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THE LEGAL ASPECTS OF THE USE OF THE ELECTRONIC FISCAL AND CUSTOMS SERVICES PLATFORM BY ENTREPRENEURS ENGAGED IN THE INTERNATIONAL TRADE OF GOODS

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Abstract
Entrepreneurs engaged in international trade are required to use the Electronic Fiscal and Customs Services Platform for the purpose of communicating with the National Tax Administration on matters relating to economic and tax policy. This modern technological tool plays an important role in the day-to-day operations of businesses and in the settlement of customs and other border taxes levied on economic operators engaged in the cross-border trade of goods within the European Union customs territory. The Electronic Fiscal and Customs Services Platform is an institution established under Polish law, aimed at implementing systemic, comprehensive solutions related to EU customs law. The objective of this article is to demonstrate that EU standards have been sufficiently detailed by the provisions of the Customs Law Act to ensure the functional implementation of this platform by Polish entrepreneurs. Without taking into account the specific circumstances of national legislation, electronic data-processing systems would be unable to function effectively within the context of the Polish economic framework.

Keywords: PUESC, custom, trade of goods, entrepreneur

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INTRODUCTION

Contemporary technologies are of pivotal significance to international trade operations. Their integration into the daily practices of entrepreneurs is imperative for the performance of such economic activities. A notable example is the Electronic Tax and Customs Services Platform (pl. *Platforma Usług Elektronicznych Skarbowo-Celnych*), commonly referred to by its acronym PUESC.[1] The use of capital letters in this acronym clearly signifies that it is regarded as a proper name for a specific instrument of contemporary technology. A linguistic and grammatical interpretation of this legal term also leads to the conclusion that the platform is associated with tax and customs services. In colloquial Polish, the term 'platform' is polysemous. However, in the analysed acronym, the meaning should be interpreted as referring to a 'domain of joint activity'.[2] The provision of tax and customs services is therefore dependent on the cooperation of various entities. It is evident that the services in question are of a public nature rather than of a private-law character. The administration of taxes and customs falls within the competence of public authorities, who are entrusted with the execution of public tasks. PUESC's historical connection to the Customs Service is evident in the institution's nomenclature, wherein the final two letters of the acronym, 'SC' (pl. *Służba Celna*), serve as a remnant of this historical association. However, following the reform of the tax, customs, and fiscal control administration, the National Revenue Administration (hereinafter referred to as 'the NRA') was established, within which the Customs and Tax Service now operates.[3] For this reason, the previous full nomenclature of the platform required adjustment to reflect the new legal framework, as it had become inaccurate and misleading. Currently, this instrument of modern technology – and the term 'services' used in its name – are defined objectively in Polish law. It is important to note that this modification did not necessitate a change to the acronym PUESC. Clearly, the legal change was formal and linguistic in nature, as emphasised through this legislative adjustment. Nevertheless, the use of the linguistic construction 'tax and customs' gives rise to significant concerns, as both the service and the procedures it applies are referred to in the National Revenue Administration Act by the term 'customs and tax'. As demonstrated in the existing literature, concerns have already been raised regarding both the nomenclature of the control procedure[4] and the NRA model.[5] That said, the fundamental nature and purpose of the platform itself have remained unaltered. It serves as an instrument for the provision of customs and tax services by the NRA, whose authorities and supporting apparatus may be referred

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1 Cf. Article 10a(1) of the Act of 19 March 2004: Customs Law (consolidated text: Journal of Laws of 2024, item 1373, as amended), hereinafter referred to as 'the CL', and Article 35a(1) of the Act of 16 November 2016 on the National Revenue Administration (consolidated text: Journal of Laws of 2023, item 615, as amended), hereinafter referred to as the 'the NRAA'.

2 *Wielki Słownik Języka Polskiego (WSJP PAN)*; https://wsjp.pl [accessed on 3 February 2025].

3 See Article 1(3) NRAA.

4 A. Gorgol, 'Krytyczne uwagi o nomenklaturze kontroli celno-skarbowej', *Dyskurs Prawniczy i Administracyjny*, 2022, No. 3, pp. 13–21.

