

Brussels 24 November 2022

Joint minutes and Conclusions

1. Opening and welcome remarks

Both sides welcomed the close cooperation on customs affairs between the Republic of Moldova and the EU. Both Chairs greeted participants from the European Commission (DG TAXUD, DG NEAR, DG TRADE, OLAF, EU delegation in Chisinau), Customs Service in Moldova, MoF Moldova, Ministry of Foreign Affairs and European Integration, Ministry of Economy and Infrastructure, EUBAM.

2. Developments in customs legislation and procedures

Moldova explained that the new Customs Code has been adopted by the Parliament in August 2021. However, it will not enter into force as promised on 1 January 2023. The EU expressed concerns about this delay and requested an explanation about the reasons.

Moldova explained that the war in Ukraine had a big impact on their country; the big number of refugees, increase of the energy prices has moved the focus to other areas. The government also intends to submit the draft code for a public consultation and organise trainings for the customs officers. Moldova intends to address all the recommendations on the draft law provided by the EU during the TAIEX mission in 2021. Moldova explained that they would need a transitional period of six months and promised to be ready for the entry into force on 1 July 2023. Moldova also explained that further work would be carried on the Entry Summery Declaration with an IT system.

The EU also raised the question on the FEZ discussed during the Committee in 2021 when it was clear that the current rules applicable in Moldova are not compatible with the Association Agreement. It was reminded that the Law on FEZ provides selective advantages to certain undertakings or for the production of certain goods in the FEZ that can distort competition and trade. Consequently, these advantages might constitute state aid.

In line with Article 341, paragraph 3, of the Association Agreement (“AA”) between the EU and Moldova state aid schemes in place in the FEZ should be brought in line with the EU acquis at the latest ten years from the date of entry into force of the AA, i.e. by September 2024.

Both Parties agreed on the same reading of Article 341, Moldova explained that they are in a process of amendment of the national legislation and respect the provision in the Agreement.

EU also explained that all special procedures in the EU under the UCC are subject to authorisation, whereas the processing procedure carried out in the MD FEZ are not. The EU is opposed to the approach stemming from the Article 1 of the ‘old’ Moldovan CC and from the law 440/2001 on FEZ, according to which the (sufficiently) processed products in the FEZ acquire the MD status, thus allowing potential cases of avoidance of payment of import duties, when the products are released for free circulation in MD. The above system, currently in place, bears risks: if there were some ADD on the raw material introduced in the FEZ for being further processed, the calculation method of duties applied (because of the change of status above

mentioned) would allow their circumvention. Finally, the current MD rules go against the UCC provisions related to the status of the goods and the ones of the Free Zone customs procedure.

Moldova explained that there is a draft law for the amendment of the current law.

The EU agreed on the extension of the entry into force of the draft Customs code to 1 July, provided that the Law on FEZ is amended in line with the Association Agreement and UCC.

The also reiterated the readiness to assist Moldova on the new amendments and invited the Customs service to contact DG TAXUD in case of a follow up questions.

The EU made a presentation on the state of play of the ongoing evaluation of the UCC.

The EU presented information (PPT Presentation) on latest developments, with the focus on the Union Customs Code (UCC) evaluation process. The aim of the process is to take stock of the state of play of the implementation of the customs legislation and delivery of the electronic systems set out in the UCC in the period from 1/5/2016 until 31/12/2020. Two-step process includes, first, the external study and public consultation, followed by the European Commission evaluation. The results are published on 31/5/2022. The revision of the UCC is foreseen for the year 2023. The EU also presented a brief information on other legislative developments, e.g. Single Window, drug precursors, origin of goods, Binding Valuation Information.

Integrity of Customs administration (point added by the NL during the CUG on 16.11.23)

Beside the implementation of its ethical code and Customs anti-corruption plan (2022-2023), the institution is currently going through reorganisation process with EU High Level Advisers' Mission assistance, focusing on internal management, duties and responsibilities of its headquarters and regional offices. The goals are to: implement a simple, clear and efficient organisational structure; ensure integrity and transparency by reviewing internal customs processes and better communication, and strengthen institutional capacities by implementing modern approaches in resource management. Expected deliverables from this exercise include new organisational structure of Customs Service, human resources and communication strategies. The latter was adopted and presented to the general public on 11 October 2022.

