

Internationalisation through Digitalisation

Interreg DigitSME

Manual workshop series 3 Customs control, value added tax control, and export control for cross-national activities

It pays for companies to be digitally well positioned and internationally active. "Digital competence and international strength"
This initiative was launched by the partners in the Euregio Meuse-Rhine, Hogeschool Zuyd, Agence du Numérique, Basse-Meuse Développement, Voka Kamer van Koophandel Limburg, IHK Eupen and IHK Aachen.
It is funded by the European Union.

[Projekte | Interreg Euregio Maas-Rhein \(interregemr.eu\)](https://interregemr.eu)

Ministerium für Wirtschaft, Innovation,
Digitalisierung und Energie
des Landes Nordrhein-Westfalen



provincie limburg



Industrie- und Handelskammer
Aachen



Zuyd
Hogeschool
ZU
YD



Agence
du Numérique

Table of contents

1. Current news from sales tax.....	1
“Sales tax in international single market”	
2. Fundamentals of customs: Import and export.....	4
“EU regional customs basics of import and export”	
3. EU export control and handling of sanctions lists: Russia, Belarus, Ukraine.....	6
4. US (Re-)export control legislation.....	8
5. Online services of customs and EU commission.....	11
“Origin of goods and preferences”	

1. Current news from sales tax

“The value added tax will be a simple tax on the delivery of goods and services.”

(Anthony Barber MP, Chancellor of the Exchequer, **1972**)



“Beyond the day-to-day world is the world of value added tax, a type of tax theme park, where factual and legal realities are suspended or become reversed.”

(Lord Justice Sedley, **2001**)

The common value added tax system was established in 1967 and introduced as a temporary value added system in 1993 with the start of the European Single Market (“Country-of-origin principle”). The final value added tax system (“Destination principle”) should help in curbing sales tax frauds of estimated 50 billion euros in international transactions

2010	EU Commission publishes a green paper on the future of value added tax.
2016	EU Action Plan summarises the modernisation of the European value added tax system .
2019	The European Council adopts measures for modernisation of e-commerce.
2020	Implementation of EU-Quick-Fixes : Obligation for a supplier declaration,
2021	E-commerce package (one stop shop, import one stop shop etc.)
2022	According to the EU Action Plan, the destination principle for deliveries of goods should come into force on 1.1.2022 (“Principle of unanimity”).

International goods transport and international services

Value added tax and international services

According to the fundamental principle of EU, B2B services at the registered office of the service recipient are taxable (so-called reverse-charge procedure). Different location is applicable e.g. for land related services. Other or differing regulations, often based on the determined income tax are possibly applicable in a non-EU country.

Excursus: Risk area of business premises sales tax

A sales tax business premises must have adequate human resource and equipment of its “own” to receive or render services. Corresponding violations are regular subjects of proceedings in tax court, Federal finance court, and European Court of Justice [CJEU].

An example: A legal entity with business premises in DE and NL

Where is the right of taxation? Who is the taxpayer?

There are “surprising” interpretations especially in the East European states, but also in Germany, Italy, and Spain; see CJEU dated 07.04.2022 (C-333/20 “Berlin Chemie”) as well as CJEU (C-605/12 Welmmory).

Intra-community deliveries

Previous prerequisites for tax exemption of intra-community deliveries (up to 31.12.2019):

- These are deliveries of an object.
- The object reaches the buyer in the course of a delivery.
- The delivery is executed by an entrepreneur.
- There is an international movement of goods in another EU member state
- The buyer is...
 - ... an entrepreneur, who has acquired the object for their company, or...
 - ...a legal entity, who is either not an entrepreneur or is an entrepreneur, but has not acquired the object for their company, or...
 - ...also any other acquirer in case of the delivery of a new vehicle.
- The acquisition of the object is subject to the regulations of the declaration of tax on intra-community acquisition when the buyer is in another member state (registration of an intra-community acquisition)
- Proper evidence of accounting and receipt is available (mandatory)
- Proper invoice is available
- VAT ID should be proven by 31.12.2019 only according to § 17c of Sales tax implementing regulation [UStDV]

EU-Quick-Fixes from 01.01.2020

The EU Quick Fixes are a series of measures, which should make international trade within the European Union (EU) easier and simple. The Quick Fixes were introduced as a part of the **value-added tax direction 2018/1910**.

