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COMMISSION STAFF WORKING DOCUMENT

Subsidiarity grid

Accompanying the document

**Proposal for a Regulation of the European Parliament and of the Council
establishing the European Union Single Window Environment for Customs and
amending Regulation (EU) No 952/2013**

{COM(2020) 673 final} - {SEC(2020) 360 final} - {SWD(2020) 238 final} -
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Subsidiarity Grid

1. Can the Union act? What is the legal basis and competence of the Unions' intended action?
1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?
<p>The legal basis for the EU to act is provided by Articles 33, 114 and 207 of the Treaty on the Functioning of the European Union¹ (TFEU). Articles 33 and 114 give the European Parliament and the Council the right to take measures to strengthen customs cooperation between Member States and between Member States and the Commission to ensure the proper functioning of the internal market. In addition, the choice of Article 207 as a legal basis relies on the premise that the scope of the initiative extends beyond cooperation between customs authorities to include trade facilitation as an important aspect of trade policy.</p>
1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?
<p>Article 33 TFEU calls for EU action on customs cooperation. This cooperation is carried out under the EU Customs Union, which is an exclusive competence of the EU. For the internal market (Article 114 TFEU), the EU's competence is shared. For the common commercial policy (Article 207 TFEU), this competence is exclusive.</p>
<p><i>Subsidiarity does not apply for policy areas where the Union has exclusive competence as defined in Article 3 TFEU². It is the specific legal basis which determines whether the proposal falls under the subsidiarity control mechanism. Article 4 TFEU³ sets out the areas where competence is shared between the Union and the Member States. Article 6 TFEU⁴ sets out the areas for which the Unions has competence only to support the actions of the Member States.</i></p>
2. Subsidiarity Principle: Why should the EU act?
2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2⁵:
<ul style="list-style-type: none"> - Has there been a wide consultation before proposing the act? - Is there a detailed statement with qualitative and, where possible, quantitative indicators allowing an appraisal of whether the action can best be achieved at Union level?
<p>Extensive public and targeted consultations were carried out and the results fed into the impact assessment (IA) report.</p> <p>The Inception Impact Assessment was published on 4 May 2018. Its purpose was to: (i) outline the problem; (ii) list the policy options for targeted EU-level action; (iii) assess the potential impact of the initiative on other policy areas; and (iv) outline the main features of the consultation strategy. Stakeholders had until 1 June 2018 to provide feedback, and a total of five contributions were submitted.</p> <p>The public consultation ran from 9 October 2018 to 17 January 2019. A questionnaire was available</p>

¹ Consolidated version of the Treaty on the Functioning of the European Union (OJ C 115, 09.05.2008, p. 47).

² <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E003&from=EN>

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E004&from=EN>

⁴ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E006:EN:HTML>

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN>

online in all official EU languages (except for Irish, due to resource constraints). It consisted of 24 questions focusing on respondents' profiles, experiences with cross-border operations and opinions on potential policy measures. A synopsis of the consultation is available on the Europa website⁶. The consultation showed that there is widespread agreement about the existence and seriousness of the problems identified and welcomed EU action to address these problems. In total, 371 valid responses were received, most of which were from businesses. The potential objectives for a new initiative were considered important by over 90% of respondents. All proposed changes triggered by new EU action were expected to have very positive impacts on business operations, particularly on: (i) reducing administrative burden; (ii) the equal treatment of economic operators; and (iii) the fight against fraudulent activities.

Much of the data was collected through the Customs 2020 project group that was set up to study a possible framework to develop an EU Single Window environment for customs including the legal context. Launched in December 2016, the project group continued to meet regularly until June 2019, combining the expertise of customs and IT delegates from 19 Member States administrations and representatives of six trade associations. The project group mainly discussed and analysed challenges to and trends associated with the single window concept at both national and EU level. The goal was to assess the gap between the current situation faced by administrations and economic operators and future possibilities. The project group's collaboration efforts resulted in a problem definition, policy objectives and policy options that were used in the IA report.

More detailed feedback and evidence was collected from a sample of eight Member States in the form of case study visits. Each visit comprised 10-15 interviews with customs authorities, partner competent authorities and individual businesses.

Additional data was collected at a high-level seminar on the EU Single Window environment for customs hosted by the Romanian Presidency in May 2019 with the participation of senior management officials from national customs administrations, candidate countries, representatives of trade associations and keynote speakers from the US Customs and Border Protection Agency and international organisations. A series of workshops were held to address the relevance of the policy options in the government-to-government and business-to-government context, with informal polls conducted to obtain feedback on the identified policy options.

