ IE (only in customs areas at entry/departure to State)/ IT (this power exists only if authorized by public prosecutor).

³⁴ All States except CZ/DK/FR/IE/IT (this power exists only in customs areas and just after customs officer are obliged to inform the Public Prosecutor)/NL/MT.

³⁵ All States except CZ/EE/EL/IT/MT.

³⁶ All States except CY/EL/FR/IE/IT (only in customs areas).

³⁷ All States except DK/EL/FR/NL.

³⁸ All States except BE/IE/DK (only with intervention of judicial authority)/IT (only in customs areas) and SI (only detention for max. 2 hours).

³⁹ All States except DK/ IE(Officers may detain for the purpose of presenting them to the police force for medical examination but it is the police force and not Customs who effects the medical examination./MT/RO/SI.

⁴⁰ All States except DK/RO/SI.

⁴¹ All States except DK/IE/RO/SI.

⁴² All States except BE/CZ/EL.

b) Frequent occurrence

Controls on persons may be carried out throughout the territory⁴³. In the case of controls on persons, customs administrations may exercise their full powers throughout the territory⁴⁴.

The right to question persons may lead to them being detained⁴⁵ and punished if they refuse to undergo checks⁴⁶. They are authorised to do so in all circumstances without an adviser being present⁴⁷.

To arrest a person, advance information or the consent of a judicial authority is necessary⁴⁸.

Customs administrations may not subject persons to non-medical screening tests⁴⁹. Medical examinations⁵⁰ and luggage searches may be carried out throughout the territory⁵¹.

⁴³ All States except DK/EE/IE/IT (only in customs areas)/MT/NL limited to goods being transported by person/SE.

⁴⁴ All States except BE (only in customs areas)/BG/DK/EE/IE/ IT (only in customs areas)/MT/NL/RO/SE.

⁴⁵ All States except BE/DK/EL/FR/LU/RO/SI.

⁴⁶ All States except BE/EL/FR/LU/RO/SE.

⁴⁷ All States except CZ/IT/RO/FI (The person in whose domicile the search is conducted or, in his or her absence, a person residing, working or otherwise authorised to be present there, shall be reserved an opportunity to be present during the search and to summon a witness. Such opportunity need not be provided if this would significantly delay the measure.)/SE/SI. In FR, the questioning of a person is done only in the framework of a free hearing, only when the person is suspected of having committed an offence. In this case, the person is informed of the suspicion, his or her right to leave the premises, to be assisted, and to remain silent. If the offence of which he is suspected is punishable by imprisonment, he may be assisted by a lawyer.

⁴⁸ BE/BG/CY (in addition, any authorized officer may, without a judicial warrant, arrest any person whom he finds committing or attempting to commit any offence provided by the customs or other legislation, where customs has competence, punishable with imprisonment)/CZ/EE/EL/ES/FI(Apprehending a person does not require prior notification, but if a request for remand of the person is made, prior notice shall first be given of this to the prosecutor, who may take it upon himself or herself to decide on the issue of submitting a request for remand)/FR/HR/IE/IT/LT/LU/LV/PL/RO/SE.

⁴⁹ All States except DE/EE/FI/FR/NL/PT/SI.

⁵⁰ AT/BE/BG/CY/DE/EL/FI/FR/HU/IT (only in customs areas, throughout the territory the competence is of police forces) /LT/LU/LV/NL/PL/RO/SK. In FR this possibility is reserved for cases where there are serious indications that a person is carrying narcotics concealed in his body.

⁵¹ All States except DK/EE/ES/IE/IT (only in customs areas, throughout the territory the competence is of police forces)/MT/NL/SE.

4. DOCUMENT CHECKS

a) Very frequent occurrence

Customs officials have the right, throughout the territory, to demand any documents in which their department is interested and have the possibility, where it is established that an offence has been committed, of rendering them unavailable. In the event of refusal to hand over documents, officials may overrule this refusal and take possession of them⁵².

b) Frequent occurrence

The right to demand documents does not include the right of access to premises⁵³ (which might in any case exist).

