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**Subject: Guidance on Customs issues related to the COVID-19 emergency -
revision 2**

As a result of the crisis created by the COVID-19 pandemic, questions have emerged concerning the application of customs provisions relating to the customs decision-making process, customs procedures and customs formalities. For the particular cases outlined below, a number of existing provisions have been identified that provide valid solutions in these exceptional circumstances.

The objective of this document is, therefore, to offer guidance to the concerned stakeholders on practical solutions given by the current legal framework, in order to ensure a uniform application of the UCC even in this time of crisis. As the situation can evolve rapidly and imply further guidance on additional issues, this note is intended as an evolving document that will be updated as needed.

1. E-commerce - Empowerment for customs representation

Due to temporary unavailability of staff, postal operators all over Europe are struggling to cope with the delivery of huge volumes of e-commerce parcels and to meet their universal service obligations. The same situation is faced by express carriers and customs agents acting on behalf of consumers for the release into free circulation of low value consignments (value below 150€).

Obtaining empowerments from consignees who might themselves be hindered by the consequences of the COVID-19 pandemic may pose a significant additional administrative burden for all these categories of economic operators.

In Article 19(2) 2nd subparagraph, the UCC allows customs authorities to waive the requirement to prove that the person represented (i.e. the consignee) has provided the empowerment.

Considering the specific circumstances related to the COVID-19 crisis, customs authorities could, during the period of the crisis, apply this provision without requiring any evidence of the empowerment from postal operators, express carriers or customs agents for the customs clearance activities they are carrying out on behalf of the consignee.

2. Customs Decisions

a) New applications for customs decisions – only essential

In the present emergency circumstances, economic operators might require some urgent customs authorisations to ensure the functioning of the supply chain and free flow of essential goods needed in the Member States.

Article 22(2) UCC and Article 11 UCC Delegated Regulation (EU) 2015/2446 oblige the customs authorities to accept applications for a decision that meet all the requirements. Therefore customs authorities are not legally entitled to refuse applications for customs decisions that meet the legal requirements.

Under the current circumstances it is advisable that traders make available to customs as much as possible relevant information, in a remote manner, allowing them to desk-check the criteria for granting the required authorisations.

However, in the present situation, economic operators are strongly encouraged to only apply for essential customs decisions, so that customs authorities can focus on the most urgent demands.

b) Extension of the time-limit to take decisions on applications already submitted

The last subparagraph of Article 22(3) UCC provides for a derogation from the 120-day general time limit set out in the same provision for taking customs decisions and/or for granting authorisations.

This provision allows an extension of the time-limit to take a decision upon request of the applicant, where the applicant needs additional time to ensure fulfilment with the relevant conditions and criteria. This could arise, for instance, in cases where the applicants cannot allow customs to enter and inspect their premises due to the restrictions of movement and quarantine measures. In such cases, they could request the customs authorities to postpone such a visit due to the restrictions applied in several Member States. Such requests would constitute requests by economic operators for extensions to carry out adjustments in order to ensure the fulfilment of the conditions and criteria.

3. Customs Debts and Guarantees

a) Impossibility to extend the 3 years period for notifying the customs debt

The 3 year-period set out in Article 103 UCC for notifying the customs debt cannot be extended. The only possible causes for suspending that period are foreseen in the same Article. However, in that respect, two scenarios need to be distinguished:

1) pursuant to Article 102(2) UCC, the release of the goods is considered as a notification of the customs debt if this is equal to the amount stated in the customs declaration. In these cases, the 3 year-time limit has been respected;

2) in other situations, pursuant to Article 102(3) UCC, notification is to be done when the customs authorities are in a position to determine the amount and to take a

decision. In these cases, the 3 year-period applies, unless Article 103(2) to (4) UCC extends or suspends this period.

b) Payment facilities

This part aims to set out in detail all the possibilities in the field of payment facilities that we believe the UCC offers to trade. Nevertheless, the preferred way to manage this situation would be to enter goods in a customs warehouse in cases where resale or processing and subsequent sale is not imminent, and the explanation hereunder is without prejudice to that preferred option.