An overall synopsis report presenting the outcome of the different consultation activities and showing how the input has been taken into account is attached as Annex 2 to the Staff Working Document (SWD) on the IA report.

Chapter 3 of the SWD on the IA report and Section 2 of the proposal's explanatory memorandum contain a section on the principle of subsidiarity as presented in question 2.2 below.

2.2 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the conformity with the principle of subsidiarity?

The complex regulatory set up and the continuous introduction of new regulatory requirements for international trade across different policy areas (health and safety, environment, agriculture, fisheries, market surveillance, cultural heritage, etc.) has led to insufficient coordination and fragmented interoperability between customs and the competent authorities in charge of these requirements. The ultimate consequences of this are inefficient clearance processes (both for

⁶ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/1739-EU-Single-Window-environment-for-customs>

authorities and economic operators) and the ineffective application of EU rules.

The issues at stake concern not only the Customs Union, but also the internal market across a range of policy areas related to cross-border operations regulated by EU law. The identified problems are inherently transnational, involving the movement of goods across borders and EU-wide effects of any error or fraud taking place in an individual Member State. They would limit the benefits of gradual digitalisation and modernisation of processes related to the clearance of certain goods.

The EU, given its responsibility for the Customs Union and for the harmonisation of the non-customs regulatory requirements in question, is well placed to address the problems by coordinating action, tackling fragmentation and generating economies of scale. Moreover, in the absence of this proposal, existing and expected action at different levels has proved to be inadequate on its own.

In particular, the proposal's objectives cannot be achieved effectively and efficiently by the Member States alone for the following reasons:

A central infrastructure (EU CSW-CERTEX) to interconnect the national customs environments of the 27 Member States to the existing EU non-customs systems that store the information on EU non-customs formalities enforced by customs, will generate substantial economies of scale compared to developing the necessary national connections. This central infrastructure will provide common services, such as business and technical transformation, to render the customs and non-customs domains interoperable. The increasing digitalisation of EU non-customs regulatory requirements will make the efficiency of a central connector more relevant in the future.

In addition, the need to strengthen and harmonise the enforcement of EU non-customs legislation across EU borders will be better achieved by standardising the automated exchanges of information between EU non-customs systems and national customs environments. This is especially important in the case of authorisations or quotas issued by non-customs authorities that can be used to import or export the authorised quantities of goods split among multiple customs declarations. These are typically valid EU-wide, meaning that the relevant consignments may be cleared in different Member States. Before releasing the declared quantities into the EU, customs authorities need to know that the remaining quantity has not already been used in the clearance of other consignments. Manual monitoring or individual automated controls based on the nationally-available information are both time-consuming and insufficiently accurate, making it difficult to prevent the fraudulent use and re-use of these authorisations and quotas. Automated quantity management at EU level requires standardised data to be shared in real time throughout the EU. This could only be effectively achieved by mandatory EU action as set out in the proposal.

Finally, measures to streamline the reporting requirements of economic operators to fulfil customs and EU non-customs formalities affecting the international trade in goods, should be harmonised across the EU to achieve a level playing field for trade. The underlying data rationalisation and harmonisation process should be performed at EU level as it involves data sets and formats regulated in EU legislation.

Given its role in modernising the Customs Union and better enforcing customs and non-customs regulatory requirements at the border, the EU is in a unique position to reassess the fundamental practices and procedures of the current fragmented model of regulatory compliance. EU action in this area will improve compliance of regulatory requirements with EU legislation and further facilitate the cross-border movement of goods. This, in turn, will bring a clear added value to the interaction between customs and partner competent authorities and the day-to-day activities of economic operators. Ultimately, EU action will generate significant social and environmental benefits, as well as economic benefits across the EU.

2.3 Based on the answers to the questions below, can the objectives of the proposed action be

achieved sufficiently by the Member States acting alone (necessity for EU action)?

The identified problems are widespread in the EU as they involve international trade in specific goods subject to EU non-customs regulatory requirements in areas such as health and safety, the environment, agriculture, fisheries, cultural heritage, market surveillance, etc. Due to the transnational nature of these problems, action at national level will only partially achieve the objectives of this proposal, and it will come at a much higher cost and with less harmonisation in the enforcement of non-customs formalities. National single window initiatives in a few Member States have helped to address the identified problems, but they face several issues which suggest that the benefits would be limited. These issues range from the lack of EU-wide quantity management to significant variations in policy priorities and regulatory reporting arrangements between Member States. Given its responsibility for the Customs Union and the effective application of internal market rules, the EU is well-positioned to address these problems and achieve the proposal's policy objectives by coordinating action, tackling fragmentation and generating economies of scale.

