

SHADOW REPORT ↘

on alignment of Ukraine's customs legislation and customs administration operations with requirements of Chapter 29 of the EU's acquis



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▼ **Authors:**

Analytical team of the Think Tank
"Institute of Analytics and Advocacy"

Experts team of the NGO
"Technologies of Progress"

▼ **Layout and design:**

Margaryta Stepaniuk

▼ **Proofreading:**

Kyiv Language Services



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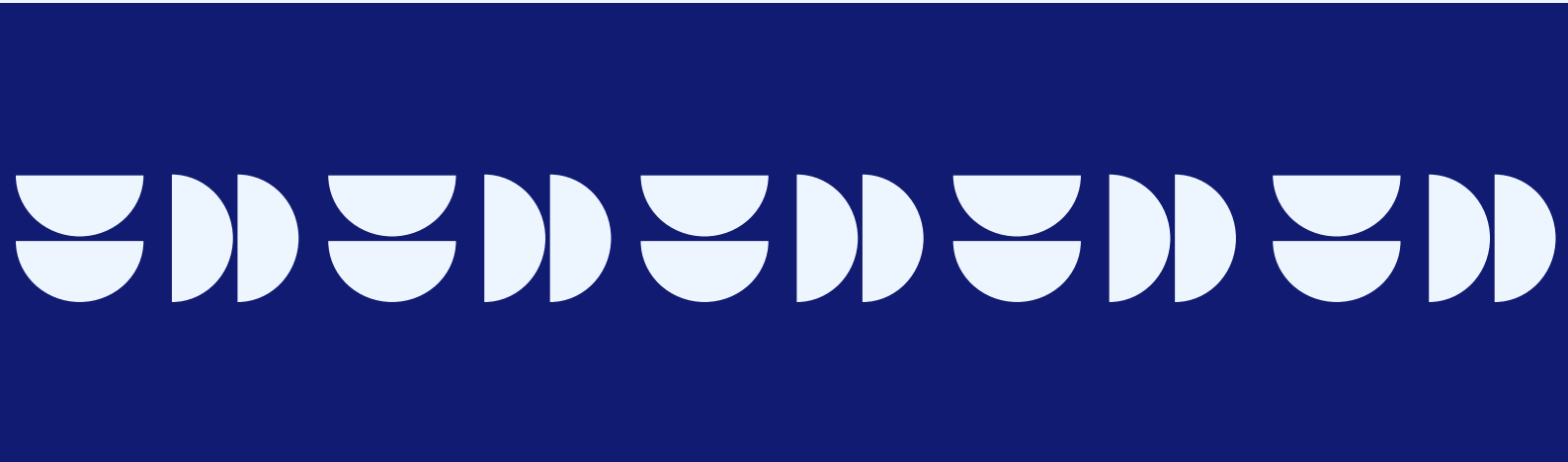
**OPERATION ACTIVITIES: THE SCS AS A MODERN, EFFICIENT,
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ABBREVIATIONS



AEO	Authorised Economic Operator
UCC	Union Customs Code
AEO	Authorised economic operator
NCTS	New Computerised Transit System
SCS	The State Customs Service of Ukraine
UFP	Ukraine Facility Plan
FCTC	Framework Convention on Tobacco Control
IPR	Intellectual Property Rights
LNP	Long-Term National Plan for Digital Development, Digital Transformations, and Digitalisation of the SCS
MASP-C	Multi-annual Strategic Plan for Customs
CDS	Customs Decision System
EDI	Electronic Data Interchange
BTI/BOI	Binding Tariff Information/Binding Origin Information
SCS-SW	Single Window
SMEs	Small and Medium-sized Enterprises
EORI	Economic Operator Registration and Identification
AFA	Application for Action
IPEP	IP Enforcement Portal
BCPs	Ukrainian Border Crossing Points
ASUR	Automated System of Risk Management
RSTs	Reform Support Teams
CPM	Customer Perception Metric
NRS	National Revenue Strategy



Brief historical reference on the State Customs Service of Ukraine

Throughout the period of Ukraine's sovereignty, the customs policy has undergone regular modifications in terms of organisation and administration of the customs authorities. The inception of Ukrainian customs can be traced back to the establishment of the State Customs Committee, under whose jurisdiction the customs offices from the former Soviet Union were placed. Subsequently, on 12 December 1991, the [first Customs Code of Ukraine](#) was adopted.

In 1996, the Committee underwent a reorganisation to become the State Customs Service of Ukraine, as [decreed by the President](#). The main changes included a reduction in the number of customs offices and customs posts (from 69 to 55 and from 268 to 199, respectively), and an updated organisational structure: regional customs offices were established on the basis of territorial customs departments (the latter acted as regional HQs only and were not engaged into operational activities).

In 2010, the number of customs offices was further reduced from 46 to 27, aligning their structure with the administrative and territorial structure of Ukraine.

In 2012, in a bid to optimise the system of central executive bodies, the Ministry of Revenues and Duties of Ukraine was formed by merging customs and tax services. The Ministry aimed to augment budget revenues by optimising processes. However, the merger under the Ministry's umbrella had adverse consequences for customs, including:

- The units of the former State Customs Service formed the Department of Customs with half the staff.
- Merge implied amalgamation of tax and customs units/branches with different functions and mission (in particular, audit units were merged, despite the fact that customs audit is a separate complex and holistic concept, the role of which is broader than mere tax assessment).
- There was a loss of personnel and expert potential.
- International relations and contacts were lost.

However, the Ministry was short-lived and has been dissolved in 2014. It was initially anticipated that the State Customs Service would be reinstated, yet on 21 May 2014, the State Fiscal Service was created by reorganising the Ministry of Revenue and Duties (subordinated to the Ministry of Finance). For customs, the replacement of the 'ministry' with the 'service' with tax authorities did not bring any substantial changes. Most of the problems that existed with the Ministry persisted.

Given the above, most of these reorganisations were more political decisions than the implementation of well-thought strategies, and they did not yield significant results.

In 2019, the State Fiscal Service was reorganised into two separate bodies: The State Tax Service and the State Customs Service. This implies that the State Customs Service has become a separate central executive body managed by the Cabinet of Ministers through the Minister of Finance.

Starting from 1 July 2021, the central apparatus of the State Customs Service and its field offices were merged into a single legal entity. Prior to this, customs local offices and the central management were separate legal entities and were therefore quasi-independent of each other.

The State Customs Service of Ukraine (hereinafter referred to as the 'SCS') is a central executive body that controls transportation of goods, vehicles and other items across the customs border and is responsible for collecting customs taxes and exercising customs control¹

As Ukraine progresses on its path to EU accession, commitments extending beyond the formal negotiating framework have emerged. Although not directly part of the accession negotiations, these documents significantly shape the reform landscape. Hence, they are briefly highlighted below to provide a thorough understanding of Ukraine's comprehensive reform initiatives.

The Ukraine Facility Plan (UFP)²

As Ukraine advances towards European Union accession, the comprehensive initiatives outlined in the UFP play a significant role in Ukraine's strategic efforts to enhance trade facilitation and ensure compliance with EU standards, a critical aspect of its accession process.

The UFP emphasises the urgent need for coordination of customs procedures and a significant update to the IT infrastructure of the customs administration to achieve compatibility with the European Union's IT systems. This involves a broad spectrum of initiatives, including the promotion of customs reform through harmonisation and digitalisation of customs procedures. A key milestone along this journey is the adoption of a new Customs Code by Ukraine, aligned with the Customs Code of the European Union, underpinning the legal and operational framework for enhanced customs cooperation.

Digital transformation is at the heart of the proposed reforms, with specific plans for the digitalisation of the State Customs Service being paramount. The implementation of a single window for customs and electronic data interchange (EDI) with EU Member States is anticipated to streamline processes and facilitate smoother trade across borders. To ensure the integrity and efficiency of the customs service, the UFP outlines strategies for improving the selection process of leadership roles within the State Customs Service, advocating for a transparent and

¹ <https://www.kmu.gov.ua/npas/86146493>

² The Ukraine Facility is the European Union's financial assistance programme for Ukraine. The Ukraine Facility Plan is a technical document required to implement the European Union's financial support programme for Ukraine.

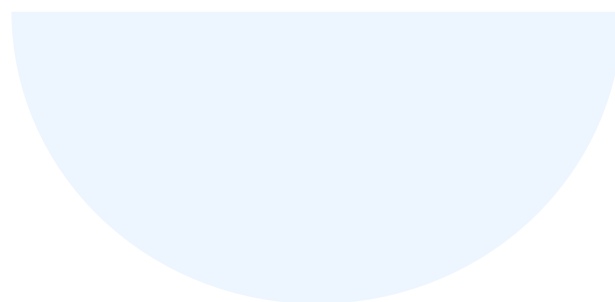
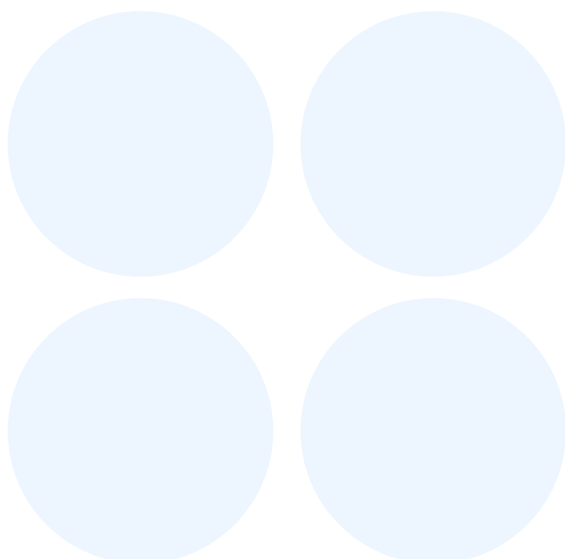
merit-based approach with international expert involvement. Additionally, the establishment of a disciplinary committee and the reorganisation of the internal security units underscore the commitment to high ethical and professional standards within the customs framework. The UFP also refers to the National Revenue Strategy and the National Strategic Plan for digital development, digital transformation, and digitalisation of the SCS, a comprehensive approach to transforming Ukraine's customs administration, setting a solid foundation for Ukraine's accession to the European Union and the fulfilment of its international commitments.

Memorandum of Economic and Financial Policies between the IMF and Ukraine (IMF Memo)

Ukraine remains steadfast in its commitment to a transformative agenda aimed at rejuvenating its fiscal governance and customs operations, as delineated in the IMF Memo dated 18 December 2023.

These reform plans are to be incorporated into the NRS, with the objective of enhancing the operational capabilities and integrity within the customs administration.

The focal areas include strengthening the state tax and customs services, augmenting anti-corruption measures, refining governance procedures, and overhauling HR and compensation policies. The reinstatement of customs post-clearance audits signifies a step towards tightening compliance and closing existing loopholes that may facilitate customs fraud. Legislative efforts to criminalise large-scale customs fraud and smuggling, bolstered by the IMF's technical assistance, underscore Ukraine's commitment to reinforce the integrity of Ukraine's fiscal systems.



EXECUTIVE SUMMARY



This Shadow Report provides an in-depth analysis of the alignment of Ukraine's customs legislation and administration operations with the requirements of Chapter 29 of the European Union's acquis, focusing on the advancements made towards modernisation and adherence to EU standards, and identifying areas where further reforms are necessary.

Through a combination of desk research and surveys conducted among the business community and public sector, this analysis covers the period from September 2023 to March 2024, offering a comprehensive view of the SCS's progress and challenges.