Several have asked for a general deferment of the time limits for payment of customs duties. The legislative framework of the UCC does not offer at present a legal basis to provide for a **general deferral** of the time limits for payment of customs duties or a suspension of recoveries of those duties, due to this crisis. Nor does it offer a legal basis to provide for a general suspension of the time limits for payment based on force majeure as many have requested.

The case law of the Court of Justice defined the notion of force majeure as follows:

“It is apparent from settled case-law, established in various spheres of EU law, that the concept of force majeure must be understood as referring to abnormal and unforeseeable circumstances which were outside the control of the party by whom it is pleaded and the consequences of which could not have been avoided in spite of the exercise of all due care”.

Moreover, there is no explicit reference to the notion of ‘force majeure’ or to ‘unforeseeable circumstances’ in the articles of the UCC related to payment of the custom debt (Articles 108 to 114 UCC), contrary to the situation for repayment and remission under Article 121 UCC . In these circumstances, there can be no systematic recourse to the notion of force majeure.

Even in situations where the concept of force majeure is explicitly provided for, a careful case-by-case assessment is required. For these reasons, it is impossible to provide for a blanket statement that each and every situation linked with the COVID19 pandemic constitutes “force majeure”.

Amending the UCC to introduce additional flexibilities would require a time-consuming legislative procedure. Such an amendment could not, moreover, alter the Member States’ financial responsibilities with regard to the making available of traditional own resources to the EU budget in a timely manner.

However, it should be stressed that the UCC already offers certain flexibility in regard to the suspension of payments of debts on a case by case basis. Member States could use, all legal means to apply flexibility, up to the limits allowed, during this crisis.

Even though applying flexibility might not ensure a fully harmonised approach, it is a reality that the situation is not the same in all Member States and equally the difficulties are not the same for all economic operators.

The below explains the limits of each of the relevant articles in an effort to respond to the request for more detailed guidance.

- Serious economic and social difficulties.

Several parties were asking for clear guidance on the concept of ‘serious economic and social difficulties’ as laid down in several provisions of the UCC (Articles 45(2) and (3) (suspension of implementation), 112(1) and (3) (other payment facilities) and 114(3)(interest on arrears)).

First of all, it is important to emphasise that application of these provisions is dependent upon a request by the operator.

Secondly, the operator bears the burden of proof to demonstrate the economic or social difficulties encountered to the satisfaction of the customs authorities. Some Member States have established national legislation applicable during this crisis, providing for certain conditions to be fulfilled in order to consider an economic operator as having “serious economic and social difficulties”. Obviously, also the other conditions provided in the UCC articles still need to be fulfilled.

- Article 108 UCC – General time limits for payment and suspension of the time limit for payment.

Article 108 UCC provides for the general time limits for payment of customs duties.

In general, that period shall not exceed 10 days following notification to the debtor of the customs debt.

However, that same provision already includes an exception to this rule (Article 108(1) second subparagraph) in subcases of appeals. Should the operator have grounds to lodge an appeal, the application of Article 45(2) and (3) UCC could lead to an extension of the 10 days in Article 108 by suspending execution of the decision establishing the customs debt. A case by case assessment would be required, taking into account the particular situation of the operator.

Moreover, Article 108(1) UCC third subparagraph provides for other situation where the time limit for payment could be extended. Where the amount payable has been determined in the course of a post-release control, customs authorities may extend that period of 10 days, upon application by the debtor (Article 108(1) third subparagraph). This extension should not exceed the time necessary for the debtor to take the appropriate steps to discharge his or her obligation. This again allows for quite some flexibility in the current situation.

Furthermore, in paragraph 3 of Article 108, different grounds for the suspension of the time-limit for payment are mentioned, linked with specific situations, namely application for remission, confiscation, destruction or abandonment of goods and incurrance of the debt pursuant to Article 79 where there is more than one debtor.

- Article 109 UCC – Payment.

With regard to Article 109 UCC, it could be useful to consider the possibility offered in paragraph 2 for payment by a third party instead of the debtor. This could offer a way out in certain situations.

- Article 110 UCC – Deferment of payment and Article 111 UCC – Periods for which payment is deferred.

There is no possibility to waive the guarantee requirement or to extend the time limit for payment in absence of a guarantee, under Articles 110 and 111 UCC.

Article 110 UCC provides for different formats of deferred payment, to be granted upon request and upon provision of a guarantee. The period for which payment is deferred is laid down as 30 days (Article 111).