5 A. Gorgol, 'Krytyczne uwagi o ustawowym modelu kontroli celno-skarbowej', *Białostockie Studia Prawnicze*, 2023, No. 28, pp. 43–50.

to as 'service providers'. At the same time, it should be noted that the 'service recipients' may include not only entrepreneurs but also national public authorities, the administrations of European Union Member States, and EU bodies. The existing literature clearly indicates that the PUESC platform is regarded by many as the core ICT system of the NRA. It is considered an essential and mandatory tool for businesses in their interactions with the authorities of this administration.[6]

A wide variety of entities expressing interest in accessing the PUESC platform and using it to pursue their own objectives necessitates cooperation among them, the essential condition for which is mutual communication. The transmission of informational messages must be standardised, transmitted remotely, and decoded in a manner that ensures they are comprehensible to their recipients. In the context of the international environment, the prospect of effective cooperation – whether on vertical or horizontal levels – depends on the use of a uniform system of remote communication. The optimal instruments necessary to achieve this outcome are techniques for the electronic transmission, collection, processing, and utilisation of data. The necessity for technical standardisation and legal regulation is paramount in this context. It is evident that no individual Member State possesses the capacity to fulfil this requirement independently. Therefore, the European Union (EU) assumes a pivotal role in the regulatory oversight of the PUESC platform, in addition to its establishment and operational management. The prevailing system for the implementation of electronic communication techniques among businesses and the customs administrations of Member States – as well as among these administrations themselves and between them and EU bodies – is predicated on a legal framework delineated by the Union Customs Code.[7] In the Polish legal system, this regulation takes precedence over national statutes, as it is directly applicable in every Member State.[8] Accordingly, any statute governing customs matters must not contain provisions that conflict with the provisions of the UCC. Furthermore, it would be incompatible with the established principles of legislative drafting if the provisions of the Code were to be replicated in such a statute without substantive amendments to their wording.[9] Under the prevailing statutory provisions, the Customs Law is to be regarded as a secondary governing authority, applicable in conjunction with the established provisions of European Union law.[10] It should first be noted that the scope of national customs law extends to matters not regulated by the Union Customs Code. In such cases, provisions that are absent

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[6] B. Rogowska-Rajda, 'Elektronizacja wiążących informacji – pierwszy krok w kierunku pełnej elektronizacji procedur podatkowych w działalności gospodarczej', *Przegląd Podatkowy*, 2024, No. 2, p. 21.

[7] See Article 6(1) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, (OJ L 269, 10.10.2013), hereinafter referred to as 'the UCC'.

[8] See Article 91(3) of the Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483, as amended, hereinafter referred to as 'the Constitution'.

[9] See § 4(2) of the Annex to the Regulation of the President of the Council of Ministers of 20 June 2002 on the 'Principles of Legislative Technique' (consolidated text: Journal of Laws of 2016, item 283, as amended), hereinafter referred to as 'the PLT'.

[10] See Article 1 CL.

from EU law – where it remains incomplete – are supplemented. The Customs Act serves to eliminate specific gaps in the field of customs legislation. Second, it encompasses issues listed in the mandatory authorisations provided by the Code and delegated to Member States for implementation through executive regulations. In the specific context under consideration, the act in question may be considered a standard implementation measure with regard to European Union law. Third, the relatively binding provisions of EU customs law permit Member States to regulate certain matters in a manner that deviates from the established standard. In such cases, national legislation establishes exceptions to EU regulations. For instance, the codified list of business entities was amended to include civil-law partnerships.[11] In light of the aforementioned considerations, a key question arises: does the PUESC fulfil the requirements set out in the Union Customs Code?

The field of customs law comprises two layers of regulation: fiscal and economic.[12] Revenues from customs duties exemplify its fiscal function, while its economic function involves the use of these revenues to regulate the directions, types, and volumes of international trade in goods. Relevant literature highlights the correlation between implementation of new ICT solutions and their fiscal determinants. The increased use of internet-based technologies in response to financial and budgetary constraints is accelerating the transformation of traditional frameworks governing commerce, governance, and public sector administration.[13] The field of customs law is characterised by its interdisciplinary nature. It constitutes an element of financial law and forms part of public economic law. Customs matters may thus be categorised according to their substance as either fiscal or economic in nature. The PUESC platform may be utilised by entrepreneurs in either category of matter. Nevertheless, the nomenclature employed is inadequate and misleading. It is notable that economic customs are the only category that does not possess a fiscal character. This distinction is not adequately reflected in the platform's acronym.

The European Union possesses exclusive jurisdiction over customs union affairs; however, this authority does not extend to taxation or other forms of public charges.[14] Consequently, PUESC does not represent a mandatory instrument for entrepreneurs in their interactions with tax authorities across the Member States. However, it should be noted that international trade in goods entails fiscal consequences, including the payment of customs duties and standard border taxes. On this basis alone, the solution adopted in the NRAA appears justified, whereby it establishes an obligation, analogous to that under customs law, for entrepreneurs to communicate with tax authorities via the PUESC platform.[15] The definition provided is as follows: 'The ICT system of the NRA, intended in particular for the submission and delivery

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[11] See Article 73 CL.

