

JAN IZDEBSKI<sup>1</sup>

# IT Reform of the European Union Customs System and Customs Administration<sup>2</sup>

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## Abstract

The functioning of the Customs Union requires the Member States to apply uniform customs regulations for the entire economic area governed by common rules for trade in goods with non-EU countries. This poses significant challenges to all customs administrations implementing customs policy within the Customs Union. In this regard, the Member States should act to allow for proper economic development and a high level of protection of the social and economic interests of the integration grouping. These interdependencies make it necessary to coordinate the actions of the administrations regulating foreign trade in individual Member States of the Customs Union. In the European Union, the need to coordinate activities undertaken within the entire customs system has become the foundation of a thorough reform of legal regulations defining the constitutional, substantive, and procedural models of functioning of the Customs Union. The legislative changes being implemented aim to bring about an IT reform translating into the integration of IT solutions for the administration of foreign trade in goods and the establishment of new administrative entities to ensure proper coordination of activities within the customs system of the European Union.

**Keywords:** customs administration, customs legislation, customs law, customs system, IT reform of public administration.

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<sup>1</sup> Professor Jan Izdebski, PhD, DSc – John Paul II Catholic University of Lublin, Department of Local Government Law and Administrative Science, Faculty of Law, Canon Law and Administration, John Paul II Catholic University of Lublin (Poland), e-mail: [izdebski@kul.pl](mailto:izdebski@kul.pl); ORCID: 0000-0002-2911-4445.

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## Introduction

Foreign trade in goods and the customs policy pursued in connection therewith is an important element of the economic and trade policies of each country, as well as of all integration groupings applying uniform legal solutions to regulate this sphere of economic activity. The implementation of public tasks in this sphere of social and economic relations within the framework of the Customs Union requires close cooperation between the administrative structures of the Member States and the use of complex IT solutions. The efficiency of public services in the regulation of foreign trade in goods has a significant impact on the conditions for the pursuit of economic activity, the protection of economic interests, and, consequently, the opportunities for economic development in a complex situation of international competition.

The purpose of this study is to analyse the proposed constitutional (systemic), substantive (material and legal), and procedural solutions that will significantly affect the functioning of the Customs Union, the rights and obligations of entrepreneurs-traders, and the structure and methods of operation of the EU authorities and the Member States' customs administrations. An important element of the anticipated customs reform is the reform of the IT tools used in the administration of foreign trade in goods. The customs reform being implemented within the European Union is an example of systemic changes to the organisation and functioning of customs administrations and of an IT reform that will bring about major changes in the exercise of the competences of customs authorities and the methods of administration applied.

## The customs system of the European Union

In order to define the sphere of activities of public entities in the field of foreign trade in goods, it is necessary to consider the notion of a customs system understood as a set of administrative and legal regulations related to foreign trade in goods. According to S. Waschko, customs systems are: "the objectives and measures adopted as part of a policy, mainly economic policy (...), which are directly connected with foreign trade and fall within the scope of competences of customs administration,

either directly or as mandated tasks".<sup>3</sup> A customs system serves as a framework to pursue the social and economic objectives of a specific state or integration grouping. These objectives are pursued through an adopted customs policy. Customs policy as an element of economic (trade) policy is implemented in the context of a customs system, which will formally reflect the customs legislation of a country or the regulations of an integration grouping.

The concept of customs policy is most accurately defined by W. Czyżowicz as: "the entirety of the activities of a state or an international organisation and its/its bodies related to the settlement of contradictions, protection, and promotion of national interests or member states of an integration grouping in the international trade in goods and services, consisting in the creation of autonomous legal norms and regulations or the adoption of international standards resulting from agreements and their incorporation into their own economic practices".<sup>4</sup>