Nevertheless, there is in our view a possibility to allow a deadline longer than the 30 days mentioned in Article 111 UCC, by having recourse to “other payment facilities” under Article 112 UCC.

- Article 112 UCC – Other payment facilities

Article 112 UCC allows for all kinds of payment facilities, other than deferred payment, in principle on condition that a guarantee is provided and that credit interest is charged.

However, paragraph 3 of this Article allows customs authorities to refrain from requiring a guarantee or from charging credit interest where it is established, on the basis of a documented assessment of the situation of the debtor, that this would create serious economic or social difficulties.

An example of such a payment facility could be for customs authorities to allow payment in instalments even if the operator has benefitted from deferment of payment pursuant to Article 110 UCC for these customs debts. The guarantee in place for these customs debts would remain valid and at the disposal of the customs authority. However, the guarantee would not be blocked or recovered to settle the unpaid debt, if this debt becomes subject to other payment facilities. If the conditions of Article 112(3) UCC are fulfilled, no additional guarantee for the other payment facility would need to be provided

Over all, it is important to highlight that the flexibilities referred above and, in particular, the suspension of payment for the operator, have no effect on the time limits provided for by Article 105 UCC which the customs authorities need to respect when entering the relevant amounts in the accounts. Non-respect of the time limits in Article 105 can only be justified where the customs authorities are able to demonstrate that they were prevented from entering those amounts in the accounts due to unforeseeable circumstances or force majeure on their side. It should be noted that Article 105(5), which refers to those concepts, touches upon the responsibilities of the Member States towards the EU budget.

- Article 91(2)(b) UCC DA

It provides for the suspension of the time limit for payment of a customs debt incurred through non-compliance, even without a guarantee, if it is established that providing such a guarantee would be likely to cause the debtor economic and social difficulties.

c) Exceeding the guarantee limits

Exceeding the guarantee limits is not legally possible outside the scope of the current legal provisions on reduction of the guarantee amount or on the guarantee waiver (paragraphs (2) and (3) of Article 95 of the Code).

Nevertheless, the Commission has taken action to ensure that the temporary admission of items for disaster victims of the COVID-19 pandemic crisis becomes free of customs duties and VAT, which would de facto waive the requirement of the guarantee for these specific goods.

d) Use of digital signature for the purpose of undertaking

In the specific circumstances of the COVID-19 pandemic, when physical contacts should be limited to the most extent possible, questions arose as to whether it would be possible to replace the hard copy of guarantor's undertakings for issuing a comprehensive guarantee as provided for in Annex 32-03 DA & IA by an electronic document including the digital signature of the guarantor.

This possibility already exist in Article 151(7) UCC - IA that allows customs administrations to accept a different form for an undertaking as long as it provides the same legal effect. This also includes the acceptance of an electronic/digital signature (instead of a handwritten one), if regulated in the national legislation.

4. Entry of goods

4.1 Medical, surgical and laboratory equipment for emergency treatments

a) Entry summary declaration

The medical, surgical and laboratory equipment are not exempted from the obligation to lodge an entry summary declaration (ENS), even in emergency cases. However, Article 127(7) UCC provides for the possibility to use commercial, port or transport documents for this purpose, under the condition that these other documents contain the necessary particulars of the ENS and are available before a specific time-limit prior to the arrival of the goods in the EU.

b) Presentation of goods to customs

Non-Union goods entering the customs territory of the EU have to be presented to customs. Whilst in principle there is no possibility to waive this obligation for medical, surgical and laboratory equipment, such presentation can be considered as being fulfilled by the oral declaration of such goods for temporary admission (see point 7(a) below).

c) Import of human organs and bone marrow destined for transplant in the EU

In order to ensure their timely delivery and use, the customs formalities for import of organs and other human or animal tissue during the current emergency times should be as minimal as possible, so as not to delay their release into free circulation.

A facilitation in this respect is offered by an amendment to Article 138(h) and Article 141(1) UCC-DA, which was adopted by the Commission on the 3rd of April as part of a package of amendments to the DA. This provision allows that organs and

other human or animal tissue or human blood, where not declared using other means, are deemed to be declared for release for free circulation by any of the acts laid down in the amended Article 141(1) UCC DA (declaration by any other act). This possibility should also be applicable to the import of bone marrow, which can be considered as a human organ or tissue for transplant.