The SCS has undergone significant organisational changes since Ukraine's independence, with a notable reorganisation in 2019, splitting the State Fiscal Service into the State Tax Service and the SCS. Despite these changes, the frequent turnover of leadership within the SCS has posed challenges to the organisation's stability and its reform agenda. The introduction of draft legislation aimed at implementing transparent and merit-based selection processes for top management positions within the SCS is a potential solution to this issue.

Additionally, the empowerment of the SCS to investigate smuggling and customs fraud through recent draft legislation would mark a critical development in strengthening the SCS's role, inter alia, as a fully competent and reliable partner of customs cooperation.

There have been legislative attempts to integrate provisions of the EU's Union Customs Code (UCC) into Ukrainian customs law. These legislative changes concerned areas such as financial guarantees, Authorised Economic Operator (AEO) status, and procedural simplifications. However, these initiatives have been piecemeal, whilst comprehensive transposition of the UCC and related legislation into Ukraine's domestic customs legislation is still pending as of March 2024.

Notably, survey respondent NGOs estimate a 51% congruence between Ukrainian customs principles and their EU counterparts, underscoring the need for a holistic legislative overhaul to fully embrace the UCC and related EU customs standards. A larger part of surveyed businesses believe that such legislative changes could simplify business operations, while scepticism persists among the rest, partly due to a lack of awareness about the draft legislative changes.

There is a demand for a robust accountability framework within the SCS, highlighting the absence of well-defined Key Performance Indicators (KPIs) as a significant gap. This gap not only hampers the evaluation of the SCS's effectiveness but also undermines public confidence. Clear KPIs should reflect the SCS's broad strategic goals, including customs control, protection, facilitation, and cooperation, beyond mere revenue collection metrics.

While some efforts have been made to release aggregated statistics on revenue collection and customs violations, the lack of detailed underlying data and the regression in data accessibility pose challenges to evaluating the SCS's performance accurately. The report emphasises the importance of making comprehensive data readily available to the public, civil society organisations, and investigative journalists to enhance transparency and accountability.

Despite existing formal anti-corruption strategies, public trust in the customs authority remains low. Survey findings point to pervasive concerns among businesses and NGOs regarding the SCS's capacity to curb corruption effectively. The report highlights a clear demand for increased automation and streamlined decision-making processes within the SCS as vital measures to mitigate corruption risks and enhance service efficiency.

Progress and challenges in implementing recommendations of 2023 EU Enlargement report for Ukraine

In 2023 and 2024, Ukraine made significant efforts to align with the EU recommendations included in the 2023 EU Enlargement Ukraine Report. These efforts focused primarily on the adoption and refinement of customs legislation. The report indicates that Ukraine has made commendable progress in the area of the customs union. However, there is still room for improvement, particularly in the following areas:

- make progress in areas related to customs procedures, customs debt, and the application of guarantees, as well as simplification of customs formalities, and in the development of a new Customs Code

A draft law on amendments to the Customs Code No 10411 of 16.01.2024 (submitted by the Ukrainian government) is currently under discussion in the Ukrainian parliament. This draft primarily addresses the implementation of certain specific provisions of the UCC. However, many essential customs issues (e.g., the concept of customs debt, list of customs procedures etc.) are not affected by the draft.

Recently, Ukraine's Ministry of Finance has announced its plans to draft a new Customs Code of Ukraine that aligns with the UCC. This necessitates the preparation of a comprehensive draft law encompassing all relevant UCC regulations. No text of such a draft is available yet.

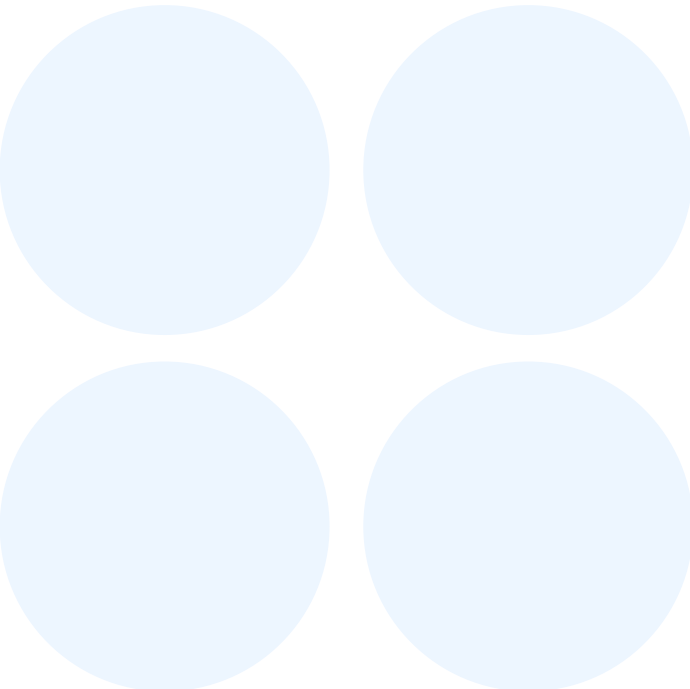
- ensure the timely implementation of NCTS Phase 5 and expand the use of the common transit procedure as well as the authorised economic operator framework

Ukraine has made the necessary preparations for implementation of NCTS Phase 5 and implemented it as of 22 April 2024, although the integration of economic operators into the common transit procedure has been modest (with a shift towards export), despite the extension of the possibility of using NCTS in national transit procedures in 2023.

- adopt legislation criminalising large-scale smuggling of all goods and build up administrative capacity to implement this

A new law criminalising large-scale smuggling has been enacted, however, its implementation is still in the nascent stages and thus remains difficult to evaluate effectively.

Various legislative and strategic initiatives are underway to enhance the administrative capacity necessary for enforcing this law. These include efforts to revamp the Economic Security Bureau of Ukraine — currently responsible for investigating smuggling cases — as well as the State Customs Service. Furthermore, the National Revenue Strategy includes provisions to empower the customs administration to conduct smuggling investigations. However, specific legislation and detailed roadmaps for these plans are not yet available.





Chapter 29 of the European 'Union's *acquis communautaire*, pertaining to the Customs Union, is a pivotal component in the negotiations for countries seeking EU membership. It encompasses a variety of policies related to legislation that is directly binding on the Member States. This includes the Union Customs Code and associated delegated and implementing provisions, the combined nomenclature, common customs tariff and provisions on tariff classification, customs duty relief, duty suspensions and certain tariff quotas, and other provisions, such as those on customs control of counterfeit and pirated goods, drugs precursors, export of cultural goods, as well as on mutual administrative assistance in customs matters, and transit, which are essential for the safeguarding of the EU's external borders and the facilitation of legitimate trade. EU Member States must ensure that the necessary implementing and enforcement capacities, including IT tools ensuring interoperability with relevant EU computerised customs systems are in place. The customs services must also ensure adequate capacities to implement and enforce special rules laid down in related areas of the *acquis* such as external trade.

The SCS is actively engaged in its own modernisation, but it is necessary to understand how well and correctly this process is progressing. In this regard, shadow reporting plays a crucial role in enhancing transparency, accountability, and the effectiveness of governmental and organisational practices, especially within frameworks like the European Union's accession processes or compliance with international conventions. Shadow reports provide an independent assessment of a government's or organisation's progress, can highlight gaps in implementation and challenges not addressed in official reports, strengthen civil society by building capacity for advocacy, research, and engagement with governmental processes, raise public awareness about specific issues, government commitments, and the extent to which these commitments are being met, promote transparency by making more information publicly available, and hold governments accountable for their actions and commitments, pushing them towards greater openness and responsiveness to their stakeholders.



Goal:

- › To describe the progress of the State Customs Service in aligning its processes and activities with the EU standards, meeting requirements of the Customs Union.



Objectives:

- › To ascertain the current state of affairs in the customs sector;
- › To examine Ukraine's progress in implementing the commitments related to the EU accession under Chapter 29 of the Customs Union;
- › To explore the opinion of business and civil society on the achievements and gaps in customs.



Methodology:

- › Analysis of legal acts and draft laws related to the customs sector;
- › Analysis of the EU legislation applied in the field of customs policy;
- › Surveying the business community and the public sector on their experience of working with the State Customs Service

The sample was formed on the principle of 'targeted sampling' and, accordingly, does not imply a representative survey.

Among the civil society representatives, we invited representatives of leading economic think tanks, anti-corruption organisations, academic institutions that study customs issues, and NGOs working to increase transparency and accountability of public authorities.

Among the business representatives, entities of various sizes and areas of activity that are members of relevant business associations were invited to participate in the survey. The total number of respondents is 23 specialists.

The survey was conducted using a mixed approach and included elements of a questionnaire and a semi-structured interview.

The survey was conducted on the principles of anonymity and confidentiality, so all the results can be used only in a summarised and impersonal form. Personal information provided by the survey participants will not be disclosed.

The timeframe covers the period from September 2023 to February 2024.

This report is in line with the thematic framework of Section 29 of the European Commission Staff Working Document on the Report on Ukraine 2023 - Customs Union³.

³ https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_699%20Ukraine%20report.pdf





UCC implementation

Ukraine has committed to implement the Union Customs Code (Regulation (EU) No 952/2013) according to the EU-UA Association Agreement (excluding certain provisions which are relevant for the Member States only). Despite this obligation being in place since 2016, the overall progress in implementing the UCC legal framework into Ukraine's domestic customs legislation has been moderate.

In particular, according to the government's 2023 report on the implementation of the Association Agreement⁴, progress in the area of customs issues is 62%, which is the third lowest of all areas⁵.

Transition to the UCC customs rules necessitates a significant redesign of existing customs regulations, which may also impact adjacent spheres of state policy (e.g., taxation etc.). However, as of March 2024, there is no comprehensive draft law of a new Customs Code of Ukraine implementing the UCC.

Simultaneously, 62.5% of surveyed business representatives believe that the adoption of the new Customs Code and the implementation of provisions corresponding to the EU customs legislation could facilitate business operations. The rest of the respondents tend to think that this will either not affect their business or will rather worsen it. However, it can be assumed that scepticism in this regard is caused by the fact that 37.5% of respondents are unaware of draft legislative changes that could make it easier for them to do business.

Meanwhile, NGOs believe that the principles and framework of the Ukrainian customs are currently 51% in line with similar European bodies.

Over the past several years, the Ukrainian parliament approved several separate draft laws introducing certain elements of EU customs legislation (e.g., AEO status and other simplifications, entry summary declarations etc.) to the existing Customs Code of Ukraine. However, due to the sporadic nature of these changes, the overall impact of these changes on the UA customs environment remains limited, failing to encompass all EU legal requirements. For instance, at the time of writing, the concept of 'customs debt' in Ukraine is only applicable to the common transit procedure (under the Convention on a Common Transit Procedure). In the meantime, the concept of customs debt does not apply to cases of arising tax liabilities upon acceptance of the customs declaration, or debt incurred through non-compliance. In this case, the definition of 'tax obligation' from the UA Tax Code applies, which is not compatible with the UCC.

Consequently, there is a strong need to adopt the new version of the Customs Code, consolidating the UCC regulations, to bring domestic UA customs law in line with the EU requirements. At the end of February 2024, Ukraine's Ministry of Finance announced the formation of a team of experts tasked with developing the draft law for the new Customs Code of Ukraine.

⁴ [AA implementation report for 2023.pdf \(kmu.gov.ua\)](#)

⁵ https://www.kmu.gov.ua/storage/app/sites/1/55-GOEEI/zvit-pro-vykonannia-ua-za-2023_UA_2.pdf

In general, respondents from the civil society have noticed this movement and have given 2.5 out of 5 possible points to the process of simplifying customs procedures or approximation of the legal systems of Ukraine and the EU in this regard over the past 6 months.