(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?

The identified problems are inherently transnational, as they involve the cross-border movement of goods, and any error or fraud taking place in an individual Member State can have an EU-wide impact. The problems affect an estimated 39,7 million of the most sensitive movements each year, which in addition to customs formalities are subject to non-customs regulatory requirements in areas such as health and safety, the environment, agriculture, fisheries, cultural heritage, market surveillance, etc. Due to insufficient interoperability and coordination among authorities, many of these movements are processed in inefficient ways conducive to error and fraud.

(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty⁷ or significantly damage the interests of other Member States?

The absence of EU-level action will leave the identified problems unresolved, undermining the EU's core objectives, such as security, public safety and environmental protection, and making it more difficult to ensure the effective application of internal market rules.

National action will only partially achieve the proposal's objectives, and it will come at a much higher cost and with less harmonisation in the enforcement of non-customs formalities. This will lead to uneven EU protection and a potential distortion of competition. In particular, automated quantity management at EU level will be very difficult to achieve, which will increase the risk of fraud and lead to gaps in the enforcement of customs rules - even in those Member States with national single window initiatives. Only a harmonised enforcement of EU regulatory formalities at the border will guarantee the equal treatment of economic operators throughout the EU, as it will improve the transparency of the relevant customs activities, thereby raising consumer confidence in market products.

(c) To what extent do Member States have the ability or possibility to enact appropriate measures?

Several Member States such as France, Italy and Spain, have made significant progress in interconnecting national customs systems to either national and/or EU non-customs systems, enabling the automated verification of non-customs regulatory compliance. These initiatives have

⁷ https://europa.eu/european-union/about-eu/eu-in-brief_en

helped to address the identified problems, but due to the following issues, these benefits are limited.

First, the necessary resources are unavailable in most Member States.

Second, the current patchwork arrangements means that EU-wide quantity management is lacking. This opens the door to fraud and contributes to the inconsistent enforcement of EU legislation in some areas.

Third, the scope of national initiatives varies and usually only includes a few non-customs regulatory requirements, based on national priorities, leaving most problems unaddressed.

Finally, with no harmonised measures to facilitate and streamline customs and EU non-customs requirements by trade, economic operators could face a complex situation due to potential variations in regulatory reporting arrangements in different Member States.

(d) How does the problem and its causes (e.g. negative externalities, spill-over effects) vary across the national, regional and local levels of the EU?

The sheer volume of regulatory requirements affecting international trade in certain goods and the complex framework to manage them at EU, national and - in some Member States - regional or local level suggests that the magnitude of the problems varies by Member State depending on their trading profiles, both in terms of type and volumes of goods traded. The level of incentive to invest in solutions that simplify and streamline processes therefore differs between countries. However, as the identified problems affect all Member States, EU regulatory action is necessary. The proposed solution therefore focuses only on EU regulatory formalities for which the information is stored in an EU-wide system that the 27 national customs systems connect to in a uniform way. Consequently, the interconnection of customs systems to national, regional or local systems that store information on non-customs regulatory requirements falls outside the scope of the proposal and is left to the discretion of the Member States.

(e) Is the problem widespread across the EU or limited to a few Member States?

The problems are widespread across the EU as they involve the international trade in specific goods subject to EU non-customs regulatory requirements in areas such as health and safety, the environment, agriculture, fisheries, cultural heritage, market surveillance, etc.

(f) Are Member States overstretched in achieving the objectives of the planned measure?

No. The proposal provides a way to achieve the objectives that represent important economies of scale compared to individual national initiatives. First, it is only focused on EU non-customs regulatory formalities for which the relevant information required by customs to release the goods is available at central level in EU non-customs systems. Therefore, putting in place a central infrastructure (EU CSW-CERTEX) that provides a single interface between national customs and these systems is cheaper than developing individual national connections to each of them. A significant portion of the investments needed to develop the EU Single Window environment for customs and in particular its central component (EU CSW-CERTEX) will be borne by the European Commission.

(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?

Most Member States are favourable to the proposed system of interconnectivity and digital administrative cooperation. On the regulatory requirements covered (EU formalities managed through EU systems), there is broad agreement among the Member States that the benefits will be significant. Criticism is limited to two aspects: (1) for those Member States that already have

advanced digital initiatives, the mandatory use of EU CSW-CERTEX could undermine the efforts that have already been made; and (2) some Member States feel that to justify the costs of their connection it would be important to prioritise high-volume regulatory requirements, rather than all requirements falling within its scope.

