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**Bitkom on the
Reform of the Unions
Customs Code**

At a glance

A uniform and digital Customs Union

Initial position

The reform of the Union Customs Code (UCC) is intended to make the heart of the EU, the Customs Union, fit for the future. It aims to create one digital customs system and to enable a uniform interpretation and implementation of European customs regulations.

Bitkom rating

Goes in the right direction: We welcome the reform of the Customs Union as it has the potential to deliver a more efficient, secure, and business-friendly Customs Union. However, this will require a common interpretation of the UCC by Member States and the actual implementation of various proposed improved customs mechanisms.

The most important

- **Creating an Attractive Trust & Checked Trader:** Any benefits of this mechanism must be available to businesses from the outset to justify the burden placed on them. Furthermore, access to real-time data should be limited to customs data only.

- **Securing the Customs Data Hub:** We stress that data security needs to be at the heart of any process and that access to stored data needs to be limited and transparent to companies.

- **A Powerful Customs Authority:** The foreseen EU Customs Authority should not only advise national customs authorities on the customs code. It should also work as mediator between businesses and national authorities in case of conflict and monitor the uniform interpretation of the UCC.

- **Consulting with Business:** The implementation of the new UCC will take more than a decade. To reduces delay and allow for a seamless transition we recommend close consultation with businesses through all steps of the implementation.

For a modern and digital Customs Union

A modern and efficient Customs Union is a vital corner stone of the European Union. It protects the European Economy from threats like unfair competition or counterfeit goods and enables the ever-growing trade flows of our globalized economy.

At the same time EU legislation, like the Carbon Border Adjustment Mechanism (CBAM), continues to set very ambitious standards in various policy areas and commonly impacts customs procedures. These trends are exacerbated by the current geopolitical shifts that once again highlighted how fragile supply chains can be. To manage these trends and still enable a competitive European economy, we need to take the Customs Union to the next level.

To ensure the success of the reformed UCC, it should be focused on digitalization and acknowledge the rapid evolution of technology. The proposal should incorporate the most up-to-date technology and possess the necessary flexibility to adapt to the swift pace of technological advancements.

Yet the UCC proposal focuses on the use of technology mainly as a means to control risk (e.g. Article 21), but not as a means to facilitate and simplify trade. This should be changed, and it could, for instance, be achieved by giving customs authorities the option to supervise various processes (like requirements for self-assessments) via AI-solutions and generally make the legislation flexible to adopt new technological solutions.

A secure EU Customs Data Hub

The UCC reform proposal includes the establishment of an EU Customs Data Hub, which will serve as the central interface behind the Customs Union. The Customs Data Hub will gather, process, link, and store all pertinent customs data, transforming the approach to information provision, customs oversight, and collaboration with partner authorities.

Bitkom welcomes the creation of the EU Customs Data Hub and supports the Commission's goal to ensure integrated data collation and sharing between customs authorities; such centralized databases and data management are key to ensuring pan-European risk assessment. Digitalization plays a vital role in streamlining customs procedures and minimizing bureaucratic hurdles, benefiting both companies and customs authorities. This is particularly significant considering the growing workload faced by customs authorities. Providing customs authorities with "*a wide range of advanced data analytics, also including through the use of artificial intelligence*" which "*should be an enabler for risk analysis, economic analysis, and predictive analysis to anticipate possible risks with consignments coming to or moving from the Union*" (Recital 20) will clearly allow them to operate more effectively and target scarce resources on safeguarding the EU market from counterfeits and other illegal goods.

Additionally, the hub offers the opportunity of truly interoperable customs systems of the member states and implementing many of the promised efficiency gains of the

last UCC reform. The EU Customs Data Hub (Title III) should help to prevent the anomalies and lack of transparency caused by the maintenance of unconnected, individual national databases, as well as the duplication both in terms of management and updating such disparate systems. We hope that in rolling out this mandatory system due attention will be paid not only to facilitating its interoperability with EU systems, e.g. IPEP, as outlined in Recital 20, but also relevant non-EU databases such as the WCO's CENCOMM. Union-level risk management activities (Recital 32, Title IV, Chapter 3 and Articles 81 and 97), with common risk analysis, Union control recommendations to customs authorities and instructions that goods destined for the Union may not be loaded or transported are all very positive developments.

Whilst we call for ambitious timelines, they should allow sufficient lead time for businesses who can only start preparing once the legislation and all implementing guidelines are adopted. We call for regular business consultation and pilot testing as key mechanisms to ensure successful implementation. The Customs Data Hub should be fully operational by 2032.

Furthermore, Bitkom recommends three changes regarding the governance of the data hub. Firstly, the access to the data hub should be strictly limited. Article 31 outlines the authorities eligible for accessing the EU Customs Data Hub. However, granting access to the Data Hub increases the likelihood of security breaches. Access to the EU Customs Data Hub, beyond the specifications of Article 31, should be strictly limited. Secondly, it is currently possible for the Commission to extend the functionalities of the Data Hub without considering the opinion of the European Parliament. Given the sensitive nature of the data stored in the hub, any change to the functionalities and change of access rights to the data should only be possible with the consent of the European Parliament. Thirdly, Article 34 specifies very dispersed responsibilities regarding personal data stored on the hub. To allow for an easier and faster administration of data (e.g. in cases where data needs to be altered or deleted) we recommend to streamline responsibilities and include less actors in the decision making process.