Over recent years, Ukraine has made progress in implementing guarantees for payment of import taxes. This included both legislative changes (e.g., enhancement of requirements to guarantors, expanding the list of goods subject to guarantees upon transportation, implementing 'comprehensive guarantee' simplification, etc.), as well as the development of IT solutions (e.g., electronic guarantee management system, etc.).

Further integration of the guarantees into the customs processes (e.g., extension of cases where customs debt can be secured by a guarantee, as envisaged in the UCC) would be beneficial to achieve full alignment with the UCC in this area.

Ukraine has made tangible progress in implementing the simplification of customs formalities. The AEO concept, as along with a system of other customs simplifications under the UCC and under the Convention on a Common Transit Procedure (NCTS) have been implemented throughout 2019–2023.

In 2023, Ukraine has also brought rules for determining the non-preferential origin of goods in line with UCC.

The system of customs procedures in Ukraine's domestic customs law does not align with the UCC. A draft law, No 10411, dated 16 January 2024, has been prepared with the intention of harmonising the procedure for authorising certain customs procedures with the UCC. However, the list of customs procedures itself remains unaddressed in this draft law. Even if this draft law is adopted, the placement of goods under customs procedures will still require harmonisation with the UCC.

To summarise, Ukraine still has much work to do in implementing the UCC. To enable full-fledged harmonisation with the UCC, the current legislative landscape should be completely redesigned. This would require a comprehensive draft law (new edition of the Customs Code), along with a set of by-law regulations, as well as changes to other pieces of regulation. This is likely to be a challenging task in practice.

Ukraine has successfully implemented Regulation (EU) No 608/2013 regarding customs enforcement of intellectual property rights in its customs legislation. In addition, the relevant bylaws have been enacted. A new IT system called the 'Customs Register of Objects of Intellectual Property Rights' has been developed. The system enables online submission of applications for inclusion in the register. The new IP register was launched in 2021.

In terms of implementing initiatives to enhance IPR enforcement, business representatives have noted that the situation in this area has improved significantly in recent years. It is mentioned that the implementation of European legislation has helped to mitigate some problems related to intellectual property (for example, the so-called 'patent trolling'). In fact, out of those business representatives who have experienced the work of the customs concerning the protection of IPR, 4 out of 5 respondents are satisfied with the performance of the customs in this area. Some of the respondents also noted that the Ukrainian customs authorities act strictly within the legal framework when it comes to the protection of IPR. Instead, when asked to assess the effectiveness of customs in preventing counterfeit goods from

entering the market, respondents rated the work of customs at 2.5 out of 5. It is important to note that not only business representatives, but also NGOs had the opportunity to answer this question. Therefore, we can assume that the customs is moving in the right direction in terms of IPR protection, but its effectiveness is assessed by respondents as mediocre.

Further analysis reveals that in terms of risk management in various areas of customs activities, respondents are most concerned about improving the approach to controlling the customs value and classification of goods (80% of respondents) and detecting smuggling, except for excisable goods, weapons and drugs (46.7% of respondents).

At the same time, the NGOs rated the effectiveness of the customs risk management system (used by the Ukrainian customs authorities to target shipments for enhanced control) at 2.4 points out of a possible 5.

Which area of risk management should be a priority for improvement⁶

Area of risk management	Percentage (%)
Control of customs value and classification of goods	80.0
Detection of commodity smuggling (including timber)	46.7
Risk analysis before the cargo arrives at the border	40.0
Identification of high-risk goods during customs clearance	40.0
Detection of smuggling of excisable goods	26.7
Post-clearance controls	20.0
Documentary checks	13.3
Detection of weapons and drugs smuggling	13.3
Control over the country of origin	6.7

The lowest scores were awarded to the following options: control over the origin of goods, smuggling of weapons and drugs, and documentary checks. We believe that this is due to the fact that, in practice, there are fewer problems in these areas in the country and that there is generally better legal regulation.

⁶ The question allowed for multiple answers, so the total score is over 100 per cent.

Criminalisation of larger-scale smuggling

On 17 January 2012, the Law on Humanisation of Liability for Offences in the Sphere of Economic Activity was enacted, thereby eliminating criminal penalties for smuggling goods. Since then, there has been an ongoing debate regarding the necessity of reinstating criminal liability for smuggling, particularly of excisable goods. The EU cited significant illegal imports of tobacco products from Ukraine.

In 2021, the President of Ukraine introduced draft law 5420, proposing to reintroduce criminal liability for smuggling goods, including excisable ones, as well as for false declaration. The draft was met with criticism from the business community and experts, who expressed concerns about low-value thresholds for criminal liability, harsh penalties for non-qualified smuggling, and vaguely defined elements of false declaration. Overall, the draft was seen as placing undue pressure on legitimate businesses.

On 9 December 2023, the Verkhovna Rada passed draft law 5420, establishing criminal liability for smuggling goods and excisable goods. The law's adoption was a prerequisite for receiving macro-financial assistance from the EU totalling 18 billion euros and 1.5 billion euros in 2023. The enacted law includes provisions, such as:

- > A value threshold of appr. 18,000 euros for smuggling goods and appr. 27,000 euros for smuggling excisable goods.
- > Removal of the controversial clauses regarding false declaration.
- > Penalties for smuggling goods ranging from a fine of appr. 4,000 euros to 11 years in prison, and for smuggling excisable goods from a fine of 8,000 euros to 12 years in prison.

Since the law was only recently adopted, we are not yet fully aware of the specific details of its application.

As of 1 January 2024, the provisions of the law imposing criminal liability for smuggling excise goods are in effect. The provisions regarding criminal liability for smuggling goods overall will come into force on 1 July 2024.

As of the date of issuance of this report, there is no publicly available information from the law enforcement agencies on the number of criminal proceedings related to the newly introduced articles of the Criminal Code. In particular, the quarterly report of the Office of General Attorney has not yet been published. However, unofficial communication have indicated that up to a dozen proceedings were initiated in respect of Article 201-4 of the Criminal Code (smuggling of excise goods). Further monitoring of law enforcement processes is necessary to assess the effectiveness of the enacted law in achieving its objectives.

Under the current legislation, the Economic Security Bureau of Ukraine is in charge of investigating smuggling that fall under the newly introduced legislative provisions. However, it is presently impractical to assess the Bureau's performance

due to the limited timeframe of three months. It should be noted that criminal proceedings related to excise goods smuggling have only recently been initiated. Therefore, it is premature to anticipate the outcome of the investigations.

Therefore, further study of this issue is required when the first data and statistics on changes under the new articles of the legislation become available. This could enhance the evaluation of customs performance on smuggling issues by the business and NGO sectors.

Implementation of other selected regulations

Accession to the Protocol to Eliminate Illicit Trade in Tobacco Products

The Protocol on the Elimination of Illicit Trade in Tobacco Products serves as an international instrument for combating tobacco product smuggling.

It stands as the inaugural protocol of the WHO Framework Convention on Tobacco Control (FCTC), which Ukraine ratified in 2006.

The Protocol was adopted unanimously at the WHO Conference of the Parties to the FCTC in 2012 and came into force in September 2018, following ratification by the initial 40 countries. Presently, 68 states are signatories to the protocol.

The protocol addresses three key areas in the fight against illicit tobacco trade:



Supply chain control:

Measures aimed at ensuring oversight of supply chains, including the establishment of a global product traceability regime.



Combating offences:

Actions to investigate, prosecute, and penalise illicit tobacco trade in line with national laws.



International cooperation:

Efforts to enhance cooperation among protocol parties on technical, administrative, and legal matter.

On 13 April 2016, the Ukrainian Parliament approved a statement commemorating the 10th anniversary of 'Ukraine's ratification of the WHO FCTC (Resolution No 1087-VIII). In this statement, the Parliament has instructed the Government to initiate the ratification process for the Protocol. However, at the time of writing, the Government has yet submitted the draft law for ratification to the Verkhovna Rada.

Strengthening the protection of Intellectual Property Rights

In recent years, Ukraine has enacted several normative acts aimed at bolstering the protection of intellectual property rights (IPR). Notably, on 17 October 2019, Law No 202-IX was passed, aligning the provisions of the Customs Code of Ukraine on IPR protection with the EU Regulation No 608/2013.

Further advancements occurred on 9 June 2020, when the Ministry of Finance issued orders approving the Procedure for applying measures to promote IPR protection. This introduced a standardised approach for customs authorities to apply measures for suspected IPR violations, including uniform documentation and interaction protocols between customs authorities, rights holders, declarants, and other stakeholders.

Additionally, the mechanisms for facilitating IPR protection based on right holders' applications have been enhanced, with the introduction of standardised application forms and procedures compliant with EU Regulation No 1352/2013. Right holders can now submit applications electronically via the State Customs Service's web service. However, Ukraine's legislation on IPR protection requires further refinement to align with EU Regulation No 608/2013.

Specifically, regulations should be implemented that provide for the application of measures to promote the protection of IP, both during the release of goods into the relevant customs procedure through the mechanism of suspension of the release of goods, and during the detention of goods suspected of infringing an intellectual property right, which were moved without carrying out appropriate customs formalities or with violations of such procedures.

To address these gaps, the Government introduced a Draft Law on Amendments to the Customs Code of Ukraine on 16 January 2024, partially addressing the aforementioned issues.

Additionally, there is a need to streamline law enforcement practices, such as suspending customs clearance for original goods pending right holders' consent.

Furthermore, the Commission Staff Working Document, Ukraine 2023 Report underscores the importance of developing the necessary IT tools alongside legislative changes.

In particular, a digital ecosystem for document circulation and communication between rights holders and customs should be in place, as well as there is a need to implement a risk management system and evaluation of customs effectiveness in IPR protection.

[Council Regulation \(EC\) No 1186/2009 of 16 November 2009](#) setting up a Community system of reliefs from customs duty (Codified version). Only a few of the existing customs duty reliefs in Ukraine's Customs Code align with provisions of Regulation (EC) No 1186/2009. In July 2021, the Government prepared Draft Law No. 5810 aimed at implementing Council Regulation 1186/2009. However, this draft law has never been released by the Parliamentary Committee and has not been voted on by the MPs. Regulation (EC) No 1186/2009 has not been implemented into Ukrainian customs legislation.

[Council Regulation \(EC\) No 116/2009 of 18 December 2008 on the export of cultural goods](#). The export of cultural goods in Ukraine is governed by the Law 'On Export,

Import, and Return of Cultural Values'. This legislation is outdated and is not aligned with the EU legislation, which is preventing the development of a robust legal market for the trade of cultural goods. Regulation (EC) No 116/2009 has not been incorporated into Ukrainian legislation.

There is a pressing need to establish an effective system for export licences for cultural goods. This would ensure the effective preservation of the national cultural heritage, while facilitating smooth and legitimate trade in art and antiques.

Unfortunately, the Ministry of Culture of Ukraine lacks the capacity to develop such a licensing system, and the State Customs Service lacks the necessary competence to effectively enforce regulations on the export and import of cultural goods. For instance, in 2023, the State Customs Service of Ukraine identified 80 cases of violation during the cultural goods movement. However, the value of these goods was only about EUR 12,953.5, i.e. the average value of seized cultural goods is cc. EUR 160 per case. This raises concerns about the overall efficiency of combating the illegal movement of cultural goods.

Regulation (EC) No 273/2004 on drug precursors and Regulation (EC) No 111/2005 – rules for the monitoring of trade between the EU and non-EU countries in drug precursors. Regulation (EC) No. 273/2004 establishes standardised measures for controlling and monitoring certain substances within the EU that are commonly used in the illicit production of narcotic drugs or psychotropic substances. The aim is to prevent their unlawful circulation.

