FEPORT updated position paper UCC reform – October 2024

1. Introduction

FEPORT represents the interests of 2,290 private port companies and terminals performing cargo handling and logistics related activities in European ports. FEPORT members employ around 400.000 workers.

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 of the above, FEPORT strongly supports a reform aiming at simplifying procedures for "Trust and Check" operators while further enhancing and harmonising 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 authorised economic operators (AEOs).

Terminals are concerned about the proposed time limit for temporary storage which is set at 3-6 days, as it can give rise to inefficiencies in ports and supply chains. These concerns will be elaborated in Section 3 of this document, which also advises that the time limit for temporary storage should be restored to 90 days as under the Union Customs Code currently in force. Section 4 contains suggestions on how to successfully legislate the temporary storage of goods – provided that the time limit is fixed at 90 days. This section focusses on elements such as guarantees, the movement of goods between temporary storage facilities, cargo release management as well as

authorisations to operate temporary storage facilities. However, first, Section 2 provides some recommendations 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 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 into the hands of organised 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 harmonised 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 harmonisation 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. FEPORT however argues that, in order to strengthen common risk management, harmonisation across Member States is key.

3. Temporary storage and customs warehousing: the need for a longer time limit

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 enter a customs procedure. Article 147(3)(b) of UCC 2013 stipulates that, during those 90 days, TSOs should ensure that the goods are not removed from customs supervision.

TSOs also need to provide a guarantee for goods they hold under storage in order to cover any existing or potential customs debt related to those goods, according to both UCC 2013 and the reform proposal.

Nevertheless, recital 36 of the UCC reform proposal states that, in order to ensure appropriate customs supervision, the amount of 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 extended.

FEPORT supports the Commission's aim of improving customs supervision of goods and thereby combat illicit trade, but has identified a number of practical limitations associated with 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) 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. Another important factor is the subsequent transport mode after the cargo leaves the terminal, as longer storage times are reported for cargoes transported into the hinterland using rail or inland waterways.

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 among others occurred during some recent crisis such as COVID-19, the Shang Hai lockdown and the war in Ukraine, the 90 days' time limit currently in force 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.

Finally, also the impacts of the 3-6 days' time limit on other parties in the maritime logistics chain should be taken into account, since a longer time limit is crucial for shipping lines' hub and spoke model to properly function as well as for shippers to effectively manage their supply chains.

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.

b) Data requirements and drafting of customs documents

In a context where the time limit for temporary storage is proposed to be reduced to 3-6 days, FEPORT is concerned by the data elements that terminal operators – in their role of customs warehouse operators – 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.

Terminal operators – in their role as customs warehouse operator – will also need to file additional documents: a storage document and, once the goods are released, the release document. This is a significant complication as compared to the current system where the shipping agent prepares the temporary storage declaration while the owner of the goods (or its representative) ends the temporary storage by placing the goods under a subsequent custom procedure.

From an operational perspective, it should also be emphasised 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.

The increase of administrative and IT costs for terminal operators related to compliance with the data requirements of article 119(1), as well as the liability issues associated with this is one of the main reasons why FEPORT favours applying a longer time limit to the temporary storage of goods. Terminals should not be forced to take on the role of customs warehouse operators. Under the current UCC, temporary storage and customs warehousing are two distinct procedures that are different when it comes to time limits, the extent to which the goods can be handled and altered, as well as administrative and data requirements. FEPORT considers that both regimes have an important function in the seamless functioning and resilience of logistics chains, and should therefore be maintained in EU Customs legislation.

4. Recommendations on how to govern the temporary storage of goods in ports

As elaborated in the previous Section, FEPORT favours maintaining the time limit for the temporary storage of goods at 90 days. However, it is equally crucial to pay attention to the following elements when designing rules governing the temporary storage of goods: guarantees, authorisations to operate temporary storage facilities and the movement of goods between temporary storage facilities.

a) Guarantees

FEPORT understands that in the event the time limit for temporary storage is restored to 90 days, a guarantee will be required to ensure that the TSO fulfills the relevant obligations such as ensuring that the goods are not removed from customs supervision. However, when doing so, the operational and economic realities of European seaports should be carefully considered.

Terminal operators can handle up to several millions of containers each year, but when conducting their operations, they do not know the value of the goods inside the containers.

Under the current legal framework, terminal operators therefore need to provide a guarantee per container of EUR 10.000, i.e. the maximum amount which is used when the value of the goods is unknown as per article 155(3) of the UCC Implementing Act.

As a consequence, terminal operators that operate without a guarantee waiver need to systematically block several millions of euros in their bank account, which is impossible from a financial perspective. It is therefore crucial for FEPORT members that the current UCC legal framework allows terminal operators to obtain a guarantee waiver if they meet the conditions spelled out in article 84(3) of the UCC Delegated Act, as they cannot operate without it.

FEPORT therefore considers that it is essential that the UCC reform also allows trusted TSO operators to apply for a guarantee waiver.

We support that article 176(2-3) of the reform proposal already allows Trust and Check traders as well as economic operators fulfilling the conditions of article 24(1)(b-c) to obtain a guarantee waiver or provide a comprehensive guarantee with a reduced amount. However, considering the above-mentioned reasons, it should be ensured that the criteria to obtain a guarantee waiver can also be met by operators of temporary storage facilities.

FEPORT therefore recommends including the criteria for obtaining a guarantee waiver which are spelled out in article 84(3) of the UCC Delegated Act in the UCC reform proposal.

b) Applying for an authorisation 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 authorisations for temporary storage facilities can be granted an authorisation 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 authorisation 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 authorisation.

c) 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 organising the transport.

d) Cargo release management

Under the current Customs framework, operators of temporary storage facilities are notified when the temporary storage status of goods ends and the goods can thus be released and picked up by the next transport mode. Procedures in this respect, however, vary significantly across different Member States while also the next customs procedure of the goods (import or re-export) plays a role in this respect. In some cases, messages are shared by email, but also port community systems and customs' IT systems are used. In some circumstances, cargo release is still paper based.

FEPORT recommends using the Customs Data Hub to harmonise cargo release messages across the EU. It is crucial to ensure that release messages are shared in a secure way through a digital system, as this will contribute to reducing administrative and IT costs for terminal operators, while preventing fraud.

Finally, it should be noted that in a context where the Data Hub will serve as the single centralised IT Customs environment, the availability and performance of this system is crucial as disruptions could seriously affect trade. Taking adequate measures in the fields of (cyber)security and contingency planning is therefore key in order to prevent downtime and allow supply chains to continue to function in case of disruptions.

5. 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 TSOs are dependent on data from other parties in the logistics chain for goods to enter in a customs warehousing procedure.

TSOs should in any case not be liable in the event that the 3-6 days limit is exceeded because other parties in the chain fail to either re-export the consignment in question or place it under a customs procedure.

Aside from increasing the time limit, it is equally important to focus on other elements related to the temporary storage of goods, in particular guarantees and the need for a guarantee waiver.