Operational conclusion:

- **Moldova to inform regularly about the state of play of the implementation of the New Customs Code.**
- **Entry into force of the new Customs code on 1 July 2023.**
- **Moldova to amend its legislation on FEZ and make it in line with EU legislation and respect the Deadline in Article 341 (3) of the Association Agreement, which requires that all state aid schemes in the FEZ be aligned with EU acquis by September 2024.**

3. Authorised Economic Operator (AEO)

EU and Moldova have been working for more than two years on the Mutual Recognition of AEOs. The start of the procedure was formally initiated with the agreement on the Roadmap in 2020 followed by the screening of legislation and recommendations of the Commission for its

full harmonisation to the UCC. The IT system was developed in 2021 and tested in January 2022. The three validation missions of TAXUD accompanied by AEO experts from Romania and Germany took place in November 2021, March 2022 and May 2022. The Council adopted the Decision on 26 July 2022. The formal written procedure of the signature of the Decision in the Customs sub-committee was launched on 29 July.

Following the completion by MD side of internal procedures related to the adoption and signing of the Decision, the AEO MRA between the EU and Moldova the Decision entered into force on 1 November 2022.

Moldova explained that currently there are 119 valid AEO authorisations; the export to EU has increased to 60%.

The EU and Moldova agreed during the committee to work together on the development of FAQ in order to raise operators' awareness and better use the Mutual Recognition.

Moldova explained that for them it is important to harmonise the application and provide benefits not only from customs but also SPS and Border police.

EU confirmed that the IT system is working well, the exchange of information is automatic.

A monitoring mission will be organised to inspect the program most likely in the end of 2023.

Operational Conclusion:

- **A meeting will be organised between TAXUD and Moldovan Customs service in Q1 2023 to develop a FAQ**

4. Convention on a common transit procedure

Moldova informed the committee that the EU delegation is expecting to sign a contract with an external provider for the development of NCTS P5, namely UNCTAD the company has developed the same system for Georgia. The contract is supposed to be signed in the end of 2022. The whole process was delayed due to the long procedure of allocation of financial resources. DG NEAR explained that the amount allocated is already available for Moldova.

A formal letter was received in TAXUD in August 2022 requesting a connection to the network in 2023; the work on CCN/CSI has started in DG TAXUD.

Moldova has sent an action plan on the legal approximation a day before the committee, TAXUD is currently analysing it.

Moldova explained that a physical mission with UNCTAD will take place in December to discuss the specifications of the system.

TAXUD experts explained that, Moldova has to establish a steering committee, National NCTS Project Manager, Project Team. The work on all the different modules related to the accession to the Common Transit Convention, namely legal, business, IT, finance and communication has to go in parallel. The time needed to wait for the financing of the IT system can be used to advance to any of the other domains listed above. In addition, it is advised to create a national NCTS roadmap together with the businesses and financial sector.

TAXUD reminded that the end of the transitional period for the Convention members is end 2023. Moldova has full access to all documents and material related to NCTS P5 in CIRCABC, this means that the country has all means to work on the project.

It was agreed to have a dedicated meeting on the new template of the Action plan on 5 December to explain to Moldova the way it has to be filled in taking into account the target accession date in the end 2024.

Moldova agreed with the complexity of the IT system and promised to prepare an updated roadmap once the contract with the external provider is signed. The Roadmap will include legal part, procedural part and IT part and will be submitted on 12 January 2023.

EU delegation explained that the financial decision needs to be amended in order to cover also the update to NCTS P6.

The EU also informed and invited Moldova to a workshop on the upcoming NCTS P6 which will take place on 25 January 2023.

Operational conclusion:

- **Regular information on the ongoing work on NCTS P5**
- **A technical meeting on the Action plan will take place on 5 December 2022**
- **NCTS P6 specifications will be shared with Moldova in order to be used as a reference in the external contract**
- **A meeting on the business side of the convention to be organised before the next committee.**

5. European Binding Tariff Information System (EBTI)

The EU has presented the basic principles of the system. BTI is a decision on the tariff classification of goods that is issued by the customs administration of a Member State. It is binding on the all EU customs administrations and on the holder of the decision. An application for a BTI decision may only be made in respect of an intended customs procedure and trader cannot have more than one BTI for identical goods (“BTI shopping”). BTI is valid for 3 years.

The purpose is to have a uniform tariff classification. BTI gives legal certainty for traders as regards tariff classification and tariff treatment of their goods and the aim is also to ensure trade facilitation and equal treatment in the EU.

The EU explained the role of the Customs authorities in Member States as issuing BTIs is part of their operational tasks. MS are also responsible for the monitoring of the BTI usage. In addition, the EU presented the list of competent authorities for issuing BTIs in MS.

The role of the Commission is to prepare the BTI related policy and legislation, to monitor its correct implementation and to also manage the European Binding Tariff Information (EBTI) system. There is an internal version (EBTI central application for Customs authorities in Member States) and the public version (DDS EBTI, non-confidential information only) which is also available for third countries.

The EBTI system is used for the submission, processing, exchange and storage of information related to BTI applications and decisions. The Commission is responsible for the functioning

of the system and Member States are responsible for issuing the BTI decisions and for the data included by their administrations. All the BTI-related processes have been made electronic and all the BTI applications have to be introduced electronically.