According to the Report on the implementation of the Work Plan for the first half of 2023, the State Service of Ukraine on Medicines and Drugs made editorial revisions to the translation of Regulation (EC) No 273/2004 of The European Parliament and of the Council.

The decision of the Governmental Committee on European and Euro-Atlantic Integration, International Cooperation, Culture, Youth, Sports, and Information Policy, dated 18 August 2023 (Protocol No 12), approved the tentative plan for translating acts of the European Union *acquis communautaire* and Ukrainian legislation for 2024.

Regulation of the European Parliament and of the Council (EC) No 273/2004 is classified under Priority II: EU *acquis* acts, in line with the implementation procedure outlined in Cabinet of Ministers of Ukraine resolution No 189 of 28 February 2023.

Regulation (EU) 2018/1672 on controls on cash entering or leaving the EU. Despite certain provisions of Ukrainian law are generally in line with the Regulation (e.g. a threshold of EUR 10k for amounts of cash which do not require written declaration to customs), Regulation (EU) 2018/1672 has not been implemented into Ukrainian legislation. The declaration process for cross-border cash movements also requires the provision of details about the cash, as specified in the Regulation.

However, a lot of EU legal requirements in this area have yet to be implemented (e.g., the concept of 'carriers', *ex officio* declarations made by the authorities, the possibility of temporary detention of cash by competent authorities etc.).

Furthermore, the implementation of the aforementioned EU Regulations necessitates a comprehensive risk analysis and inter-agency collaboration to detect suspicious cash movements and their potential links with fraudulent activities (e.g., trade-based money laundering). This is not yet in place in Ukraine.

Although there is some degree of information exchange between competent authorities (including a register of declarations on cross-border cash movement accessible to law enforcement and financial intelligence authorities), the effectiveness of their collaboration with customs authorities requires enhancement.

In general, reforming customs legislation is an important aspect for both business and NGO representatives. When prioritising what should be harmonised with the UCC as the highest priority, the interviewed NGO representatives noted that the issues of customs valuation and the interaction of customs authorities with other regulatory authorities urgently need to be harmonised.

Areas of Ukrainian customs legislation most urgently needed to be aligned with the EU Customs Code (based on the results of the survey and interviews with business and NGO representatives)

Area of customs law	Percentage (%)
Customs value and classification of goods	26.6
Cooperation with other regulatory authorities	26.6
Violation of customs regulations	20
Customs regimes and formalities	20
IPR protection	6.6

The results of answering this question correlate with the answers to the question on improving the risk management system (presented above in this section). In both cases, the respondents identified customs valuation and classification of goods as their primary concern, both in terms of improving the risk management system and the urgency of harmonising relevant provisions with the EU Customs Code.



ACCESS TO THE COMMON COMPUTERISED CUSTOMS SYSTEMS ↘

Computerised customs systems covering national and EU customs business requirements

The SCS has recently developed a comprehensive long-term national plan for digital development, digital transformations, and digitalisation of the SCS and its field offices, anchored in the EU's Multi-annual Strategic Plan for Customs (MASP-C).⁷ It is hereinafter referred to as the LNP). This plan received approval from the Ministry of Finance in February 2024.⁸ It includes several critical projects, which are as follows:

Project description	Comparable MASP-C rev.2023[2] component	Operational date
Central component of the automated customs clearance system	n/a	2 January 2025
Customs Decision System	1.2 UCC Customs Decisions	2 January 2025
Single Window	1.13 EU Single Window environment for customs	2 July 2025
Guarantee Management System	1.22 UCC Guarantee Management	2 July 2025
NCTS (including Phase 5/Phase 6)	1.7 UCC NCTS	31 December 2024
Import Control System 2	1.19 UCC Import Control System 2	2 July 2025
Automated Export System	1.6 UCC AES	2 January 2025
Binding Tariff Information System	1.4 UCC BTI	2 July 2024
Integrated Tariff Management System	1.14 Classification Information System (CLASS)	9 October 2023
Economic Operator Identification and Registration System	1.15 UCC EORI2	2 July 2025
Authorised Economic Operator System	1.5 UCC AEO and Impacts of MRA	2 October 2024
Anti-Counterfeit and Anti-Piracy System	1.12 COPIs	2 October 2024
Needing further study		
Uniform User Management and Digital Signatures	4.6 UUM&DS	

⁷ <https://t.ly/OgfeE>

⁸ <https://t.ly/plmbj>

However, the LNP does not include plans for projects related to several other components, such as 1.11 UCC REX (Registered Exporter System), 1.16 CRMS2 (Customs Risk Management System 2), 1.20 UCC Surveillance 3, 1.24 UCC CCI (Centralised Clearance for Import), 1.25 CUP-MIS (Customs Union Performance – Management Information System), and 1.28 UCC Special Procedures.

Furthermore, the strategy overlooks projects identified by the EU for further exploration, specifically 2.14 Carbon Border Adjustment Mechanisms, 2.16 Electronic Proof of Origin Certificates, 2.17 BOI/BVI IT System, 3.2 eATA Carnet System.

In general, the surveyed organisations have no complaints or problems with the electronic services available in the customs area.

At the same time, businesses and NGOs prioritised the automation of customs clearance without human intervention as an improvement in IT solutions for customs. A total of 46% of NGOs and 87.5% of business expressed this view. Simultaneously, the vast majority of businesses noted the option of online parcel clearance, while NGOs did not show interest in such a tool.

What specific IT solutions would you suggest to improve the efficiency and convenience of the Ukrainian customs services?⁹

Specific IT improvements or innovations	Business (%)	NGO (%)
Online parcel registration	100.0	0.0
Automatic completion of customs clearance without human intervention	75.0	46.6
Obtaining all types of permits for foreign economic activity via a single window	62.5	20
Automated integration of customs data into accounting	37.5	20
Registration of used cars in Diia	37.5	6.6

In general, the response rates of the NGO sector are lower for all options, as they were less active in answering this question. In particular, almost none of the organisations took the opportunity to choose three options from the proposed list.

⁹ The question allowed for multiple answers, so the total score is over 100 per cent.

Analysis of the current state of play for the projects envisaged by the LNP

▼ Customs Decision System (CDS)

The current decision-making system continues to operate predominantly on paper, despite the provisions of Article 31-1 of the Customs Code, enacted in January 2020, which permits decisions to be made electronically. This inconsistency persists even for procedures that can be initiated electronically, such as the application for granting the AEO status. The final decisions are still issued on paper and often delivered as scanned copies signed with a digital signature, serving as the legally binding document. There are exceptions to the paper-based system, particularly for classification and valuation decisions made during customs clearance. These procedures are conducted electronically, although not via the Single Window. Instead, they are carried out via Electronic Data Interchange between the trader's specialised customs declaration system and the customs authorities.

The LNP outlines the Ukrainian CDS's focus primarily on authorisations, including those for AEOs, individual simplifications, guarantees, specific types of customs-related activities (such as customs brokers, customs warehouses, and temporary storage facilities), and end-use authorisations.

Concurrently, recently proposed legislation¹⁰ is set to broaden the decision-making scope of the customs authorities significantly beyond what the LNP suggests, especially regarding special procedures like temporary admission, inward and outward processing.

It is essential to acknowledge and commend the Ukrainian customs authorities for their efforts in this area, as the significance of these planned advancements in the CDS cannot be overstated. In an era where rapid and transparent customs processing is crucial for international trade, the customs authorities are laying the groundwork for a more streamlined, efficient, and compliant customs operations by extending the decision-making capabilities beyond traditional frameworks.

▼ Single Window (SCS-SW)

The Single Window Portal offers a suite of services designed to streamline customs processes for users. These services include:

- 01.** The submission of entry summary declarations, facilitating the preliminary notification of goods entering the customs territory.

¹⁰ Article 19-1 of draft law No 10411 <https://itd.rada.gov.ua/billInfo/Bills/Card/43539>

02. The application process for various statuses and registrations, such as Authorised Economic Operator status, the Unified Customs Register of Intellectual Property Objects, binding tariff/origin information, customs broker registration, and economic operator registration, alongside requests for reimbursements.
03. The verification of selected permits and approvals issued by other governmental bodies, ensuring compliance and authorisation, are efficiently managed within a single platform.
04. The ability to review processed customs declarations and identify potential errors in draft declarations before submission.
05. Access to a wealth of information resources, including registries of guarantee issuers, customs brokers, AEOs, customs warehouses and temporary storages, intellectual property objects, as well as tariff information, issued BTI/BOI, and classification rulings, tracking of postal/express consignment status, etc.

The Single Window Portal incorporates secure access mechanisms, including authorisation via digital signatures or the gov.id portal, to ensure a high level of security and user authentication for accessing and utilising these services.

▼ **Guarantee Management System**

The Guarantee Management System within the SCS-SW portal provides economic operators with the tools they need to track and manage their guarantees. Specifically, it enables the listing of all guarantees provided, monitoring their discharge, and viewing available limits.

In Ukraine, the application of guarantees occurs within two distinct contexts. The first pertains to the NCTS guarantees, which are fully aligned with EU requirements and facilitate the international transit of goods under the common transit procedure. The second context involves national guarantees, which, similar to practices within the EU, cover national transit procedures and other special procedures requiring guarantees (e.g., bonded storage of goods under certain simplifications). This national guarantee management system mirrors the electronic nature of the NCTS guarantees, operating entirely paperlessly and allowing for the electronic handling of guarantees, thus ensuring a streamlined approach to guarantee management.

An assessment of the effectiveness of these systems has revealed that both the NCTS-aligned and national guarantees management systems within the SCS-SW portal are fully operational and provide a robust framework for guarantee management by eliminating paper-based processes and facilitating real-time tracking and handling, which aligns with modern customs practices and enhances the efficiency of customs operations.

▼ NCTS

The New Computerised Transit System offers traders two primary avenues for interaction: through the dedicated NCTS Trader Portal or via the resources available on the SCS-SW portal. The latter enables the generation of transit declarations directly from processed export declarations, providing flexibility and ease in managing transit procedures.

Although there is still a small number of businesses that remain sceptical about NCTS, organisations that use the system tend to evaluate it positively.

▼ Import Control System

The SCS-SW portal enables the creation and submission of entry summary declarations for goods being imported into Ukraine.

▼ Automated Export System

As of now, the SCS-SW portal does not provide services that could be classified under the Automated Export System.

Earlier, in 2020, the SCS made a significant stride forward in the modernisation of customs processes with the launch of an innovative pilot project designed to automate customs processes through risk assessments.¹¹ The pilot project focused on automating customs formalities for three specific regimes: export, inward processing, and re-export following inward processing. The core feature of this pilot was the 'automatic completion' of customs declarations, which enabled the system to register customs declarations autonomously, without the need for customs officials to intervene. Declarations identified as low-risk by the system were automatically processed, while those flagged for risks underwent standard manual clearance procedures.

The implementation of this automated system was made possible by a bespoke algorithm tailored to various transport modes, customs regimes, and declaration types. This initiative has successfully processed thousands of declarations, with participating traders expressing high satisfaction levels.¹² Notably, the time required to process export declarations was significantly reduced to 7–10 minutes, a stark improvement from the previous average of 65 minutes for low-risk cases as of January 2024.

¹¹ https://jurliga.ligazakon.net/news/195459_oformlennya-deklaratsiy-v-avtomatichnomu-rezhim-mitnitsya-rozpochala-plotniy-proekt
¹² https://www.mdoffice.com.ua/ua/aMDOSForum.GetANS?p_id=1913234

Despite these achievements, a comprehensive evaluation of the pilot's impact and its scalability remains elusive. No detailed reports, analyses, or studies on the pilot's outcomes and its implications for the future have been made available. Furthermore, the project team's efforts to find related information on the SCS website have been unsuccessful, indicating a lack of communication regarding the achievements and lessons learned from this initiative.

