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RENDÉSZETTUDOMÁNY

The European Customs Authorities in Fighting Tobacco Smuggling

The Perspective of a Possible Harmonisation of European Customs Law Enforcement Aspects as a Factor of Increasing Effectiveness and Efficiency

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Purpose: This study investigates the role of European Customs Authorities in addressing tobacco smuggling as a form of organised cross-border crime. It evaluates whether greater harmonisation of EU Customs Authorities' law enforcement could improve effectiveness and efficiency. Tobacco smuggling is presented as a high-priority area closely associated with organised criminal networks and posing a threat to the EU's financial interests.

Methodology: The research employs a doctrinal and policy-oriented legal analysis of EU customs legislation, including the Union Customs Code, the PIF Directive, and the ongoing EU Customs Reform proposals. A three-level analytical framework – policy, legislative, and operational – is applied to assess current levels of harmonisation and pinpoint structural gaps in enforcement across Member States. Comparative illustrations (France, Lithuania, Greece) were selected to represent distinct enforcement models and sanctioning approaches, enabling structured comparison across definitions, liability standards, and sanctioning practices.

Findings: Although customs procedures are largely harmonised, major differences persist in sanctions, investigative powers and operational practices. This fragmentation leads to enforcement inconsistencies and opportunities for "forum shopping", undermining deterrence against organised tobacco smuggling. The proposed reforms – especially the creation of an EU Customs Authority and the partial harmonisation of administrative sanctions – mark progress, but further legislative and operational convergence is necessary.

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Value: This study demonstrates that harmonised enforcement enhances customs performance and better protects the EU's financial and security interests, thereby contributing valuable insights to the policy debate on the future of EU customs governance.

Keywords: tobacco smuggling, customs law enforcement, EU customs reform, EU harmonisation

Introduction

Customs authorities, among the oldest agencies, implement similar global processes and legislation. They play a dual role as global authorities for both trade facilitation and control, striking a balance between these mandates within the appropriate structural framework.

The customs regulatory framework is formed in three levels. The first level corresponds to the international approach to the customs framework, primarily under the auspices of the World Customs Organisation (WCO). The Harmonised System (HS) Convention, the Revised Kyoto Convention (RKC), the Norms of Standards to Secure and Facilitate Global Trade (Norms SAFE), the Authorised Economic Operator (AEO) Compendium and the Risk Management Compendium constitute only some examples of the global customs approximation. Furthermore, in the context of the World Trade Organisation (WTO), the Trade Facilitation Agreement (TFA) and the General Agreement on Tariffs and Trade (GATT) also illustrate the global nature of customs objectives as a natural outcome of the globalisation of trade and the dominance of Global Supply Chains.

Besides the "globalisation" of the Customs framework, the next level of approach lies in the development of the "hybrid European phenomenon" and concerns only the 27 Member States (MS). In harmony with European integration, the European Union (EU) customs legislation is a characteristic field of unification since the establishment of the internal market. From the Customs Union to the repealed Community Customs Code (Regulation EC 2913/1992) and to the – in force – Union Customs Code (UCC, Regulation EU 952/2013), the almost absolute approach and unification of customs legislation in the frame of the EU allows pertaining to the so-called "Europeanisation" of customs matters. The EU legislator's option to choose the legal instrument of Regulation to "host" the UCC, with immediate, universal, and fully binding validity in the internal legal systems of the MS, bears witness to his willingness to achieve full unified approximation. Thus, this unification concerns almost not at all the field of customs violations and penalties.

The third level of customs legislation is modulated at the national level, where each State and, within the EU, each EU Member State, formulates its regulatory framework, usually via the formulation of a National Customs Code.

This study uses a qualitative, analytical, and policy-focused method. It relies on secondary data from official legal sources, academic works, and reports from organisations like OLAF and the European Court of Auditors. The research uses comparative and content analysis to study different customs law enforcement frameworks across EU Member States. By examining laws, policies, and findings, the study identifies differences, assesses their impact, and evaluates harmonisation in the context of the ongoing EU Customs Reform. This method provides a clear view of how legal convergence could make European Customs Authorities more effective against tobacco smuggling.

Customs and tobacco smuggling

At the EU level, Article 3 of the Union Customs Code lists the main roles of European Customs Authorities: collecting duties and taxes; facilitating legal trade; implementing trade policy; controlling illegal trade; fighting smuggling and fraud; and protecting public health, safety and the environment. Undoubtfully, Customs powers primarily include fighting illegal activities, with smuggling being the most characteristic.