One of the most important changes concerns the **obligation to issue receipt** for intra-community deliveries. Under this obligation, companies delivering goods in another EU country must present the so-called “supplier’s declaration”. The supplier confirms in this declaration that the goods were actually delivered in another EU country. **This shall prevent companies from wrongly claiming input tax deduction and thus evading the sales tax.**

Another measure concerns the **uniform treatment of consignment stocks** within the EU. Consignment stocks are **stocks, which are located in another EU country** and were not yet sold to the end customers. The Quick Fixes make the taxation of these stocks easy by taxing the sale only when the goods are actually sold to the end customers.

Furthermore, **changes in invoicing** were introduced to ensure a uniform handling in the entire EU. **Invoices must now contain specific information**, such as the location, where the goods are delivered and a **unique identification number (UID)** of the customer.

2. Fundamentals of customs: Import and export

Import

The following **important documents** are needed for international goods import:

- Import declaration
- Commercial invoice/pro-forma invoice
- Movement certificate EUR.1 (or declaration of origin)
- Open market certificate A.TR. (Turkey)
- Certificate of origin
- REX declaration (UZ form A)
- A supplier's declaration for delivery of goods from the EU
 - Previous document for the export

The **unique arrangement of the goods** is according to the currently applicable Combined Nomenclature. It also determines the **applicable rate of duty**.

Prohibitions and restrictions in import of weapons, wastes, plant protection products, foodstuffs, narcotics, animals, plants, branded products, etc. are applicable in order to protect different areas of life.

The electronic customs tariff (TARIC), import-sales tax of 19 % to 7 %, and an excise duty on alcohol, tobacco, coffee, and other consumer goods among others are incurred on the import of goods.

Export

Exports of €1,000 or more in goods value or 1,000 kg weight should be declared at the customs (export declaration). Companies have the option of developing all export related issues using the Internet with the **Internet export declaration Plus (IAA Plus)**. An **Elster certificate** is needed for reporting. In addition, companies must use the **EORI number** as the identification number in all its customer procedures as soon as the company exchanges information with the customs authorities.

The **Export check of customs authorities** pertains to...

- ... Countries (by embargos),
- ... Persons (by sanctions lists),
- ... Goods (by goods lists),
- ... Use of goods (for military or nuclear end use).

The Federal Office of Economic Affairs and Export Control (**BAFA**) gives the **approvals**. Potential import provisions of the destination country should also always be followed. The following **ways of easing the process** are available among others:

The respective competent main customs office can **exert power over companies (exporters)** to transfer goods in a simplified way, i.e. **without provision** at the export customs office and if required, with the submission of an **export declaration, which initially does not contain all particulars**. Missing particulars should be handed in later with an additional export declaration.

Companies located in the EU, involved in customs activities can apply for the status of **Authorised economic operators (AEO C/S)**. The status entitles the companies to **benefits** of customs controls related to security_and/or simplifications in accordance with the applicable customs regulations.

Significance of origin of goods

The **preferential origin** of goods leads to a **reduction in duty** or even **exemption from duty** in corresponding receiving country. The bases for it are Preference agreements in different countries and the following documents:

- Movement certificate EUR. 1
- Declaration of origin on the invoice

Above all, the assessment requires special care when the goods or components of the goods have not been manufactured in the applicant's own company. More information on it in Section 5. Origin of goods and preferences.

