

**EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION
WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND THE
WINDSOR FRAMEWORK**

**C(2023)258 + ANNEX: PROPOSAL FOR A REGULATION OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL ESTABLISHING THE UNION CUSTOMS
CODE AND THE EUROPEAN UNION CUSTOMS AUTHORITY, AND REPEALING
REGULATION (EU) NO 952/2013**

WITH

SEC(23)198: OPINION OF THE REGULATORY SCRUTINY BOARD

SWD(23)140: IMPACT ASSESSMENT

SWD(23)141: IMPACT ASSESSMENT EXECUTIVE SUMMARY

**C(2023)259 + ANNEX: PROPOSAL FOR A COUNCIL REGULATION AMENDING
REGULATION (EEC) NO 2658/87 AS REGARDS THE INTRODUCTION OF A
SIMPLIFIED TARIFF TREATMENT FOR THE DISTANCE SALES OF GOODS
AND REGULATION (EC) NO 1186/2009 AS REGARDS THE ELIMINATION OF
THE CUSTOMS DUTY RELIEF THRESHOLD**

**COM(23)262: PROPOSAL FOR A COUNCIL DIRECTIVE AMENDING DIRECTIVE
2006/112/EC AS REGARDS VAT RULES RELATING TO TAXABLE PERSONS
WHO FACILITATE DISTANCE SALES OF IMPORTED GOODS AND THE
APPLICATION OF THE SPECIAL SCHEME FOR DISTANCE SALES OF GOODS
IMPORTED FROM THIRD TERRITORIES OR THIRD COUNTRIES AND SPECIAL
ARRANGEMENTS FOR DECLARATION AND PAYMENT OF IMPORT VAT**

1. Submitted by HM Revenue and Customs 03/08/2023

SUBJECT MATTER

2. This package of proposed EU measures is based on the ten recommendations of the 'Wise Persons Group on Challenges Facing the Customs Union' report, published in March 2022 [\[link\]](#), which suggests adaptations to the operation of the EU Customs Union to ensure it is fit for purpose. The report primarily identifies two major shortcomings of the Customs Union, management of ecommerce goods movements and management of EU-wide risks, which call for structural change in order to be addressed.
3. C(2023)258 + ANNEX sets out a proposed redraft of the Union Customs Code ("UCC"). The UCC is the primary legislation for the EU's customs

regime. The structure of the proposal anticipates a redraft of the overarching regime including the granting of powers to the Commission to adopt one or more Delegated Acts (secondary legislation) in respect of specific areas of the UCC. The secondary legislation is not published alongside this proposal. It is currently unknown what the secondary legislation would cover. However, officials will consult the committees' clerks when the proposed delegated acts issue to determine whether EMs are required in each case.

4. The proposals for changes to the Union Customs Code are anticipated to be implemented in line with the timetable below. The time horizon for implementation of these proposals is already lengthy and it should be noted that the proposals are at early stages of consideration and their application in Northern Ireland is still under consideration/subject to further engagement with the European Commission. They will also need to be agreed by the Council of the EU (comprising EU Member States) and the European Parliament which may require up to a year and therefore may push the implementation timeline further back.

Measures relating to stronger centralised customs control	Anticipated timeline
Establishment of the European Union Customs Authority	1 January 2028
Introduction of deemed importer rules making online marketplaces responsible for customs duty on e-commerce sales into the European Union.	1 March 2028
Changes to various provisions of the UCC to allow for the withdrawal of the €150 exemption and introduction of optional simplified customs rates for online sales to consumers.	1 March 2028
Customs duty reporting by online marketplaces and Trust and Check traders centralised in one EU member state rather than point of import.	1 March 2032
Existing authorised economic operator status under the current UCC to be re-assessed.	2035 to 2037

5. Alongside measures aimed at improving compliance/increasing customs revenue, the changes to the UCC also look to reduce costs by between €1.5bn and €2.6bn per year by the end of the programme by having all declarations handled centrally in an EU Data Hub, instead of by the EU Member States. This 15-year project is to be delivered in stages.

Timetable for the implementation of the EU Data Hub	Anticipated timeline
Technical preparation of the EU Data Hub by European Commission	2024 to 2027
Transfer of responsibilities from national systems to EU Data Hub managed by the European Union Customs Authority	2028 to 2034
Carriers, importers, exporters or holders of transit procedures may commence filings to the EU Data Hub. Provision of required data in the EU Data Hub replaces requirement for customs declaration.	1 March 2032
All import filings required to be made to the EU Data Hub	1 January 2038

6. C(2023)259 + ANNEX sets out two revenue raising customs proposals in e-commerce, to apply from 1 March 2028:
- a. amending the Duty Relief Regulation to remove the current exemption from customs duty for consignments valued under €150;
 - b. amending the Combined Nomenclature to allow for non-excise goods to be imported without identifying tariff classification, customs value or origin, subject to customs duty at the five rates set out in the ANNEX to C(2023)259.
7. COM(23)262 amends the Principal VAT Directive, to remove the €150 per consignment limit currently applying to the ‘deemed supplier’ (online

marketplace liability rules) and related administrative provisions, from 1 March 2028.

8. This is linked to the above customs measure, with the intention that all ecommerce operator sales into the EU (regardless of value) will have both VAT and customs duty paid for by the ecommerce operator rather than the individual consumer.

SCRUTINY HISTORY

No recent scrutiny history.

MINISTERIAL RESPONSIBILITY

9. The Chancellor of the Exchequer has responsibility for UK policy on EU monetary and economic issues, including customs.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

10. Customs is not a devolved matter, but UKG will continue to discuss matters where relevant with each of the devolved administrations.