Smuggling, especially tobacco smuggling, is a hidden, widespread, and organised crime phenomenon worldwide. Criminology considers it as a "shadow economic activity"(Filippov 2019: 37) with major social impacts, threatening public health, safety, and also EU's and Member State's financial interests. Tobacco harms public health as it is the only legal product that can cause death, as seen, in case of illicit, low-quality products.

According to Article 1 (f) of the World Health Organization's Framework Convention on Tobacco Control (WHO FCTC), under the term "tobacco products" (Nowak 2020: 8) are included products made entirely or partly from tobacco leaves as a raw material, which are manufactured to be used, mostly, for smoking. Moreover, under the term "Illicit tobacco trade" and for the purposes of this paper, the main types of traditional tobacco products are primarily cigarettes and fine-cut tobacco.

Considering the legal treatment in EU level, the Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty and also the specific Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products must be mentioned, setting up rules mainly about packaging, labelling and traceability.

Illicit tobacco trade includes genuine but contraband products, illicit whites, counterfeit cigarettes, and illegally made and distributed cigarettes within the EU (Council of the European Union 2025: 52). This activity leads to evasion of customs duties, VAT, excise, and other taxes and charges.

Regarding the illicit phenomenon, Figure 1 shows that as Legal Domestic Consumption (LDC) decreases, the consumption of counterfeit and contraband cigarettes steadily increases.

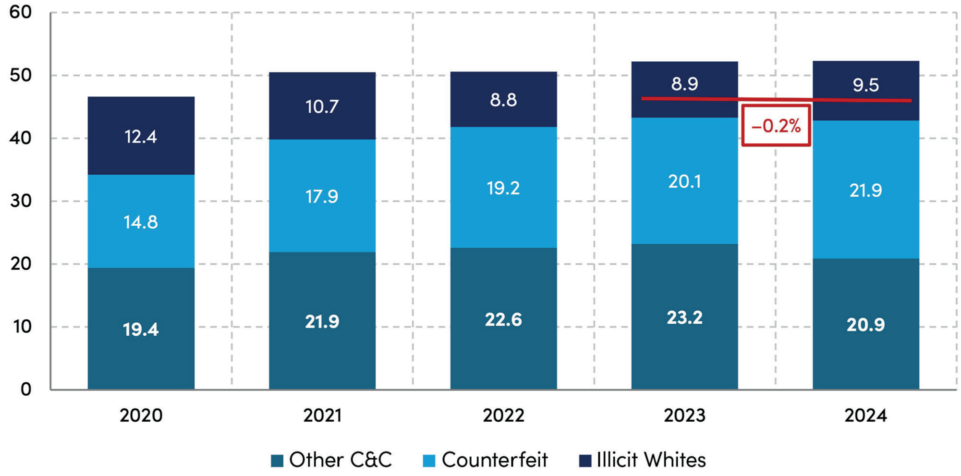

Figure 1: C&C trend by type in 38 European markets, 2020–2024 (bn cigarettes)
Source: KPMG 2025

Additionally, from Figure 2 below, it is quite clearly indicated that there is an increasing tendency of consumption of illicit whites and counterfeit cigarettes.

