



Brussels
TAXUD/GT

WISE PERSONS GROUP ON CHALLENGES FACING THE CUSTOMS UNION

TERMS OF REFERENCE

1. BACKGROUND

The EU is the largest trading block in the world, followed by the United States and China, and accounts for over 15% of the world trade. **Imports from third countries into the EU reached over EUR 2 trillion in 2019, rising from about EUR 1 trillion in 2004 and EUR 1.5 trillion in 2008.** In recent years, a greatly increased proportion of these imports derives from e-commerce. In 2019, more than 2 000 EU customs offices, working 24 hours a day and 365 days a year to manage this volume of international trade, handled the import, export or transit of over 868 million articles/items.

In the face of this increasing volume of consignments and of the rise of e-commerce, Member States' customs authorities are struggling with the challenges of successfully managing their many fiscal and non-fiscal responsibilities while facilitating legitimate trade. The departure of the United Kingdom from the EU Customs Union has further increased the workload of EU customs authorities, leading to a significant increase in customs declarations to be processed.

The list of tasks that customs authorities must perform is large and growing. In the first place, they are responsible for collecting customs duties and VAT on imported goods, and excise duties where applicable. The European Court of Auditors has frequently drawn attention to weaknesses in customs fiscal controls, highlighting incidents of undervaluation of goods to avoid customs duties and VAT as well as imbalances between Member States in customs controls leading to a risk of goods being diverted towards the weakest entry and exit points to the EU customs territory to avoid detection. In addition to these important fiscal responsibilities, customs authorities are required to identify safety and security threats before goods arrive in the EU (including imports of weapons, drugs and cash) and to check imported goods for an increasing number of non-financial purposes, such as to ensure that they meet EU product standards and/or meet food, health and environmental rules and/or do not violate EU IPR rules.

To address those challenges, the Commission in its **Action Plan on Taking the Customs Union to the Next Level**¹ of 28 September 2020 sets out an ambitious series of seventeen actions aimed at ensuring a more coherent and stronger Customs Union responding to four areas

¹ COM(2020) 581

of intervention: risk management, e-commerce, compliance of traders, and the Customs Union acting as one.

A key action in the Action Plan is that of launching discussions on **how to ensure that the Customs Union is better prepared for the future (Reflection Group)**. As the Action Plan states, it is vital to explore how to make the Customs Union smarter, more agile, more technologically advanced and more crisis-proof. The Council conclusions on the Action Plan of 21 December 2020 (14292/20) welcomed the plan to launch of such a Reflection Group.

In order to stimulate “thinking outside the box” in the EU debate on the future of the Customs Union, including in the Reflection Group, the Commission proposes to call on external expertise by first establishing a **“Wise Persons Group On Challenges Facing the Customs Union” (WPG)**. The primary role of the Group will be to reflect on the development of innovative ideas and concepts and deliver a report that contributes to a general inter-institutional debate on the future of the Customs Union. The report should identify ideas for **customs reforms that would benefit the EU Member States, the EU as whole and society at large at an horizon of 10 years**. The Group will prepare its report in full independence and the report will not commit the EU institutions, the EU Member States, or the Reflection Group to a particular course of action. The Reflection Group is likely to be set up and to start work in early 2022 following completion of the report of the Wise Persons Group.

2. TASKS

Custom authorities are currently confronted with **several megatrends** that need to be addressed effectively in the coming years. Some of them can present opportunities while others are mostly seen as challenges: a) the exponential growth of e-commerce, b) lack of a uniform approach among Member States to combating fiscal and non-fiscal risks in imported goods and the scope for using the availability of large data to ensure a more uniform application of risk management rules, c) the substantial growth of non-fiscal tasks attributed to customs authorities, and d) the cross-cutting question that arises when addressing these megatrends, namely whether smarter management (“governance”) of the Customs Union, in particular a more coherent division of responsibilities between the EU-level and Member States, would help to address these and other future developments.

