

Modernised Customs Code – Annex to Impact Assessment

EVALUATION OF THE QUESTIONNAIRE FOR PARTIES INTERESTED

IN THE MODERNISED CUSTOMS CODE

I. Purpose of this document

This document summarises the results of the consultation exercise on the potential impact of the modernised Customs Code on business and trade, which was carried out during December 2004 and January 2005, based upon a questionnaire published on the Internet in December 2004. The responses from business and trade stakeholders are evaluated in this document.

II. Background

The Communication from the Commission on a simple and paperless environment for customs and trade, dated 24 July 2003, proposed a complete overhaul of the Customs Code, an objective which was endorsed by the Council resolution of 5 December 2003. As a result, a modernised Customs Code has been drafted by the Commission, and progressive versions of this draft have been discussed with Member States' customs administrations and European trade federations for more than a year.

The main reasons for simplifying customs legislation are:

- reducing costs to business by easier access to the rules and a more uniform application of them, creating a level playing field for economic operators throughout the EU;
- increasing legal certainty for citizens (better regulation); and
- allowing traders fully to benefit from the possibilities offered by IT procedures in the Single Market.

During the summer of 2004, an open public consultation was carried out on the Internet. The numerous comments received from various economic operators, Member States, and third countries have been taken into account in the latest drafting of the modernised Customs Code, Revision 4.

In December 2004, a questionnaire was published on the Internet, in order to give all interested parties a final opportunity to submit comments on how the implementation of the modernised Customs Code will impact their business.

A total of **236** replies to the questionnaire have been lodged:

- 14 European trade federations and associations;
- 198 national traders, trade federations, chambers of commerce and other stakeholders;
- 23 national administrations of Member States and 1 candidate country. (These comments are not included in the following assessment. The likely impact on customs administrations is to be separately evaluated.)

All Portuguese customs agents who answered the questionnaire sent in identical replies. The same replies were also used by Spanish customs agents. There were 123 entries of this kind in total. For statistical reasons, they will be identified in the following presentation of the results.

III. Evaluation of the questionnaires

1	What are the current priorities of your business for changing the Customs Code?
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Summary of the main issues brought up by the stakeholders

The top three priorities of stakeholders are simplification and rationalisation of rules and procedures, harmonisation of data across the EU, and the one-stop shop. They all agree that the ultimate goal of modernising customs in the EU must be savings in time and, thereby, in costs.

Numerous stakeholders pointed out that it was difficult to differentiate between priorities because all issues are interlinked and are largely of equal value with regard to the vision of a paperless environment for customs and trade.

Simplification and liberalisation

Some stakeholders expressed their opinion that new solutions must support the supply chain and be based on modern IT solutions instead of paper-based procedures. They should also be simple, in order to save costs for business in terms of operation and education. The stakeholders strongly support common standards in the application of regulations and controls in the Member States.

Other issues which have been raised included further liberalisation and simplification:

- rules of origin;
- control of agricultural products (no obligatory certificates for non-sensitive products);
- reference to existing controls (including ISO-certified internal controls) in order to prevent multiple controls.

Harmonisation of data across EU

Many stakeholders pointed out that even slightly different approaches by the Member States would raise the time and effort required for customs transactions. Therefore, many stakeholders favour not just a single set of rules but also a single common IT system, rather than harmonised data sets based on today's solutions. In the same context, some stakeholders suggested opting for best practices rather than merging today's systems. Some stakeholders would like to see closer cooperation with the WCO with regard to standard data elements and global standards for authorised traders.

Single window, One-stop shop and single access point

Numerous stakeholders mentioned that they would like to lodge their declaration to a single customs office and to have to communicate with this office only. Some of them suggested that every Member State ought to have its own single access point.

Other essential issues

Most stakeholders would like a single authorisation for AEO, recognised by all Member States. Some of them see single comprehensive European authorisations as a priority.