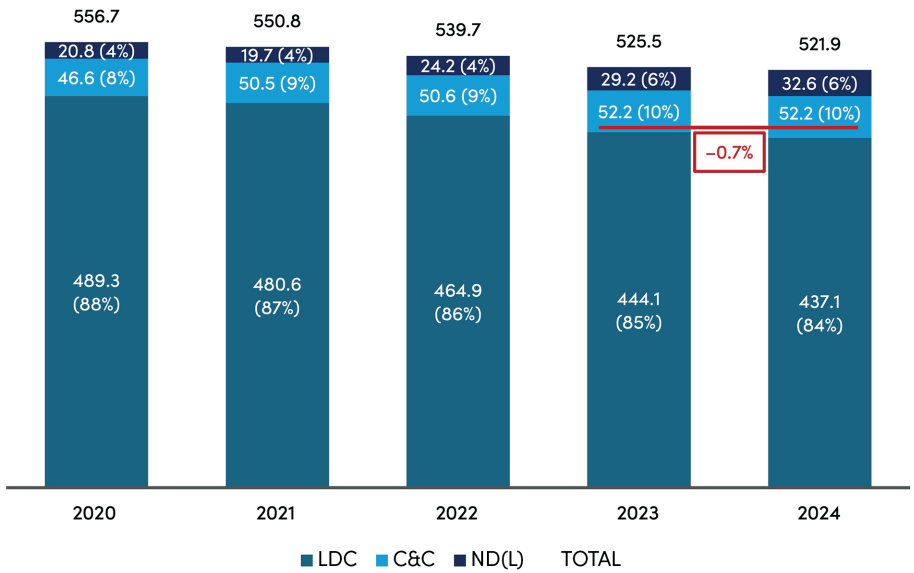

Figure 2: Total manufactured cigarette consumption in 38 European markets, 2020–2024 (bn cigarettes)
Source: KPMG 2025

Key European Institutions, Organisations, Agencies and Bodies such as EPPO, Europol, Eurojust, Frontex, and OLAF (European Commission – European Anti-Fraud Office 2025) combat this phenomenon. Nationally, Customs, Police, and the Coast Guard are the main law enforcement agencies. The almost exclusive competence of customs authorities at the European level in fighting smuggling is illustrated in Figure 3 below, as excise duties smuggling (tobacco, alcohol, energy products and electricity) provides a sole customs competence in a rate of almost 80% (22/27 MS).

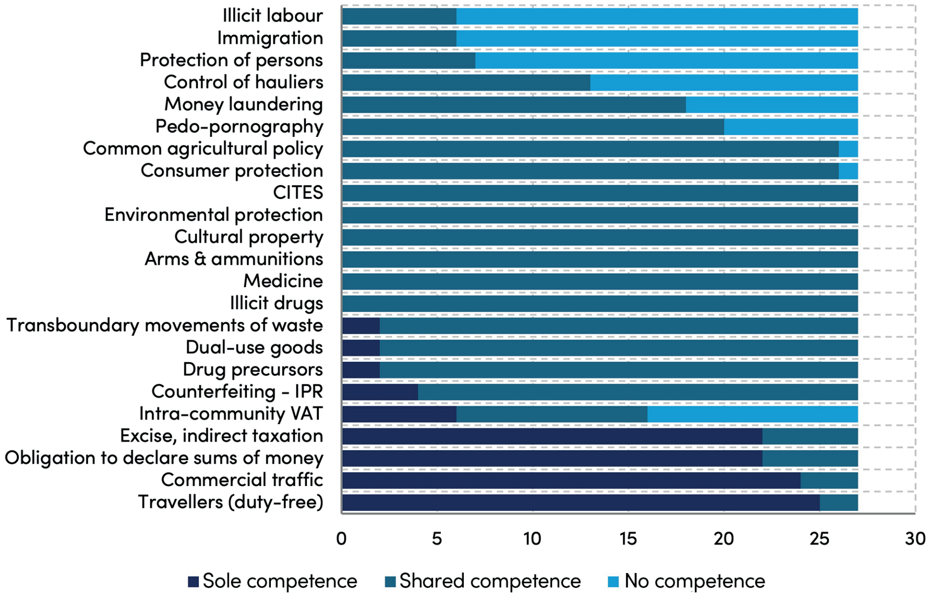

Figure 3: Powers of customs officials in the EU (per number of the 27 MS)
Source: Customs Threat Assessment Council of the European Union, 2025

The contribution of Customs Authorities in tackling the phenomenon is crucial. At the outset, Customs, as global border authorities, are presented as the suitable authorities for tackling global and border crimes, such as smuggling, one of the most characteristic, cross-border traditional customs crimes.

The ways Customs may intervene differ, as they may involve different axes and points, either at the border (land, airport, maritime) or during inland controls, via anti-smuggling teams and mobile customs groups. In particular, Customs intervene in all forms of illegal movement of goods, as operators and guards at all kinds of Border Crossing Points (BCPs), air, land, and maritime, on a random basis or based on risk management systems. A classical case study is where, during a transit declaration and procedure, after a customs physical examination and control, customs officers detect that, among the declared goods and in an in-built false floor of a truck, illicit cigarettes are hidden. Customs also intervene in cases of circumvention of customs procedures across all EU territory (import, export, special customs regimes and procedures, etc.).

