FEPORT feedback on the EU Commission proposal for a Regulation establishing the Union Customs Code and the European Union Customs Authority, and repealing Regulation (EU) No 952/2013

1. Introduction

FEPORT represents the interests of 1225 private port companies and terminals performing cargo handling and logistics related activities in European ports. FEPORT Members employ over 390.000 workers.

FEPORT welcomes the possibility to provide comments regarding the EU Commission Union Customs Code (UCC) reform proposal.

FEPORT members, which in Customs legislation usually take on the role of operator of temporary storage facilities or customs warehouse operator, are directly impacted by changes to the EU Customs legislation as it affects their operations.

Terminal operators carrying out cargo handling activities in seaports form the junction between maritime and sustainable hinterland transport modes and are thereby contributing to the success of the EU's modal shift targets.

FEPORT members therefore have a strong interest in Customs legislation that enhances the efficiency of customs controls – in order to hinder seamless operations as little as possible - while combating illicit trade.

At the same time, in a context where some EU neighbouring countries seem to move down a pathway of customs simplifications and loosening of controls while pursuing less ambitious environmental policies, it is crucial to assess how the UCC reform package impacts the competitive position of ports in the EU vis-à-vis their non-EU competitors.

In light with the above, FEPORT strongly supports a reform aiming at simplifying procedures for "Trust and Check" operators while further enhancing and harmonizing risk management thanks to the introduction of an EU Customs Data Hub and the establishment of an EU Customs Authority. Moreover, the transition to "Trust & Check" should be as simple as possible for authorized economic operators (AEOs).

However, even though they strongly support the abolishment of the guarantee for goods held in temporary storage, terminal operators are concerned that the newly proposed rules for the temporary storage of goods can give rise to inefficiencies. These concerns will be elaborated in Section 3 of this document while in the next section, some recommendations will be provided on how to further improve the proposed rules on risk management.

2. Risk Management

According to current practices, customs authorities scan 100% of cargoes that are considered "high risk", for example, if these cargoes are considered as likely to be used for illicit trade.

Such scanning practices are important from a law enforcement perspective but have a high operational impact on terminal operations.

National customs administrations still have different practices as to how "high risk cargoes" are defined and also have different procedures in place regarding the stage in the handling process at which high risk cargoes can be checked.

FEPORT therefore recommends aligning definitions and procedures for the scanning of high risk cargoes across the EU, especially between the main EU gateway ports.

Different levels of "strictness" could play in the hands of organized crime as ports with the lowest level of control - or with the highest amount of loopholes - would be chosen as hubs for illicit trade. In addition, a harmonized approach towards the scanning of high-risk cargoes would positively impact the level playing field between ports in the EU.

Following the above considerations, FEPORT agrees with the assessment of the Commission as expressed in the UCC reform proposal (p.7, explanatory memorandum), which states that the harmonization of risk management is currently insufficient.

The UCC reform proposal aims for customs supervision, controls and mitigation measures based on risk management of the supply chain with an EU perspective. At the same time, the proposal allows the Commission to establish common risk criteria and standards and priority control areas via Implementing Acts (article 55.1).

Such efforts aimed at improving common risk management should be welcomed, as well as the fact that article 52 gives clear examples of which kind of elements could be included in the common risk criteria and standards, for example:

- A description of the risks;
- The risk factors to be used to select goods or economic operators for customs controls;
- Mitigation measures in the supply chain, including information requests and instructions not to load/transport.

It is a positive development that national customs authorities are, in principle, required to implement the control recommendations issued by the EU Customs Authority, but to further strengthen common risk management, FEPORT recommends making the implementation of the control recommendations referred to in article 51(6) mandatory.

3. Temporary storage and customs warehouses

FEPORT members – terminal operators active in the seaports of the EU – under the current UCC (hereinafter UCC 2013) normally take the role of operators of temporary storage facilities (TSO).

According to UCC 2013 (article 149) goods can stay in temporary storage for up to 90 days, after which they either need to be re-exported or placed under a customs procedure. Article 147(3)(a) of UCC 2013 stipulates that, during those 90 days, TSOs should ensure that the goods are not removed from customs supervision.

Nevertheless, recital 36 of the UCC reform proposal states that, in order to ensure appropriate customs supervision, the time goods remain in temporary storage should be limited to a maximum of 10 days. Article 86(5) of the reform proposal, in addition, stresses that goods in temporary storage should be placed under a customs procedure no later than 3-6 days after the notification of their arrival, although article 86(7) states that the Commission is empowered to adopt Delegated Acts specifying circumstances under which this time limit may be extended.

FEPORT supports the Commission's aims to improve customs supervision of goods and thereby combat illicit trade but has identified a number of practical difficulties that may result from the reduction of the time limit for temporary storage from 90 to 3-6 days. These and other concerns related to the UCC reform proposal's provisions on temporary storage and customs warehousing are specified below.

a) When are goods considered to be in temporary storage?