Terms and conditions of payment and delivery

The following payment options are available:

- Payment in advance
- Deposit | Instalment
- Payment on delivery
- Documentary collection: Exporters can handover the relevant contractual documents to their bank. This ensures that the contractual partner's obligations abroad are fulfilled. If the goods have been paid for, the contractual partner receives the documents.
- Letter of credit: In case of letter of credit, the importer's bank assumes the promise of payment to the exporter.

The **Incoterms** (International Commercial Terms) are international commercial terms specifying how the costs for the purchase and sale of goods are divided among buyers or sellers. They are structured by the **type of transport** (e.g., by ship, truck) and by the **type of transaction** (collection clause vs dispatch clause vs arrival clause).

Special features in the EU single market

The 27 member states benefit from a free movement of goods, services, capital, and people. The following special features simplify these cross-national activities:

- Uniform customs tariff, uniform import provisions
- Joint customs and foreign trade law
- No customs borders for community product
- EC directives should be converted into national law by all the member states
- The principle of mutual recognition
- Exemption from sales tax possible subject to certain prerequisites

Responsibilities and examples of measures

3. EU export control and handling of sanctions lists: Russia

Parties involved in the export of goods

- Companies as legal entity, responsible for compliance with the provisions (export officer)
- Federal Office of Economic Affairs and Export Control (BAFA) as the approving authority, which is subordinate to the Federal Office for Economic Affairs and Climate Action (BMWK).
- Customs as enforcement and investigation authority (Regional Tax Office (OFD), Customs Investigation Office (ZFA), Customs Criminal Investigation Office (ZKA))
- Public Prosecutor's Office as law enforcement agency
- German Federal Intelligence Service (BND) as the source of information
- Federal Office for Economic Affairs and Climate Action (BMWK) as the political body of Foreign Office/Defence Ministry as consulting ministries
- Federal Security Council (BSR) as the highest (political) decision-making body

Note: Although the management of a company bears the responsibility, it is possible to delegate certain tasks – especially the daily handling of export affairs – to employees of the company. The responsibility of the management remains unaffected here.

Responsibilities in relation to embargos and sanctions

Embargos always pertain to countries, while sanction lists pertain to persons and companies, and goods lists refer to goods.

Each company has the task of identifying sanctioned business partner, to avoid violations of sanction regulations. As a rule, companies establish a kind of automatic sanction screening.

The “Gold standard” is a **software-based screening**, which checks every single transaction for sanctioned parties. However, some companies invest less effort, e.g. a weekly or monthly screening or screenings of exclusively risky transactions (starting from a certain volume). All these different approaches are legally feasible – but the less intensive the screening, the higher the risk of a violation and the stricter the response of the authorities.

The management and especially the export officer are responsible for setting up a **compliance-management-system**, which ensures the compliance of all the provisions under foreign trade law (export control, sanctions, and embargos). The boundary conditions under data protection law must especially be followed in all these measures.

Examples for the necessary measures by the company:

1. Control of goods: Reliable classification of the goods and corresponding approval management.
2. Usage control: *“know your customer”* - it must be ensured that “sensitive” end uses are identified.
3. Financial sanctions: Sanction screening and the analysis of hits.
4. Embargos: Identification of the relevant embargos and the goods as well as business relations affected by the embargos.

Consequences of violations

The discovery of a potential violation raises the question of whether it makes sense to undertake a voluntary disclosure to the authorities. The following considerations are relevant here:

The management must weigh whether the company can prevent major damage by voluntary disclosure. The compliance declarations of companies also often do not leave any other option at all. Proactively dealing with violations has the following advantages: The responsible parties gain control over the events and authorities often give only a “milder” response. In practice, **voluntary declarations** are the order of the day.

The responsible parties have to fear the following consequences:

- Imprisonment, of up to ten years depending on the element of crime
- Judicial fine - as usual, according to daily rates
- Penalty - for administrative offences (§§ 30, 130 of Code of Administrative Offences [OWiG])
- Other possible legal consequences:
 - Forfeiture (confiscation of profit according to the no-netting principle)
 - Loss of “reliable exporter” status and hence, negative effects on the grant of approvals
 - Loss of customs privileges: AEO status, reliable exporter

Highly topical: Sanctions and embargos against Russia

The prohibition of import and export, forwarding, and provision of sanctioned goods is no longer concentrated on oil and gas, but concerns broad areas of Russian industry as well as financial markets.