[12] W. Wójtowicz, 'Prawo celne', in: Brzeziński B., Dębowska-Romanowska T., Kalinowski M., Wójtowicz W. (eds), *Prawo finansowe*, Warszawa, 1996, p. 265.

[13] M.E. Milakovich, *Digital Governance: New Technologies for Improving Public Service and Participation*, 1st ed., New York, 2011, p. 3.

[14] See Article 3 of the Treaty on the Functioning of the European Union of 26 October 2012 (consolidated version: OJ C 326, 26.10.2012, p. 47).

[15] Cf. Article 35a(1) and (6a) NRAA.

of documents between NRA authorities and PUESC users in matters concerning customs law, excise duty, value added tax on the importation of goods, value added tax in the case of intra-Community acquisition of motor fuels, tax on the extraction of certain minerals, fuel charge, emission charge, and gambling.' It should be noted that PUESC is an information and communication technology system. Therefore, it would be inaccurate to characterise it simplistically and misleadingly as an internet portal.[16]

Entrepreneurs engaged in international trade in goods use the PUESC platform both to conduct their business activities and to settle the fiscal consequences of those activities with the NRA. This finding suggests that this modern technological apparatus plays a substantial role in foreign trade.[17] The objective of this study is to substantiate the hypothesis that the EU standard has been stipulated by the provisions of the Customs Law in a manner sufficient to enable its practical implementation by Polish entrepreneurs. This clearly defined research objective requires the use of the dogmatic legal method as the primary analytical approach to the source material. The comparative method will enable a juxtaposition of systemic solutions in Polish and EU law. However, there is little justification for applying it in a horizontal dimension, as PUESC is an platform governed exclusively by Polish law.

THE EUROPEAN UNION STANDARD GOVERNING MUTUAL COMMUNICATION BETWEEN ECONOMIC OPERATORS AND CUSTOMS AUTHORITIES IN THE E-CUSTOMS FRAMEWORK

Public economic law provides a statutory definition of an entrepreneur, whose distinguishing features include legal subjectivity conferred by legislation other than the Entrepreneurs' Law, and the conduct of business activity.[18] From the perspective of civil law status, an entrepreneur may be classified as a natural person, a legal person, or an organisational unit without legal personality (a *quasi*-legal entity). However, a civil-law partnership does not qualify as an entrepreneur, since – unlike partnerships governed by commercial law – it is the individual partners who possess that status.[19]

It should be noted that EU customs law does not employ the term 'civil-law partnership', as this concept is specific to Polish law. Instead, it introduces a broader and more collective notion of an organisational unit without legal personality. This legislative approach is fully justified, as the application of the UCC is not contingent upon a case-by-case enumeration of all equivalents to the civil-law partnership that may exist in the Member States. The codified standards should

[16] This erroneous perspective has been articulated in various publications, including: R. Michalski, 'Komentarz do art. 10(a) Digitalizacja wymiany informacji z organami celnymi', in: Komorowski E., Laszuk M., Michalski R., *Prawo celne. Komentarz*, Warszawa, 2022, pp. 181–189; P. Szymanek, *Nowe narzędzia informatyczne służące monitorowaniu podatników. Problematyka prawna*, Warszawa, 2023, p. 310.

[17] E. Gwardzińska, 'The standardisation of customs services in the European Union', *World Customs Journal*, 2012, Vol. 6, No. 1, p. 97.

[18] See Article 4(1) of the Act of 6 March 2018 – the Entrepreneurs' Law (consolidated text: Journal of Laws of 2024, item 236, as amended), hereinafter referred to as 'the EL'.

[19] See Article 4(2) EL.

reflect solutions common to the functioning of the Customs Union, rather than the specific features of national legal systems. It is important to note that customs law holds a special status in relation to the Entrepreneurs' Law. The general legal definition of an entrepreneur does not apply when this legal term is separately defined for the purposes of regulations within a specific branch of public economic law. It is evident that customs law represents a distinct branch of such legislation. The Union Customs Code contains its own definition of an 'economic operator', which differs substantively from the one used in the Entrepreneurs' Law. This definition is set out in an EU regulation, which occupies a superior position over national statutes within the Polish hierarchy of legal sources. Consequently, the statutory definition of an entrepreneur cannot be applied within the framework of customs law. It is also impermissible to alter the semantic scope of the definition provided by EU law – whether by omitting elements of its content or by expanding it through the introduction of new defining components, including those derived from the statutory definition. In applying the provisions of customs law, entities engaged in economic activity involving the trade of goods with foreign countries should therefore be identified solely on the basis of the codified definition.[20]