According to recital 36 and article 86(1) of the reform proposal, goods are considered to be in temporary storage from the moment the carrier notifies the arrival of the goods to the EU customs territory, which could be before the goods are actually unloaded.

As will be elaborated below, reducing the time limit for temporary storage from 3-6 days already gives rise to a number of practical and operational concerns.

It should therefore be confirmed that goods are only considered to be in temporary storage from the moment that they are unloaded from the ship and enter the TSO's facilities. If not, the challenges related to the reduced time limit for temporary storage would be aggravated even further.

b) 3-6 days' time limit

The time cargo remains in temporary storage strongly varies per port and also per cargo type, but FEPORT internal survey showed that in many cases cargo stays longer in temporary storage than

the 3-6 days that are currently proposed. This is especially true for bulk cargoes and containers stored in transhipment ports, but also non-transhipment cargoes stay longer than 6 days.

Furthermore, in some other cases, the customs document (to place the goods under the next customs regime) is also drafted based on the (amount of) goods which are actually discharged in order to avoid discrepancies. In that case, if goods are discharged from the vessel on Friday that would mean that the goods should be placed under the next customs regime during a weekend. This is not workable, especially as customs administrations are not always available 24/7.

In some exceptional cases, that especially occurred during some recent crisis such as COVID-19, the Shang Hai lockdown and the war in Ukraine, this time limit even had to be extended and FEPORT supports the simplifications provided in that context allowing to place goods under the customs warehouse procedure at the same facilities.

In light of the above, FEPORT suggests maintaining the 90-days limit for temporary storage, while allowing for some flexibility in cases where this time limit is exceeded due to force majeure related circumstances.

The 3-6 days' time limit proposed could also give rise to concerns related to liability as TSOs do not control when the exporter or importer/owner of the goods places the goods under a customs procedure such as customs warehousing. FEPORT therefore recommends that for each consignment, responsibility is assigned to an im- or exporter as it is in their power to place the goods under a subsequent customs procedure. In some Member States, it is already common procedure that the declarant is responsible for exceeding customs clearance time, which in FEPORT's opinion provides a good practice to follow when implementing the UCC reform package.

c) Data requirements

Aside from the liability issues that could arise when the 3-6 days' time limit for the temporary storage of goods is exceeded, FEPORT is also concerned by the data elements that terminal operators - in case they assume the role of customs warehouse operator – will need to make available to customs.

According to article 119(1), the operator of a customs warehouse needs to make a set of data available to customs, namely:

- The importer responsible for the goods;
- The manufacturer;
- The value, origin and tariff classification of the goods;
- The list of relevant other legislation the customs authorities apply on those goods;
- Description of the goods;
- Subsequent movement of the goods;

At the moment, terminal operators are not able to access most information elements listed above. Terminal operators usually enter in contracts with a shipping company to handle cargoes and to that end exchange information which is relevant for the handling of those goods such as the weight

of the cargoes, whether they contain any hazardous materials and the ships' estimated time of arrival.

However, terminal operators do usually not know about the value of the goods or the manufacturer, and although they might know which second transport mode is going to pick up the cargo, they are most likely unaware of the goods' subsequent destination. And even in the case they would be aware of the data required by article 119(1), administrative and IT costs will increase, as terminal operators will be compelled to shift to an administrative system at goods' level as opposed to the container-level for which terminal operators currently store data. This means that the complexity of terminal operators' IT systems will increase as they will need to make a distinction between temporary storage goods and goods that are stored under the customs warehousing procedure.

From an operational perspective, it should also be emphasized that, especially in the case of container terminals, terminal operators will not be able to verify whether the data they need to store in accordance with article 119(1) is correct, as it is not possible to check the content of all sealed containers that will be stored in customs warehouses. To open and to unload sealed containers disturbs the operational flows and will result in extra costs for the terminal operator. To open a sealed container will result in two extra moves and additional personnel will be required to verify the container's content. Furthermore, terminal operators would need to make space available to perform the necessary checks.

This again will give rise to liability issues since, in the situation where discrepancies between the information provided by the customs warehouse operator and the actual content of the consignment are established when the next party in the logistics chain receives the goods, it will be impossible to determine who is responsible for these discrepancies. One possibility explaining this situation will be that the information originally provided by the importer was incorrect, but irregularities can also have occurred at the terminal. It will therefore be difficult to establish which party is responsible for the infringement. Nevertheless, article 161(1)(a) and 161(3)(c) suggest that a customs debt can be incurred on terminal operators in case of non-compliance with customs legislation for goods they have held in storage.