Member States also saw the benefits of the proposal's additional measures to simplify reporting formalities for trade. Nevertheless, some Member States voiced their concerns that the technical solutions would be costly and difficult to prioritise over the coming years due to the focus on other IT projects, such as those required as part of the Union Customs Code work programme. A few also expressed worries about the organisational challenges related to the envisaged coordinating role for national customs authorities.

2.4 Based on the answer to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of scale or effects of that action (EU added value)?

The objectives of the proposal can be better achieved at EU level. Establishing a central module to facilitate digital cooperation and information exchange between the national single window environments for customs and EU non-customs systems, together with the increasing digitalisation of EU non-customs formalities will render the customs and non-customs domains interoperable, reduce administrative burden for all affected stakeholders, and generate substantial economies of scale. Isolated national initiatives will not achieve the same level of benefits and the costs will be significantly higher. EU action in this area will significantly improve the functioning of the internal market by enhancing and harmonising the enforcement by customs of EU non-customs requirements imposed on the international trade in goods. This, in turn, will bring a clear added value to the interaction between customs and partner competent authorities and the activities of economic operators. Ultimately, EU action will generate significant social and environmental impacts, as well as substantial economic benefits across the EU.

(a) Are there clear benefits from EU level action?

Yes, clear benefits are expected for Member State administrations, economic operators and the general public. The initiative will save customs administrations significant time and resources in the clearance of goods subject to non-customs regulatory requirements, as the system interconnections and electronic data sharing will enable automated controls and reduce reliance on manual documentary checks. This will also benefit economic operators as it will reduce the time and resources spent on documentary controls. In addition, a harmonised simplification of reporting requirements will facilitate trade compliance by reducing duplication, time and compliance costs for economic operators.

The benefits will be especially pronounced for regulatory formalities where quantities of authorised goods can be split across multiple customs declarations thanks to the introduction of an automated quantity management at EU level. This will enable the automated verification of 'write-offs' throughout the EU, preventing any goods over the authorised quantity from being cleared. Moreover, standardising the exchange of information between customs and non-customs systems will be an opportunity to enhance and harmonise the enforcement of EU non-customs legislation by national customs administrations across the EU. This will help protect public health and safety, improve security, preserve cultural heritage and protect animal welfare and the environment.

(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?

Yes. The central infrastructure (EU CSW-CERTEX) will provide common services such as business and

technical transformation to render the customs and non-customs domains interoperable. Furthermore, the increasing digitalisation of EU non-customs regulatory requirements will make the efficiency of a central connector more relevant in the future. This will generate substantial economies of scale compared to developing individual national connections to each EU system.

The proposed action will significantly improve the functioning of the internal market by enhancing and harmonising the enforcement by customs of EU non-customs requirements imposed on international trade. It will help strengthen the single market by eliminating possibilities for distorted competition. Ultimately, the public will benefit from better compliance with and enforcement of these regulatory requirements which are designed to protect public health and safety, increase security, preserve cultural heritage and protect animal welfare and the environment.

(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?

Broader harmonisation and better enforcement of EU non-customs formalities at the border will better protect the EU and reduce possibilities for distorted competition. More efficient customs clearance processes throughout the EU will be achieved at a lower cost given the economies of scale generated by EU action.

(d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, regional and local levels)?

Yes. The direct economic impacts are high in terms of trade facilitation and reducing administrative burden, particularly by saving time and making clearance simpler and more automated. Isolated national initiatives will not achieve the same level of benefits and the costs will be significantly higher. In terms of environmental and social impacts, only EU action enabling the monitoring of authorised quantities and quotas at EU level could deliver on the objectives, by improving the enforcement of multiple policy measures conceived to protect people and the environment.

(e) Will there be improved legal clarity for those having to implement the legislation?

Yes. The 2008 e-Customs Decision⁸ on a paperless environment for customs and trade called on the Member States and Commission to 'endeavour to establish and make operational a framework of single window services'. However, the evaluation of the e-Customs Decision in 2014⁹ found these provisions insufficiently concrete and recommended the adoption of a new legal instrument for the single window. This proposal aims to provide a comprehensive framework to support the establishment of an integrated and coherent environment for customs single window services in the EU and put in place concrete provisions that are directly applicable in all Member States.

3. Proportionality: How the EU should act

3.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?