▼ **Binding Tariff Information System**

In March, the SCS introduced a new module on the SCS-SW portal designed to provide access to the customs authorities' decisions related to binding information, as outlined in Article 33 of the UCC.

Additionally, the portal features a module that houses classification decisions made by the customs authorities. This module includes both preliminary classification rulings, which are comparable to BTIs, and classification rulings made during customs procedures. These are rulings made when there is a need to adjust the tariff classification of goods mid-process. Although this functionality mirrors aspects of the DG TAXUD's CLASS (Classification Information System), it falls short in scope, lacking comprehensive resources such as customs tariff details, explanatory notes, and relevant court rulings.

▼ **Integrated Tariff Management System**

The SCS-SW portal features an Integrated Tariff Management System module that provides comprehensive tariff information on goods, closely paralleling the functionality of the DG TAXUD's TARIC Consultation service. This module provides detailed insights into applicable duties, excise, and VAT rates, as well as exemptions available under free trade agreements and specific import/export restrictions. This enables informed decision-making for traders.

▼ **Economic Operator Identification and Registration System**

Ukraine has implemented a procedure for the registration of economic operators with the customs authorities, which mirrors the EU's Economic Operator Registration and Identification (EORI) system to some extent. The SCS-SW portal facilitates the online registration process, enabling economic operators to obtain their Ukrainian EORI number. Furthermore, the system offers a verification service for EORI numbers, enabling users to search the registry using the company's name, EORI number, or tax/personal ID. This enhances the ease of compliance and operational efficiency for businesses engaged in international trade.

✓ **Authorised Economic Operator System**

The SCS-SW portal provides a convenient online platform for the submission of Authorised Economic Operator applications. However, following this initial digital step, the process reverts to paper-based methods, with the final decision or rejection issued in hard copy. Currently, the system does not support online applications for individual customs simplifications, despite the similarity in forms and procedures to those for AEO status, which typically require less documentation. Moreover, the portal lacks specialised electronic services tailored for AEOs or entities authorised for simplifications. Additionally, the integration of Mutual Recognition Agreements, should they be established with Ukraine, represents a significant aspect of future enhancements to the AEO system.

✓ **Anti-Counterfeit and Anti-Piracy System**

The SCS-SW portal offers a feature aligned with the Anti-Counterfeit and Anti-Piracy System through its online service for registering intellectual property objects. This functionality mirrors the Application for Action (AFA) process available on the IP Enforcement Portal (IPEP). While the Customs Register compiles all AFAs, it currently lacks the functionality to facilitate subsequent interactions with rights holders, in contrast to the IPEP's more interactive approach.

➤ **Recommendations**

Despite its title, the Long-term National Plan primarily focuses on the near term, with most developments scheduled for 2024–2025. A significant portion of its initiatives is expected to become operational within the same timeframe. The projects outlined in the LNP are largely based on the current functionalities of the SCS-SW, with many requiring only minor adjustments to align with the existing systems of the EU.

Given that not all MASP-C projects are mandatory for EU candidate countries and that some are specifically tailored for member states, it is likely that the LTNP's focus is on those of the utmost priority for Ukraine at this stage. It is important to note that the LTNP's current scope and strategic selection of projects, which is comprehensive but not exhaustive, does not encompass all IT systems identified in the Multi-Annual Strategic Plan for Customs.

Nonetheless, the LNP may fail to consider several projects outside of the MASP-C that are directly relevant to Ukraine's strategic policies. In particular, the LNP is not aligned with the National Revenue Strategy's IT-focused initiatives for customs modernisation, including:

- › Utilisation of body cameras in customs activities (2024–2027).
- › Creation of a business support HelpDesk (2025–2026).
- › Enhancement of border early warning systems – scanning systems, intelligent video control systems, weighing systems, etc. (2024–2025).
- › Introduction of new KPIs and IT monitoring (2024–2025).
- › Upgrades to taxation IT solutions in relation to preferential taxation of imports. (2024–2030).

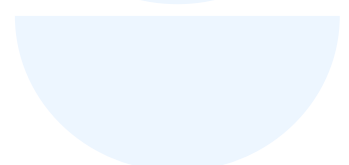
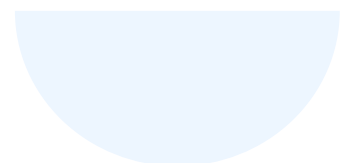
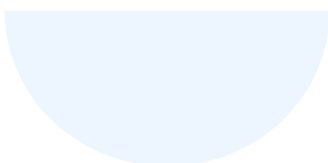
The authority of customs to initiate smuggling investigations under the NRS for 2024-2027 is also worth mentioning here, as this functionality also requires significant IT support.

Given that it has already been approved, the LNP would benefit from a periodic review, potentially on an annual basis, to ensure it remains aligned with evolving needs and integrates relevant projects that are currently absent. Furthermore, the LNP would benefit from anticipating future needs by incorporating other MASP-C initiatives that, although not immediately mandatory, could significantly enhance its strategic relevance and efficacy.

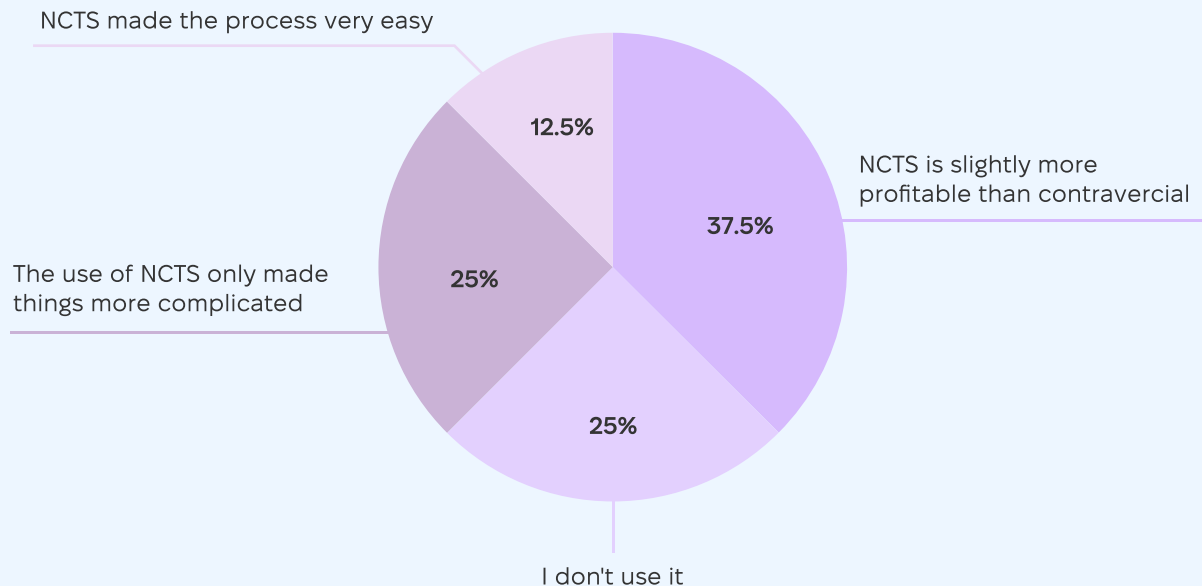
Progress with the AEO programme and utilisation of NCTS

In November 2023, amendments to the Ukrainian Customs Code curtailed the customs authorities' flexibility to green-light low-risk import and export shipments without a compulsory stop at a customs terminal. Since the Ministry of Finance labelled these discretionary powers as 'simplifications', we will similarly refer to them, although they were not simplifications in the strict sense. The rationale was to address concerns that the attractiveness of the national AEO programme and the uptake of other simplifications available to businesses, including those already ²⁸ holding various authorisations, were being undermined.

In November 2023, the government also abolished the national beneficial technologies of customs clearance (the option to export and import goods without presenting them to the customs office for clearance). This was done to encourage businesses to use the simplifications granted for AEOs and under the NCTS. This move was met with significant opposition from Ukrainian businesses, who perceived it as a deterioration of the business climate.



Does the use of the European transit system (NCTS) simplify the process of transporting?



Currently, 50% of business respondents view the NCTS positively, although a minority still perceive it as a complicating factor in their work.

The survey also allowed respondents to outline the benefits and drawbacks of the NCTS.

Among the advantages, the business noted the convenience of a single document and the potential for reducing the time of customs formalities at the border crossing point. However, the full effect is not yet felt due to the blocking of the border with Poland from November 2023 till April 2024.

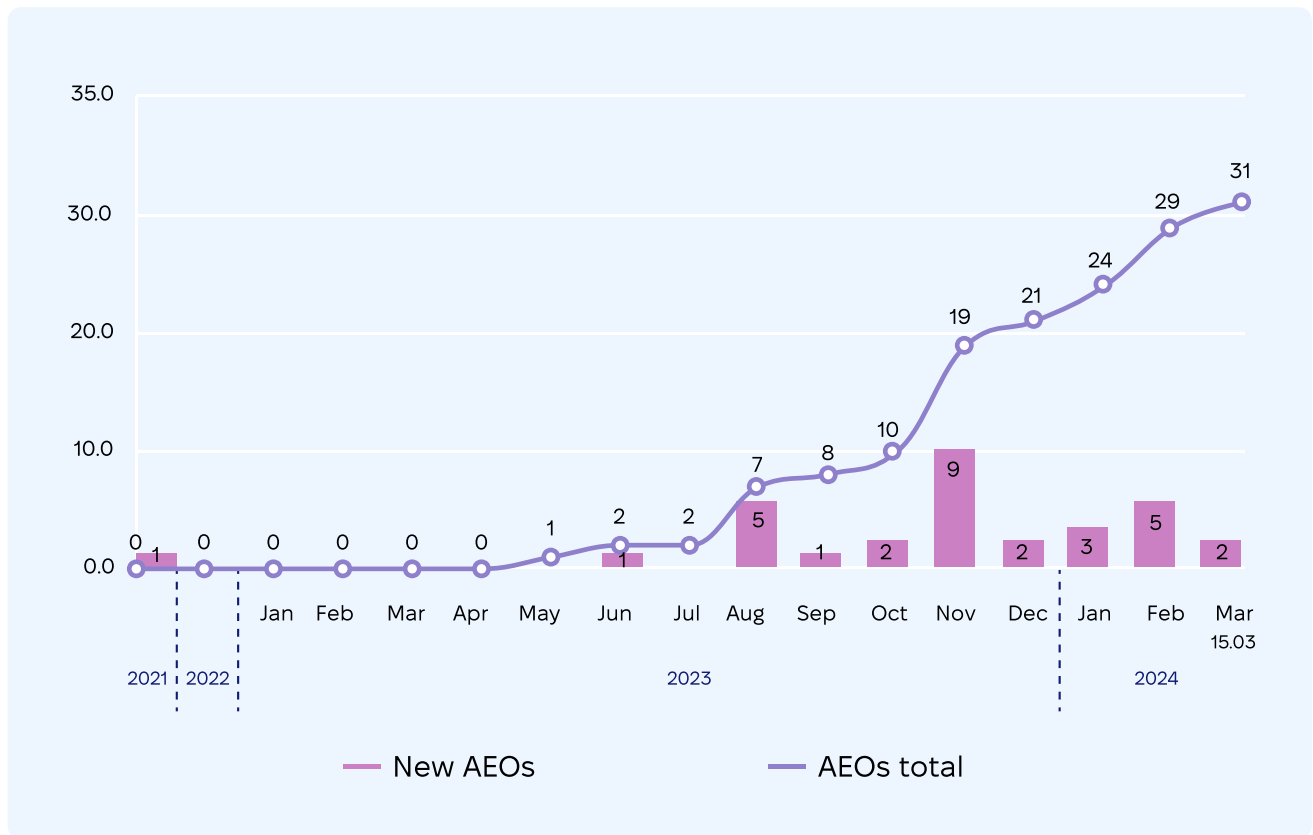
At the same time, there are also certain challenges to be overcome. The respondents noted that the NCTS is more complex than the previous national transit system because it adds an administrative burden. The respondents indicated that the regulatory requirements of the NCTS (presentation of goods to customs, sealing, guarantee) are generally more burdensome than the national transit system that previously operated in Ukraine.