Consequently, customs policy will mean the activities of the relevant competent public administration bodies pursuing public objectives related to foreign trade in goods within the framework of the existing customs system. A customs system, on the other hand, comprises specific legal and administrative institutions and instruments designed to serve a specific customs policy implemented on the basis of customs legislation<sup>5</sup> – i.e. customs law. At this point it would be reasonable to describe this branch of law in more detail. According to the definition offered by W. Wójtowicz, "customs law may be defined as a set of legal norms regulating the trade in goods with foreign countries, the collection of customs duties and other customs charges on account of such trade, as well as the control of such trade."<sup>6</sup> The group of norms understood in this way is treated as a component of financial law and public economic law, being definitely a part of public law. Moreover, the method of regulation of legal relations also points clearly to the domain of public law (administrative-legal regulation method in the scope of relations between the participants of turnover and state bodies based on the inequality of subjects, and penal-legal regulation method in the case of violation of prohibitions and orders). In a sphere of regulation characterised in this way, it is possible to distinguish two most important levels: the economic level, related to the regulation of trading in goods, and the fiscal level, resulting from the fact that such trading involves the

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<sup>3</sup> S. Waschko, *Systemy celne*, Warszawa 1971, p. 16 *et seq.*

<sup>4</sup> W. Czyżowicz, *Pojęcie i przedmiot Prawa celnego a polityka celna*, [in:] W. Czyżowicz (ed.), *Prawo i postępowanie celne*, Warszawa 2001, p. 16.

<sup>5</sup> R. Molski, *Podstawy prawne interwencjonizmu państwowego w sferze obrotu towarowego z zagranicą*, „Przegląd Ustawodawstwa Gospodarczego” 1995, 12, p. 14.

<sup>6</sup> W. Wójtowicz, *Prawo celne*, [in:] W. Wójtowicz (ed.), *Prawo finansowe*, Warszawa 1996, p. 265.

collection of revenue by the state and integration groupings in the form of customs and other duties.<sup>7</sup> In the legal system, customs law is regarded as a comprehensive branch of law, considered separate due to the specific subject of regulation<sup>8</sup>.

The various institutions of customs law incorporated by a state or developed in the course of international cooperation have well-defined functions and purposes. In addition to the oldest – fiscal – function (related to the provision of revenue to the state budget), there exist the following functions: regulatory, social, and organisational. These functions are served within the framework of a specific customs policy.

The regulatory function means the influence of customs regulations on economic activity, in the form of rationing and indicating the obligations of entities pursuing such an activity, stimulating selected branches of the economy, and establishing the rules of access to the domestic market and the situation of domestic producers on foreign markets. The social function is about taking advantage of the customs system to protect such values as environmental protection, public order and safety, health, cultural heritage, and intellectual property – which is particularly important in modern economic turnover. When serving the organisational function, the customs legislation disciplines foreign trade in goods and indicates sanctions for violating its rules.<sup>9</sup>

These various objectives served by the administration of foreign trade in goods determine the importance of customs regulations in the implementation of the economic policy of the integration grouping in the form of the European Union. Customs regulations within the Customs Union should be applicable in a uniform manner in all member states of the Customs Union. Furthermore, with the development of international trade, it should keep up with the latest advancements in electronic communication and the use of IT solutions to facilitate doing business in a legal, legitimate way. As for constitutional law (the law governing the system of customs bodies and procedural law) – related to customs rulings, it is necessary to ensure proper coordination in the application of EU customs legislation by the customs administrations of the Member States of the European Union.

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<sup>7</sup> A. Kuś, *Podstawy prawa celnego*, [in:] W. Wójtowicz (ed.), *Zarys finansów publicznych i prawa finansowego*, Warszawa 2002, p. 266 *et seq.*

<sup>8</sup> On the definition of customs law and its place in the system of law, see: A. Drwiłło, *Stan i kierunki rozwoju polskiego prawa celnego*, [in:] R. Mastalski (ed.), *Księga Jubileuszowa Profesora Marka Mazurkiewicza, Studia z dziedziny prawa finansowego, prawa konstytucyjnego i ochrony środowiska*, Wrocław 2001, p. 23 *et seq.*

<sup>9</sup> A. Kuś, *Podstawy...*, p. 276.