A report from the Wise Persons Group on these issues, as described in this section, would help the Commission and the Member States to decide how to organise their collaboration in an effective manner. When identifying solutions, it should be noted that the EU is not alone in its efforts to tackle these issues: many trading nations around the world are confronted with similar challenges.

a) E-commerce

The volume of B2C retail e-commerce is on an exponential growth path. Worldwide, e-commerce sales doubled between 2016 and 2019, reaching USD 3.5 trillion and are expected to reach USD 6.5 trillion by 2023. The share of e-commerce in total global retail sales grew from 7.4% in 2015 to 14.1% in 2019 and is likely to reach 22% in 2023.² For Europe, retail e-commerce revenues were just below USD 300 billion in 2017 and are likely to increase to over

² Statista (2021), <https://www.statista.com/statistics/379046/worldwide-retail-e-commerce-sales/> and <https://www.statista.com/statistics/534123/e-commerce-share-of-retail-sales-worldwide/>

USD 500 billion by 2024.³ Brexit and the COVID 19 pandemic are causing further increases in the volumes of e-commerce entering the EU.

While facilitating e-commerce is a cornerstone of the EU's Digital Single Market strategy, this fast-changing business model, with its often complex supply chains and massive volume of low value parcels, poses a particular challenge for customs authorities who have to tackle financial and non-financial risks. The use and effectiveness of traditional customs approaches for identifying/targeting and controlling incoming goods is challenged by the constant increase in volumes. Conducting physical controls is extremely resource intensive and therefore innovative measures must also be found rapidly. There is a need for agile processes to allow customs to collect import revenues (customs duty, VAT and excise duties), for simple and coherent rules to facilitate compliance by consumers, and for measures to ensure the safety (including products compliance) and security of imports for EU citizens and a level playing field for EU companies.

Several surveys have confirmed consumers' preference for all-inclusive prices upon checkout. This has led to the spread of diverse mechanisms to pre-collect import VAT and customs duties. In this scenario, it is also becoming vital to clarify the roles and responsibilities of the main e-commerce stakeholders such as online marketplaces and platforms and to seek synergies in customs duty and import tax collection procedures and reinforce cooperation between customs and tax authorities. A similar reflection should take place with respect to non-financial risks, notably regarding the role of e-commerce stakeholders and the level of cooperation with other sectoral public authorities. Cooperation with third countries is also important.

Task

The Wise Persons Group is invited to provide its views and ideas for the assessment of safety and security, other non-financial risks and the collection of duties and taxes in EU-external cross border e-commerce. In particular, the group should investigate how to use existing and new data sources and data analytics techniques.

b) Risk management

A well-functioning Risk Management Strategy is pivotal to effective customs controls, given the substantial volumes of goods coming into and leaving the customs territory that cannot be controlled on an individual basis taking into account the obligation of balancing effective controls with trade facilitation. Customs authorities perform risk management on fiscal and non-fiscal risks on the basis of an EU-wide common Risk Management Framework comprising common risk criteria and standards, measures to exchange risk information and the performance of electronic risk analysis.

However, there are several challenges with the current risk management framework. In particular, while all authorities are collecting a very substantial amount of data (big data), this data is not being fully exploited through analytical tools (some such tools are already available and others are under development, including artificial intelligence). The Commission services have initiated work, under the *Joint Analytical Capabilities* exercise, on the identification of EU level risks, but various limitations currently prevent this work from reaching its full potential. There is also evidence that some customs authorities lack reliable data, due at least partially to a lack of communication both between authorities within Member States and between Member States. Authorities are also confronted with data of an inadequate quality and face uncertainties linked to data protection and confidentiality claims. All of these factors can limit the potential for exploitation of data (including the use of artificial intelligence).

³ Statista (2021) <https://www.statista.com/forecasts/715663/e-commerce-revenue-forecast-in-europe>

Another problem is that the current risk management rules provide for a multiplicity of policies and actors and procedures and formalities that are complex even for specialists and this can lead to non-uniform application of the rules by Member States.

Undeclared or mis-declared goods as well as dangerous, non-compliant, unsafe or illicit goods have negative effects on revenues, on legitimate business and on citizens (consumer protection). Regarding the fiscal risks, the European Court of Auditors, in a report of March 2021 on the EU Customs Risk Management Framework, made a number of critical remarks and provided strong recommendations for further improvements.⁴

Alongside these difficulties with the risk management framework, customs authorities often find it difficult to increase human and technical resources. Budgetary cuts, the development of new fraud techniques, the high costs of sophisticated detection materials, the cost of investing in human capital (customs officers, analysts), etc. all contribute to these difficulties. Furthermore, the incentives to control are often balanced with other economic considerations as more and tighter controls may hinder a smooth flow of trade. Another problem is a fragmented governance, with a split of competencies between the different authorities involved and insufficient cooperation between customs authorities and other bodies such as tax authorities and sectoral competent authorities. Finally, cooperation with compliant traders and supply chains is more difficult at a time of growing volumes of trade, greater complexity of the supply chain and increasing variety of risks.