LEGAL AND PROCEDURAL ISSUES

i. Legal Base:

C(2023)258 – the UCC redraft – Regulation of the European Parliament and of the Council (with EEA relevance). EU competence in customs matters among member states pursuant to Article 3, paragraph 1(a), Treaty on the Functioning of the European Union (TFEU). The Union Customs Code is established pursuant to Article 28 TFEU.

C(2023)259 – customs duty relief and rate reforms – Regulation of the Council of the European Union. The Common Customs Tariff and reliefs applying to it are established pursuant to Article 31 TFEU.

COM(23)262 – Amendments to Principal VAT Directive – Council Directive. EU competency on harmonisation of indirect taxation pursuant to Article 113 TFEU.

ii. Voting Procedure:

Ordinary legislative procedure – Articles 33, 289 and 294 of the Treaty on the Functioning of the European Union – requires approval by a majority of the European Parliament and a qualified majority of the European Council.

iii. Timetable for adoption and implementation:

C(2023)258 – Staged implementation as set out under Subject Matter above

C(2023)259 & COM(23)262 – 1 March 2028

POLICY AND LEGAL IMPLICATIONS

11. The Windsor Framework governs the arrangements that apply in Northern Ireland in respect of the movement of goods. These arrangements involve the application of the Union Customs Code alongside a series of bespoke provisions within the Framework which provide for a unique system for the movement of goods.
12. The Government will examine the detail of these proposals as they progress through the EU legislative process and engage the European Commission on the package via the governance structures provided by the Withdrawal Agreement, including the new dedicated customs sub-group of the Joint Consultative Working Group.
13. Whether or how individual proposals will apply in respect of Northern Ireland will be subject to further engagement with the European Commission to understand the proposals and their impact in NI. However, many of the proposed reforms seek to address challenges common to many customs administrations, including the UK, in trying to streamline processes for traders and modernise borders. It is therefore appropriate that certain of these proposals may apply once properly considered by the appropriate Committee.
14. The Windsor Framework puts in place safeguards to ensure that goods moving through the green lane will continue to benefit from the new arrangements agreed in March of this year and the proposal document states that the proposals do not affect these arrangements. The Windsor Framework also includes safeguards - including the new Stormont Brake - that can be used to manage any difficulties.

15. Depending on how the proposals are taken forward, the process of both 'green lane' and 'red lane' movements into NI may change however, as above, the green lane guarantees certain treatment in relation to customs duty and data requirements, therefore impacts beyond the red lane are currently even less certain. Impacts to 'red lane' movements could include:
- a. Low value imports: In response to the significant increase in e-commerce imports into the EU, the European Commission proposes removing the customs duty exemption that currently applies to all movements worth less than €150 and replacing it with a new way of collecting customs duty on e-commerce movements from 2028. The Commission believes that, as well as raising revenue from consignments below the threshold, this will reduce avoidance behaviours – the splitting of consignments and/or undervaluation. The Commission perspective is that this promotes fair competition with EU-based e-commerce operators. For all e-commerce movements whereby the sale has been facilitated by an online marketplace the online marketplace will be liable for paying the duty, preventing consumers being surprised by fees when purchasing goods via an online marketplace. It is not clear at this stage what the administrative impact of the proposal will be. There are unique arrangements in place governing the movement of parcels from GB-NI under the Windsor Framework. The UK and EU would need to consider the applicability of these proposals in the context of these arrangements.
 - b. 'Trust and Check' trader scheme: Introducing a new category of the most reliable traders ('Trust and Check' traders). Currently, the EU awards Authorised Economic Operator (AEO) status to businesses able to demonstrate secure international supply chains and compliant customs controls. This status grants the trader certain customs facilitations, and under the UK-EU Trade and Cooperation Agreement UK established AEOs receive the same facilitation as EU AEOs. The 'Trust and Check' proposal will provide greater facilitations than AEO status and will require business processes and supply chains to be more transparent so that the traders will be able to release their goods into circulation without any active customs interventions. The Commission believes that this will improve compliance, including requiring that traders grant customs authorities access to their electronic systems, enabling record keeping of their adherence and specific movements of their goods. The 'Trust and Check' designation will be available to businesses with a base in the EU and so traders established in the EU and moving EU destined goods through NI will be able to benefit from this new category.
 - c. Data Sharing: The EU is aiming to allow traders bringing goods into the EU to log all the information on their products and supply chains into a single online environment. There are existing governance and data sharing arrangements under the Windsor Framework and the UK and

EU will need to consider in due course how these proposals interact with existing arrangements.

16. These are initial proposals from the Commission, and the final outcome may differ following the EU legislative process. Some proposals also come with an implementation timeframe of up to 15 years. The Government will continue to consider any potential long-term impacts as the policy develops.
17. The EU has expressed the need for consultation with the UK to take into account potential implications for Northern Ireland.
18. In addition, the UK Government continues to engage with the EU as part of the UK/EU annual Trade Specialised Committee on Customs and Rules of Origin on the European Commission's interim evaluation of the UCC. The UK's Mission to the EU will also seek to monitor the potential impacts of the proposed reforms.

CONSULTATION

N/A

FINANCIAL IMPLICATIONS

19. Given uncertainty about whether or how specific reforms may apply in respect of Northern Ireland for reasons discussed above, it is premature to make any assessment of potential financial implications.

MINISTERIAL NAME AND SIGNATURE

A handwritten signature in blue ink that reads "Victoria Atkins". The signature is written in a cursive, flowing style.

Victoria Atkins MP
Financial Secretary to the Treasury
HM Treasury