It is worth mentioning that in April 2025, the first Customs Threat Assessment (Council of the European Union 2025) was published, indicating that there is an increase in illicit tobacco flows in the EU via all modes of transport, but with road transport continuing to be the predominant mode. Addressing methods of smuggling, according to the assessment, they could be divided into the following categories:

- Small-time trafficking, where individuals circumvent the allowed threshold to purchase a larger quantity of excisable products.
- "Ant trafficking", where small groups of smugglers traffic the illicit products by carrying out several journeys by all types of transport in a systematic way.
- Large-scale tobacco smuggling and trafficking, which is also conducted via the manufacture of illicit cigarette factories in the EU.

The increasing tendency to establish illegal tobacco factories within EU territory is linked to an increase in seizures of raw tobacco leaves, given that the latter are not considered an excisable tobacco product in all EU countries; therefore, they are not subject to controls. Addressing the resale modes, the "marketing" via darknet and social networks and the distribution via local delivery system or postal, express freight, compete quite effectively with the traditional street selling (Council of the European Union 2025: 53).

Tobacco smuggling: The increase and the connection with organised crime

There is no doubt that over the last few years, the Criminal Gang Networks (CGNs) have entered the "tobacco smuggling game" more aggressively, raising a range of threats and challenges to officials' safety and Customs Authorities' performance.

The reasons tobacco smuggling appears more attractive than other criminal activities, such as drugs, or more interesting than other kinds of excise duty smuggling (energy, alcohol), are primarily the "easier logistics" in terms of transport and the general infrastructure required. Another reason for the increase of the phenomenon is the high profit of the fraudsters, which is aligned by the large prices of cigarettes as a result of the large taxes (Joossens–Raw 1998: 67) and also aligned by the significant differences in prices between MS as a result of the different rates of excise duty. Additionally, the target market is larger and therefore very attractive, as tobacco products are widely consumed, and the predicted sanctions are generally less severe than for other types of offences (Southeast European Law Enforcement Center 2019: 26).

Tobacco smuggling is one of the most common crimes strictly related to organised crime, often forming a part of the global, "poly-crime" phenomenon. Arguing a definition for organised crime, it is unquestionable that every "formulation of a general definition" could be considered as "an endeavor fraught with difficulties" (Antonopoulos–Papanikolaou 2018: 7). However, according to the Council framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, it is almost certain that large scale tobacco smuggling gangs fall within the "criminal organisation" as a structured association of persons having the intention to commit serious offences in order to gain a direct or indirect benefit, either financial or other material.

The serious threats emerging from the cruel criminal profiles and the tough criminal activities of the smugglers, acting in the frame of Organised Criminal Groups (OCGs), present a continuous challenge against the customs officers who are performing their duties conscientiously and are committed to this fight, even concerning the protection of their own lives. Moreover, the dangers and threats posed by OCGs, in combination with officials' corruption, also affect the effectiveness and performance of Customs in tackling tobacco trafficking and, at the same time, raise questions about the development of an efficient customs law enforcement framework and system.

Aspects of EU Customs Law Enforcement harmonisation (or non-harmonisation?)

Following a three-level approach (policy – legislative – operational) in customs law enforcement matters, it is crucial to identify the specific aspects at the EU level that could support improvements in customs performance in combating organised smugglers.

Primarily, from a wide-open view, the EU *policy,* the integration into the Customs Union and the internal market, the protection of EU financial interests, and the protection of consumers and the environment cover all aspects of tobacco smuggling. Furthermore, the Customs Action Plan (European Commission 2020: 11–12) prioritises the fight against fraud among its crucial axes, thereby suggesting that, at the policy level, law enforcement is fully integrated and unified.

Regarding the *legislative level,* there is a total and absolute harmonisation in customs procedures and in customs debt treatment (e.g. rules regarding the incurrence, recovery, remission) provided by the Union Customs Code (UCC, the Regulation EU 952/2013) and all the relevant regulations and legislation in general, which allows an absolute similar procedural treatment of goods coming from a third country into the EU Customs territory. This approach is also extended to IT systems, as outlined in the Multiannual Strategic Plan for Customs (MASP-C). Thus, the harmonisation does not include the area of infringements and sanctions, which constitutes a real paradox, given this "divergent enforcement legislation to affect the EU duty recovery system" (Anaboli 2018: 276). Therefore, smuggling is not a harmonised infringement and is not punished with the same penalties among MS.