## The ideas behind the customs reform. The customs legislation of the European Union

The basis for the European Union's functioning in the area of free movement of goods is the Customs Union. Under the Treaty on the Functioning of the European Union,<sup>10</sup> it covers all trade in goods and includes the prohibition of customs duties on imports and exports between Member States and of all charges having equivalent effect, as well as involves the adoption of a common customs tariff in relations with non-EU countries. The consequence of the existence of the Customs Union in terms of legislation is the formation of a branch of the customs legislation of the European Union.<sup>11</sup> Therefore, the customs system of the European Union is regulated through uniform legal solutions applied by the customs authorities of the individual Member States. The role of national law is to supplement the EU regulations in order to correctly apply the customs legislation. Within the framework of customs legislation, EU regulations prevail in the sphere of substantive law defining the rights and obligations of entities trading in goods with foreign countries and the competences of customs authorities. The legislation of the Member States is of significant importance in the area of constitutional and procedural law. In the Polish legal system, this legislation takes the form of the Act of 19 March 2004 – Customs Law<sup>12</sup> in the sphere of substantive and procedural law and of the Act of 16 November 2016 on the National Fiscal Administration<sup>13</sup> defining the constitutional basis of Poland's customs administration – the Tax and Customs Service of Poland.

The European Union's customs legislation is the consequence of a long-lasting integration process aimed at incorporating the principles of free movement of goods, capital, services, and people into the existing legal order and standard of socio-economic life.<sup>14</sup> As a result of transformations occurring in the economic landscape, the regulation of customs law is marked by a constant need to adapt to changing conditions, and one major example in this respect is the inclusion of e-commerce in the relevant legal framework.

<sup>10</sup> Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union Treaty on European Union (consolidated version) Treaty on the Functioning of the European Union (consolidated version) Protocols Annexes to the Treaty on the Functioning of the European Union Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon signed on 13 December 2007, OJ C 202, 7.6.2016, pp. 1–388.

<sup>11</sup> A. Kuś, P. Witkowski, *Procedury celne w prawie celnym Unii Europejskiej*, „Ius Novum” 2019, 1, p. 132.

<sup>12</sup> Uniform text in the Journal of Laws of the Republic of Poland of 2024, item 1373.

<sup>13</sup> Uniform text in the Journal of Laws of the Republic of Poland of 2023, items 615, 556, 588, 641, 658, 760, 996, 1059, 1193, 1195, 1234, 1598, 1723, 1860, of 2024, items 850, 863, 879, 1222.

<sup>14</sup> A. Kuś, P. Witkowski, *Towar w prawie celnym Unii Europejskiej*, „Analizy i Studia, Centrum Analiz i Studiów Podatkowych” 2024, 1(17), p. 9.

The objectives of the proposed customs reform include the following:

- ❑ An efficient Customs Union with simplified and modernised customs procedures, so that legitimate businesses can benefit from trading opportunities with certainty that their competitors also play by the wide range of rules enforced under the customs umbrella, no matter where the goods enter the EU.
- ❑ A geopolitical Customs Union, capable of better defending the financial interest of the EU and its Member States as well as EU's security, safety, health, economic or environmental interests and values, to coordinate trade restrictions and shape international customs cooperation, by pooling competence and expertise at central level in the EU Customs Authority.
- ❑ An agile and future-proof Customs Union, adapting flexibly to changes in supply chains, be it the twin green and digital transitions in the ongoing decade, or future developments in supply chain management. This will be supported by the new EU Customs Data Hub which is designed to evolve with new requirements in customs operations over time, unlike traditional IT systems that are built for specific processes and purposes only.<sup>15</sup>

The achievement of the objectives of the reform involves the largest legislative change to the Customs Union in its history within the European Union. When it comes to customs legislation regulation, it is necessary to enact a new Union Customs Code to replace the current Regulation (EU) No. 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code.<sup>16</sup>

In this regard, a new legal solution regarding the establishment of a new EU Customs Code is under way.<sup>17</sup> It offers a comprehensive legal regulation of the proposed changes to the customs system of the European Union.

In the draft, Article 2 specifies the mission of customs authorities:

With a view to achieving a harmonised application of customs controls, for making the customs union act as one and for contributing to the smooth

<sup>15</sup> Communication From The Commission To The European Parliament, The Council And The European Economic And Social Committee Customs reform: Taking the Customs Union to the next level, Brussels, 17.5.2023 COM(2023) 257 final. Available from: <https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:52023DC025> (accessed: 10.09.2024).

<sup>16</sup> Regulation (EU) No. 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, OJ L 269, 10.10.2013, pp. 1–101.