Furthermore, businesses view the transition from the previous to the new system as a challenging process. Respondents also indicate that NCTS is more straightforward for large businesses, whereas it is considerably more challenging for SMEs.

However, the surveyed organisations recognise the importance of adapting to work with NCTS, as they acknowledge that it is the only viable option on the path to European integration.

Despite these regulatory adjustments, the State Customs Service reports only a modest increase in AEO certifications. From August 2023 to mid-March 2024, just 29 companies obtained AEO status. There was a notable surge in November 2023,

possibly tied to the policy change, which was followed by a subsequent decline in AEO approvals. Without access to detailed data on application numbers and processing times, it is difficult to assess the SCS's capacity to handle these requests. The feedback from businesses gathered through surveys and interviews for this shadow report indicates that there is a lukewarm reception towards AEO status. This is primarily due to the perceived high compliance costs relative to the benefits.

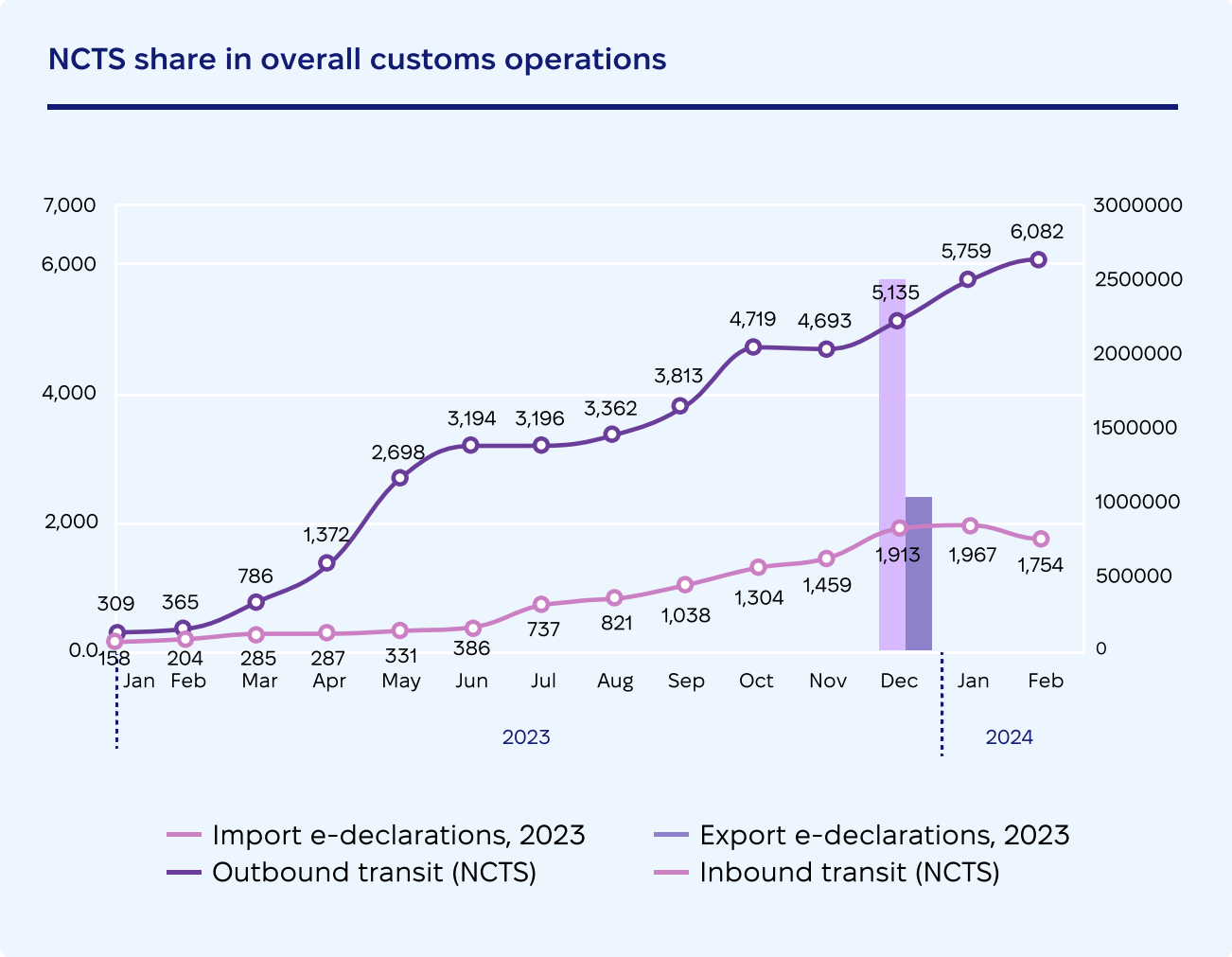


For example, one significant advantage of full AEO status — the use of dedicated traffic lanes at border crossings — remains largely theoretical. The constraints on infrastructure expansion at Ukrainian Border Crossing Points (BCPs) mean that this benefit is not practically achievable. At the same time, the national 'e-Queue' system, which manages cargo traffic, subjected outbound lorries to waiting times ranging from 9 to 30 days as of winter-spring 2024. Introducing an AEO-specific fast lane within this system would provide an incentive for businesses to seek AEO certification. According to the SCS, it has repeatedly contacted the Ministry of Infrastructure with proposals to improve the E-Queue system, to prioritise vehicles operating under NCTS/TIR procedures or with AEO cargo, but has not received a positive response.

Extending the benefits of AEO to non-customs areas, as is being discussed in the EU, would further boost interest. For instance, exempting a portion of an AEO-certified company's workforce from military mobilisation could provide a compelling reason for businesses to comply with AEO requirements.



Similarly, the uptake of the New Computerised Transit System remains minimal, with transit declarations via NCTS accounting for only 3–4% of total electronic import and export filings (based on the SCS data extracted from publicly available information on the SCS website¹³ and the Customs Digest by MP Y.Zheleznyak¹⁴). This is despite Ukraine’s supply chains predominantly linking to its western EU borders, where NCTS would naturally apply.



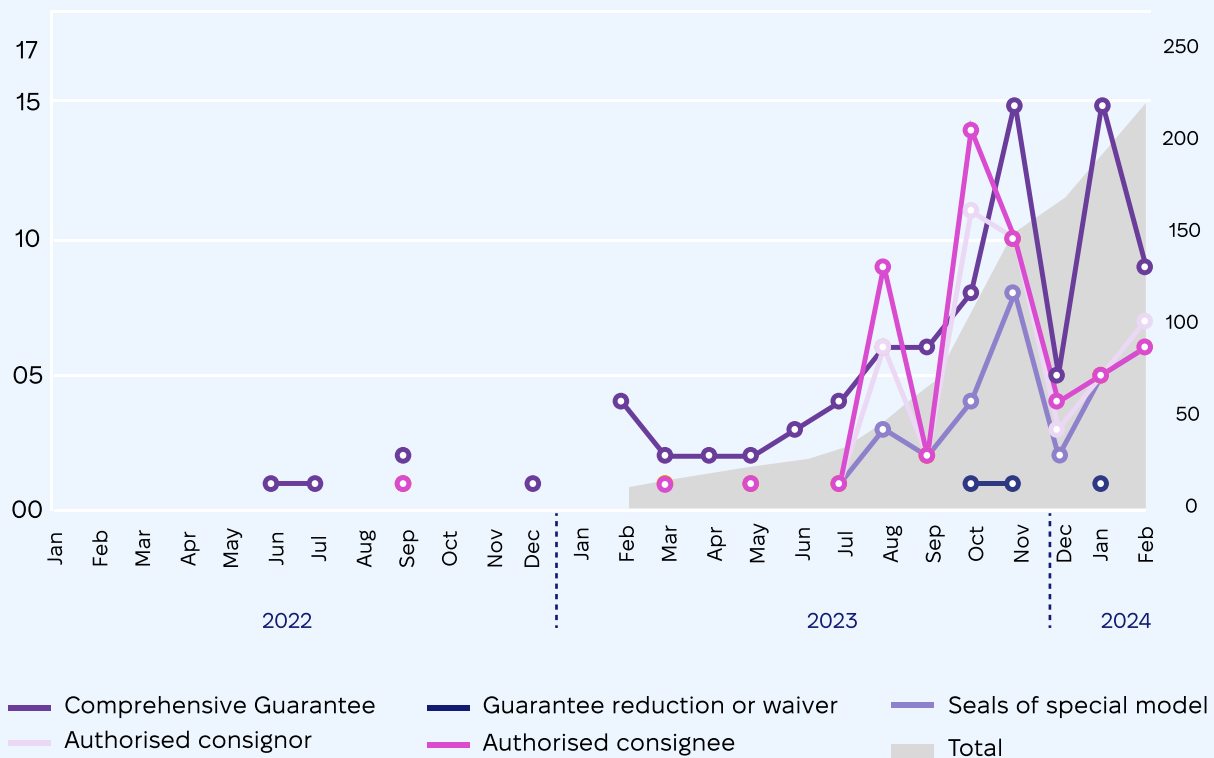
Applications for individual simplifications mirror the tepid interest in AEO status, with some businesses previously authorised for simplifications now opting for AEO status, potentially reducing the overall number of authorisations.



¹³ <https://customs.gov.ua/en/statistika-ta-reiestri>, Declaration rates 12 months_2023.xls

¹⁴ <https://t.me/yzheleznyak/7751>

Authorizations for individual simplifications monthly rate, 2022-2024 (Jan, Feb)



It is possible that businesses are undervaluing the benefits of the NCTS, particularly in relation to inbound traffic. In this context, it is worth noting that EU shippers often only provide guarantee coverage up to the Ukrainian border. This makes the national transit system appear more straightforward and familiar, which may explain why it is so frequently used. The reasons for the low adoption rate for exports are less clear, given that Ukraine’s exports are oriented towards the EU.

To encourage traders to pursue simplifications or AEO status and to fully leverage the NCTS, it is necessary to go beyond awareness-raising. The business community, already aware of the theoretical benefits, is reluctant to engage, signalling the need for strong, context-specific incentives to drive meaningful change.

The survey of the business community revealed that the vast majority (87.5%) of respondents were aware of the AEO system and its benefits, while a minority (12.5%-) indicated a lack of knowledge about this system.

For those entities designated as AEOs or authorised for specific simplifications under the AEO scheme, the perceived impact on the efficiency of cross-border movement of goods varied. The average score provided by businesses, measured on a five-point scale, was reported to be 2.5. This score indicates a nuanced perception of the effectiveness of AEO status and its simplifications in streamlining cross-border trade operations.

However, despite the potential benefits offered by AEO status, certain challenges were identified in obtaining and maintaining this authorisation. The respondents identified several complexities in the process of confirming compliance with the AEO status criteria. In particular, they noted the high requirements imposed, which may pose significant challenges for small and medium-sized enterprises (SMEs).