Since the beginning of the war, a high dynamic can be observed in relation to the sanctions and embargos against Russia. The regulations for Russia were often drawn up under enormous political and time pressure. The regulations are accordingly often ambiguously and incomprehensibly formulated.

The EU (and national authorities) have therefore published [FAQs on the most pressing issues](#).

Current embargo regulation: [EU/833/2014](#)

Current sanction regulation: [EU/269/2014](#)

[Responsibilities and examples of measures](#)

4. US (Re-)export control legislation

Understand the US export control legislation in 7 steps

Step 1: Who is the affected party?

Each company, each person must follow the US law when it comes to goods of US origin and these goods should be re-exported (exported further to other destination countries).

US persons are subject to the US law. This is especially important when a US citizen (or Green-card holder) is working in the top management of a German/EU company, e.g., as a director. Subsidiary companies of US companies (judicial entity) in Germany/EU are generally not affected, except in case of an Iran embargo.

Step 2: US content or specific goods

The US law can be applicable even if no person from the USA is involved where “sensitive US content” is concerned.

Especially: Goods under the US-Munition list (USML) and are thus subject to the ITAR (International Traffic in Arms Regulation). Possibly in case of encryption technology, e.g., computers beyond a certain performance class.

Step 3: Calculation according to the de minimis rule

The so-called de minimis rule is applicable even no sensitive US content, but “normal” US content is involved:

- Under 10 % in US share:** No US controls as a rule (exceptions for various embargos or specific goods, e.g., ITAR products)
- Up to 25 % in US share:** US controls for all embargo countries
- Over 25 % in US share:** US controls for all countries

Note: Calculation of the de minimis limit can be extremely complex, the calculation requires precision. A calculation guideline can be found in Supplement no. 2 to Part 734.

Step 4: Classification by the Commerce Control List (CCL)

In case of relevant US contents (exceeding the de minimis threshold) the classification is according to the Commerce Control List (CCL). The Export Control Classification Numbers (ECCNs) are in principle identical to the list items in Appendix I of EU Dual-Use Regulation (EU/428/2009). The following special features should be noted:

- Deviations in case of some entries
- Differences in the interpretation
- Additional national ECCNs (Series 900 and Series 600)
- Abnormality in CCL - Reason for the check (e.g., AT, NS, etc.)

If ECCN cannot be assigned, the Export Administration Regulation (EAR) 99 is applicable. Goods under this classification can be exported in all the countries with the exception of E group of countries: Cuba, Iran, North Korea, Syria (Supplement no. 1 to Part 740 of EAR).

Step 5: Export approval

An export approval is required under the US law only if the goods are controlled for receiving country for specific reasons of control. Otherwise, an approval is not required.

Step 6: Exceptions to the approval requirement

There are a number of exceptions, which can, however, be reversed again by sub-exceptions; some examples:

- GBS (Group B shipments)

- CIV (Civil end user)
- LVS (low-value shipments)
- BAG (Personal baggage)
- GOV (Governmental shipments)
- Extremely complex: Licence exceptions for objects of encryption (e.g., ENC)

Step 7: Follow all the control legislations

- “General Prohibitions” - EAR Sec. 736
- Red Flags (examples of BIS - comparable to the red flags in D GP 10)
- Prohibited parties (quasi sanction list checking – GP 5)
- Embargo (GP 6)
- Proliferation activities (in all the countries except for most of the EU countries and some others – GP 7)
- China, Russia, military end use - EAR Sec. 744.21
- “*Know your customer*” – Recipient screening