In particular, the only UCC provision that addresses customs infringements and sanctions is Article 42 UCC, which obliges the MS to adopt penalties that are "effective, proportionate and dissuasive", while the second paragraph provides a "mild" provision regarding administrative penalties. Under this approach, the European customs legislation conserves and maintains the significant divergences and substantial differences between Member States. The national implementation of Article 42 UCC traverses the separate national legal systems of MS and the special features of each, creating a patchwork that is non-uniform, confusing and distorting. Nevertheless, the only control that can be applied is the inspection by the Court of Justice of the European Union (CJEU) regarding compliance with the principles of effectiveness, proportionality and deterrence provided for in Article 42 UCC (Desplanques – de Franssu 2018: 307).

Regarding the *operational level,* it is justifiably indicated that there is also a lack of harmonisation in customs controls, which impacts the effectiveness of European customs law enforcement, says the European Court of Auditors (ECA) Special Report (2021). Different competences, different powers *(power of research-inspection, investigative measures, detention, seizure, control on persons and documents, physical examination of goods, examination of accounting records of a natural person or a legal entity, criminal investigation, access in premises and private places, pursuit, sampling),* divergent working methods, disparity in equipment and control means *(X-ray equipment,dogs, drones, cameras, mobile labs),* different use of technology, diversified risk management systems and as well diversified training and professional standards, configure a frame of disparity at the practical, on-the-field implementation, raising reservations about the EU customs cooperation effectiveness, especially in tackling cross-border crimes such as smuggling.

Consequences of the lack of harmonisation at the legislative and operational levels

Although sanctioning systems were traditionally considered part of the core of sovereignty, an absolute national field, the consequences of the lack of harmonisation in customs law enforcement are so serious that this approach must be reconsidered. This absence of uniformity, which concerns not only smuggling but also in general customs infringements, leads to inconsistency of treatment of rule-breakers and creates distortion of competition, striking the EU structural base, the internal single market (Antonini – Ioachimescu-Voinea 2023: 440).

Moreover, the divergent, heterogeneous implementation of European customs legislation results in inefficient enforcement of measures to tackle cross-border crime. It is important to mention the phenomenon of "customs shopping" (forum shopping), in which the smuggler chooses the country with lower penalties, selecting entry points with less control and fewer penalties. In any case, the different legislative framework in the MS affects smuggling patterns, particularly smuggling routes (Theologi 2024: 198), making it easier for the perpetrators to escape.

The lack of harmonisation at the legislative and operational levels is highlighted in detail in the ECA Special Report (2021), which illustrates the uncertainty that inefficient harmonisation of customs controls among MS and risk management systems hampers the EU's budget and financial interests.

In other words, the lack of harmonisation at legislative and operational levels of EU customs law enforcement entails that the common, harmonised policy and strategic targets are almost condemned to remain "dead letter".

Smuggling: The legislative approach

Considering the previously noted disparity in the customs violations framework at the EU level, and the attempt to provide a comprehensive definition of smuggling, it could be argued that 27 MS with different legal systems yield 27 different definitions. In any case, providing a common core of definition of smuggling, that could be *any action for the avoidance of customs and excise duties and taxes in general and for the evasion of prohibition and restriction rules,* in other words, smuggling could be defined as "the evasion of customs and excise duties on goods by all kind and types of circumvention" (Merriman 2021).

Beside the disparity in definitions, many divergences refer also to the nature of the applicable infringement, administrative or criminal, or even dual, to the extent of the smuggling objective, if for example smuggling covers only goods from third country products or, in case of excise duty products, could also cover products from other EU MS, while other problematic points concern the presence of intention or negligence, elements of careless behaviour or not, the time limitation, the liability of legal persons, the possibility of legal settlement (Anaboli 2018: 275) and, of course, there are many significant diversities on sanctions.

Customs infringements, including smuggling, are punished in all MS, more or less, in a similar or different manner, with administrative or criminal sanctions, or both. In particular, smuggling is treated by some countries as a criminal offence, by others as an administrative violation, and by others as a dual infringement (administrative and penal).

For example, in France, smuggling is considered the illegal importation of goods without their presentation to customs authorities, or any other act assimilated to smuggling, which is a first-class major offence under Article 414 of the French customs code and is sanctioned by imprisonment.