OPERATION ACTIVITIES: THE SCS AS A MODERN, EFFICIENT, TRANSPARENT, AND CORRUPTION-FREE INSTITUTION ↘

Empowering the SCS to investigate smuggling

As previously discussed, various law enforcement agencies are currently authorised to investigate smuggling, depending on its nature. These include the Economic Security Bureau of Ukraine, the Security Service of Ukraine, and the National Police. The issue of empowering customs authorities to investigate customs fraud cases was discussed in the Verkhovna Rada of Ukraine at least as early as 2002.

On 24 December 2009, two draft laws were presented to grant customs bodies the status and powers of a law enforcement agency for smuggling investigations (registrations Nos 5478, 5479). However, both were rejected.

Instead, on 13 April 2012, Law No 4652-VI was passed, authorising customs enforcement divisions to conduct operational and investigative activities. However, this provision was repealed with the enactment of Law No 406-VII of 7 April 2013 that established the Ministry of Revenues and Duties, which included the Customs Service.

Following the dissolution of the Ministry of Revenue and Duties, its successor, the State Fiscal Service, was granted authority to conduct operational and investigative activities, but only in relation to tax evasion. Smuggling was decriminalised in 2011.

With the customs service restored in 2019, the issue of its law enforcement status gained renewed importance, particularly in the context of Ukraine's European integration. The Directive (EU) 2017/1371 emphasises the criminalisation of smuggling, money laundering, and corruption and highlights the need for enhanced cooperation and joint investigations among member states.

The National Revenue Strategy until 2030, adopted by the Ukrainian Government, outlines plans to grant customs authorities the right to conduct operational and investigative activities and pre-trial investigations in smuggling cases during the years 2024 through 2027.

The EU's Customs Blueprint 12: 'Investigation and Law Enforcement' is designed to establish an effective customs service capable of detecting, preventing, and investigating cases of customs fraud.





Customs must be flexible to take account of:



- ① operational information;
- ② the latest risk assessment methods and modern technologies;
- ③ ensuring income and protection of society;
- ④ ensuring compliance with national and international legislation;



Strategic tasks:



- ① to develop a universal legal framework for cooperation and information exchange;
- ② to develop organisational and operational capabilities to counter customs fraud effectively;
- ③ to establish internal and external cooperation;
- ④ to develop management, IT, HR, and training systems;
- ⑤ to ensure the provision of suitable facilities, equipment, IT and security standards;

While Ukraine recently introduced criminal penalties for large-scale smuggling (please see the relevant chapter on legislative alignment), these legislative amendments do not yet grant customs authorities any new rights or obligations.

Risk management, customs controls, and customs clearance

The Ukrainian customs control system employs a risk management subsystem within its declaration processing software to determine the level and type of customs scrutiny. The system operates in two modes: automatically, based on pre-set risk indicators known as risk profiles, and manually, with customs officials evaluating risk based on additional information from law enforcement bodies like the National Police, Security Service, and others.

This section of the report examines both the automated system (ASUR) and the effectiveness of law enforcement information. By the end of 2022, ASUR had integrated 114 electronic risk profiles, which are vital for both domestic customs processes and monitoring cross-border goods and vehicle movements into Ukraine.

The profiles are designed to ensure the accuracy of declared customs values, check quantities and weights, confirm correct goods identification, and prevent the illegal movement of restricted or hazardous materials across the Ukrainian border.

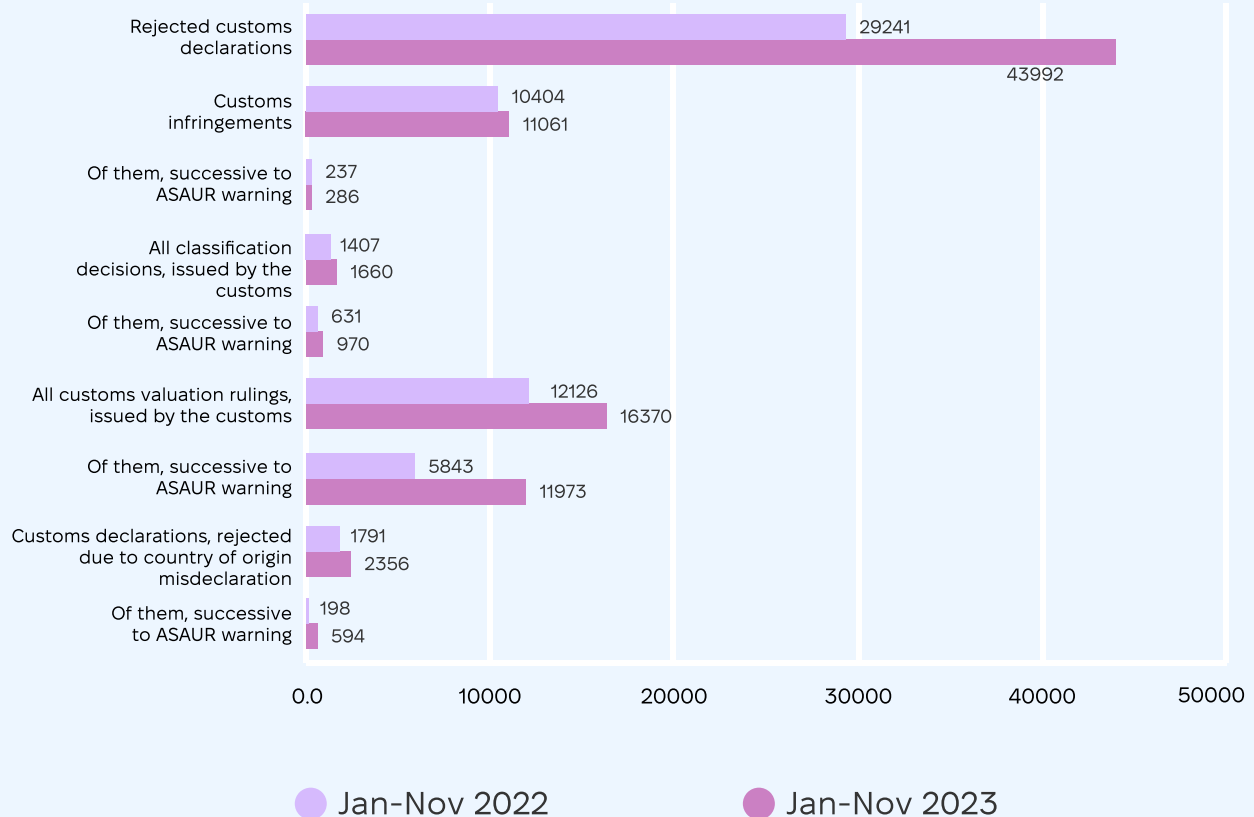
While the customs 'administration's reluctance to publicly disclose specific ASUR operational details is understandable, 'there is a noticeable lack of transparency regarding the 'system's overall effectiveness. External analysis indicates a need for a more in-depth evaluation of the risk management 'system's performance.



It is notable that ASUR generates a disproportionately high number of warnings relative to the volume of cross-border transactions. This indicates that documentary checks are a predominant focus of control, with other control types being less prevalent. Furthermore, despite its long-term operation, ASUR has not yet achieved the same level of efficiency as manual customs interventions.



ASUR warning efficiency



This analysis underscores the necessity for the SCS to refine and prioritise its risk management strategies in order to enhance the efficiency and effectiveness of customs controls.

With regard to the efficacy of customs risk analysis during clearance processes, respondents held divergent views. The majority, representing 62.5%, expressed that risk analysis occurs in different ways, suggesting a mixed perception of customs practices in this regard. However, a quarter of respondents expressed dissatisfaction with the consistency and rationale behind customs procedures, indicating that they believe customs requirements and actions are chaotic and unreasonable. Conversely, a smaller proportion, representing 12.5%, expressed confidence in the overall effectiveness of the risk management system employed by customs authorities.

The survey responses regarding the frequency and nature of difficulties encountered during customs clearance have yielded several key insights.

Firstly, the data indicates that a majority of respondents, comprising 75%, reported occasional instances where customs authorities requested additional documents during the clearance process.

Furthermore, a smaller percentage, specifically 12.5% of respondents, indicated facing more significant challenges with customs authorities. The respondents reported that their cargoes were subject to inspections, which resulted in laboratory testing. It seems that these difficulties may stem from heightened scrutiny or specific industry-related regulations, particularly in sectors such as fuel and chemicals.

A participant noted that while documentary forms of customs control, such as confirming customs values and tariff codes, are common sources of difficulty for many customers, physical inspections are more prevalent in certain industries, especially those involving sensitive or regulated materials. Additionally, the impact of external factors, such as martial law and associated restrictions, can lead to delays, as evidenced by the intensified inspections of imported fertilisers suspected of having russian origins.

Transparent and merit-based selection of leadership

The chronic issue of leadership turnover within the SCS over the past five years, with seven Chairs serving in rapid succession, underscores a systemic problem that has contributed to operational inefficiencies and a disconnect between the central apparatus and territorial bodies. The frequent changes at the leadership level, coupled with the prolonged periods where leadership roles are filled by 'interim appointees', have not only destabilised the organisational structure but also potentially facilitated the formation of confidant networks or loyalist groups within crucial customs offices. This situation highlights a critical shortage of competent managers and may point to practices aimed at either removing officials from their positions or, conversely, installing personnel into roles for which they were not originally designated.

The practice of rotation, whether involving general non-rated personnel or executive personnel, has proven to be an ineffective immediate measure against corruption. Instead, it can inadvertently serve to establish confidant networks or loyalist groups within important offices. Furthermore, the Ministry of Finance's authority to approve appointments of D-level management in the SCS, while intended to ensure accountability, may paradoxically entrench these networks by severely limiting the SCS's chief executives in executing their team-building powers.

The parliament's current consideration of a draft law (No 6490-d) aimed at implementing concurrent competitive and merit-based selection for the top management of the SCS, along with the evaluation of personnel virtue and aptitude, is a positive step in the right direction. However, there are still some challenges to overcome, particularly the ongoing efforts of the Ministry of Finance to restrict the autonomy of the SCS management in making HR decisions. There is a risk that amendments to the draft law might reduce its effectiveness, as was the case with recent legislation concerning the Bureau of Economic Security.

Furthermore, the challenge of attracting suitably qualified candidates from public, business, or expert circles into public service, particularly for roles within the SCS, remains unresolved. The sensitivity and critical nature of these positions demand not only a transparent and merit-based selection process but also a concerted effort to enhance the attractiveness of public service roles. This includes providing adequate incentives, professional development opportunities, and establishing a clear career trajectory that aligns with personal growth and organisational goals.

This challenge is also evident in the experiences of reform support teams (RSTs).¹⁵ When some of these teams were recently dissolved, members opted to pursue careers in the private sector or other donor-funded projects across various competency areas, rather than continuing their work as public servants. This trend underscores a significant obstacle to capitalising on the expertise and enthusiasm of professionals in public service roles, particularly in sectors that are crucial to national development such as customs.

To effectively address these issues, a comprehensive reform strategy is required that goes beyond legislation. This should include:

- ⑤ Enhancing the SCS's autonomy in HR decisions to enable a more dynamic and responsive management structure.
- ⑤ Implementing robust mechanisms for transparency and accountability in the selection process, ensuring that merit and competence are the primary criteria.
- ⑤ Developing a strategic plan to attract talented individuals from various sectors by offering competitive compensation, clear career paths, and opportunities for professional development.
- ⑤ Fostering a culture of integrity and service within the SCS that aligns with the broader goals of reform and anti-corruption efforts.