Conflicting goals of US and EU law

The US export control regulations are an important prerequisite for compliance with the regulations for the European companies, especially in relation to the economic sanctions and re-export controls. However, the US requirements sometimes contradict the EU requirements. The most important subjects in this regard are:

- **Foreign employees and anti-discrimination legislations:**
Most of the companies employ people from all over the world. This can lead to problems if these employees are working in sensitive areas in security and get access to controlled technologies. The easiest way out is near: Block the access to these technologies for these employees. However, excluding employees from certain projects, workplaces or not employing them at all can be in violation of anti-discrimination legislations.
- **Sanction test and data protection:**
Any processing of personal data requires a justification in accordance with the general data protection regulation (GDPR).
Consequently, any checking of persons to determine whether they are on a “black list” under economic sanctions, is an act of data processing needing a justification. The problem becomes more pressing when persons, who are on the black list only under the US American law are checked. The solution: Offset the protection of personal data against compliance with anti-terrorism provisions.
- **Anti-boycott Regulation:** In accordance with Article 5 of the EU Anti-boycott regulation (also called as “Blocking Regulation”), companies are prohibited from complying with certain US regulations. The dilemma: You either violate the US legislation or the EU law. Consequently, the EU companies should ask themselves: Is there really a conflict of laws? If yes, the national law strictly takes priority. However, it can be necessary to

weigh the risks – until now, the companies complied with the US law due to the strict penalties in the USA (e.g., fines, black lists), while there was a lack of enforcement of penalties in the EU. **Note:** The EU Anti-boycott Regulation is applicable only in relation to certain US legislations, which are expressly mentioned in Appendix I of the regulation.

The EU regulations prohibits natural and legal entities from the EU from following the extraterritorial application of certain (not all!) US legislations, which are listed in Appendix of the EU regulation. At the same time, it means: Any other compliance with the US regulations not listed in Appendix I of the EU Anti-boycott Regulation is not prohibited.

[Online services of customs and EU commission](#)

5. Origin of goods and preferences

There are regulations made by countries among each other to grant **trade preferences for certain goods from certain countries**. These regulations can be implemented in the form of customs tariffs, tariff quotas or other trade facilitations.

In practice this means that certain goods come into question for application of preferences only when they originate from countries, which have concluded an agreement on preferential origin of goods with the favoured country. The **prerequisites** for the preferential origin of goods **varies by country and product**. However, **certain threshold values for the proportion of domestic raw materials or production processes** must be fulfilled as a rule so that a product can be deemed as the “product originating” in a certain country.

Preferential origin of goods can be of great significance for companies since it **reduces the costs for the export** of goods in certain countries. For example, if a country stipulates a lower rate of duty for products from a certain country, a company can expand its competitiveness by compliance with the requirements for preferential origin.

Products must be certified by independent inspection bodies to ensure that they actually fulfil the requirements for preferential origin of goods. This certification is often time-consuming and costly – but is necessary to ensure that preferences are not misused. The certification is an important instrument for promoting international trade and establishing economic relations beyond international borders.

The customs and the European Commission provide digital data bases and infographics for information about origin of goods, preferences, and free trade zones.

[Access2Markets of the European Union](#)

My Trade Assistant

Waren + ROSA ↑ Dienstleistungen und Investitionen ↓ Beschaffung ↓ Von Russland/Belarus verhängte Beschränkungen ↓

Einschließlich ROSA Rules of Origin Self-Assessment [Verwendung dieses Formulars](#) ⚠ Haftungsausschluss ↓

Produktname oder HS-Code Exportland Bestimmungsland

Produktname oder HS-Code [] [] [] Suche >

[Origin of goods and preferences online](#)

