

Position Paper

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Revision of the Union Customs Code

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1. Introduction

The Community of European Railway and Infrastructure Companies (CER) would like to thank the European Commission for this opportunity to provide our views on the 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 (hereinafter "Proposal"). The Union Customs Code (UCC) plays a vital role in governing customs procedures and regulations within the European Union, impacting a wide range of industries and modes of transport. Our comments and recommendations focus on the potential effects of the proposed changes on the rail transport sector.

2. General remarks

- Since many rail-related provisions will only be specified in the Implementing and Delegated acts of the new UCC, CER's position on the Proposal is somewhat limited. We anticipate the need to further develop our stance following the release of the draft text in these acts.
- We emphasize the importance of maintaining an ongoing dialogue on the draft texts with the stakeholders of the Transit Convention. This is vital because some rules from the new UCC will also need to be incorporated into the new Transit Convention. We are particularly interested in the conditions under which transit procedures can be avoided in case of transport under transit supervision.
- We would like to emphasize that shifting the responsibilities of the entire European customs process to importers and exporters will lead to a redefinition of these roles. This transition could pose challenges for countries with external borders, including seaports and airports, as it implies that many customs operations will need to occur in another Member State. This situation raises questions about whether stakeholders in this other Member State, such as importers, exporters, and customs administrations, would adequately consider the interests of the external border country (including seaports and airports), particularly in terms of preventing logistical issues and congestion.
- Additionally, the Proposal appears to promote the status of a "trusted trader" for a smooth customs process. Nevertheless, it's crucial to clarify the consequences of not meeting this requirement and establish precise criteria for achieving trusted trader status. For example, should the existing status of an Authorized Economic Operator (AEO) suffice to meet these criteria? Addressing these issues is essential to ensure a seamless transition in the European customs framework, promoting transparency, consistency, and minimal disruption for all stakeholders. CER recommends clarifying this point in the modified UCC.

3. Temporary storage period (Recital 36 and Article 86)

CER has taken note of the proposal to reduce the temporary storage period from 90 to 10 days under the revised UCC. While this may align with most logistics scenarios, it's essential to consider business cases and models, particularly those in the container transport sector, where **longer storage periods are necessary for efficiency in the**

customers interest. Additionally, we have observed a particularly stringent time limit outlined in Article 86(5). We seek clarification on the underlying reasoning for this highly restrictive timeframe and respectfully request the Commission to reevaluate this decision. We suggest a potential compromise of extending the period to 30 days, allowing more flexibility without compromising security.

4. Obligations for carriers (Recital 34)

The proposed obligations for carriers, which require determining the importer, especially in cases where the importer is not the consignee mentioned in the consignment note, require further clarification. The carrier may not always have direct knowledge of this, and there is a need to create a mechanism for accurate information transfer.

5. New obligations for the holders of the procedure (Recital 46)

The requirement for railway undertakings (RUs) acting as holders of goods to determine whether the consignee in the consignment note is the importer or the exporter presents challenges. Rail carriers often have limited visibility into the roles of the consignees as importers or exporters. The Proposal states that in cases where the importer and exporter are not known, the RU should be considered as being the importer or exporter. **We strongly oppose this proposal because the RU in question might not be aware of whether the consignee of the consignment note, or another party, is the importer or exporter.** We recommend considering the consignee in the consignment note as the importer or exporter instead, as this party is closer to the importer or exporter and may have more relevant information than the RU.

In relation to the last sentence of recital 33, the introduction of Trust and Check Traders is a positive step toward reducing the number of transit procedures. However, it is unclear how carriers can verify whether the importer/exporter qualifies as a Trust and Check Trader, and, whether, as a result, no transit procedure is necessary. **It is crucial to establish clear guidelines or mechanisms for carriers to determine the eligibility of this status.** It is not clear whether it would be considered sufficient if the carrier relies on the information provided by the consignor in the consignment note. It could be considered to establish a provision stating that, in cases where the carrier is not provided with the respective authorisation number, the carrier may default to a transit procedure to ensure compliance.

6. Advanced cargo information (Article 80)

The requirement for advanced cargo information creates new obligations similar to the Entry Summary Declaration (ENS) under ICS2 Release 3. However, it appears that for countries with security agreements like Switzerland and Norway, where ENS is not required, this requirement also applies. CER suggests that the Commission reevaluates the necessity of advanced cargo information for transports originating from countries with security agreements, as it may introduce additional burdens without clear benefits. Furthermore, the requirement to the transporter should be limited to the portion of the transport under the carrier's responsibility. Moreover, it is essential for customs IT systems to accommodate the provision of partial information, similar to the planned multiple filing concept of ICS2.