Furthermore, the SCS management will require a continued transition period to address and resolve the existing problems. This period is crucial for cleansing the system of inefficiencies and entrenched issues, which can only be successful with the full support of the Parliament and government. During this period, it is imperative that the management is shielded from attacks that could hinder their reform efforts. Such protective measures are essential to maintain the integrity and momentum of the reform process, ensuring that the administration can achieve its objectives without external interference.

The survey results provide valuable insights into perceptions of professionalism, integrity, and performance within customs authorities, as well as recommendations for improving human resource management practices to enhance efficiency.

The average score on a five-point scale regarding satisfaction with the professionalism and integrity of customs officers from the business perspective is reported to be 3.1, indicating a moderate level of satisfaction overall.

Over the past six months, the majority of respondents from business (75%) reported no observed changes in the professionalism and performance of customs staff. However, some respondents (12.5%) indicated a perceived deterioration in staff performance, while an equal percentage had no information on any changes.

The average score on a five-point scale regarding the effectiveness of the current organisational structure and personnel policy of customs authorities in achieving strategic goals and meeting operational needs from the NGO perspective is reported to be 2.3, indicating a moderate level of effectiveness.

¹⁵ The Recovery and Reform Support Teams are groups of Ukrainian professionals (non-civil servants) funded on a temporary basis through the Ukraine Recovery and Reform Architecture (URA) programme. The Ukraine Recovery and Reform Architecture (URA) is a comprehensive technical assistance programme deployed by the European Bank for Reconstruction and Development (EBRD), in partnership with the European Union, to support critical recovery and reform processes in Ukraine.

Both the NGO and businesses have identified a number of key recommendations to improve human resource management practices within customs authorities to improve efficiency.

What improvements in human resource management practices would you recommend to improve the efficiency of customs authorities (multiple answers are possible)¹⁶

Recommendations	NGO (%)	Business (%)
Overhaul of staff at customs offices	33.3	50.0
Increase in the salaries of customs officers	13.3	87.5
Elimination of the external (including political) influence on Customs	66.7	100.0
Improvement of the selection process for executive positions	73.3	75.0

In summary, both NGOs and businesses recognise the significance of a comprehensive revitalisation of the organisation’s workforce, improving executive selection processes, and eliminating external influences on customs officers to enhance the efficiency and effectiveness of customs authorities. Additionally, businesses emphasise the significance of competitive salaries in order to attract and retain skilled personnel.

Other good governance practices

Accountability and oversight

For an extended period, the State Customs Service of Ukraine has been evaluated based on two metrics: revenue collection and, to a lesser extent, its effectiveness in combating customs violations. It is noteworthy that the Customs Code mentions revenue collection only once amidst a list of the customs authorities’ key goals, which also include control, protection, facilitation, and cooperation. This closely mirrors the European Union’s strategic objectives. The absence of approved Key Performance Indicators currently hinders a holistic assessment of the SCS’s performance, impeding evidence-based policymaking and the evaluation of the organisation’s effectiveness.

¹⁶ The question allowed for multiple answers, so the total score is over 100 per cent.

Furthermore, the SCS lacks transparency regarding performance data related to customs administration. While some aggregated statistics on revenue collection and efforts against customs infringements are periodically released, the lack of detailed underlying data makes it challenging to discern what these figures actually represent. The data utilised for this report would have been inaccessible without the Customs Digest provided by the Parliament's Temporary Investigation Committee on Economic Security.¹⁷ This raises concerns about the validity of observations made in this and future analyses due to potential data unavailability in subsequent years.

Additionally, there has been a discernible decline in data accessibility. In 2020, the SCS launched a business intelligence dashboard with the intention of making trade data more accessible to a wider audience. Unfortunately, by mid-2023, this initiative had been halted. While other data types required by the Customs Code are still published, the format is not user-friendly. It requires either proficiency in programming languages like Python or specialised business intelligence software, which erects a substantial barrier to entry for the general public, including civil society organisations and investigative journalists lacking in-depth IT knowledge.

During the survey, we inquired of NGOs about the advantages and disadvantages of this tool.

The data gathered from respondents regarding their familiarity with the interactive module for analysing export/import operations, hosted at <https://bi.customs.gov.ua>, provides valuable insights into both positive and negative experiences encountered while utilising the platform. Among respondents, 86.7% indicated that they were unaware of the module, while 13.3% reported familiarity with it.

For those respondents who had interacted with the module, the experiences they reported were somewhat mixed. One respondent highlighted the module's high level of data detail, particularly commending its granularity.

However, in addition to the positive feedback, several challenges and negative experiences were also reported by users. Notably, concerns were raised regarding the lack of timely updates during the period of a full-scale invasion. The data was last updated on 31 July 2023.

Furthermore, users expressed difficulty in understanding the legend and explanation of indicators provided within the module, highlighting a need for enhanced clarity and user guidance to facilitate effective utilisation of the platform.

In conclusion, while the interactive module for export/import operations analytics provides valuable data, various challenges, including data currency, indicator presentation, technical functionality, and unit standardisation, hinder its effectiveness and user experience. It is therefore vital to address these concerns in order to optimise the module's utility and usability.

¹⁷ <https://ces.org.ua/category/project/digest-tic-on-economic-security/>

Integrity

The State Customs Service of Ukraine has adopted an anti-corruption strategy that aligns with the National Anti-Corruption Strategy in form. However, this strategy has been criticised for being more procedural and formalistic than innovative and focused on tangible outcomes. This approach has not been effective in improving public confidence in the customs authorities, which remains low or at best, stagnant.

It is notable that a survey conducted by Gradus Research in June 2023¹⁸ revealed a significant lack of trust in the SCS, with only 2% of the population expressing confidence in the service. This sentiment is echoed by the business community, which regularly interacts with customs operations. The For Fair and Transparent Customs campaign's Customer Perception Metric (CPM) indicates that there has been no appreciable improvement in trust levels since 2020.¹⁹ In fact, the CPM in 2022 mirrored those of 2021 and even showed a decline from 2020. Similarly, the European Business Association's Customs Index for 2023 indicates only minor fluctuations within the neutral range observed from 2020 to 2023.²⁰

From a business perspective, the data reveals significant concerns regarding the transparency and effectiveness of current customs legislation, with an average rating of 2.6 out of 5. Furthermore, the majority of respondents (62.5%) have not observed a decrease in corruption problems at customs over the past six months. There is unanimous agreement (100%) that customs authorities do not effectively minimise opportunities for misconduct and corruption. To address these issues, recommendations include adopting stricter legislation, a staff overhaul, and increasing the automation of decision-making processes. There is a particularly strong endorsement (86.7%) for the latter approach. Additionally, respondents identified corruption at customs as being attributed to poor governance, political influences, and the interference of law enforcement agencies in the process of customs control and customs operations.

NGOs also express similar concerns regarding the prevalence of corruption at customs. Just 12.5% of respondents observed a decrease in corruption problems over the past six months, while the majority (86.7%) expressed doubt about the effectiveness of customs authorities in minimising opportunities for illegal actions and corruption. The recommendations for reducing corruption are in line with those from the business sector, including the adoption of stricter legislation, updating customs personnel, and increasing automation of decision-making processes.

Some respondents also highlighted the potential for corruption risks to arise from the discretionary interpretation of legislation by customs officers.

These indicators suggest that despite the presence of formal anti-corruption measures, the SCS is unable to significantly impact or improve public and business perceptions of its integrity and effectiveness. This scenario underscores the need for a shift towards more innovative, results-driven approaches in combating corruption and building trust within Ukraine's customs system.

¹⁸ <https://gradus.app/uk/open-reports/wartime-survey-ukrainian-society-eighth-wave/>

¹⁹ https://www.slideshare.net/IER_Kyiv/2022-pdf-256289873

²⁰ <https://eba.com.ua/en/research/doslidzhennya-ta-analityka/>

From a business perspective, perceptions of transparency and corruption within customs authorities are influenced by a number of key factors. Firstly, there is a recognition of the importance of automation in customs processes to reduce human influence and mitigate opportunities for corruption. Delays in customs clearance procedures are identified as a potential trigger for bribery. Furthermore, respondents have identified a lack of basic information about customs operations in the public domain, which hampers transparency and public engagement with customs activities.

From an NGO perspective, there is a significant concern about the perception of transparency and corruption within customs authorities. Furthermore, respondents note a lack of interest from customs authorities in being open to the public, which is indicative of a systemic issue that further exacerbates transparency challenges within customs operations. Both perspectives indicate a need for systemic reforms to improve transparency within customs authorities.

In terms of strengthening the ethical system and integrity at customs, NGOs suggest several key tools:

- Introducing public reporting at regular intervals for customs officers.
- Implementing technology-driven solutions to minimise direct interactions between customs officers and individuals or entities.
- Considering the replacement of existing customs officers with new recruits to refresh the workforce.
- Providing comprehensive training to customs officers not only on customs regulations but also on the broader legal framework.
- Instituting a culture of personal responsibility among customs employees at all levels, where everyone is held accountable for their actions and decisions.
- Embracing and implementing the principles of independent administrative behaviour as practiced in leading European countries to foster transparency, accountability, and integrity within customs operations.
- Endorsing and actively supporting initiatives such as the Business Ombudsman Council's Declaration of Principles of Fair and Reasonable Law Enforcement, which emphasises the importance of equitable and just enforcement practices.

Some of the concerns raised by business and the public are reflected in the NRS and in the SCS projects, such as the re-certification of customs officers or the HelpDesk. However, the change in consumer perception of customs will require the implementation of significantly more measures. The introduction of an annual survey to assess the transparency, accountability, efficiency, and customer satisfaction of the customs service could be the start of such a trajectory.



Policy coordination and consultations

The Public Council at the State Customs Service (PC SCS) was established on 18 February 2021 and comprises four dedicated committees: the Committee on Trade Facilitation and Electronic Business Operations; the Information and Communication Committee for Interaction with the Public, Public Authorities, and Customs; the Committee on Practical Application of Customs Legislation; and the Committee on Evaluation and Improvement of Customs Legislation. The Council has 38 members in total.

While reports on the activities of the PC SCS highlight various priorities and initiatives, there is a notable lack of information regarding tangible outcomes, such as the implementation of specific recommendations or the resolution of identified issues. The lack of concrete results makes it challenging to evaluate the PC SCS's effectiveness in achieving its objectives.

Furthermore, it is important to note that although the PC SCS was invited to contribute to the survey designed for this report, no responses could be definitively attributed to it. This lack of engagement makes it challenging to assess the council's impact and effectiveness in supporting the State Customs Service's mission.

The average rating for the openness of customs to dialogue with the public is relatively low, with an average score of 2.7 out of 5. This indicates that there is room for improvement in this aspect. Respondents shared some of the issues they have encountered with customs or specific aspects of its operations:

- Some respondents have highlighted instances of potential dishonesty among customs officers and brokers in charging customs duties and paying for brokerage services.
- When importing humanitarian aid, customs authorities have been known to request additional documents that are not required by law.
- Respondents reported instances of probable overstatement of prices (indicative) for customs clearance.
- Issues were raised regarding the failure to consider binding conclusions of the Supreme Court and court decisions on previous deliveries.
- Some respondents identified legislative gaps, particularly regarding the termination of customs regimes in cases of voluntary free transfer of goods to military administration at the owner's request.

In conclusion, the experiences shared by respondents indicate a number of challenges and areas for improvement within customs operations, including transparency, adherence to legal requirements, and consistency in decision-making. Addressing these issues would enhance efficiency, fairness, and public trust in customs authorities.