In the context of customs law, the term 'economic operator' is defined as a 'person'. Such an operator is considered a qualified person, as they engage in economic activity that is subject to the provisions of customs law. However, it is considered inappropriate and misleading to describe organisational units lacking any legal or natural personality as 'persons'. This results in a logical inconsistency and an internal contradiction within the provision defining the subject of customs law. In codified terms, a person is defined as a natural person, a legal person, or an organisational unit without legal personality but recognised – under EU or national law – as having legal capacity.[21] A civil-law partnership is not endowed with legal capacity. Under Polish civil law, it is treated as a named contract.[22] It does not function as a separate legal entity and therefore cannot independently acquire rights or incur obligations. Consequently, the assets utilised over the course of its operations are subject to joint ownership by the partners, who are the contracting parties.[23] The absence of legal capacity means that a civil-law partnership does not comply with the EU requirement for recognition as a person or an economic operator. Its designation as an 'organisational unit' is also questionable, since its essential contractual element is not its organisational structure. The recognition of a civil-law partnership as both a person and an economic operator under the provisions of customs law constitutes a legal fiction that is inconsistent with the provisions of the Entrepreneurs' Law and EU customs law. Nevertheless, in practice, it is identified as such under national customs regulations and is permitted to use the PUESC system.

Economic operators engaged in cross-border trade in goods are subject to differing legal obligations with respect to the fulfilment of the formal requirements imposed by customs law. These requirements depend on the location of the registered office

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[20] See Article 5(5) UCC.

[21] See Article 5(4) UCC.

[22] See Article 860 of the Act of 23 April 1964 – Civil Code (consolidated text: Journal of Laws of 2024, item 1061), hereinafter referred to as 'the CC'.

[23] See Article 863 CC.

of the operator, i.e. within or outside the customs territory, which is defined as a third country. The codified standard dictates that the registration obligation applies exclusively to operators whose registered office is situated within the EU territory, signifying that they are EU-based entities.[24] It is evident that economic operators from third countries are subject to registration only in exceptional circumstances, when required to complete the relevant documentation. Such obligations arise only under particular circumstances defined by customs law and do not serve as a general requirement for all non-EU entities.[25] A basic principle is that individuals or entities lacking the status of an economic operator are not subject to registration by the customs administration.[26] It is imperative to emphasise that the concept of 'seat', as interpreted under civil law, deviates from its meaning within the Union Customs Code. In the context of civil law, this concept pertains to a legal attribute that is exclusively applicable to entities other than natural persons. The definition of this attribute is derived through reference to the registered place of residence of the entity.[27] The seat of an organisational unit, irrespective of whether it possesses legal personality, is the location of its governing body.[28] Exceptions to this rule arise in circumstances where a specific legal provision or the entity's articles of association designate a different location as its seat. It is important to note that the Union Customs Code does not provide a definition of the general concept of a seat. Instead, it offers a definition of its qualified variant, namely the 'permanent business establishment'. In accordance with Article 5(32) UCC, a 'permanent business establishment' is defined as a fixed place of business in which the necessary human and technical resources are permanently available, enabling the person concerned to carry out all or part of their customs-related operations. It is an irrefutable fact that the term 'seat of an economic operator engaged in cross-border trade' refers to the place of business activity, encompassing operations subject to customs regulations. This interpretation is applicable to all legal forms of such operators, including natural persons. In such cases, the individual's place of residence is irrelevant for the purposes of customs law. This term is not defined by geographical location, but rather by the actual place where the business is conducted. The concept of a seat is materially expressed through the presence of human and technical resources concentrated in a given location by the economic operator. It should be noted that a key deficiency in EU customs law is its failure to provide a definition for the fundamental concept of a 'seat', limiting its scope to the more specific variant of the 'permanent business establishment'. This discrepancy can only be addressed through legal reasoning founded upon induction rather than deduction. Broadening the characteristics employed in the delineation of the codified term introduces a substantial degree of uncertainty into the resulting assertions – an uncertainty that would not arise if the term were assigned a clear statutory legal definition.