In Lithuania, smuggling is provided and sanctioned with a fine by the Code of Administrative Offences, but in case of overrun of the value of smuggled goods over a specific limit, the offence becomes a criminal offence (Juozaitis 2018: 294).

In Greece, smuggling constitutes in parallel a dual offence, administrative and criminal, and the Greek National Customs Code provides that the relevant procedures, administrative and penal, are going on in parallel and independently. The challenging point in the Greek national approach to smuggling concerns another very interesting parameter: the influence of EU law on the national legal systems of MS. The question is whether national legal systems should still be considered national, given that EU law permeates many aspects of national legal systems and transforms them. This penetration, as a result of the principle of primacy of EU law, is carried out through the EU Treaties, the general principles of EU law, the jurisprudence of CJEU and of the European Court of Human Rights, the Charter of Fundamental Rights of the EU and the European Convention on Human Rights (ECHR). In this context, it is worth mentioning the influence of the *ne bis in idem* principle (Article 50 of the Charter, Protocol 7 of ECHR) in Greek customs legislation since it was considered by the European Court that Greek smuggling offence has in any case a criminal nature. Therefore, the Greek legislator maintained the dual nature of smuggling but made some modifications to the National Customs Code of Greece (Law 5222/2025, 2025) to mitigate the effects of *double jeopardy* in the national legal system.

In this context of lack of convergence in European smuggling law enforcement, another important topic that arises is, actually, whether the fight against the illicit trade of tobacco products can be primarily and more effectively conducted through the enforcement of criminal law rather than through administrative tax law. The EU legislator has already provided the appropriate answer through the PIF Directive.

The criminal minimum harmonisation of smuggling

While Customs disputes about the way, the level and the grade of customs harmonisation in violations and sanctions, the EU legislator has already ensured the protection of EU financial interests via the PIF Directive. The Directive (EU) 2017/1371 (2017) under the legal basis of Article 83 of the Treaty on the Functioning of the European Union (TFEU), has introduced a basic approach in European penal law regarding the protection of EU financial interests, leading to an obligatory revision of all national criminal customs legislation (Consolidated version of the Treaty on the Functioning of the European Union 2016). Although the target of this Directive is not the harmonisation of customs infringements and sanctions, smuggling mainly falls into the applicable area of the PIF criminal offences. Smuggling (most types) in principle falls within Article 3 paragraph 2 (c) of the Directive if the threshold of 10,000 euros of damage against the EU budget is met, forcing MS to proceed to criminalise. However, the legally correct transposition of the Directive's provisions into the MS legal systems is another, different topic.

The EU customs reform and the perspective of law enforcement harmonisation

Since May 2023, there has been an ongoing Customs reform initiated by the Commission, which is probably the most ambitious reform of the EU Customs Union since its establishment in 1968. EU Customs Reform came out as a result of the increasing trade volumes, the "explosion" of e-commerce, the increase of standards that must be checked on borders (e.g. Digital Product Passports, Carbon Border Adjustment Mechanism) and the new challenges appearing that require a daring step, which will reshape and deepen customs union, pushing to a new vision of EU Customs Authorities "acting as one".

The ongoing reform includes, among others, the reform of the Union Customs Code, the creation of the European Union Customs Authority (EUCA), with crucial tasks related to risk management, restrictive measures, crisis mechanism, operational support and coordination (Schippers 2023), and the creation of the EU DATA Hub. The latter will be a central digital platform, replacing MS's disparate Information Technology (IT) systems, a centralised portal for submitting data to Customs authorities, and providing a 360-degree overview of the supply chains of economic operators. Furthermore, regarding the UCC reform specifically, the Proposal for UCC (P-UCC) also includes provisions for a minimum level of legislative harmonisation at the customs administrative infringements and sanctions level.

The idea of harmonising the customs sanctions system is not new; the first systematic endeavour was made in 2013 with the proposal of a Directive COM 2013 884 final (European Commission 2013). This legal attempt was based on the primary idea of dividing all customs (administrative) infringements into three categories, each linked to the level of liability. This Proposal met resistance mainly from the Council and from industry, suggesting that the lack of an "official public consultation with stakeholders" was a strong reason for its withdrawal (Muñiz 2018: 273). In any case, this attempt shed light upon the important diversities in terms of nature and scope of infringements and penalties (Desplanques – de Franssu 2018: 304).