Statistical overview

A	Simplification and rationalisation of rules and procedures (please specify if there are any particular rules that you have in mind)	1.) 29* + 12** 2.) 16* + 123*** 3.) 2*
B	Harmonisation of data across the EU	1.) 20* + 10** + 123*** 2.) 17* + 1** 3.) 11*
C	Harmonisation of customs-trader interfaces across the EU	1.) 12* + 3** 2.) 6* + 6** 3.) 10* + 6**
D	Common Customs Information Portal (information needed for customs transactions in all Member States)	1.) 5* + 3** 2.) 2* + 1** 3.) 10* + 6**
E	Single Access Point for customs transactions (e.g. customs declarations)	1.) 15* + 6** 2.) 7* + 3** 3.) 5*
F	"single window" interface with each EU customs administration for all services linked to import/export transactions, even if they are provided by other authorities and agencies than customs	1.) 12* + 6** 2.) 6* + 7** 3.) 7*
G	"one stop shop", for goods to be controlled by different competent authorities at the same time and at the same place	1.) 14* + 5** 2.) 15* + 4** 3.) 7* + 1**

* National customs agents, traders, trade federations, chambers of commerce and other stakeholders.

** European trade federations and associations.

*** Identical replies by Portuguese and Spanish customs agents.

2	Would you consider it to be sufficient if the current customs procedures should be handled under national automated systems without any changes being made to the Customs Code?
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Summary of the main issues brought up by the stakeholders

The majority of other stakeholders expressed the opinion that it is necessary to modernise the Customs Code for the following reasons:

The two main objectives of modernising the Customs Code – higher security standards and trade facilitation – can only be reached if customs systems are automated and made more consistent. Harmonised procedures and IT systems, possibly worldwide, are key priorities for most international companies. Today’s systems and procedures lead to high costs for business, market distortions and inefficiencies. EU business will therefore be at a competitive disadvantage unless there are changes to the Customs Code.

The concept of authorised economic operators and simplifications of customs legislation can only be realised by changing the Customs Code. The same is true for taking into account security concerns. Some stakeholders expressed their wish to maintain simplifications already achieved.

Portuguese, Spanish and a minority of other stakeholders believe that the current Customs Code would be sufficient for the following reasons:

Portuguese and Spanish stakeholders think that, in the short and medium term, the systems established in Member States are “safer” than an EU system. They believe that it is impossible to establish systems as provided for in the multi-annual strategic plan within the next 15 years.

Other stakeholders also consider today’s customs systems to be sufficient. They are opposed to stipulating the use of automated solutions and would prefer leaving the choice between paper and automated solutions to the traders. Some stakeholders would like to introduce the customs systems before defining the legal basis for them.

Some traders believe that changes to the CC will have only limited effect throughout the EU, because the CC will be interpreted in different ways by the MS.

Statistical overview

A	Yes	16* + 1** + 123***
B	No	51* + 13**
C	I don't know.	1*

* National customs agents, traders, trade federations, chambers of commerce and other stakeholders.

** European trade federations and associations.

*** Identical replies by Portuguese and Spanish customs agents.

3	Would you consider it to be sufficient if for each customs procedure, a national automated system existed which would not be interoperable with other Member States' systems? Please give reasons for your answers.
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Summary of the main issues brought up by the stakeholders

The majority of traders expressed the opinion that it is necessary to provide for automated systems which are interoperable with other Member States' systems for the following reasons:

Interoperable customs systems are fundamental for the concepts of single window, one-stop shop and single access point. These are the clearly defined objectives of eCustoms and the Lisbon agenda. Furthermore, interoperable customs systems are essential if security-related measures are not to damage legitimate trade.

Maintaining national systems which are not interoperable would continue to create unnecessary costs, due to the fact that international traders have to implement the various systems and deal with this complexity. Some stakeholders believe that interoperability will encourage administrations to become more customer-oriented and competitive.

Portuguese and Spanish stakeholders gave the same answer to this question as to question No 2. Two traders are satisfied with their national system because they are not international operators and believe that most shipments are subject to control by only one Member State.

Statistical overview

A	Yes	5* + 123***
B	No	60* + 14**
C	I don't know.	2*

* National customs agents, traders, trade federations, chambers of commerce and other stakeholders.
 *** Identical replies by Portuguese and Spanish customs agents.
 ** European trade federations and associations.