Upon completion of the registration process, an economic operator is assigned a unique identification number, which serves as the basis for its recognition within

[24] See Article 9(1) UCC.
[25] See Article 9(2) UCC.
[26] See Article 9(3) UCC.
[27] See Article 25 CC.
[28] See Article 41 CC.

the relevant legal and administrative frameworks. This identifier must be used in legal and commercial transactions to ensure that such activities are conducted securely, safeguarding both the public interest and the legitimate individual interests of other entrepreneurs and consumers. The Entrepreneurs' Law introduces an obligation to register the intention to conduct business activity.[29] Furthermore, the entrepreneur is bound by the stipulation to utilise the Tax Identification Number (NIP).[30] This number is the primary identifier used to identify entities conducting business activity in official registers. It is important to emphasise that the PUESC system is not a tool employed for the purpose of registering business activity or acquiring this number. However, it should be noted that fulfilling the conditions set out in the Entrepreneurs' Law is insufficient to conduct business activities involving the trade of goods subject to customs law regulations. Entities engaged in foreign trade must meet additional legal requirements, the strict observance of which is mandatory. Accordingly, such entities register via the PUESC platform in the Integrated Registration System for Entrepreneurs Engaged in Trade in Goods, abbreviated as SZPROT. In its present form, this official register – centrally maintained by the Ministry of Finance – is also employed for the management of entrepreneurs' applications. Its full title is as follows: 'The Integrated System for the Registration of Entrepreneurs and Application Processing (SZPROT)'.[31]

Entrepreneurs from EU Member States must not be afforded privileges or subjected to discrimination on the basis of their place of residence or registered office. The principle of fair market competition is predicated on the notion of equality among entities engaged in commercial activity. It is therefore imperative that EU entrepreneurs are registered in accordance with uniform legal principles. Discrepancies in regulations, procedures, and instruments have the potential to impede the effective operation of market mechanisms. The Polish Tax Identification Number (NIP) is not a suitable identifier for entities conducting business activity outside Polish territory, as foreign entrepreneurs do not use it. Consequently, in cases of cross-border trade involving the external border of the EU customs territory, the use of the EORI number becomes necessary. The acronym stands for 'Economic Operators Registration and Identification'.[32] According to the EU definition, it refers to the registration and identification number of an economic operator, which is unique within the EU customs territory and assigned by a customs authority to an entrepreneur or another person for the purpose of customs-related registration.[33]

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[29] See Article 17 EL.

[30] See Article 20(2) EL.

[31] See § 1 of the Ordinance of 26 November 2020 amending the Ordinance on the organisation of the National Revenue Administration, the Revenue Administration Office, the Tax Office, the Customs and Tax Service, and the National School of Tax Administration, and on granting them statutes (Official Journal of the Ministry of Finance, Funds and Regional Policy of 2020, item 20).

[32] Ministry of Finance, *EORI. Informacje na temat EORI (Economic Operators' Registration and Identification)*; https://www.podatki.gov.pl/clo/informacje-dla-przedsiebiorcow/eori [accessed on 10 February 2025].

[33] See Article 1(18) of the Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (OJ L 343, 29.12.2015, as amended), hereinafter referred to as 'the DR'.

In the context of EU legislation, the EORI system is also referenced more broadly.[34] From a functional perspective, PUESC is the ICT-based component of the EORI system. The competent customs authority employs this instrument to collect, store, exchange, and provide access to information about registered entities.

The EORI identifier is unique in terms of both the entity and the object it designates. Every duly registered business entity is issued a single, distinct identification number.[35] This arrangement reduces bureaucratic burdens and facilitates the conduct of business activities in the field of foreign trade. Registration in one EU Member State renders any further registration unnecessary and legally inadmissible, both within that Member State and throughout the EU customs territory. Re-registering the same entity would violate the principle of single application of this procedure and the use of a unique EORI number. However, EU customs law does not automatically invalidate an EORI number in such circumstances. The customs authority may only carry out this action upon request from the registered entity or, *ex officio*, if it becomes aware that the registered entrepreneur has ceased the activity requiring registration.[36]

The ICT system has technical requirements that cannot be met by individuals who are digitally excluded for subjective reasons, such as lack of knowledge, or objective factors, such as the absence of electricity, remote communication devices, or software. This issue has been recognised and addressed in EU customs legislation.[37] The European Commission has been authorised to issue decisions introducing derogations from the application of the ICT system, which may be addressed to an individual EU Member State or a group of states. However, the term 'group of states' must not be interpreted as referring to 'all Member States'. An interpretation of this kind would be *contra legem*, entirely overriding the codified obligation to communicate in customs matters through electronic data-processing techniques. The granting of a derogation depends on the specific circumstances of the requesting Member State, which constitutes an indeterminate expression, thereby establishing a discretionary margin. It is important to emphasise that the exception under consideration cannot be implemented at the exclusive discretion of an EU authority. The Commission adopts a time-bound decision, thus specifying the duration of the derogation. However, it should be noted that the duration of this period is subject to alteration – either extended or shortened – depending on the persistence or cessation of the grounds justifying its application. This solution has never been applied in relation to Poland. This finding suggests that the prevalence of digital exclusion among Polish entrepreneurs does not impede the operational efficiency of the PUESC system.