Where customs officials cannot overrule the refusal to hand over documents, such refusal is subject to special penalties⁵⁴.

5. OTHER POWERS OF INVESTIGATION

a) Very frequent occurrence

For the purposes of detecting customs offences and identifying the persons involved, customs officials may track goods, including by post⁵⁵.

National laws do not authorise controlled delivery within national territory by non-national officials⁵⁶.

⁵² All States except BE/FR/LU/MT.

⁵³ All States except AT/DE/EL/FI/HR/SK.

⁵⁴ All States except DK/EL/FI/IE.

⁵⁵ All States except DK/SI.

⁵⁶ All States except FR/HU/SE (no legislation on controlled deliveries – practice).

b) Frequent occurrence

The exercise of controlled deliveries is not restricted by law to certain categories of customs officials⁵⁷.

Customs administrations may require travellers to declare any money or securities they are carrying⁵⁸ and have powers to combat money laundering⁵⁹.

Under the powers of criminal investigation conferred upon them, customs officials may implement letters rogatory⁶⁰.

⁵⁷ All States except BE (Under national legislation Belgian customs officers are *not* allowed to use this technique. In specific legislation applicable on customs officers the "controlled delivery" got another name «intervention différée" and there is a possibility to use that kind of technique.) CY/CZ/EE/ES/HR/HU/IT (only Police has the powers for controlled delivery) LT/LV/MT/NL/PL/RO/SE (no legislation on controlled deliveries) /SI(only Police has the powers for controlled delivery) /SK. FR (the controlled delivery can only be carried out by customs officers authorized by the Minister).

⁵⁸ AT/BG/CZ/DE/ES/FR/HR/IE/IT/LT/LV/PL/PT/RO/SE/SI/SK. CY and MT (over €10,000).

⁵⁹ CY/DE/EL/ES/FI/FR/HR/HU/IE/IT (in Italy only police forces)/LT/MT/NL/PL/RO/SI/SK.

⁶⁰ All States except BE(only some customs officers granted with the quality of judicial police officer may implement letters rogatory)/BG/CZ/DK/EL/HR/MT/PL/RO/SI. In FR category A and B customs officers, specially designated by order of the ministers of justice and budget, issued after the approval of a commission, may be authorized to carry out judicial investigations at the request of the public prosecutor or on the basis of a letter of request from the investigating judge.

6. CUSTOMS OFFICIALS AND ASSISTANCE TO THE JUDICIAL AUTHORITIES (*very frequent occurrence*)

Customs officials possess powers of criminal investigation⁶¹, which can be used to conduct preliminary investigations⁶².

Officials carry out criminal police tasks⁶³. With such powers they may conduct preliminary investigations⁶⁴, implement letters rogatory and investigate serious offences where the offender is caught in the act⁶⁵.

The customs authorities may not respond to requests for mutual legal assistance on their own initiative⁶⁶. Nevertheless, when such a request relates to customs offences, the judicial authorities place the investigation in their hands as a first choice⁶⁷.

7. TYPE OF CUSTOMS OFFENCES (*very frequent occurrence*)

Infringements or breaches of customs legislation detected by customs officials are punishable by the criminal penalty of confiscation of goods and means of transport⁶⁸.

Infringements or breaches of customs legislation detected by customs officials are punishable by administrative penalties⁶⁹ imposed by an administrative authority and, in this context, fines are imposed⁷⁰.

⁶¹ All States except DK/EL/NL (criminal investigation powers exercised by the FIOD and certain customs officers)/PL/RO/SI.

⁶² All States except DK/EL//PT/RO/SI.

⁶³ All States except BE (customs have only power for customs infringements)/BG (during joint investigations) DK/HR/LU/MT /NL(FIOD and certain customs officers)/RO/SI.

⁶⁴ All States except DK/HR/LU/MT/NL(FIOD and certain customs officers)/PT/RO/SI.