In order to facilitate the import of bone marrow in the present crisis situation, the Commission will make the amendments to Article 138(h) and Article 141(1) of the UCC-DA retroactively applicable from 15 March 2020¹. This will allow importers to already use this this solution in order to facilitate the release of these goods in the present crisis situation. Nevertheless the national competent authorities remain responsible for ensuring compliance with the relevant national, EU or international rules governing the transportation and trade of these goods.

4.2 Other categories of goods

a) Presentation of goods to customs

Economic operators are encouraged to use the Union or Common transit procedure, TIR or pre-lodged customs declarations to the widest possible extent in order to speed up border crossing and optimize customs controls at the EU external borders.

b) T2L

Economic operators are encouraged to consider moving goods in such a way that they will benefit from the presumption of the Union status in accordance with Article 119(2) UCC-DA.

Customs authorities may, at national level, find ways to accept on a temporary basis T2L scanned copies of the original T2L documents, as long as circumstances prevail that make the timely presentation of originals impossible and provided the original documents remain available for possible control in accordance with Article 51(1) UCC. This remains without prejudice to the application of control procedures or other procedures of administrative assistance, in particular in the event of suspicion of fraud or irregularities.

5. Submission of proof of preferential origin during the COVID-19 crisis

The Commission services have been informed about the impossibility of some EU Member States and EU preferential trade partners to provide origin certificates in due form (i.e. signed, stamped and in the right paper format), as in a number of countries contacts between customs and economic operators have been suspended due to the COVID-19 crisis.

As a result, the Commission has examined several ways to ensure the continuation of preferential trade for the duration of this extraordinary situation. In particular, Commission services have looked into the possibility of accepting copies of

¹ The rest of measures included in the amendment to the UCC DA will become applicable once the amendment enters into force, i.e., 20 days after the publication of the legal text in the Official Journal. The publication will happen after the period that the European Parliament and the Council have to scrutinise the text that the Commission has adopted on the 3rd of April. That period is generally of two months but it can be extended.

certificates, as well as optimally using approved exporter status as an alternative to official certificates. This would only take place during the crisis period and under specific conditions.

The Commission services have, in consultation with Member States, invited the EU trading partners facing such situations to inform the Commission whether they would be interested in making use of these exceptional measures. Member States would also need to provide detailed information as to how they could proceed, with a view to ensuring coordination and mutual information exchange on such arrangements.

The approach, described in an information note² will start being operational among the EU Member States and EU trading partners that express their interest, after confirmation by the Commission services. Information on the countries applying such measures will be made available shortly.

6. Customs Procedures and Temporary Storage

a) Goods in temporary storage for longer than 90 days

As the maximum time limit of 90 days for temporary storage cannot be prolonged without amending the UCC, a customs debt occurs for goods that are not declared for a customs procedure (or re-exported) within that period. If the goods fail to be placed under a customs procedure or re-exported due to circumstances related to the spread of COVID-19 disease, the economic operator may invoke force majeure. Customs authorities will assess each situation on a case-by-case basis and, when conditions so justify, apply equity in accordance with Article 120 UCC or regularise the situation of the goods in accordance with Article 124(1)(h) and 124(1)(k) UCC, depending on whether the goods are finally released for free circulation or re-exported UCC. This should not, however, lead to a situation where the due customs duties are not paid at all for goods remaining in free circulation.

In this context, the application of Article 120(2) UCC does not refer to the COVID-19 pandemic itself; instead, it refers to the different effect that the pandemic has on different economic operators, according to their capacity and preparedness to protect themselves against such a situation.