LÄNDERAUSWAHL

ISO-ALPHA2-CODE oder LÄNDERNAME

VERARBEITUNGSLISTE

HS-POSITION

STICHTAG ÄNDERN

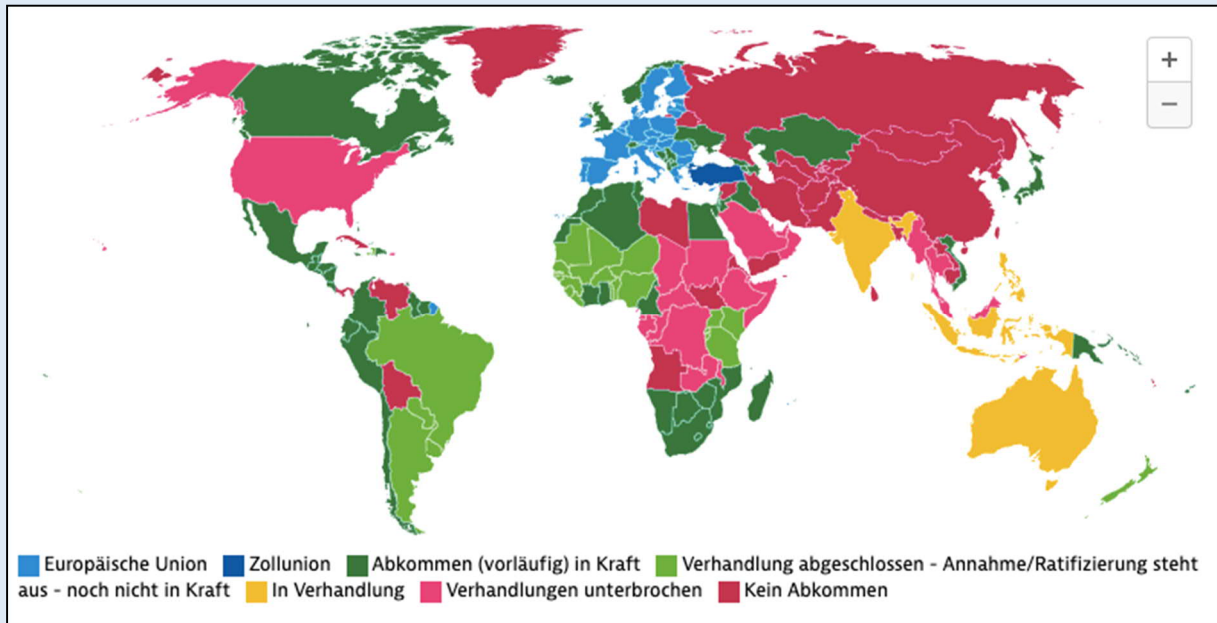
08.04.2023

SUCHEN

ISO Alpha-2 codes are two letter country codes defined in ISO 3166-1. This is a part of the ISO 3166 standard, which was published by the International Organisation for Standardisation (ISO) to represent countries, dependent territories, and special territories of geographical interest.

The **Harmonised System (HS)** designates and codes goods to facilitate a uniform classification globally. The code consists of six digits and uniquely identifies each group of goods. The extension of HS by two digits using the combined nomenclature (CN) of the European Community facilitates a precise categorisation of goods and uniform customs tariffs and tariff quotas are ensured. The combined nomenclature also contains specific customs tariffs and tariff quotas for trade within the European Union. The combination of HS and CN enables a detailed classification of goods and a uniform application of customs tariffs and tariff quotas.

[GTAI Infographics and information on free trade zones:](#)



According to GTAI (Germany Trade and Invest – Gesellschaft für Außenwirtschaft und Standortmarketing mbH) EU's trade with FTA countries amounted to 44% of the total export trade of EU in 2021. The United Kingdom is the most important partner for EU, followed by Switzerland, Turkey, and Norway.

Industrie- und Handelskammer
Aachen



Dr. Gunter Schaible
Industrie- und Handelskammer Aachen

Theaterstr. 6 - 10, 52062 Aachen

phone: +49 241 4460-223

website: [Industrie- und Handelskammer Aachen - IHK Aachen](http://www.ihk-aachen.de)

Zuyd
Hogeschool **ZU**
YD

VO
ka Kamer van
Koophandel
Limburg



Agence
du Numérique