Task

The Wise Persons Group is invited to provide its views and ideas on risk management, in particular on the following elements:

- changes needed to the risk management framework to improve the effectiveness, efficiency and uniformity of controls and to respond better to crises and growing complexity;
- whether a layered (EU + Member States) risk management and analytics approach should be established, taking into account the various instruments for enforcement that customs authorities have or can make available and the different modes of transports;
- use of existing and new data analytics and artificial intelligence for risk management purposes;
- other topics that the Group deems important, e.g. the shift from a transaction-based controls to system-based controls.

c) Effective management of customs' increasing range of non-financial tasks

The third megatrend where reflection and discussion is urgently needed is customs authorities' enormous and growing range of non-fiscal tasks (supervisory and control responsibilities over imported and exported goods).

Nowadays, customs authorities not only collect customs duties and VAT on imported goods, and excise duties where applicable, but have a unique responsibility to protect our citizens and

⁴ European Court of Auditors (2021), Customs Controls: insufficient harmonisation hampers EU financial interests, Special Report 04/2021, Luxembourg.

the environment and to ensure a level playing field for EU businesses. To that end, they also check those imported goods for many non-financial purposes, such as to ensure that they are meeting safety and security standards, EU product compliance requirements, food, health and environmental standards and rules, IPR and cultural property. They also cooperate in the fight against fraud, terrorism and organised crime together with law enforcement authorities, administrations and agencies responsible for border and internal security. With new EU-wide legislation underway to support the greening of Europe and other important non-fiscal policy objectives, it is clear that customs authorities will soon face new tasks, for which they will not necessarily have the required expertise readily available.

The scope and complexity of customs non-fiscal control tasks (the so-called “Prohibitions and Restrictions”, “P&R”) has increased very significantly in recent years, with over 300 relevant pieces of legislation currently in place, and the scope of intervention has also been significantly broadened and made more complex under the various sectoral laws. The evolution of international trade, in terms of its volume, pace and complexity, further increases the number and complexity of the necessary non-fiscal controls, in particular because of e-commerce that requires controls of a growing volume of small individual consignments. Another consideration is that each time new responsibilities are imposed on customs, new IT systems must be developed and managed, requiring additional IT human resources. It is questionable whether customs authorities will receive significant new resources from their Government to address these new tasks in an effective manner.

Yet another aspect is the long list of involved actors issue in the application of these sectoral laws, either at national or EU level (e.g. European Food Safety Authority and national food safety authorities). Given the sector-specific expertise of these actors, it is legitimate to reflect on whether customs authorities should duplicate this expertise and how cooperation between customs authorities and other concerned authorities should be strengthened.

Task

The Wise Persons Group is invited to provide its views and ideas on monitoring and control of Prohibitions and Restrictions in cross border trade, taking into account the difficulties that customs authorities have in physically safeguarding increasing trade flows. This could include new cooperation models between customs and competent authorities, clarifying responsibilities for economic operators including online platforms, better prioritisation of non-fiscal tasks, better integration of non-fiscal risks into customs processes and IT systems including through interoperability with non-customs systems and the use of modern technologies (e.g. blockchain) to protect the supply chain.

d) Future governance structure

When analysing solutions to the above megatrends, and to any other customs challenges that the Group itself identifies, an important additional/crosscutting question arises, namely whether the current management structure for the Customs Union, and in particular the division of responsibilities between the EU and Member States is the most suited for ensuring rapid delivery and pro-active implementation of possible solutions. The EU Customs Union is based on uniform EU-wide legislation, but the legislation is implemented on a decentralised basis by the Member States via their national customs administrations which sometimes apply different approaches in comparable situations. In 2018 the Commission launched an exercise aimed at helping policy makers to ensure that EU customs remains effective for the long-term. During this “foresight” project, many participants suggested that there was a need for clearer/improved

management (“governance”) of the Customs Union. Essentially two main questions need to be answered: (1) what customs tasks should be best done at EU level versus at national level and (2) what would be an effective management (governance) structure for the respective tasks.