<sup>17</sup> 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, COM/2023/258 final version, Document 52023PC0258, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0258&qid=1684913361276> (accessed: 10.09.2024).

functioning of the internal market, customs authorities shall be responsible for protecting the financial and economic interests of the Union and its Member States, for ensuring security and safety and contributing to the other Union policies protecting citizens and residents, consumers, the environment and the overall supply chains, for protecting the Union from illegal trade, for facilitating legitimate business activity, and for supervising the Union's international trade in order to contribute to fair and open trade and to the common commercial policy.

Customs authorities shall put in place measures aimed, in particular, at the following:

- ❑ ensuring the proper collection of customs duties and other charges;
- ❑ ensuring that goods presenting a risk for the security of citizens and residents do not enter the customs territory of the Union, by putting in place the appropriate measures for controls of goods and supply chains;
- ❑ contributing to protecting human, animal or plant health and life, environment, consumers and other public interests protected by other legislation applied by the customs authorities, in close cooperation with other authorities by ensuring that goods presenting related risks do not enter or leave the customs territory of the Union;
- ❑ protecting the Union from unfair, non-compliant and illegal trade through a close monitoring of economic operators and supply chains and a minimum core of customs infringements and penalties;
- ❑ supporting legitimate business activity, by maintaining a proper balance between customs controls and facilitation of legitimate trade and simplifying customs processes and procedures.

It should be emphasised that defining the missions of customs authorities – represented through the customs administrations of the Member States of the European Union – is an essential element in making the actions of the customs authorities within the Customs Union consistent and coherent. This is important in the context of the anticipated coordination of customs administrations within the customs system of the European Union.

## EU Customs Authority and EU Customs Data Hub

The customs system of the European Union has been diagnosed to suffer from a number of fundamental problems associated with the application of customs regulations by the customs administrations of the Member States. These problems



include: “a massive increase in trade volumes, coupled with the need to check goods for compliance with a growing number of EU standards at the border, [which] has heaped pressure on customs authorities. Concerns have been raised that the EU’s customs union is burdened by an uneven level of digitalisation and by divergent IT customs environments across the EU. Coordination between authorities is also suboptimal, leaving traders with high administrative compliance costs and criminals with opportunities to commit fraud”.<sup>18</sup>

Addressing the multifaceted risks associated with the implementation of customs policy and the application of EU customs regulations proposed under the drafted customs reform concerns the establishment of new administrative entities – the European Union Customs Authority and the Union Customs Data Hub. However, the most significant change has to do with the latter and involves the creation of a single EU digital system, which would replace the existing electronic systems of individual Member State customs administrations. This solution will have a major impact on the obligations of economic operators by unifying their administrative duties related to foreign trade in goods across all Member States of the European Union.

In its argumentation related to customs reform, the European Union stresses that: “The two key provisions in the proposal involve the establishment of an EU customs authority and an EU customs data hub. The latter would serve as a single EU-wide digital customs environment allowing traders to report all of their customs data to the authorities by means of a single interface, rather than having to deal with multiple national systems. As all data would be centralised in the data hub, this would allow national and EU authorities to run swift checks. The data hub would be fully operational by December 2037. A new EU customs authority would be set up to develop and manage the data hub. It would analyse the incoming data, measure the customs union’s overall performance, develop risk strategies and issue recommendations to national authorities”.

The adoption of new solutions also aims to improve the legal situation of economic operators who act in keeping with the law, in a transparent manner, and duly fulfil their administrative obligations related to trade in goods with non-EU countries. According to the proposed changes: “Subject to strict requirements (clean criminal record, high level of transparency, etc.), traders would also be able to apply to the ‘Trust and Check’ traders scheme. Authorised traders would benefit from ‘green lanes’, which would afford their goods quicker and smoother handling at customs”.<sup>19</sup> Solutions of this type fit into a positive trend seen in customs law solutions,

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<sup>18</sup> Establishing an EU Customs Data Hub and an EU Customs Authority, European Commission, Plenary Meeting – March 2024. Available from: [https://www.europarl.europa.eu/RegData/etudes/ATAG/2024/760345/EPRS\\_ATA\(2024\)760345\\_PL.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2024/760345/EPRS_ATA(2024)760345_PL.pdf) (accessed: 10.09.2024).