Close collaboration with economic operators is crucial for the development and implementation of digital solutions at both EU and national levels. To bring about tangible simplifications for business in the Customs area the Commission should develop the hub in close collaboration with business. Given the importance of the data hub, there should be a separate consultation on the EU Customs Data Platform to meet the needs of traders.

The definition of "economic operators" who "*should be able to submit to or make available in [the Data Hub] all relevant data required to fulfil customs legislation*" (Recital 23) should include right holders' data pertinent to IPR. In the latter regard, we welcome the clarity provided in Article 38 that "*customs authorities and economic operators may exchange any information not specifically required under the customs legislation, in particular for the purpose of mutual cooperation in the identification and counteraction of risk.*" Similarly, references to access to the data by other EU Law Enforcement Authorities (Recitals 24-26, Article 31) should include the latter's ability to submit relevant data.

Furthermore, if traders upload their information in one central portal this should help to identify falsified shipping documentation which is a well-known problem in this illegal trade. As laid out in Article 252(1)(c), Union customs infringements should include "*provision of incomplete, inaccurate, invalid, inauthentic, false or falsified information or documents to customs*: sanctions here need to be set at a level to ensure deterrent effect.

An attractive and fast Trust & Check Trader

The UCC proposal expands on the existing concept of the Authorised Economic Operators (AEO) with the introduction of the "Trust and Check trader". Trust and Check traders will receive certain advantages and simplifications, but they will also be obligated to grant customs authorities complete access to their systems, records, and operations.

Bitkom welcomes the idea to overhaul the concept of the AEO. Many European companies doubt that the benefits of becoming an AEO outweigh the costs of the process. If done right, the overhaul can not only make the AEO and the Trust and Checked Trader more attractive but generally improve the system.

This means that first, the required real time access to any sensitive data (as established by Article 23 (3)) needs to be more limited. The number of cyber-attacks and the inflicted damage are rising, year by year.[1] And while the Commission has done a lot of work regarding the protection from these attacks, there is simply no way to be completely safe. To limit any damage inflicted by security breaches of the EU Customs Data Hub the data available on the system should be more limited. Information exchanged between EU Customs Data Hub and ERP systems should be limited to the content required for customs declarations, access to internal process data and accounting should be excluded. Customs authorities shall get extended insights into accounting data for monitoring and risk evaluations at every time, but not automatically. There must be an additional verification to ensure the access is lawful and businesses should be able to monitor any access to the ERP-systems. Due to the risk for businesses of losing confidential business data, there should be no copying and archiving of accounting data towards EU Customs Data hub or any other hub.

Secondly, the required information for self-assessment should be reduced. Reflecting the data available at the data hub the amount and quality of documents that are to be submitted should be more limited. For instance, the questionnaire for self-assessment should be shortened. Digitization must also lead to a reduction of the administrative burden in terms of monitoring. A parallel record keeping and the transfer and documentation of already known information in questionnaires should not be necessary anymore. Additionally, the documentation of changes to any process should no longer be required as the changes would directly transferred to EU Customs Data

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[1] C.f. for Germany: Bitkom 2022.

Hub and automatically logged. This would both benefit the companies and the customs authorities.

We would then urge the Commission to open a possibility for willing companies to use all the benefits and simplifications of The Trust and Check trader as soon as the EU Customs Data Hub allows for it.

Furthermore, SMEs should receive capacity building (e.g. from the EU Customs Authority and national Customs Authorities) to be able to get the Trust & Check trader status. SMEs may have less resources and means to comply with the requirements and not getting the T&C status would put them at a disadvantage as compared with bigger companies. Considering this, an intermediary solution could be provided whereby certain flexibilities for SMEs are envisaged regarding the conditions to get the T&C status, while they can still enjoy its benefits. Thirdly, the implementation of the Trust & Checked Trader should be speed up. According to the UCC proposal the benefits of the new system should only be in place by December 2037. Yet the main benefits (being the concept of "self-assessment" and the "process-oriented" system) have been promised to businesses since at least 2008. To bring a stronger drive to the reform we recommend implementing the concept of the Trust and Checked trader together with the start of the EU Customs Data Hub by 2032.

The EU Customs Authority

The new EU Customs Authority is the third centerpiece of the reform. The EU Customs Authority will play a pivotal role in achieving the objective of significantly reducing compliance costs for businesses and administrations, while also empowering EU Customs to safeguard the Single Market.

In our view, the customs authority can provide meaningful support in three ways (some of which are already provided for in the draft UCC): First, it can contribute to a level playing field for customs standards by acting as a central authority for guidance and interpretation of EU customs legislation. Second, the Agency can act as a mediator and should resolve conflicts between Member States or between Member States and companies. Thirdly, the Agency should act as a reporting point for businesses in cases where a Member State is not complying with EU customs law. It is paramount to the success of the UCC reform that across Europe the UCC is implemented in the same way. The Customs Authority is a crucial step to assure that this is the case.

