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| **“Readiness of the Legislative System of the Custom Union for the Implementation of a Single Window for International Trade”** |
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Table of Content

[Introduction 3](#_Toc325725718)

[Structure and organization of the Single Window mechanism in the Customs Union 4](#_Toc325725719)

[The Customs Code of the Customs Union - the prerequisites for the establishing a Single Window 5](#_Toc325725720)

[Customs and Single Window 6](#_Toc325725721)

[Proposals for changes in the Customs Code of the Customs Union 6](#_Toc325725722)

[Article 6 7](#_Toc325725723)

[Article 8 7](#_Toc325725724)

[Article 43 8](#_Toc325725725)

[Article 45 9](#_Toc325725726)

[Article 62 10](#_Toc325725727)

[Articles 69, 111, 113 10](#_Toc325725728)

[Article 151 11](#_Toc325725729)

[Article 158 11](#_Toc325725730)

[Articles 163 and 176 11](#_Toc325725731)

[The Customs Code of the Customs Union and the national legislation 12](#_Toc325725732)

[Analysis of IISVVT in the context of implementation of the Single Window in the Customs Union 13](#_Toc325725733)

[Brief review of the documents of the Customs Union concerning IISVVT 13](#_Toc325725734)

[The legal basis, structure and organization of the Single Window mechanism using IISVVT 14](#_Toc325725735)

[Data protection 15](#_Toc325725736)

[The right of access to data and its transfer 17](#_Toc325725737)

[Mechanisms of identification, authentication and authorization 18](#_Toc325725738)

[Data quality 19](#_Toc325725739)

[Responsibility 20](#_Toc325725740)

[Dispute settlements 20](#_Toc325725741)

[The equivalence of paper and electronic documents 21](#_Toc325725742)

[Electronic archiving 22](#_Toc325725743)

[Intellectual property rights 23](#_Toc325725744)

[Competition issues 23](#_Toc325725745)

[Conclusions and suggestions 24](#_Toc325725746)

# Introduction

The current study presents a complex of issues related to the legal basis for the establishment and functioning of a Single Window mechanism in the Customs Union of Belarus, Kazakhstan and Russia (hereinafter – the Customs Union), where trade data and documents required for import, export or transit of goods are submitted into the system only once at a single entry point.

After the conclusion of the Agreement on Establishing the Single Customs Territory and Forming the Customs Union of Belarus, Kazakhstan and Russia, in October 6, 2007, active work on its development started.

The discussions on the main results of the functioning of the Customs Union on 19 May 2011[[1]](#footnote-1) at the meeting of the EurAsEC Interstate Council, emphasized the fulfillment by May 2011 of the plans of activities during 2007-2009 for the establishment of the: legal and regulatory framework; Common Customs Tariff; unified system of foreign trade and Customs regulations, sanitary, veterinary and phytosanitary control, and the institutional structure of the Customs Union. The implementation of activities related to the transfer of all agreed types of State controls (Customs, transport, [sanitary](http://multitran.ru/c/m.exe?t=28548_1_2), veterinary-[sanitary](http://multitran.ru/c/m.exe?t=28548_1_2), quarantine [phytosanitary](http://multitran.ru/c/m.exe?t=4170395_1_2)t) to the external borders of the Customs Union Member States with trade regimes harmonization and protective measures against third countries are near completion, as well as the activities related to the introduction of the Customs Code of the Customs Union including more than 100 adopted legal documents, 20 prepared projects of international agreements, 16 of which were adopted and using, by the Customs Union Commission (hereinafter - the Commission). The Commission adopted a set of standardized classifiers for filling Customs declarations, approved structure and format of electronic copies of Customs declarations, a declaration of Customs value and Customs value adjustments. In accordance with international Agreements and Decisions of the EurAsEC Interstate Council, the Commission comply about 150 functions in the field of ​​Customs, tariff, non-tariff and technical regulation, sanitary, veterinary and phytosanitary inspections. The Customs Union Member States worked on the national legislation in regard to make it in line with the Customs Code of the Customs Union ratified the International Convention on Simplification and Harmonization of Customs Procedures, on May 18, 1973 as amended by Protocol of June 26, 1999. The work is on accession of these States to the Convention on Simplification of formalities in trade of goods of 1987, and the Convention on common transit procedure of 1987. The results of this work should be the unification of the Declaration adopted by the Commission for goods and the Transit Declaration with the Single administrative document, as well as the possibility of their use for transit through the European Union and the Customs Union territories.

This is a strong reason to raise an issue of the implementation of the Single Window at the regional level within the Customs Union. At the same time it should be noted that Kazakhstan and Belarus have made steps towards establishing the national Single Windows. Therefore, while making the decision on implementation of the Single Window in the Customs Union, it is important to take into consideration the work on establishing the Single Window mechanisms that has been already undertaken at the national level. In this regard, we cannot exclude that the implementation of the system of interaction will be more appropriate within the Customs Union of the national Single Windows mechanisms.

While considering the prospects for creating the Single Window in the Customs Union, one of the main objectives is to examine issues related to the readiness of the Customs Union legal base for the implementation of the Single Window mechanism. These issues are reviewed in this study in accordance with the checklist of Recommendation No 35 UNECE “Establishing a legal framework for international trade Single Window”.