4 Which of the following changes of the modernised Customs Code do you anticipate will save costs to your business or will simplify the way that you conduct your business after the change-over period? Please tick each box below that applies. If you expect increased costs after the change-over period, please specify what you anticipate these costs to be.

Summary of the main issues brought up by the stakeholders

Implementing new customs systems

Most stakeholders believe that business costs will be higher if the Customs Code is not modernised and interoperability between customs systems of the Member States is not ensured.

Some stakeholders from countries with automated customs systems which allow for electronic communications between customs and traders believe that the costs of implementing new customs systems and education will be higher than potential savings. Other stakeholders are afraid that their traffic may be delayed if the accompanying paper documents must be converted into electronic format.

National restrictions on customs representation

This issue is controversial among stakeholders throughout the EU. Portuguese, Spanish and a small minority of other stakeholders are opposed to the abandonment of national restrictions on customs representation. Most of the latter suggest a clear definition of the status of customs service providers, based on customs compliance record and a proven standard of competence, experience and educational qualifications, at EU level, in order to ensure a high standard of qualifications.

Most of the other stakeholders expressed the opinion that these restrictions must be abandoned. This will reduce costs of compliance and increase the level of standardisation. These stakeholders also point out that common professional qualifications, which guarantee high standards with regard to customs declarations, should apply to all those that could benefit from centralised customs clearance, single European authorisations and simplified procedures.

Authorised economic operators (AEOs)

Most stakeholders welcome common rules on AEOs in the draft modernised Customs Code (which mainly incorporates amendments to the present Customs Code which have recently been accepted by the Council and the European Parliament).

Some stakeholders pointed out that the concept of AEOs must not lower existing levels of facilitation for economic operators. Some stakeholders suggest freeing AEOs from the requirement to make transaction-based declarations and advocate periodic customs audits instead, in order to save costs, rather than reduced exposure to physical inspections.

Numerous stakeholders were not prepared to make a statement before the relevant implementing provisions are known.

Pre-arrival/departure declarations

This issue, although resulting from a recent amendment of the Customs Code, is still controversial among stakeholders throughout the EU. However, numerous stakeholders believe that pre-arrival/departure declarations in the context of security-related measures may reduce costs on their business if the goods are released at arrival, giving predictability for customers.

Some of the stakeholders relate cost saving to the following conditions being in place:

- sufficient deadlines;
- use of international data sets;(controversial: same procedures and data requirements as US);
- no more data required than today;
- re-use of data for export or import declarations; not exclusive use for security purposes; export/import declaration may be used as pre-declaration
- prior introduction of a common customs IT system, to ensure no paper-based pre-declarations;
- setting out of advantages for AEOs;
- no mandatory pre-declarations;
- exemptions for minimum value or quantity, in order to prevent logistics problems for SMEs.

Numerous stakeholders expect increased costs caused by the obligation to lodge pre-arrival/departure declarations for the following reasons:

- delayed release of goods;
- extra work load; invoicing often takes place after the goods have left the consignor's premises;
- transaction-based concept;
- necessity to remodel well established IT systems for simplified procedures.

Administrative penalties

Many stakeholders welcomed the Commission's attempt to harmonise administrative penalties throughout the EU. They point out that divergences in the level of infringements and administrative penalties imposed in different MS have caused distortions. Some of them would prefer to see more precise and clearer rules in the Customs Code.

Customs fees

Numerous stakeholders welcomed the harmonisation of customs fees. However, many consider that they should be totally abolished.

Disassociation of customs declarations from the location of the goods

Most stakeholders are in favour of this change. Some stakeholders are concerned that they may not know the identity of the means of transport or who to contact in some cases as the accompanying documents will be sent with the goods, which are rarely physically checked by the declarant.

More flexible changes of the customs rules; guidelines, explanatory notes

Numerous stakeholders are in favour of these issues. Some traders stress the importance of trade consultation.