7. Application of Article 95(4-5) to rail carriers

We would like to emphasize that Article 95(4), related to loading, may not be readily applicable to rail carriers. Rail carriers typically do not handle loading and may not always possess information about the final destination of the transported goods, particularly in situations where transport is covered by two separate consignment notes. Additionally, rail carriers may not be in possession of the export accompanying document or might not be involved in the finalization of the export procedure, especially when the export procedure is closed at an overseas port. Therefore, it is essential to ensure that the responsibilities outlined in Article 95(4) align with the specific context of rail transport.

Similar to Article 95(4), Article 95(5), which pertains to discrepancies between the pre-departure declaration and loaded goods, may not be directly applicable to rail carriers since rail carriers regularly do not engage in loading process. The language of this provision should be modified to reflect the rail sector's characteristics. In the context of rail transport, rail carriers can solely ensure that the goods within containers or wagons remain unchanged from the moment of their takeover at the point of departure to their handover at the destination. If any modifications occur, customs authorities must be promptly notified.

8. Application of Article 98(2) to rail carriers

Article 98(2) poses a challenge for the rail sector, potentially imposing a new obligation. It is important to know that the law waives this obligation¹ for goods leaving the customs territory of the Union by a single contract to a third country. Given the lack of clear empowerment, Article 98(2) may introduce unwarranted burdens. It is crucial to provide clarity regarding its relevance to rail carriers and carefully assess any unintended consequences.

9. Application of Article 110 to rail carriers

Article 110 raises concerns about the role of railway undertakings when goods enter the EU, potentially designating them as importers. As previously mentioned, determining the importer can be complex, and a clear mechanism is needed to identify the correct party. Rail carriers may only handle a part of the supply chain, and it should be specified who assumes the role of importer. In this regard it is important to clearly outline what should be indicated in the consignment note and/or in the transit document to prove that the carrier is not the importer, and to establish which party assumes the role of the importer.

10. Article 116(1)(a): challenges for rail carriers

The requirement in Article 116(1)(a) presents challenges for rail carriers acting as holders of procedures. Rail carriers may not always possess information about the importer or exporter, rendering this obligation challenging to fulfil. Additionally, the wording of the Article should be refined to ensure its alignment with the practices and responsibilities specific to the rail sector. Namely, the term "the movements" should be more precisely defined, such as by replacing it with "the movement under the responsibility of the holder of the procedure", as rail carriers in their capacity as holder of the procedure might not be responsible for the whole supply chain.

¹ see the last sentence of the Article 332(5) of the UCC IA

11. Discrepancy between Article 115 and Article 116

Article 115 designates the holder of the goods as the importer or exporter when the actual party is unknown. At the same time, Article 116 places obligations on the holder of the procedure to know the importer or exporter. There appears to be a discrepancy between these two articles. It is unclear why there is an obligation on the holder of the goods if the holder of the procedure is the party responsible for knowing. Clarification is needed to ensure consistency and fairness.

12. Note on Article 121 on storage time limit

We would like to note that, while Article 121 removes the 90-day time limit for storage, which, per se, doesn't raise specific concerns on our side, it may be requested by customers that the goods are stored for longer periods, especially in container transport.

13. Proposed amendment to Article 161

We recommend adding a new provision (d) to Article 161(4), which would read as follows: "(d) on demand of that person, the importer, or another party willing to pay the customs debt". This adjustment would streamline the process and enhance efficiency for all parties involved, as the importer is the one able to deduct the import tax, while the carrier or another party that caused the customs debt cannot. Additionally, it would be simpler for the importer and other involved parties to foresee such a direct payment to customs.

14. Editorial remarks

- Chapter 2 Transit contains Sections 1 and 3 but omits section 2. A review of the numbering or content may be necessary to ensure completeness.
- Article 95(8) is absent from the text, despite being referenced within the Article 95. This inconsistency should be rectified.

About CER

The Community of European Railway and Infrastructure Companies (CER) brings together railway undertakings, their national associations as well as infrastructure managers and vehicle leasing companies. The membership is made up of long-established bodies, new entrants and both private and public enterprises, representing 78% of the rail network length, 81% of the rail freight business and about 94% of rail passenger operations in EU, EFTA and EU accession countries. CER represents the interests of its members towards EU policy makers and transport stakeholders, advocating rail as the backbone of a competitive and sustainable transport system in Europe. For more information, visit www.cer.be or follow us on Twitter [@CER_railways](https://twitter.com/CER_railways) or [LinkedIn](https://www.linkedin.com/company/cer).

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