

# Client Alert

## International Trade

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### European Union publishes new Union Customs Code

On 9 October 2013, the European Union (EU) adopted the Union Customs Code (“UCC”), which was published in the EU Official Journal the following day.<sup>1</sup> It will on 1 June 2016 replace the current Community Customs Code<sup>2</sup> as the new EU framework legislation in the area of customs which the 28 EU Member States must apply (with some room for Member State discretion). The UCC is intended to achieve greater legal certainty for businesses as well as increased clarity for customs officials throughout the EU. The UCC also seeks to improve and simplify customs rules and procedures, harmonise decision-making procedures further, and lead to more efficient customs transactions. The UCC consolidates a number of important rules and practices which, until now, have been applied on a case by case basis.

The improvements introduced by the UCC include measures to complete the transition to a paperless/electronic customs environment, and provisions to expand and reinforce customs procedures for Authorised Economic Operators (“AEOs”), including centralised clearance.

#### Background – the long and bumpy road to modernisation

The UCC will supersede the 1992 Community Customs Code (“CCC”), which was the first attempt to consolidate the EU’s customs regulations over two decades ago. Although a major achievement and facilitation for businesses at that time, the procedures and practices under the CCC relied on the use of paper documentation,<sup>3</sup> and it was therefore considered important to update the EU’s customs rules to today’s trading environment.

This led to a Commission proposal for an EU Modernised Customs Code (“MCC”) in late 2005 and adoption of the MCC Regulation in 2008.<sup>4</sup> The MCC sought to adapt customs legislation and practices to the electronic environment and at the same time simplify and restructure customs rules. The MCC was meant to become fully applicable once its detailed implementing provisions were in force, and established 24 June 2013 as the final deadline to have the detailed provisions in place. However, for a variety of reasons, including problems with the introduction of new customs IT systems (a key element of the MCC), and additional requirements imposed by the Lisbon Treaty (entailing different procedures to adopt the detailed implementing provisions), the Commission decided to “recast” the MCC before its planned application date.

On 20 February 2012, the Commission proposed the UCC to “take over” from the MCC, and set **31 December 2020** as the final deadline for implementing the IT systems and techniques needed in a paperless customs environment. The UCC will repeal the MCC on **30 October 2013**. On that date, the articles of the UCC providing the legal basis for the adoption of detailed implementing rules will take effect, but



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<sup>1</sup> See [Regulation \(EU\) No 952/2013](#) of the European parliament and of the Council of 9 October 2013 laying down the Union Customs Code, OJ L 269, 10.10.2013, p. 1.

<sup>2</sup> Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing a Community Customs Code, as amended. The most recent consolidated version of Regulation 2913/92 is available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1992R2913:20070101:EN:PDF>.

<sup>3</sup> Since 1992, some electronic systems have meanwhile been introduced through amendments and implementing provisions.

<sup>4</sup> [Regulation \(EU\) No 450/2008](#) of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code), OJ L 145, 4.6.2008, p.1.

other provisions will only take effect on **1 June 2016**, after the adoption of detailed implementing provisions. These details will be laid down in “delegated” and “implementing” acts which the European Commission will work on with the other institutions in the next few years. The final picture of what will change, and how, is therefore not yet known.

## Main elements of the UCC

The UCC foresees a complete **shift to a paperless environment by the end of 2020**. By that time, the customs environment must be based entirely on electronic data-processing techniques for the exchange of information between economic operators and customs officials. The EU is already working on this major goal in a multi-annual strategic plan, in which target dates are set to achieve the various steps towards full computerisation.

The new UCC also **extends benefits for AEOs**. AEOs will, for example, be given access to the “centralised clearance” procedure, allowing them to lodge customs declarations and pay duties centrally from their place of establishment, rather than in the other EU Member States where the goods are imported or consumed. AEOs may also be allowed to move goods to another Member State while they are still under temporary storage (i.e. before they are assigned to another customs procedure). AEOs will in addition be able to benefit from certain waivers, and from deferred payment based on a guarantee with a reduced amount (as compared to non-AEOs, which would have to provide a full guarantee).

Another major change for AEOs concerns **the timing of when goods are released for free circulation**. Goods will be considered released into free circulation as soon as the AEO lodges the customs declaration, without the need to present the goods. Customs authorities will however retain the right to request documentation and conduct inspections at the premises where the goods or documentation are held.

The UCC further provides for the **merger of inward processing, processing under customs control and destruction procedures**. Under the new rules, the holder of the authorisation decision will also have more time to decide whether to re-export the final goods, have them destroyed or enter them into free circulation. The current inward processing “drawback” system (under which import duties on input materials are first paid but then refunded upon export of the processed product) will no longer exist.

The UCC lays down **harmonised rules on decision-making** by the Member States, and on the **right to be heard prior to adoption** of a disadvantageous decision (albeit not for all types of decisions, e.g. Binding Tariff Information or Binding Origin Information Decisions).

Finally, the UCC envisages certain changes to the rules on **temporary storage**, including the extension of the storage period to 90 days (as opposed to the current 20 or 45 days, depending on whether the goods were carried by sea), and the possibility to move goods under temporary storage between facilities without transit procedures.

## Comment

The simplification of customs legislation and procedure introduced by the UCC is expected to bring down costs and increase legal certainty for economic operators. The UCC is also expected - in the longer run - to ensure that economic operators are able to benefit fully from information technology, thus reducing the burden and costs while at the same time improving the effectiveness of customs controls.

Some companies say, however, that the UCC does not go far enough in facilitating trade (e.g., requiring AEO status for certain simplifications in the future will disadvantage small companies not able to invest in acquiring AEO status), or that it will take too long for the benefits to fully materialise, because transitional periods are planned to allow the continued co-existence of paper systems at the request of individual Member States.

Until the delegated and implemented acts are adopted, it remains unclear which exact changes will take place on 1 June 2016. The devil will, as always, be in the detail.

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