Other essential issues

- Deadlines for keeping accompanying documents.
- No traders register; registration of AEOs should suffice.
- Simplification of Swiss corridor T2.

Statistical overview

A	General use of IT procedures and interoperability (Art. 5, 6, 162)	53* + 11**
B	Harmonisation of data across the Community (Art. 5)	54* + 11** + 123***
C	Abolition of monopolies for customs representation; providing for common quality standards (Art. 9)	32* + 9**
D	Community-wide simplifications for Authorised Economic Operators (Art. 10, 104)	42* + 10**
E	Stricter deadlines for decisions and appeals, extension of the right to be heard before a negative decision is taken (Art. 11, 17, 59)	34* + 10**
F	Extension of binding information to other areas, such as valuation (Art. 14)	31* + 9** + 123***
G	Common rules on administrative penalties (Art. 19)	30* + 5** + 123***
H	Harmonisation and limitation of customs fees (Art. 22)	29* + 9** + 123***
I	Community-wide guarantees and rules for comprehensive guarantees (Art. 35 – 43)	34* + 10** + 123***
J	Improved rules on the incurrence and extinction of the customs debt in case of non-compliance (Art. 46, 72)	26* + 6** + 123***
K	Simplification of the rules for the determination of the customs debt (Art. 52, 53)	20* + 5** + 123***
L	Centralisation of the place of the incurrence of the customs debt (Art. 54, 104, 114)	17* + 4**
M	Better aligned rules on repayment/remission (Art. 67-71)	24* + 6** + 123***

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N	Pre-arrival declarations bringing forward risk-analysis and opening the way for pre-selection for controls, so that Customs resources can be better planned and deployed, with the consequence not only of better security, the primary objective, but also of instant release of innocent goods upon their arrival at offices of entry (Art. 73-75)	26* + 6** + 123***
O	Disassociation of the customs declaration from the presentation /location of the goods, allowing, where authorised, immediate release without using transit (Art 92, 102)	31* + 12**
P	Simplification of rules for amendment/invalidation of declarations (Art 94, 95)	29* + 7** + 123***
Q	Simplification and alignment of special procedures (Art. 113 - 153)	32* + 9** + 123***
R	Extension of usual forms of handling (Art. 119)	17* + 2** + 123***
S	Extension of the principle of equivalence (Art. 120)	23* + 5** + 123***
T	More flexible changes of the customs rules; more widespread use of guidelines and explanatory notes; imposition of an obligation to resolve problems resulting from a divergent application of the customs rules (Art. 162)	31* + 5** + 123***
U	Pre-departure declarations based on existing export declarations or notifications (Art. 154)	26* + 8** + 123***
V	Summary prior declarations for goods leaving the Community for which neither an export declaration or re-export declaration is required, e.g. direct transshipments in free zone	17* + 6** + 123***
W	Other	11* + 2**

5 Do you anticipate that the proposed changes in the modernised Customs Code, taken as whole, will save costs to your business or will simplify the way that you conduct your business after the transitional period?

Summary of the main issues brought up by the stakeholders

Apart from Portuguese and the Spanish stakeholders, most believe that, taken as a whole, the modernised Customs Code will, in the long run, save costs to their business by abandoning paper-based procedures and providing for Community-wide approval for AEOs, for centralised clearance, for a single customs portal and for the one-stop shop. Some of the stakeholders, however, fear a movement back to transaction-based solutions because of mandatory pre-arrival/departure declarations.

Some stakeholders are also afraid that the implementing costs of new IT systems will be higher than the potential savings, particularly in Member States which already have automated customs systems and simplifications for authorised traders. Others believe that the additional safety provisions will lead to higher costs.

Numerous stakeholders found it difficult to judge the impact of the modernised Customs Code on their business before the implementing provisions are known.

Statistical overview

A	Yes	44* + 11**
B	No (please specify)	24* + 3** + 123***

6 Which of the proposed changes are, in your view, not radical enough and which additional changes to the current Customs Code should be made? Please tick the relevant boxes and give reasons for your answers.