Regarding the ongoing P-UCC, the scope is partial harmonisation at the administrative level, with a common core of acts listed as administrative customs infringements and penalties related to the intentional or negligent perpetration. Considering the configuration of the relation between the minimum harmonised customs penal infringements (PIF Directive) and the upcoming new provisions of the under-reform UCC, some indications may emerge. Considering that in the P-UCC criminal harmonisation is not provided, there is always the possibility of overlap with Directive PIF EU 2017/1371. In particular, intentional conduct for the evasion of customs duties (as smuggling), which is also regulated in the PIF Directive (Lux–Wemmer 2025: 340), could also fall into P-UCC (e.g. the provision of falsified information or documents submitted to customs authorities), probably also giving rise to the problem of incompliance with the *ne bis in idem* principle. Consequently, the necessity of approach, unification and harmonisation must include both criminal and administrative customs violations.

Moreover, according to academic literature, in order to reach this substantive harmonisation, the minimum core and standards of approach must not only be exhausted in definitions of violations and sanctions, but it must be widened to procedural rules, as rules of evidence and burden of proof, and voluntary discretion (Rovetta–Villante 2018: 344). Therefore, the particular and complex nature of customs violations and sanctions requires the creation of a "proper multilevel, multisource complex system of procedural and substantial law" customs penalty system (Rovetta–Villante 2018: 345) in order to implement the unique Article 42 of UCC for "effective, proportionate and dissuasive customs penalties".

In any case, the EU can be in the position to achieve the harmonisation of customs law enforcement from a criminal and non-criminal perspective because it has, all these years, "gained a solid competence to do so" (Antonini – Ioachimescu-Voinea 2023: 441).

With a view to the future, in the concept of the ongoing EU customs reform and the promising creation of the EUCA, according to the provisions of the P-UCC, the EUCA will be mandated also to support customs authorities in harmonising controls and risk management and therefore enhancing the enforcement of EU legislation (Lyons 2024).

Additionally, the legislative approximation must go further to the operational level, including enforcement procedures, the powers of customs officers (control, detection, prosecution's support), and working methods, equipment, and technology instruments.

In this context of an operational approach and perspective, it is worth mentioning the European Union Customs Alliance for Borders (EUCAB), which, in a way, serves as the successor to the Customs Eastern and South-Eastern Land Border Expert Team (CELBET). EUCAB is an expert team, on a voluntary basis, staffed by customs experts from all MS, established under the EU Customs Programme, with the main purpose of enhancing operational cooperation at ports, land, and air borders between Member States and third countries. It consists of six working units: four operational units (Air & Post, Maritime, Land, and Mobile Cooperation), supported by two cross-sectional units (Coordination and Support). The goals are to strengthen operational efficiency and facilitate the exchange of best practices.

Last but not least, from the perspective of EU law enforcement harmonisation, risk management (RM) is undoubtedly one of the key factors that Customs administrations can leverage to meet the demands and challenges of the 21st century. The data-driven, intelligence-enabled RM framework lies at the core of every modern Customs administration. In this concept, the RM area, the information-intelligence network of Customs, provides another objective for a common approach. From the implementation of the Common Risk Criteria (CRC) and the Customs Risk Management Framework (CRMF), including the Financial Risk Criteria (FRC) Framework [Article 46, Regulation (EU) No 952/2013; Article 36–40, Commission Implementing Regulation (EU) 2015/2447], and all the information and data coming within the frame of WCO (RILO alerts) or within the frame of EU cooperation (Europol, Eurojust, OLAF), the creation of EU Customs Data Hub and the possibility of centralised risk management (Arendsen 2024) it is expected to push the EU Customs Authorities to the next level of Customs RM, by providing an enormous database operationally managed by EUCA.

Conclusion

Tobacco smuggling, as an increasingly global criminal phenomenon strongly linked to organised crime, should be tackled at a supranational level by effective law enforcement authorities. In the EU context, and given their crucial competences, Customs Authorities appear to be the appropriate authorities to combat this serious crime, provided they act, at the legislative and operational levels, in a similar and unified manner. The approach and possible harmonisation of customs infringements and sanctions at the EU level is a really "heavy task" with no certain outcomes or guaranteed success, as alike as appears the approach of EU Customs Authorities at the operational level. Nevertheless, the effectiveness and efficiency of customs law enforcement in tackling tobacco smuggling and, in general, cross-border customs crimes and infringements require "daring steps", brave compromises, and national retreats.

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