Regarding the first question, one could reflect for example on how best to manage present and future costly customs IT systems (including for e-commerce and for prohibitions and restrictions). At present, some of these IT systems are EU-wide systems and others are national systems. A system for the storage and dissemination of the results of planned EU-level data analytics also has to be considered (in the context of risk management). Another issue is the training of customs officials (this applies to all megatrends). More centralised approaches in some of these areas might make sense going forward, but there might also be certain downsides. As regards the second question, different models for closer cooperation/rationalisation of tasks between customs and other national and EU border authorities were debated in the foresight exercise. The solutions could include Commission-led initiatives, closer cooperation between Member States at operational level or outsourcing certain tasks to existing or new centralised bodies.

Other ideas raised in various fora for improving governance have included systems to forecast and anticipate problems/detect emerging trends, establishing rapid reaction mechanisms to respond quickly to new realities, improving the flexibility of customs legislation for times of crisis, and drawing conclusions from present crises.

There is also a pressing need to tackle the issue of international customs governance. As a major actor in the global arena, the EU cannot face existing challenges in an isolated way and, furthermore, should work to shape international customs rules according to its values and standards.

Task

The Wise Persons Group is invited to provide its views and ideas on the future management set-up (governance structure) of EU customs for the areas identified under topics a) to c) and beyond. Possible ideas that point to adjustments such as more EU-wide/uniform/centralised management of customs activities and how this could be achieved should be mapped by the Wise Persons Group.

The Wise Persons Group might also, in the course of its discussions, identify other challenges that the Customs Union could face in the future such as changes in business models and the possibility of future crises, the greening of customs and possible governance-related solutions to these challenges such as rapid reaction structures.

Finally, the Wise Persons Group is invited to consider what if any steps the EU should take at the international level, to ensure that global customs rules are shaped according to the EU’s values.

3. WORKING METHODS AND REPORTING OF THE WISE PERSONS GROUP

- The Wise Persons Group will be set up and meet for the first time in September 2021.
- A meeting of the Group with Member States in the Directors-General of Customs Forum (DGCF) could be organised in early October 2021.

- The Group will keep the Member States (through the DGCF and the CPG) and the Commission (through meetings with Commissioner Gentiloni and/or DG TAXUD) informed about the progress of its work. The Chair and Vice-Chair of the Wise Persons Group could present the Group's work at the High Level Seminar organised by the Presidency on the subject of e-commerce in October 2021. Commissioner Gentiloni may also present a state of play report to ECOFIN in December.
- The Group may conduct hearings with public and private sector experts such as individual Member States, trade experts and other European Institutions.
- The Group will be informed about, and should take into account, the work already being carried out by existing project groups and subgroups, and ongoing studies, in the three megatrend areas described above.⁵
- The Group will finalise a report by March 2022 that will be presented to Commissioner Gentiloni in charge of the Customs Union, to the Council, to the European Parliament, to the Customs Policy Group and to the Reflection Group once established.
- Transparency: the names of the members of the Group, the inputs received by the Group, the associations and experts (acting in personal capacity) that participate in the hearings, the minutes of the meetings of the Group, submissions made to the Group, and the reports of the Group will be made public. One exception will be made for information that is of a sensitive nature or classified. See Annex for more details.

4. MEMBERSHIP

1. The group will be composed of 9 - 12 members.
2. Members will be appointed in a personal capacity, thus acting independently and in the public interest.
3. The Director Generals of Customs have been invited to propose names of independent persons for the Wise Persons Group to the TAXUD Director General.
4. Members who are no longer capable of contributing effectively to the Group's deliberations, who, in the opinion of DG TAXUD, do not comply with the conditions set out in Article 339 of the Treaty on the Functioning of the European Union or who resign, shall no longer be invited to participate in any meetings of the Group and may be replaced for the remainder of their term of office.

5. SELECTION PROCESS

1. The participants in the Wise Persons Group will be selected with a view to ensuring where possible an adequate geographic, gender and professional balance. They will have some or all of the following attributes:
 - a. The **Chair** will be a person with experience at ministerial or high policy level and a good knowledge of the European Union and its processes. The Chair will act as a Primus Inter Pares and take a guiding role in the organisation of the meetings of the Group.
 - b. The **Members** of the Group will have experience in either the public sector or the private sector. The following factors will be taken into account when deciding on membership:

⁵ In the field of e-commerce, for example, the work already being carried out would include that within the Project Group on Import and Export Customs Formalities Related to Low Value Consignments and the Subgroup on Platforms