Another solution could be that the holder of the authorisation for temporary storage applies for an authorisation for customs warehousing for the same facilities. Once granted, this will give the possibility to declare the goods for the customs warehousing procedure without changing their location beyond the 90-day period available for temporary storage. Such applications should be processed, to the extent possible, as a matter of priority. Consequently the economic operator will operate both authorisations.

b) Possibility to use designated places for temporary storage of goods

As an interim solution, economic operators may ask the competent customs authorities whether they can designate additional temporary storage facilities as places where goods in temporary storage may be stored. If so, the designated places

² See Information Note no 1 here: https://ec.europa.eu/taxation_customs/sites/taxation/files/200331-information_note_certificates_en_and_fr.pdf

could be used until the authorisations for temporary storage have been granted or amended.

c) Possibility to use simplified declarations without prior authorisation

Such a possibility is foreseen by the UCC under the condition that the simplified declaration constitutes a non-regular or occasional use. The absence of a definition of the term 'regular use' allows for a certain flexibility.

d) Time-limit for submitting the supplementary declaration

The time limits for submitting the supplementary declaration provided for in Article 146 DA are determined by reference to the date of the entry into accounts which do not apply in cases of unforeseeable circumstances or in cases of force majeure.

Accordingly, if an economic operator cannot meet the deadline for submitting the supplementary declaration due to reasons linked to the COVID-19 pandemic, he or she should inform the supervising customs office as soon as possible. The request for extending the deadline is to be submitted to the customs authorities and justified by duly substantiated unforeseeable circumstances.

e) Presentation of goods at approved places

The presentation of goods to customs could be performed in a 'place approved by the customs authorities' referred to in Article 139(1) UCC. This facilitation allows traders to present the goods, e.g. critical goods, directly at their premises.

f) Longer period to amend declarations

In accordance with Article 173(3) UCC, after release of the goods the declarant may request the amendment of the customs declaration within three years of the date of its acceptance, in order to comply with the obligations relating to the placing of the goods under the customs procedure concerned. For declarations lodged during the COVID-19 crisis, this time-limit should be sufficient for economic operators to request the amendment.

7. Transit

The transit procedures seem to function smoothly despite the precautionary measures applied to prevent the outbreak of COVID-19, i.e. limiting physical contacts and the use of paper-based documents. The following measures should be applied in the EU and in common transit countries.

a) Placing good under the transit procedure without presenting them to customs and receiving the goods at an authorised place (233(4)(b) UCC)

Economic operators are encouraged to consider making even wider use of the simplifications such as authorised consignor and authorised consignee.

b) Time-limits to present goods at the customs office of destination (Art. 297 and 306(3) IA)

Economic operators can expect that the customs office of departure will take into consideration possible longer transport times due to anti-corona measures when

setting the time limit within which the goods shall be presented at the customs office of destination.

When the goods are presented to the customs office of destination after expiry of the time limit due to the particular circumstances of the outbreak of COVID-19, the customs authority may consider that the delay was not attributable to the carrier.

c) Alternative identification measures to sealing (Art. 302(1) IA)

Due to the particular circumstances of the outbreak of COVID-19, where possible, alternative identification measures to sealing may be accepted. Instead, customs will rely on the description of the goods if these are sufficiently precise to permit an easy identification of the goods and states their quantity, nature and any special features.

d) Time-limits for the control results (Art. 309(1) IA)

The time limit to send the control results may be extended up to six days in exceptional cases such as the particular circumstances of the outbreak of COVID-19.

e) TIR

Carriers could ask the customs authorities to allow the use of the TIR procedure on paper only, if this is necessary under the current circumstances in the context of the rules on business continuity.

f) Transit (Security) Accompanying Document, T(S)AD.

Customs administration may provide or accept temporarily during the crisis period the T(S)AD in an electronic format, e.g. scanned document or SMS of the MRN number.

g) Supporting documents

Customs administration may accept temporarily during the crisis period that economic operators may add or send scanned supporting documents to the electronic transit declaration, e.g. transport document, CMR, invoice etc. provided the original documents remain available in accordance with Article 51(1) UCC. In case of doubt about the veracity or correctness of the documents, customs may still require the original paper document.

h) CIM consignment note as customs transit declaration for rail transport (Articles 24, 30, 33 et seq. TDA)

Customs administrations may accept temporarily during the crisis period scanned copies of the paper document(s) in the context of this procedure provided the original documents remain available and subject to suitable verifications ex post and subject to informing the actors involved.