⁶⁵ All States except DK/HR/LU/NL(FIOD and certain customs officers)/RO/SI.

⁶⁶ All States except BE/FI/MT/NL/PL/RO/SE.

⁶⁷ All States except BG/DK/ LU/MT/PL/RO/SI.

⁶⁸ All States except FR: in FR certain contraventional offences, although of penal nature, do not give rise to the confiscation of goods or means of transport.

⁶⁹ CY/FR: Customs penalties are sanctions of Criminal nature.

BE//IT: Customs penalties are sanctions of mixed nature, with both criminal and tax nature.

LV: regarding infringements of customs legislation detected by customs officials and applicable penalties. Please be informed that for some customs offences criminal liability is applicable too, not only administrative penalties are provided for breaches of customs rules.

MT: infringements are punishable by judicial authorities. However, fines may be imposed as an alternative to Court proceedings.

⁷⁰ All States except DK/IE/MT (Fines may be imposed by Customs as an alternative to Court proceedings)/RO.

8. OCCURRENCE OF CUSTOMS OFFENCES (*very frequent occurrence*)

There is an occurrence of customs offences⁷¹.

9. PROSECUTION OF CUSTOMS OFFENCES

a) Very frequent occurrence

The customs administration may call for fines⁷².

The public prosecutor/magistrate may bring a prosecution⁷³ relating to customs offences and/or apply for punishment⁷⁴. Public prosecutors do not have the power to settle the dispute by amicable arrangement, without recourse to the courts⁷⁵.

The public prosecutor/magistrate has the power of discretion to decide whether to bring a prosecution and/or apply for punishment to be imposed⁷⁶.

⁷¹ All States except DK/LU.

⁷² All States except EE/FI/HU/(if the word 'fine' is interpreted, translated as a financial penalty) MT/NL/PT. In FR, the public prosecutor can only take action for the application of customs penalties as an accessory to his public action. However, when the investigation is carried out by customs officers with the status of judicial customs officer or when the European public prosecutor's office has exercised its jurisdiction, they alone can take action for the application of customs penalties. However, the public prosecutor may authorize the customs administration to exercise this action or to compromise. The European public prosecutor may authorize the customs administration to compromise.

⁷³ Belgian customs administration prosecutes itself customs offences and public prosecutor is not involved except when applying for prison sentence. Additionally, the Belgian customs administration may settle the dispute by amicable arrangement. FR see footnote 71.

⁷⁴ All States except MT(public prosecutors do not have the power to settle the dispute by amicable arrangement with or without recourse to the courts)/RO.

⁷⁵ All States except DK/EL/HU/LV/NL/RO/SI (customs offences are treated in administrative procedure by customs, public prosecutor is not involved. Smuggling, tax evasion, forging of documents, etc. are treated as criminal acts and in this case public prosecutor is in charge for prosecution).

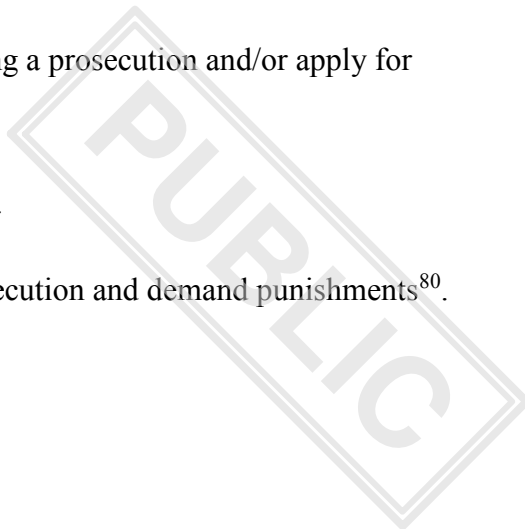
⁷⁶ All States except AT/BE/HU: the public prosecutor office initiates ex officio a criminal proceedings for a criminal offence to be (public) prosecuted/MT/PT.

b) Frequent occurrence

The public prosecutor/magistrate may be required to bring a prosecution and/or apply for punishment to be imposed⁷⁷.

