



17.1.2025

NOTICE TO MEMBERS

Subject: Petition No 0820/2023 by Frans Daniël Bosch (Dutch) on the implementation of the EU Customs Regulations in General Aviation

1. Summary of petition

The petitioner brings attention to the current legal uncertainty, lack of harmonization and proportionality in customs procedures for general aviation flights from and to destinations outside the EU customs union, such as Switzerland and Norway. He explains that, in the past, airplane pilots had to submit customs forms for each departure and landing in addition to an ICAO flight plan. Three years ago, the EU customs regulation (EU) 2015/2446, specifically Article 141(1)(d), was amended by (EU) 2020/877. The new regulation allows flights across EU customs borders without any formalities and without using a designated customs airport, as long as no goods are carried that would require a customs office. Indeed, as per the new regulation, the sole act of the goods crossing the frontier of the customs territory of the Union is one of the acts deemed to be a customs declaration or a re-export declaration. While, according to the petitioner, this significant regulatory change holds great potential to enhance flight safety, streamline operations, and reduce administrative burdens for pilots, he underlines that the implementation and awareness of these new procedures remain inconsistent among EU Member States. Indeed, he states that, for the time being, only the German customs authorities have formally recognized and publicly addressed this legal change while the other countries have kept their procedures unchanged, thereby requiring pilots to continue using airports with customs offices and submitting national customs forms, even when they don't carry any goods that are relevant for customs. In addition to the unnecessary administrative burden imposed on pilots, the petitioner underlines that requirement to use airports with customs facilities (even when no relevant goods are carried), often leads to landings distant from the intended destination which implies additional costs, including landing fees, handling fees, increased fuel consumption and unnecessary carbon emissions. The petitioner therefore calls on the EU to act in order to harmonize the implementation of the EU Customs Regulations in General Aviation.

2. Admissibility

Declared admissible on 24 November 2023. Information requested from Commission under Rule 233(5) (former Rule 227(5)).

3. Commission reply, received on 12 September 2024

The Commission's observations

As the petitioner rightly mentioned, Article 141(1)(d) of Commission Delegated Regulation (EU) 2015/2446 (UCC-DA)¹, supplementing the Union Customs Code (UCC)² was amended by Commission Delegated Regulation (EU) 2020/877³. This amendment allows 'means of transport' to be declared by the sole act of crossing the frontier, i.e. no need to undergo any customs formalities, if they are either:

- declared for temporary admission, i.e. the airplane can stay in the customs territory of the Union without being subject to import duty if it stays in that territory for no longer than 6 months and provided that the relevant conditions set out in the UCC-DA are met, or
- declared for release for free circulation and benefitting from relief from import duty pursuant to Article 203 UCC. That is, the airplane was exported as a 'Union good' and is re-imported within 3 years without any change in its state.

There is no definition of the term 'means of transport' in the UCC. The Guidance on Special Procedures other than Transit⁴ (providing guidance on Title VII of the UCC), provides information on what can be considered as means of transport in the sense of the legal provisions mentioned above, including some several examples of when airplanes can or cannot be considered as 'means of transport' in page 50. According to that Guidance, the relevant elements of the term 'means of transport' are the following ones:

- 1) Definition of the term 'means of transport' in the Istanbul Convention:
The term 'means of transport' means: Any vessel (including lighters and barges, whether or not shipborne, and hydrofoils), hovercraft, aircraft, motor road vehicles (including cycles with engines, trailers, semi-trailers and combinations of vehicles) and railway rolling stock; together with their normal spare parts, accessories and equipment carried on board means of transport (including special equipment for the loading, unloading, handling and protection of cargo).
- 2) The relevant timing for deciding whether the goods are means of transport or not is the moment of the presentation of goods to customs (Article 139 UCC).
- 3) The main purpose of the means of transport is the transport of persons and/or goods. If a certain good is actually used, or it is intended to be used, for this purpose at the moment of presentation to customs, then it is considered as a means of transport.
- 4) Registration may be used as a relevant element if there is an obligation to register the means of transport.

The customs authorities may need to check that the requirements are met to confirm that the airplane is a means of transport in the sense of Article 141(1)(d). This may lead to different practices in the Member States, as, according to Article 46(1) UCC, the customs authorities may carry out any customs controls they deem necessary.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02015R2446-20230314>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R0952-20221212>

³ https://eur-lex.europa.eu/eli/reg_del/2020/877/oj/eng

⁴ https://taxation-customs.ec.europa.eu/document/download/1bdaa892-93fe-4809-93e7-7ead3ea5ebb0_da

However, Article 3(d) UCC states that the customs authorities must put in place measures aimed at maintaining a proper balance between customs controls and facilitation of legitimate trade.

Conclusions

The issue raised by the petitioner is due to different control practices in the Member States, which check whether the requirements in the common EU customs legislation applicable to small airplanes are met. The Commission can request from the customs authorities from the Member States information on how they control whether the requirements to apply this provision are met in the case of small airplanes landing on the customs territory of the Union from a third country. This would help assessing whether the practice can be improved.

4. Further reply from the Commission, received on 17 January 2025

The Commission's observations

The petitioner brought attention to the legal uncertainty, lack of harmonization and proportionality in customs procedures for general aviation flights from and to destinations outside the EU Customs Union.

Therefore, to verify how those customs procedures were applied throughout the Member States, the Commission asked the delegates of the Customs Expert Group on Special Procedures (CEG-SPE) to describe the customs formalities that were requested to leisure airplanes landing on the customs territory of the Union from a third country during the meeting held on 15 and 16 October 2024. Until today, 23 answers from the Member States have been received.

Implementation of custom formalities are a member state competence. Although all Member States should in principle apply the same rules, a distinction must be done between the aircrafts as means of transport and the other goods or people transported by these aircrafts.

Whereas no customs formalities are requested to leisure airplanes landing on the customs territory of the Union from a third country, customs controls can be carried out on goods transported by those aircrafts including those carried on the airplane, as set out in Article 46 of Regulation (EU) No 952/2013 (UCC). Other bodies, as for instance the police, can also carry out controls for other purposes, e.g. controls on persons.

In order to implement these controls, some Member States request those planes to land at authorised airports (so-called customs airports), or other landing sites authorised by the customs authorities. In addition, eleven Member States explained that they require or can require the presentation of some documentation (e.g. an electronical notification of the expected arrival of the aircraft or a general declaration at the customs office of first entry) before the arrival of the aircraft which can help the authorities to decide whether customs controls must be carried out or not.

Conclusion

Considering what has been stated above:

- a) No customs formalities are required to the leisure airplane itself landing on the customs territory of the Union from a third country, based on the customs facilitation set up in Article 141(1)(d) of the Commission Delegated Regulation (EU) 2015/2446.
- b) On people who travel in those airplanes and goods contained therein, customs controls can be carried out, such as examining goods, verifying the accuracy and completeness of the information given in a declaration or notification, inspecting means of transport and inspecting luggage and other goods carried by the airplane, as set out in Article 46 UCC. Other bodies, as for instance the police, can also carry out controls for other purposes, e.g. controls on persons.

Member States circumstances (e.g. risk management criteria) can differ depending on the location or on the moment in time, which may lead to different results regarding the customs formalities applied to leisure airplanes.