8. Special procedures

a) Use of the temporary admission procedure

The present exceptional situation should be considered as a ‘disaster’ in the terms of Article 221 UCC DA. Therefore, all goods brought to the customs territory of the Union to counter the effects of this ‘disaster’, i.e. COVID-19, such as ambulances or some support medical equipment, should be eligible to be declared for temporary admission with total relief from import duty. Article 139 UCC DA may allow these goods to be declared by any other act, e.g. by the sole act of crossing the border, according to Article 141(1)(d) UCC DA.

Another possibility would be to lodge an oral declaration according to Article 136(1) UCC DA. The provision of the form established in Annex 71-01 is mandatory in this case (see Article 165 UCC DA), but such provision could be postponed up to 120 days after the release of the goods if customs authorities allow it (see Articles 166(2) UCC and 147(2) UCC-DA).

The same approach can apply for the temporary admission of medical, surgical and laboratory equipment referred to in Article 222 DA by any other act, in accordance with Article 139 DA or by an oral declaration based on Article 136(1)(d) DA.

b) Possibility to extend the limit for re-exporting the goods under temporary admission

As many economic operators have been obliged to close their premises and stop working, it may be impossible for them to re-export the goods declared for temporary admission by means of ATA carnets within the established time-limit.

In such cases, Article 251(3) UCC allows the holder of the procedure to ask customs authorities to prolong the time limit for re-export of goods declared for temporary admission under exceptional circumstances (such as COVID-19). This applies regardless of the type of declaration used for the placing of goods under the temporary admission procedure. In case the ATA Carnet was used for this purpose, there is no need to issue a new ATA carnet, as Article 14 of the Istanbul Convention is a ‘may’ provision. Besides, Article 7(2) of this Convention allows customs to grant a longer period than that provided in the Annex and even extend the initial period.

c) Use of Inward processing procedure

The use of the inward processing procedure is possible and many goods (e.g. medicines) that may be used to relief the crisis caused by the COVID-19 pandemic, may benefit from the discharge simplification established in Article 324(1)(e) UCC-IA as long as their import duty rate is free.

If the goods to be placed under inward processing are subject to the examination of economic conditions, the customs authorities should evaluate whether such economic conditions are deemed met due to the unavailability of the processed product in the Union. For such assessment the extraordinary circumstances caused by the COVID-19 pandemic should be taken into account in order to grant authorisations with a short time limit (only covering the period until the crisis is over, e.g. three months) and including the quantities of the products that are actually needed.

9. Exit of goods

a) *Ship supplies*

Ship supplies are goods and equipment for use on board the ship by the crew, and not for export. According to Article 269(2)(c) UCC, the export procedure does not apply to ship supplies. Ships leaving EU ports are considered to be leaving the EU (even if this is a voyage between two EU ports - maritime law), and therefore medical supplies on board are subject to export formalities, even if they are not formally placed under the export procedure.

Ships must have on-board pharmacies (Council Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels), and therefore they should be allowed to leave EU ports carrying protective gear and medication for the on-board pharmacies catering for their crews.

This specific type of “ship supplies” is, therefore, exempted from the export restrictions on personal protective equipment implemented by Regulation (EU) 2020/402 of 14 March 2020.

Other questions related to the customs elements of Regulation (EU) 2020/402 are being dealt with in a separate specific guidance document.

b) *Possibility to delay the invalidation of the customs declaration for export or the re-export declaration*

Economic operators have requested the prolongation of the period for the exit of goods from the customs territory without the export or re-export declaration being invalidated by the customs office of export.

Indeed, if the customs office of export has not received any information or evidence that the goods have left the customs territory of the EU within 150 days from the date of the release of the goods for the export, re-export or outward processing procedure, the customs office may invalidate the declaration concerned, in accordance with Article 248 UCC DA.

Considering the current exceptional circumstances, it is recommended that the customs office of export does not initiate such invalidation, unless it is explicitly requested by the declarant of the declaration concerned.

10. Additional information

The UN Office for the Coordination of Humanitarian Affairs (OCHA) has made available documents related to the importation and Customs clearance of goods in the response to COVID-19 on its [COVID-19 webpage](https://vosocc.unocha.org/GetFile.aspx?xml=rss/5033i2la_11.html&tid=5033&laid=1&sm=-SM34023-#S84455)³.

³ https://vosocc.unocha.org/GetFile.aspx?xml=rss/5033i2la_11.html&tid=5033&laid=1&sm=-SM34023-#S84455