Adequate Temporary Storage

Currently, Non-Union goods brought into the Customs territory of the Union must be placed under a customs procedure or re-exported within 90 days. The proposal for the UCC reform however now requires goods in temporary storage to be placed under a customs procedure with in 3 or 6 days respectively (according to Article 86). After these deadlines, goods must be placed in a customs warehouse.

Currently European businesses are used to the fact that they have some lenience when deciding under which customs procedure a good is to be placed. Abolishing this room

for maneuver will lead to an increase in the demand for customs warehouses and administrative costs. And will increase the amount of applications for the correction of customs declarations regarding the chosen customs procedure. To allow for more goods to directly transition into customs procedures we recommend increasing the foreseen timelines to 14 or 21 days respectively.

Being fit for E-commerce

The abolition of the EUR 150 de minimis threshold raised divergent opinions within the digital economy and not least withing Bitkom's members.

On the one hand, some Bitkom's members support abolishing the threshold. They argue that its existence contributes to the importation and placement of pirated and counterfeit goods on the internal market. They stress that counterfeit and pirated goods not only cause economic damage to the holder of the intellectual property rights but can pose a safety risk to consumers and should principally be prosecuted no matter the value of goods. Furthermore, this side points to the fact that the current threshold is an incentive that leads to the undervaluation of goods imported into the Union and that its abolition would be a decisive measure to level the playing field and to reduce competitive distortions between EU business and third-country direct to consumer importers in e-commerce.[2]

On the other hand, some Bitkom members are against abolishing the threshold. In this view, the abolition of the de minimis rule may increase complexity and administrative burdens for small and medium-sized enterprises, which rely on reduced bureaucracy at the border to keep costs down.[3] It is also argued that the resulting reduction in trade could reduce consumer welfare and that it is unclear whether criminals would not simply continue to undervalue goods that are brought into the Union. In addition, this side points to the risk that, notwithstanding the real intend of the measure, the abolition could be interpreted as a protective trade measure by foreign nations and therefore carries the risk of causing retaliatory reactions by third states.

However, there is unanimity that in the case of the abolition of the threshold the right processes need to be in place to protect the customs border and facilitate lawful imports of small consignments. The new system could rely, for instance, on stopping a certain percentage (e.g., two to three percent) of imports based on statistics and profiling. This approach is viewed to effectively deter illegal activities. The UCC draft contains provisions to streamline the importation of smaller shipments, it is paramount that these improvements are actually implemented. This is important, for example, for the proposed use of the importer-one-stop-shop (IOSS) for duties. Two years after its introduction, there are still fundamental problems with the IOSS system (e.g. double taxation, potential misuse of IOSS numbers). The timeline of the UCC allows for these problems to be fixed, but they need to be solved to allow for seamless and safe importation of goods. The same points apply to ICS2 and numerous other

[2] OECD, European Intellectual Property Office (2018). Misuse of Small Parcels for Trade of Counterfeit Goods, Facts and Figures.
[3] Latipov, O., McDaniel, C., & Schropp, S. (2017). The de minimis threshold in international trade: The costs of being too low. The World Economy, 41(1), 337-356.

systems at national and EU level (such as the Single Window) which need to be up and running for the new UCC to work effectively.

The Road Ahead

As it stands today the proposed UCC reform will likely take at least 15 years. Many of the important decisions will be determined through delegated and implementing acts. In addition, the transition towards the Data Hub will require specific secondary legislation. For all these steps it is important to keep the ultimate goal in mind: A Customs Union that exist not only in name but in practice and is fit for the future.

To achieve this, three things are necessary: First, and through all the coming years: The Commission needs to listen to business. Regular dialogues, such as the Trade Contact Group need to be established and consulted. Secondly, the process needs to guarantee predictability. For businesses to be able to adapt any legislation needs to be published well ahead of their implementation date. Thirdly, the improvement of current custom systems and regulation must not stop. It is unclear how the UCC reform will play out. To avoid potential fallout current software, like Germany's ATLAS, and envisioned further simplifications should continue to be developed.

Bitkom represents more than 2,000 companies of the digital economy. Through IT- and communication services only, our members generate a domestic turnover of 190 billion Euros per year, including 50 billion Euros in exports. Members of Bitkom employ more than 2 million people in Germany. Among the members are more than 1,000 small and medium-sized businesses, over 500 startups and nearly all global players. They offer a wide range of software technologies, IT-services, and telecommunications or internet services, produce hardware and consumer electronics, operate in the sectors of digital media or are in other ways affiliated to the digital economy. 80 percent of the companies' headquarters are located in Germany with an additional 8 percent each in the EU and the USA, as well as 4 percent in other regions. Bitkom supports the digital transformation of the German economy and advocates a broad participation in the digital progression of society. The aim is to establish Germany as globally leading location of the digital economy.

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