It should be noted that all ICT systems are susceptible to potential failures, during which they cannot be used for transmitting information between users. Issues related

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[34] Cf. Article 3 DR, and Article 7(1) of the Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, as amended), hereinafter referred to as 'IR'.

[35] See Article 7(2) IR.

[36] See Article 7(2) DR.

[37] See Article 6(4) UCC.

to remote communication can be analysed across three functionally interconnected dimensions: technical, semantic, and efficiency-related.[38] Consequently, addressing this issue within EU customs law appears fully warranted.[39] The concept under discussion pertains to the facilitation of communication through methods involving the exchange and storage of information, excluding electronic data-processing techniques. This suggests that system failure is interpreted too narrowly, as it is considered solely from a technical perspective. Although the Union Customs Code defines alternative instruments negatively – by essentially emphasising what they are not – it should be acknowledged that, in practice, this represents a return to the classical form of a written document. Each document functions as a medium of information, thereby facilitating access to its content.[40] The identity of a document is determined by its content; therefore, the medium on which the content is presented is irrelevant. It is important to emphasise that the discontinuation of the ICT system in the customs environment due to a failure does not amount to a permanent derogation but rather a temporary solution. The scope of this exception is limited to the time required to restore system functionality, which is achieved by resolving the failure. It should be noted that the concept of an ICT system, within the context of customs law regulations, is interpreted broadly. It encompasses both the official subsystem, located within the organisational structures of public administration operating at national and EU levels, and the subsystems of individual economic operators. From a functional failure perspective, the location and nature of the malfunction are considered irrelevant. The potential for malfunctions to affect any of the electronic devices utilised for remote communication, in addition to the network connecting its individual components, is a distinct possibility. It is necessary to acknowledge the potential for exploitation of the examined statutory derogation by unscrupulous economic actors. The customs authority is not equipped with the necessary mechanisms to verify the veracity of claims concerning deficiencies in the technical infrastructure of a stakeholder within the customs administration. It is recognised that certain economic operators may engage with the customs administration in matters pertaining to customs without consistently using the ICT system. The application of a permanent derogation is permissible only when it is duly justified by the inherent nature of the trade, or when the utilisation of electronic data-processing techniques is deemed unsuitable for managing customs formalities. This exception is grounded in praxeological and functional reasoning. The outcome of this process does not result in the privileging or discrimination of specific categories of economic operators. The underlying reason for this is that the derogation is not based on subjective characteristics of the entities involved, but rather is determined by objective aspects of trade in goods and their relevant legal and customs-related consequences.

As previously mentioned, EU institutions play a crucial role in the creation and regulation of the ICT system used in customs matters. Decision No 70/2008/EC[41] of

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38 J. Fiske, *Introduction to Communication Studies*, 2nd ed., New York, 1990, pp. 22–23.

39 See Article 6(4) UCC.

40 See Article 77[3] CC.

41 Decision No 70/2008/EC of the European Parliament and of the Council of 15 January

the European Parliament and of the Council was pivotal in the implementation of e-customs administration. This decision was adopted prior to the establishment of the European Union in its current form and before the adoption of the Union Customs Code, highlighting its significant impact on the development of customs administration within the European Union. This assertion is corroborated by the document's title, which underscores the objective of eradicating the use of paper documentation within the domains of customs and trade. The decision was premised on the assumption of the complete elimination of paper documentation,[42] without anticipating any exceptions in the implementation of this objective. It is evident that this approach is contentious, as it fails to consider the potential impact of communication system failures on economic operators and customs authorities. In such circumstances, users have no means of avoiding paper documentation. Fortunately, the Union Customs Code introduced reasonable derogations from the principle of eliminating paper documentation in the customs environment.

The decision delineates the requirements that the ICT system must satisfy.[43] The following key characteristics of the system are emphasised: security, integration, interoperability, and accessibility. In the decision, these features are associated with the term 'electronic customs systems', which is used in the plural form. This creates an inconsistency with the terminology employed in the Customs Code, which refers to the 'ICT system'. The use of the plural term 'systems' constitutes a substantive error, as it would imply the absence of integration into a single, functionally and praxeologically coherent whole. Within a single system, three distinct components can be identified, each oriented towards the movement of goods across the EU customs border (import, export, transit), the identification and registration of economic operators, and the procedures for granting authorisations and certificates.[44] The PUESC platform serves the purpose of transmitting all information formally designated within the content of the analysed decision. It is a single, secure, integrated, interoperable, and accessible platform, rather than a system of separate platforms.