<sup>19</sup> *Ibidem*.



which in their way of regulating legal relations should provide for facilitations for entities conducting their economic activity in the sphere of exchange of goods with non-EU countries legally. Such solutions have so far included binding information in the area of customs law and the status of an Authorised Economic Operator (AEO). An entrepreneur who has been granted AEO status is treated by customs authorities as a reliable trader. This involves granting the economic operator important privileges in the fulfilment of their obligations under the applicable customs law.

The tasks of the EU Customs Authority to be established are as follows:

- ❑ the EU Customs Authority will pool customs expertise at central level to carry out EU risk management, exploiting for risk analysis purposes the wealth of constantly updated data in the EU Customs Data Hub. Based on this analysis, the EU Customs Authority will issue control recommendations to national customs authorities, which those will have to apply or justify not applying. Common risk management, translating into a more harmonised application of customs controls, will help create a true common external border for goods. This will be key in tackling 'border shopping', a prevalent practice undermining the integrity of the Single Market whereby traders target the weakest link of the EU's external border to allow illicit products to enter the Single Market. EU and national risk management will inform and reinforce each other. National customs authorities will continue performing national risk analysis and management tailored to the risks profile of a given Member State, based on starkly improved intelligence provided by the EU Customs Data Hub and the collaborative networks it will support.
- ❑ the EU Customs Authority will coordinate operational crisis management. Under the applicable EU legislation, the EU Customs Authority will develop protocols and procedures for different crisis scenarios and ensure their application. The EU Customs Authority will also be the central customs interlocutor for non-customs authorities (e.g. market surveillance, law enforcement authorities, including EUROPOL) tasked with preserving the integrity of the Single Market<sup>37</sup>. While the EU Customs Data Hub will provide the IT and underpinning data, ensuring integration of innovate data sources such as the Digital Product Passport, the EU Customs Authority will ensure operational cooperation and coordination with relevant entities including EU Agencies such as Europol and Frontex. There are strong synergies between these two tasks, as the new EU risk management capability in the EU Customs Authority will also enable much more rapid, effective, and comprehensive targeting of crisis-related risks and a stronger multi-agency cooperation than is currently possible.

- the European Commission may task the EU Customs Authority with developing and maintaining the EU Customs Data Hub and overseeing the migration and integration of existing customs IT systems over time. Moreover, if deemed appropriate, the Commission may delegate the execution of future Customs programs financed via the EU budget.<sup>20</sup>

## Conclusions

The development of international trade and the complexity of the interests involved – including those of economic significance – mean that the role of the administrative services implementing customs policy is growing. The way in which they operate, their efficiency and ability to make good use of the competences they are granted greatly affect the chance to benefit from this aspect of international cooperation, which is the trade in goods.

The changing economic landscape and the increasing international competition pose significant challenges for administrative services regulating foreign trade in goods. This is particularly true for customs administrations working together within the Customs Union to implement the customs policy of the entire integration grouping and to protect the multifaceted social and economic interests of the entire economic area of the integration grouping.

A remedy to these challenges has been adopted at the EU level to integrate the European Union customs system through the implementation of uniform IT solutions. This objective is underpinned by a reform of the constitutional (systemic), substantive (material and legal), and procedural customs regulations designed to create a legal framework for the functioning of a substantially modernised European Union customs system with the possibility of coordinating and applying uniform IT administrative solutions. Their aim will be, on the one hand, to facilitate legal foreign trade activities and, on the other, to protect the social and economic interests of the Member States of the European Union.

The adoption of uniform IT solutions in the domain of operation of entities making up the European Union customs system will allow for the proper implementation of the principles of the EU regulation of trade in goods with non-EU countries. The uniformity of administrative and legal obligations related to the activity of economic operators will have a significant impact on the possibility of supporting

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<sup>20</sup> Communication From The Commission to The European Parliament, The Council And The European Economic And Social Committee Customs reform: Taking the Customs Union to the next level, Brussels, 17.5.2023 COM(2023) 257 final. Available from: <https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:52023DC025> (accessed: 10.09.2024).

business done in a legal manner and, consequently, increasing the competitiveness of the European economy while reducing the bureaucratic burden.

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