He has the right to impose fines⁷⁸ and prison sentences⁷⁹.

The customs administration is competent to bring a prosecution and demand punishments⁸⁰.



⁷⁷ AT/CY/CZ/DE/EE/ES/IT/LT/LU/MT (prosecutor/ magistrate is required) /PL/PT/RO/SE/SK/SI.

⁷⁸ All States except BE/CY/CZ/EE/LV, where only the customs authority imposes sanctions, and IE, where the courts impose fines or prison sentence/SE.

⁷⁹ All States except CY/CZ/EE/IE/LV/SE/SI (prison sentences are applicable only as punishment in criminal procedure), where only the customs authority imposes penalties.

⁸⁰ All States except EE/FI (Customs may apply for punishment, but the consideration of charges is undertaken by the judicial authorities)/HU (the public prosecutor's office presents a motion to sentence, not the customs/investigating authority) NL/RO/SI.

III. SPECIAL SITUATIONS

Reminder: The following statements refer only to groups of fewer than 17 Member States.

1. CONTROLS ON GOODS

Goods may be rendered unavailable under all circumstances⁸¹.

Officials may enter premises, without a judge's consent, to check goods not released for free circulation which are stored there, except in certain investigation situations⁸².

2. CONTROLS ON MEANS OF TRANSPORT

The conditions laid down in certain countries⁸³ for controls on means of transport within the territory vary: particular areas, reason to suspect offences, magistrate's consent, etc.

3. CONTROLS ON PERSONS

The possession of advance information is required for identity checks⁸⁴, particularly those carried out outside the frontier zone.

Where non-medical screening tests may be carried out, they are systematically determined by the existence of advance information⁸⁵.

Customs administrations have the power to carry out immigration controls in frontier zones⁸⁶, and in this context may detain persons⁸⁷.

The customs administrations of most of the States within the Schengen area have authority to implement the agreements⁸⁸ and twelve of them have the right to consult the SIS⁸⁹.

⁸¹ All States except BE/CZ/DK/EL/ES/FR/IE/IT/LU/MT/.

⁸² BG/CY/CZ/DE/EE/HU/IT/LT/LV/MT/NL/PL/RO/SI/SK/FR.

⁸³ All States except AT/CZ/DK/EE/FI/FR/HR/LU/PT/RO/SK.

⁸⁴ All States except DK/EE/EL/FI/FR/HR/LU/MT/NL/PL/PT/RO/SI/SK.

⁸⁵ DE/ES/FI/FR/IT/LT/PL/PT/RO/SI/SK.

⁸⁶ DE/FI/FR/PL/RO.

⁸⁷ Except DK, FR, IT: only police forces, MT.

⁸⁸ All States except CZ/DK/EE/EL/ES/IE/IT/LT/MT/NL/PL/RO/SI/SK.

⁸⁹ DE/EL/FI/FR/HU/LV/LU/NL/PL/PT/RO/SE.

4. OTHER POWERS OF INVESTIGATION

Passive controlled deliveries may concern all kinds of goods⁹⁰.

For the purposes of detecting customs offences and identifying the persons involved, officials are authorised to carry out active controlled deliveries⁹¹, a power which may be subject to prior authorisation by the judicial authorities⁹².

5. PROSECUTION OF CRIMINAL OFFENCES

Customs administrations may impose prison sentences⁹³ and penalties entailing loss of rights⁹⁴. Although the customs administration may be required to bring a prosecution and/or apply for punishment to be imposed⁹⁵, it also has the power of discretion to decide whether to do so, under all circumstances⁹⁶ or in certain cases⁹⁷.

The public prosecutor is entitled to impose penalties entailing loss of rights⁹⁸

The customs administrations have the power to settle a dispute without recourse to the courts⁹⁹

⁹⁰ AT/CY: Passive controlled deliveries don't concern all kinds of goods, but those specified in National Law CZ/DE/EE/FI/IE/LT/LV/MT/PL/SE (practice)/ SK.