NATIONAL REGULATION GOVERNING THE OPERATION OF THE ELECTRONIC CUSTOMS AND TAX SERVICES PLATFORM

It is important to note that an entrepreneur reserves the right to conduct any and all customs procedures independently or, alternatively, through a designated customs representative.[45] According to the definition set out in the Customs Code, a representative is defined as any individual formally appointed by another to undertake actions and obligations stipulated by customs legislation before the relevant

2008 on a paperless environment for customs and trade (OJ L 23, 26.1.2008, as amended), hereinafter referred to as 'the Decision No 70/2008/EC'.

[42] See recitals 4, 9 and 11 of the preamble to Decision No 70/2008/EC.

[43] See Article 1 of Decision No 70/2008/EC.

[44] See Article 4(1) of Decision No 70/2008/EC.

[45] See Article 18(1) UCC.

customs authorities.[46] A distinctive feature of the customs legal framework is the entrepreneur's entitlement to select either direct or indirect customs representation.[47] The concept of direct representation is based on acting in the name and for the benefit of the entrepreneur, thus reflecting the legal construct characteristic of a mandate or power of attorney.[48] The authority to act on behalf of the principal derives from a unilateral legal declaration – specifically, the principal's express will. In the context of indirect representation, the customs agent operates autonomously in their own name, albeit on behalf of the principal's interests. This legal construct differs from a power of attorney and constitutes indirect agency. Consequently, it is incumbent upon customs authorities to ascertain the representative status of the entity accessing PUESC, including the form and scope of representation. Errors in determining the nature of representation can have substantial procedural ramifications, potentially rendering activities related to customs administration invalid. It is therefore both necessary and justified that legal provisions mandate customs representatives to disclose their role and the form of representation – direct or indirect – at the outset of interactions with customs authorities.[49] Any breach of this obligation, including unauthorised representation or actions beyond the scope of authority, provides grounds for the customs authority to treat the representative as a procedural party. Such legal fiction and codified presumption are indispensable for the consistent application of customs legislation, particularly in the context of PUESC operations.

In order to ensure the effective implementation of the ICT system, it is imperative to employ precise identification procedures for both entrepreneurs and their designated customs representatives. User authentication within the PUESC system is permitted solely through one of the three methods defined by the Minister of Finance's implementing regulation: (1) login credentials (identifier and password); (2) an electronic identification instrument issued within a system linked to the national eID node; and (3) an electronic certificate, such as that provided via the mObywatel mobile application.[50] In accordance with the prevailing statutory provisions, the transmission of electronic communications with customs authorities necessitates prior registration with the PUESC system, accompanied by the presentation of a document that validates the user's entitlement to access the services provided therein.[51] It is imperative that this document be submitted in electronic form. The Union Customs Code does not regulate the issue of electronic document signing by PUESC participants. Consequently, it is deemed appropriate to delineate this matter through statutory provisions. The signing of electronic documents is permitted through one of the following means: (1) a qualified electronic signature; (2) a signature that is recognised as reliable or personal; (3) an advanced

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46 See Article 5(6) UCC.

47 See Article 18(1) UCC.

48 See Article 96 CC.

49 See Article 19(1) UCC.

50 See § 2 of the Regulation of the Minister of Finance of 6 July 2022 on the authentication of users on the Electronic Customs and Tax Services Platform (PUESC), Journal of Laws of 2022, item 1434.

51 See Article 10a(2) CL.

electronic signature verified by a customs certificate; or (4) a method commonly used for signing electronic tax documents.[52] It is evident that the scope of these tools exceeds that of the user authentication options provided by PUESC, as well as the statutory methods for executing electronic signatures on official documents produced by customs authorities.[53] This solution is advantageous for entrepreneurs, as it facilitates optimisation of the method used to sign their data carriers. For instance, it allows them to avoid the financial obligations associated with the use of electronic signatures or the acquisition of relevant certifications.