- Awareness / experience in (a) customs matters; (b) e-commerce; (c) risk management; (d) regulatory bodies related to prohibitions and restrictions;
 - Awareness / experience in trade and trade facilitation;
 - Awareness of the EU including its legal, economic and political framework; and
 - Ideally respectively one member each with experience in and knowledge of (1) the international supply chain (e.g. logistics and express delivery), (2) IT systems and data analytics and (3) internal market legislation and international trade law.
2. Members of the Group are appointed in a personal capacity and thus act independently and in the public interest. They shall disclose any circumstances that could give rise to a conflict of interest. In particular, the Commission shall require them to submit a declaration of absence of conflicts of interests ('DOI') form, together with an up to date curriculum vitae (CV). Submission of such a completed DOI form is necessary in order to be eligible to be appointed as a member in a personal capacity.
 3. The Chair will be appointed by the European Commissioner for Taxation and Customs, Commissioner Paolo Gentiloni. The members, including the Vice Chair, will be appointed by the Director General of TAXUD. The Director General of TAXUD will consult the Director Generals of the national customs authorities as appropriate.
 4. The working language of the Group will be English.
 5. Members shall be appointed for a period of nine months. They shall remain in office until the end of their term of office.

6. SECRETARIAT

1. The administrative support of the Wise Persons Group will be provided by COM. The Secretariat will, in particular, help in the organisation of meetings and hearings and do any drafting tasks required including drawing up minutes, and drafting the report under the supervision of the Group.
2. Minutes of the discussions on each point on each agenda and on the opinions delivered by the Group shall be meaningful and complete. Minutes shall be drafted by the secretariat under the responsibility of the Chair. The minutes may include positions expressed at the meeting but will not disclose the identities of the persons expressing those positions.
3. Further administrative and organisational details relating to the Wise Persons Group are set out in the Annex which forms an integral part of this document.

ANNEX – Administrative and organisational arrangements

a) Invited experts

Experts with specific expertise with respect to a subject matter on the agenda may be invited to take part in the work of the Group in organised hearings or on an *ad hoc* basis.

b) Rules of procedure

On a proposal by DG TAXUD, the Group shall adopt its rules of procedure by simple majority of its members.

c) Professional secrecy and handling of classified information

The members of the Group, as well as invited experts, are subject to the obligation of professional secrecy, which by virtue of the Treaties and the rules implementing them applies to all members of the institutions and their staff, as well as to the Commission's rules on security regarding the protection of Union classified information, laid down in Commission Decisions (EU, Euratom) 2015/443⁶ and 2015/444⁷. Should they fail to respect these obligations, the Commission may take all appropriate measures.

d) Transparency

1. The Group including the names of the members of the Group shall be announced on a dedicated page on the website of DG TAXUD
2. The page on the website of DG TAXUD shall also mention the names of associations participating in the above-mentioned proposed hearings. Names of representatives of associations will not be published while names of independent persons participating in hearings will be published, in order to comply with transparency requirements.
3. All relevant documents, including the agendas, the minutes and any submissions made to the Group, shall be made available on the same page on the website of DG TAXUD. However, the minutes shall not disclose the identity of the persons expressing positions and the documents and submissions shall not disclose the identity of individuals making submissions without their express consent. Access to the page shall not be submitted to user registration or any other restriction. In particular, DG TAXUD shall publish the agenda and other relevant background documents in due time ahead of the meeting, followed by timely publication of minutes. Exceptions to publication shall only be foreseen for information that is of a sensitive nature or classified or where it is deemed that disclosure of a document would undermine the protection of a public or private interest as defined in Article 4 of Regulation (EC) N° 1049/2001.⁸

⁶ Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

⁷ Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

⁸ These exceptions are intended to protect public security, military affairs, international relations, financial, monetary or economic policy, privacy and integrity of the individual, commercial interests, court proceedings and legal advice, inspections/investigations/audits and the institution's decision-making process.

e) Meeting expenses

1. The Chair and Vice-Chair of the Group shall each, for a maximum of 20 days each, receive a special allowance, in line with the allowance set out in Article 21.2 of the Commission's decision on expert groups (C(2016) 3301),⁹ in recognition of the particular services they will offer.

2. Travel and subsistence expenses incurred by participants in the activities of the Group shall be reimbursed by the Commission. Reimbursement shall be made in accordance with the provisions in force within the Commission and within the limits of the available appropriations allocated to the Commission departments under the annual procedure for the allocation of resources.

⁹ [C\(2016\)3301/F1 - EN \(europa.eu\)](#)