⁸ Decision No70/2008/EC of the European Parliament and of the Council of 15 January 2008 on a paperless environment for customs and trade, OJ L 23, 26/01/2008, p. 21-26.

⁹ Evaluation of the electronic customs implementation in the EU, final report (21 January 2015). https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/ecust_evaluation_final_en.pdf

In line with the principle of proportionality, the scope of this proposal is limited to non-customs regulatory formalities laid down in EU legislation for which an EU electronic system is in place to store relevant information required by customs to verify compliance with the respective measures. The interconnection of these systems to the national single window environments for customs systems through the EU CSW-CERTEX, and the electronic information exchanges prescribed in the proposal are necessary to improve and ensure a consistent enforcement of these regulatory formalities throughout the EU. This is notably the case when the legislation allows authorised quantities of goods to be split across multiple customs declarations that can be lodged EU-wide, or prohibits the import or export of goods subject to quotas after a certain threshold is reached. While customs authorities need to verify the quantities used in the clearance of previous consignments, manual checks are both time-consuming and insufficiently accurate. These problems cannot be solved without new EU action, partly because they relate to EU formalities. On the other hand, the rules presented in this proposal to harmonise the national single window environments for customs are necessary to achieve a level playing field for economic operators when fulfilling their regulatory requirements.

3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?

The scope of this proposal covers EU non-customs regulatory formalities for which the relevant information required by customs to release the goods is available in EU non-customs systems. A central module (EU CSW-CERTEX) will connect these systems to the national customs systems, allowing the automated verification by customs of these formalities and also automated quantity management at EU level. The electronic information exchanges prescribed in the proposal are necessary to ensure an EU-wide enforcement of the regulatory formalities included in its scope. Likewise, procedural rules to harmonise the national single window environments for customs are essential for creating a level playing field for economic operators when fulfilling their regulatory requirements. As evidenced in the findings of the SWD on the IA report, the costs related to the proposed measures are commensurate with the policy objectives to be achieved. A regulation is the most suitable instrument for a central solution that introduces an obligation for the Member States and the European Commission to connect their respective systems to it, and lays down rules governing digital cooperation and information exchange between national and EU components.

(a) Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?

Yes. As indicated above, the scope of the proposal is limited to EU non-customs regulatory formalities for which the relevant information for customs to release the goods is available at central level in EU non-customs systems. The proposed solution will provide national customs with a single interface to these systems so that verification of these formalities by customs and quantity management at EU level are both automated. EU formalities that are not digitalised at EU level and national regulatory requirements are not covered by the proposed EU action as there is no clear evidence that this will bring tangible benefits.

(b) Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-legislation, etc.)?

Yes. The proposal pivots on the establishment of a central module (EU CSW-CERTEX) that will connect national customs systems to the EU non-customs systems. A regulation is the most suitable

instrument for a central solution that introduces an obligation for the Member States and the European Commission to connect their respective systems to it, and lays down rules governing digital cooperation and information exchange between national and EU components.

(c) Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit the European action to minimum standards or use a less stringent policy instrument or approach?)

Yes. The proposal is limited to non-customs regulatory formalities regulated at EU level and managed with the support of an EU system. For EU non-customs formalities managed through national systems or not digitalised at all, as well as for any national regulatory requirements, the objectives of enhanced cooperation and interoperability between customs and non-customs authorities may be achieved more efficiently at national level, and therefore they remain outside the scope of this proposal.

(d) Does the initiative create financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?

Yes. One-off implementation and recurrent costs will be borne by the EU and national authorities. Implementation costs include IT spending, process change management, training and support, and are expected to be phased over a period of 7 years. The ensuing recurrent costs will include maintenance, periodic updates, support and day-to-day operations. The estimated costs (in €m, low and high ranges except for EC costs) are:

Total for gradual implementation years 1-7	EC	64.73	Annual total once fully operational, from year 8 onwards	EC	6.35
	Total MS authorities	64.38 to 127.73		Total MS authorities	5.91 to 11.75
	Total	129.11 to 192.46		Total	12.26 to 18.10

These costs are commensurate with the objectives to be achieved. Once fully implemented, the proposed measures are expected to generate significant direct economic impacts, totalling €209.4m to €311.5m annually, showing its proportionality.

(e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?

The proposal prescribes the connection of the national single window environments for customs to the central module (EU CSW-CERTEX) and the necessary set of functions or services that the national environments need to facilitate information exchanges within the overall environment. The internal organisation of the national environments and their operational practicalities are left to the discretion of the Member States.