Statistical overview with summary of the main issues brought up by the stakeholders

A	General use of IT by traders and administrations (Art. 5)	17* + 7**	<ul style="list-style-type: none"> • Deadline for all MS: 2007. • Data sets must comply with international standards. • CC must be more detailed with regard to single IT customs system. • Instead of computerising today's paper-based procedures: use simplified procedures, stairway concept instead of transaction-based procedures. • Customs systems must be implemented simultaneously in all countries in EU. • Paper documents should not be part of these requirements.
B	Merging customs regimes	10* + 2**	<ul style="list-style-type: none"> • Cost-effective solutions (best practice) based on supply chain concepts instead of merger; goal: unitary relief. • Harmonisation of national legislation, other than

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			<p>customs legislation, in context with imports/exports (import VAT, Stat, excise, etc.).</p> <ul style="list-style-type: none"> • Art. 156/157: different procedures for European and other goods. Almost impossible to separate goods and use different procedures. Merger of procedures.
C	Merging simplified declaration systems	11*	<ul style="list-style-type: none"> • Deadlines for implementation.
D	Community-wide simplifications for Authorised Economic Operators (Art. 10, 104)	33* + 11**	<ul style="list-style-type: none"> • Authorisations making the status of AEOs valid in all MS, without additional national criteria. • Controversial: simplifications ought to be accorded Community-wide or not. • Periodical instead of transactional declarations; local clearance with reduced data set. • More precise information about simplifications must be set out in the CC.
E	Common rules on decisions and administrative appeals (Art. 11, 17)	15* + 2**	<ul style="list-style-type: none"> • Simple and rapid border crossing based on commercial documents • Establish a decision board for all EU binding decisions • Art. 11(2): 2-month deadline for customs. • No extension period.
F	Common rules on administrative penalties (Art. 19)	14* + 4**	<ul style="list-style-type: none"> • Administrative penalties will not be necessary in an environment with modern customs systems. • Simple system is necessary to avoid distortion of competition. • More precise common rules.
G	Guarantee requirements (Art. 35-43)	12* + 5**	<ul style="list-style-type: none"> • Single EU-wide comprehensive customs guarantee covering all customs procedures. • AEOs should not be required to provide a guarantee.
H	Incurrence and extinction of the customs debt (Art. 46, 72)	6* + 2**	<ul style="list-style-type: none"> • Principle of economic duties must be enforced. • Criteria must be clarified.
I	Repayment/remission (Art. 67-71)	8*	<ul style="list-style-type: none"> • Repayment/remission if goods have been destroyed. • Automatic notifications of exchange rates on a daily basis instead of OJ consultation. • Art. 67(3): 30 days instead of 3 months. • Art. 68: Interests if duty has been overcharged.
J	General provisions on	10* + 4**	<ul style="list-style-type: none"> • More simplifications with regard to authorisations,

	special procedures (Art. 114-121)		<p>follow-ups and audits.</p> <ul style="list-style-type: none"> • Application for cross-border customs activities filed at place where main activities take place. • Change between special procedures without declaration (e.g. storage, processing).
K	Storage (Art. 126-130)	15* + 3**	<ul style="list-style-type: none"> • Transit could be abandoned if the entire EU customs territory was deemed to be a warehouse.
L	Processing (Art. 145-153)	13* + 4**	<ul style="list-style-type: none"> • Simplify the system of equivalence. • Maintain alternative systems of equivalence <i>and</i> exchange.
M	Others	20* + 7**	Cf. below.

Other essential issues brought up by the stakeholders

Risk management and physical inspections

- EU-wide risk management with identical risk criteria.
- Risk analysis and release at first point of arrival in the EU; physical inspection, other than related to security measures, at final destination.
- Allow non-fiscal customs checks on transshipment cargo at final port of destination in EU.

Other issues

- Common customs audit methods.
- Declaration of the intended procedure not necessary in a summary declaration; supplementary declaration should be sufficient.
- Postponed accounting: Periodic accounting should include customs duties, excises and other charges.
- Reduce customs documentation burden on cargo carried between Member States by sea.