The EU presented how the Member States use the EBTI system and how it functions, including the EU Customs Trader Portal. Twenty-two MS use the EBTI central application and the EU Customs Trader Portal and five other MS use their national system and national trader portal.

In case the MS fail to resolve the divergence in 90 days, the divergences are examined by the Customs Code Committee.

The EU also presented the number of statistical data related to BTI applications and decisions.

6. Rules of Origin

6.1 State of play

The EU is in the process of amending 21 origin protocols within the pan-Euro-Mediterranean area, by implementing an alternative set of rules of origin applicable alongside with the rules of the PEM Convention, on a bilateral basis pending the adoption of the revised Convention. The target application date of the new set of rules was 1 September 2021.

In parallel, the PEM Secretariat and the EU continued having bilateral discussions with all Contracting Parties to examine possible ways to address outstanding issues/derogations and the next steps, given that the main objective is to complete the revision process so that the revised rules of origin of the Convention can be endorsed by all Parties.

In this context, Tunisia accepted at technical level the proposed derogations and expressed an interest to join the transitional process together with all other interested countries, while supporting the revised Convention.

Egypt also accepted the implementation of the transitional rules under the condition to maintain the obligation provided by Article 8(3) concerning the information related to cumulation.

Discussions are going on with Morocco, who has expressed recently an interest in applying the revised PEM rules of origin.

In the next few days an updated Commission notice regarding the cumulation possibilities under the transitional rules will be published in the Official Journal.

6.2 “Permeability” between the two systems

The application in parallel of the two sets of rules of origin, by choice of the economic operators, created two distinctive zones of cumulation. The co-existence of the two sets of rules creates an issue for economic operators, since not all companies cannot change their IT systems and processes in order to use simultaneously both the current PEM Convention and the transitional rules.

It is known that some companies apply the revised rules while others will change over time. As a result, proofs of origin (in particular movement certificates EUR.1) issued according to the current rules continue to be issued by these companies. The exporter issuing the proof of origin

based on the alternative rules must refer to proofs of origin based on the same transitional rules (which are generally EUR.1 certificates but with an indication that the product complies with the alternative rules).

This implies that, insofar as some of their suppliers have not yet updated yet their IT systems to incorporate the usage of the new rules and thus to obtain origin proofs under the alternative rules, then exporters are in the impossibility to issue proofs of origin on the basis of the new (more relaxed) rules.

The text of the alternative rules opens the possibility for permeability between the two sets of rules, by allowing the issuance of a retrospective proof of origin (according to the new rules) on the basis of a proof issued according to the current rules of the PEM Convention, with the fulfilment of the condition that the products in case meet the requirements of both sets of rules.

The Commission is exploring together with the PEM partners the solutions for implementing the permeability in the international bilateral agreements.

The Commission is in the process of submitting a proposal to amend the Implementing Act to introduce the permeability at the EU level.

6.3 Launch of a project on e-certification

The current sanitary crisis created an unexpected need to accelerate the process of digital exchange of customs documents among customs administrations and economic operators. Several countries, including some Member States, have devised digital solutions to prevent customs administration staff and customs participants from exposing themselves to unnecessary risks through contact with infected persons or contaminated paper documents.

In this context, the question is being posed whether it would be appropriate to provide for the electronic issuance and/or presentation of certificates of origin and in particular origin certificates. Some PEM partner countries have developed, or are developing, e-certification systems, and are asking the EU to engage to develop a modern system more adapted to the business requirements and the technological possibilities available in the 21st century, rather than continuing to rely on paper-based certification with hand-written signatures, ink stamps and physical availability of documents.

The Commission, Member States and PEM Contracting Parties will explore the possibility of issuance and/or presentation of certificates of preferential origin through electronic means within the PEM context, and may envisage a technical solution that – subject to further discussion and analysis – could possibly be implemented based on the existing systems, compatible with the current procedures and at a minimal cost.

In the framework of the PEM Convention Joint Committee the Commission is exploring a possibility to submit a proposal to substitute Information note no.1 of 31 March 2020 by a recommendation to use electronic certificates.

In the framework of the transitional rules of origin the EU and its PEM partners are working to trigger the enabling clause related to the use of electronic certificates. Several partners and Member States developed systems to issue electronic proofs of origin.

Operational conclusions:

- **Exchanges on rules of origin, namely on e-certificates**

7. Implementation of Protocol III on Mutual Administrative Assistance in Customs Matters; fight against fraud

Both Parties have updated the list of contact points in advance and exchanged general information concerning past and ongoing assistance, including progress and plans in combating fraud and ways of improving cooperation.

Moldova made a presentation on MAA.