⁹¹ All States except BE/DK/IT/LU/PL/PT/RO/SI/SK/SE (practice).

⁹² AT/BG/CY/CZ/DE/EL/ES/FR/IT/LT/LV/NL/MT/PT/SE (practice).

⁹³ EL/LU/SK.

⁹⁴ BG/CY/DK/EL/LU/SK.

⁹⁵ All States except BG/EE/FI/FR/HR (Applicable for customs offences/infringements only)/IE/LV/LU/NL/RO/SI/SK.

⁹⁶ AT/BG/DE/ES/IE/LV/PL/SK.

⁹⁷ All States except CZ/EE/EL/ES/HR (Applicable for customs offences/infringements only) IE/IT/LV/NL/PL/PT/RO/SI/SK.

⁹⁸ DE/DK/EL/ES/FI/FR/HR/IT/LT/LU/MT/PT/RO/SK.

⁹⁹ CY/CZ/BE/BG/DK/FR/EL/HR (Applicable for customs offences/infringements only) /IE/IT (only in administrative disputes) /LU/NL/MT/PL.

COUNTRIES: current names, codes and protocol order(Source: <http://publications.europa.eu/code/en/en-370100>, September 2016)

The names of the Member States of the European Union must always be written and abbreviated according to the following rules:

- the two-letter ISO code should be used ([ISO 3166 alpha-2](#)), except for Greece for which the abbreviations EL is recommended;
- the protocol order of the Member States is based on the Roman alphabetical order of their geographical names in the original language(s)

Short name, in source language(s) (geographical name) ⁽¹⁾	Short name in English (geographical name)	Official name in English (protocol name)	Country code ⁽²⁾
Belgique/België	Belgium	Kingdom of Belgium	BE
България (*)	Bulgaria	Republic of Bulgaria	BG
Česká republika	Czech Republic	Czech Republic	CZ
Danmark	Denmark	Kingdom of Denmark	DK
Deutschland	Germany	Federal Republic of Germany	DE
Eesti	Estonia	Republic of Estonia	EE
Éire/Ireland	Ireland	Ireland	IE
Ελλάδα (*)	Greece	Hellenic Republic	EL
España	Spain	Kingdom of Spain	ES

Short name, in source language(s) (geographical name) ⁽¹⁾	Short name in English (geographical name)	Official name in English (protocol name)	Country code ⁽²⁾
France	France	French Republic	FR
Hrvatska	Croatia	Republic of Croatia	HR
Italia	Italy	Italian Republic	IT
Κύπρος ^(*)	Cyprus	Republic of Cyprus	CY
Latvija	Latvia	Republic of Latvia	LV
Lietuva	Lithuania	Republic of Lithuania	LT
Luxembourg	Luxembourg	Grand Duchy of Luxembourg	LU
Magyarország	Hungary	Hungary	HU
Malta	Malta	Republic of Malta	MT
Nederland	Netherlands	Kingdom of the Netherlands	NL
Österreich	Austria	Republic of Austria	AT
Polska	Poland	Republic of Poland	PL
Portugal	Portugal	Portuguese Republic	PT
România	Romania	Romania	RO
Slovenija	Slovenia	Republic of Slovenia	SI

Short name, in source language(s) (geographical name) ⁽¹⁾	Short name in English (geographical name)	Official name in English (protocol name)	Country code ⁽²⁾
Slovensko	Slovakia	Slovak Republic	SK
Suomi/Finland	Finland	Republic of Finland	FI
Sverige	Sweden	Kingdom of Sweden	SE

(*) Latin transliteration: България = Bulgaria; Ελλάδα = Elláda; Κύπρος = Kýpros.

⁽¹⁾ The short name in the source language(s) is used to fix the protocol order and is used in multilingual documents (see [Section 7.1.2](#)).

⁽²⁾ The abbreviation to use = ISO code, except for Greece for which EL is recommended (instead of the ISO codes GR).