FEPORT is satisfied that, on the long term, the Data Hub will do away with the need to issue customs declarations but even with the Data Hub in place liability issues will persist. However, on the short term, requiring terminal operators to provide data stipulated in article 119(1), possibly on a goods' rather than container basis, could lead to a huge increase in administrative costs as well as disruptions and congestion in the event other parties in the logistics chain do not provide the required data on time.

FEPORT therefore recommends considering aligning the entry into application of the new rules on temporary storage and customs warehousing with the entry into operation of the Data Hub. At a minimum, it should be ensured that all data required by article 119.1 is shared with terminal operators before the goods are unloaded. Furthermore, for each data element that customs warehouse operators need to provide in accordance with article 119(1), the relevance of requesting this data should be carefully considered. There is no

added value in requesting terminal operators to provide data which they are not able to verify.

d) Data needed for the customs warehouse procedure should be made available before goods are unloaded

Article 119(3) of the reform proposal stipulates that customs warehouse operators should not accept goods for which the above-mentioned minimum information has not been provided or made available to customs.

This provision could lead to some practical problems. As stated above, goods can only remain in temporary storage for a period up until 3-6 days and afterwards need to be stored in a customs warehouse. **FEPORT therefore recommends that a system is set up where the data specified in articles 119(1) and 118(2)(a) is already shared before goods are unloaded in a seaport in the EU.** This way it will be prevented that goods exceeding the 3-6 days' time limit cannot enter into a customs warehouse procedure due to missing data elements.

e) Drafting of customs documents

Under the current regime with a 90 days time-limit applying for temporary storage, the temporary storage declaration is prepared by the shipping agent whereas the owner of the goods (or its representative) will end the temporary storage by placing the goods under a subsequent customs procedure. The message allowing the terminal operator to release the goods is provided by customs.

The newly introduced regime where terminal operators will become customs warehouse operator once goods stay for longer than 3-6 days at their facilities, will lead to an increase of administrative workload and costs for the terminal operator. The terminal operator, in its role as customs warehouse operator, would need to file the storage document and then, once the goods are released, the release document.

This is an additional reason why FEPORT recommends maintaining the time limit for temporary storage at 90 days, as the purpose of the UCC reform proposal is to reduce administrative burdens and not to increase them. Alternatively, as suggested above, it could be considered to synchronize the entry into application of the new rules on temporary storage and customs warehousing with the entry into operation of the Customs Data Hub.

f) Applying for an authorization for the operation of a temporary storage facility

According to article 86(3) of the UCC reform proposal, goods in temporary storage shall in principle be stored in customs warehouses, and in justified cases, in other places designated or approved by the customs authorities.

Article 87 of UCC 2023 in this respect adds that by 31 December 2037, customs authorities should assess whether holders of authorizations for temporary storage facilities can be granted an authorization to operate a customs warehouse.

Reading the UCC reform proposal, it is unclear how until 31 December 2037 companies can apply for an authorisation to operate a temporary storage facility. Article 148 of UCC 2013, which specified under which conditions such an authorization could be granted, does not have an equivalent in the reform proposal.

Article 86(7) indeed specifies that the Commission is empowered to adopt Delegated Acts determining the conditions under which places for the temporary storage of goods can be approved. However, these Delegated Acts can only enter into force after the entry into force of the UCC reform proposal, meaning it will be impossible to assign places for the temporary storage of goods in the meantime.

FEPORT therefore recommends that it is clearly specified that from the moment the new UCC enters into force, it will remain possible for companies wishing to develop new port business to apply for a TSO authorization.

g) Movement of goods between temporary storage facilities and/or customs warehouses

Similar questions remain when it comes to the movement of goods between temporary storage facilities. In UCC 2013, the rules for the movement of goods between temporary storage facilities were governed by article 148(5). However, again, no similar article is found in the reform proposal while UCC 2013 will be repealed once the reform proposal enters into force.

Article 107(1) of the reform proposal on "movement of goods" states that importers and exporters can move goods placed under a special procedure other than transit in the customs territory of the EU, which would include customs warehousing, which is listed as one of the special procedures.

In case goods will be moved between customs warehouses, they will be outside of the control of the customs warehouse operator who therefore should not be liable. It is key to specify in article 107(1) that liabilities related to the movement of goods between customs warehouses are assigned to the party organizing the transport.

4. Conclusion

FEPORT welcomes the UCC reform proposal as the introduction of an EU Customs Authority and EU Customs Data Hub jointly hold the potential to allow for the simplification of customs procedures for trusted traders while enhancing supervision of supply chains, thereby combating illicit trade.

However, FEPORT recommends to critically re-assess the rules proposed for temporary storage as according to current practices, a large share of cargoes stays in temporary storage for a period beyond 3-6 days and terminal operators are dependent on data from other parties in the logistics chain for goods to enter in a customs warehousing procedure.

Terminal operators should in any case not be liable in case the 3-6 days limit is exceeded as other parties in the chain fail to place the consignment under a customs procedure.