On FCTC, EU congratulated MD Customs service for the ratification of the Protocol in March this year. The EU also explained that they are available in case of need for assistance in the implementation of the Protocol.

Moldova assured the EU that the customs service has regular contact and informal consultations. Moldova also assured that they will inform the EU in case there is a request for verification from an EU Member State.

Operational conclusion:

- **Moldova and the EU will continue the cooperation especially on tobacco smuggling.**

8. EU Customs and Fiscalis programs

EU explained that the Proposal for the Agreement for the accession to the Customs program was adopted by the Commission on 18 November 2022. The Agreement was sent for translation and will be ready in December 2022. The Agreement on the accession to the Fiscalis is expected to be adopted by the Commission in January 2023. Both Agreements will be signed physically in Brussels on 7 February by the Moldovan Prime Minister and Commissioner Gentiloni.

9. ICS2 Release 2 and 3

The EU made a presentation of the new EU ICS2 is advance cargo information system. It supports the implementation of the new customs pre-arrival safety and security programme and regulatory regime which aims to better protect security of supply chains and transport (e.g. air cargo) and security, health and safety of the EU citizens and internal market and facilitate free flow of legitimate trade across the EU external borders.

ICS2 collects safety and security data from Economic Operators (EO) about all goods entering or transiting the EU prior to their arrival. EOs have a legal obligation to submit data to ICS2 in the form of the Entry Summary Declaration (ENS). From the EO point of view, main ICS2 business process scope covers: submission of the ENS, handling of the risk mitigation referrals, notification of the arrival of the means of transport, presentation of goods

ICS2 supports a layered approach to customs security and safety risk management following the strategic principle 'assess in advance, control where required' ICS2 is implemented in three phases: Release 1 – 15/03/2021, Release 2 – 01/03/2023, Release 3 – 01/03/2024.

It was explained how should the Economic Operators prepare, what are the consequences in case of non-compliance, the role of the global awareness campaign, who is impacted, what is the data required.

The EU provided a detailed list of EU legal acts and links towards all of the legislation.

10. Border Enforcement of IPR

Moldova updated the Committee on recent developments and challenges in the area of Border enforcement of IPR.

The EU explained that it plans to evaluate Regulation (EU) No. 608/2013 which currently regulates border enforcement of intellectual property rights and has been in force since 1 January 2014. It is the fourth iteration of the legal framework for customs enforcement of IPR in the EU. Over the years the legislation has evolved in order to address the evolution of fraud trends, to adjust the scope (more intellectual property rights (IPR) and more infringements covered, as well as a wider scope of customs procedures under which customs can intervene on IPR infringement) and procedures (simplification introduced to address the high volume of small consignments). An evaluation study will be carried out in 2023. According to the conclusions of the study and the subsequent Commission report, a revision of the regulation may be envisaged.

The EU presented the report EU enforcement of intellectual property rights: results at the EU border and in the EU internal market 2020. The report is also available on DG TAXUD's website. Data for the year 2021 will be made public shortly.

Focus made was on goods suspected of infringing IPR, detained at the EU borders in the years 2018 – 2020 and originating from Moldova. Such goods were detained in Czech Republic, Germany, Romania and Slovenia. The total estimated value of the goods detained was over EUR 164,000. The detained goods were (in the order of the estimated retail value of the original goods): Foodstuffs, alcoholic and other beverages; Clothing and accessories; Personal accessories; Other goods (i.e. not falling into any of the specific categories). The IPR infringed encompassed: trade marks (78.57%), designs (14.29%) and geographical indications for wine (7.14%).

11. Solidarity Lanes - Update on the work done in cooperation with DG MOVE

DG MOVE, taking the lead of the EU Solidarity Lanes initiative, has informed MSs and UA, MD recently, that the next call for Connecting Europe Facility (CEF) applications is opened now. The applications must be provided by mid-January next year.

As for the CEF transport projects, this time BCP improvements may become a part of an application. Nevertheless, to be eligible, the project must meet the TEN-T precondition (i.e. only TEN-T roads, railways are qualified. Therefore, only BCPs on TEN-T may be eligible).

12. Any Other Business

Border enforcement of control over non food products – The MDCS and the Agency on Consumer Protection and Market Surveillance are working on establishing cooperation in order to ensure enforcement at the border of TBT rules. It is expected that the pilot test will start on 1 January 2023 on toys. Then it should be extended to other industrial products. It is important to enquire about the state of play of preparation for this action.

To welcome the changes in legislation which excluded all facilities to Duty Free Shops. After their licences expiry in 2023, they will be liquidated or will be transformed in travel shops which apply all taxes and fees.

13. Closing remarks and next meeting

The EU will prepare the minutes from the meeting and will publish it on DG TAXUD website.

Next meeting will take place in November 2023 in Chisinau.