The corporate privileges granted to Polish professionals, including advocates, legal advisors, and tax consultants, are not addressed within the framework of Union customs law. These professionals are authorised to independently certify copies of documents submitted to public authorities. Consequently, there is no justification for excluding this right in the context of customs proceedings. It is therefore considered appropriate to affirm the applicability of this provision within the Customs Law, particularly in cases where the document is submitted through an electronic data interchange system.[54] The scope of document authentication extends to powers of attorney as well.[55] In such situations, the customs authority may request the principal's official signature if doubts arise regarding the actions of a purported customs representative, or concerning the authenticity or reliability of the document in question. It is important to note that this measure exceeds the standard stipulated in the Union Customs Code. In accordance with Article 19(2) UCC, a customs authority is permitted to request evidence of authorisation solely from individuals claiming to be customs representatives. It is evident that extending the entitlement to independently certify copies of documents in customs matters to certain business entities beyond the scope of advocates, legal advisors, and tax consultants would be advantageous. This provision applies exclusively to entities recognised as Authorised Economic Operators or those granted authorisation to use simplifications as defined under customs legislation.[56] The simplification of customs procedures for such entities has been shown to contribute to a reduction in the operational costs of business activity by removing the need to pay for document authentication services, thereby supporting more efficient business operations.

CONCLUSION

PUESC constitutes part of the EU teleinformatics system, which enables entrepreneurs to communicate with the National Revenue Administration in economic and fiscal matters governed by customs and tax law. The European Union's customs legislation establishes uniform provisions to be implemented across all Member States. However, the implementation of these provisions in Poland required consideration

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[52] See Article 10b(1) CL.

[53] See Article 10b(2) CL.

[54] See Article 10a(2) CL.

[55] See Article 138a § 4 of the Act of 29 August 1997: Tax Ordinance (consolidated text: Journal of Laws of 2023, item 2383, as amended), in conjunction with Article 73(1)(1) CL.

[56] See Article 10a(2a) CL.

of specific national economic and legal conditions. Consequently, it was necessary to implement, supplement, and elaborate upon the provisions of the Union Customs Code through statutory regulation. It is important to acknowledge that the Customs Law cannot be employed as a means of eradicating defective codified norms. This conclusion follows from the superior hierarchical position of EU regulation over national Customs Law within the Polish legal system.

The recognition of a civil partnership as an entrepreneur within the meaning of customs law represents an atypical solution under public economic law. Treating it in every case as an organisational unit without legal personality entails the application of a legal fiction and statutory presumption. Such a partnership does not meet the codified requirement of performing legal acts within the sphere of civil and commercial transactions. Conferring civil-law subjectivity upon this named agreement simultaneously divests such status from its partners, who, in accordance with the provisions of the Entrepreneurs' Law, are the actual entities engaged in business activity. The Union Customs Code does not automatically classify a civil partnership as a person, nor as a qualified form thereof, such as an entrepreneur. Consequently, there is no legal requirement to apply its current customs-law classification as a legal entity. This solution is controversial from the perspective of the Polish legal system, as it results in an inconsistent approach to the legal subjectivity of the civil partnership and its partners within the context of public economic law.

PUESC does not function as a discrete teleinformatics system or a standalone portal. It is an electronic, interactive tool for remote communication between entities from both the public and private sectors. A necessary systemic component is the National Revenue Administration, which provides public services to stakeholders of this administration. It is erroneous to characterise these services as 'fiscal-customs' from the standpoint of the NRAA terminology. This nomenclature lacks precision in designating the referent of these services and gives rise to disruptions in the process of decoding legislative communications addressed to entities applying customs law provisions.

The failure rate of the remote communication system using PUESC confirms the justification for applying a temporary exception to the codified solution typical of the 'e-customs' environment. The rationale for reinstating the possibility of using paper documentation in communication between entrepreneurs and the National Revenue Administration is neither precisely regulated in EU customs law nor described in statutory provisions. Communication theory indicates that system malfunction need not be perceived solely in a technical dimension. It is therefore reasonable to propose resolving the identified ambiguity by defining the term 'teleinformatics system failure'. It is evident that the semantic scope of the term does not encompass digital exclusion. The utilisation of PUESC stipulates that Poland is not at liberty to petition the European Commission to determine a provisional cessation of 'e-customs' standards for Polish entrepreneurs.

In order to gain access to the EU teleinformatics system, both users and their customs representatives must undergo registration and identification procedures. The application of the EORI number serves as a rational measure for this purpose, with the stipulation that it should be unique, singular, and non-repetitive across the entire EU customs territory. Entrepreneurs' access to PUESC is permitted via various

methods defined in the implementing provisions of Polish law. From a functional and praxeological perspective, it is appropriate to reaffirm the corporate rights of professionals to certify documents as true copies. Nevertheless, the utilisation of this instrument requires the National Revenue Administration to eliminate instances of action by fraudulent representatives. Extending corporate rights to entrepreneurs deemed reliable by the tax authority in terms of compliance with customs law is a concept that merits approval. It is both necessary and appropriate to supplement the codified standard for the use of electronic documents by establishing, within the Customs Law, a catalogue of methods for their authentication.

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