The study indicates the legal problems regarding the implementation of the Single Window in the Customs Union and possible ways to resolve them.

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# Structure and organization of the Single Window mechanism in the Customs Union

The guidelines on “Establishing a Single Window mechanism”, which complete the Recommendation No 33 UNECE, note that as a result of the review of various existing or proposed systems for the implementation of a Single Window made by Working Group on the international trade procedures CEFACT UN, three basic models for the Single Window mechanism were identified:

a) a Single Authority that receives information either on paper or electronically, disseminates this information to all relevant governmental authorities, and co-ordinates controls to prevent barriers in the logistics chain;

b) a Single Automated System for the collection and dissemination of information that integrates the electronic collection, use and dissemination (and storage) of data related to trade that crosses the border;

c) an Automated Information Transaction System through which a trader can submit electronic trade declarations to the various authorities for processing and approval, using a single record method.

Since the Customs Union has not yet made ​​a decision to establish a Single Window mechanism (or systems of Single Windows) and its model was not defined, the formulated proposals in this study for changes and additions to the Customs Code of the Customs Union and other acts, as well as to the conclusion (supplement) of international agreements that are constructed in purpose to eliminate potential legal barriers for the establishment of a Single Window in the Customs Union with the possibility of choosing any mentioned models.

As it is indicated in Recommendation No 33 UNECE, the lead agency should direct the process of establishing and functioning of the Single Window mechanism. The lead agency should be performed by a very [authoritative](http://multitran.ru/c/m.exe?t=2875967_1_2) organization with the necessary strategy, (legal) authority, political support, financial and human resources, and close connections with other relevant organizations.

The Customs Union Commission meets the above mentioned criteria in the Customs Union. According to the international agreements within the Customs Union, the Commission implements such functions and tasks as:

* implementation of the interaction between government bodies and the Members of the Customs Union;
* approval of paper and electronic forms of various documents, which are used for import, export and transit of goods;
* performance of functions of the operator of the integration component (cross-border electronic document management system based on the interaction of trusted third parties) of the general infrastructure of information documenting in electronic form;
* implementation of ownership’s rights over a number of constituent elements of the Integrated Information System for Foreign and Mutual Trade of the Customs Union (IISVVT);
* approval of cost estimation for the creation, development and operation of IISVVT;
* implementation of the financing of work for creation, development and operation of a number of constituent elements of IISVVT.

The Commission can prepare a draft of the document (decision or international agreement) for the higher authority of the Customs Union – Interstate (Mezhgossovet), in the cases when the issue goes beyond the power of the Commission.

The secretariat of the Commission acts as a working body for the implementation of Customs Union’s decisions. Accordingly, as it seems, in case of the decision to establish the Single Window, the secretariat will work on the implementation of Single Window.

# The Customs Code of the Customs Union - the prerequisites for the establishing a Single Window

The Customs Code of the Customs Union is one of the most important legal acts that regulates the document flow of import, export and transit of goods in the Customs Union. Therefore, the first part of the study analyzes its statements to see if they contribute or prevent the implementation of a Single Window in the Customs Union.

The analysis of the Customs Code of the Customs Union shows that it does not include direct regulations related to the Single Window mechanism or the organizational structure of its establishment and operation[[2]](#footnote-2). In this regard, we can speak only about the situation if the Customs Code of the Customs Union creates prerequisites for the implementation of the Single Window.

Since the Customs Union has not yet made ​​a decision to establish the Single Window mechanism (a system of Single Windows) and, accordingly, its model was not selected, ​​proposals for changes in the Customs Code of the Customs Union are constructed in purpose to eliminate potential legal barriers for the establishment of the Single Window taking into account the possibility of choosing any model.

## Customs and Single Window

In the context of choice of the mentioned model (a) of the Single Window mechanism, as it seems, the most possible candidate for the role “one body” in the Customs Union could be the Customs authorities, through which there would be the exchange of information and documents between participants of foreign economic activity (hereinafter – participants of FEA) and government regulatory agencies.[[3]](#footnote-3)

In support of this approach we can refer to the fact that the Customs Code of the Customs Union directly indicates the obligation for traders to go through the Customs authorities procedures for registration of all cases regarded to import, export or transit of goods[[4]](#footnote-4), they received the largest number of the related information. The Customs authorities have a large network of Customs offices. According to paragraph 1, article 103 of the Customs Code of the Customs Union, during the Customs control of goods, which are transported across the Customs border and are subject for control by other regulatory State agencies, the Customs shall provide an overall coordination of actions and their simultaneous execution in the manner determined in the legislation of the Member States of the Customs Union.

The Russian legislation requires a carrier to provide the Customs authority with the documents submitted in accordance with the Customs legislation at the arrival of goods and vehicles into the Customs territory of Russia together with necessary documents for other controls.[[5]](#footnote-5) Moreover, the Customs authorities at the border-crossing checkpoints carry out the transport inspection, as well as control the documents of goods for import under the quarantine phytosanitary, veterinary and sanitary-quarantine inspections. At the same time they are entitled to decide whether to pass vehicles, imported products in Russia (immediate export) or to send into specially equipped checkpoints for the inspection by officials of the Rospotrebnadzor and Rosselkhoznadzor.[[6]](#footnote-6)

In addition to above facts we can also refer to the practice of other countries. As noted in the above mentioned Guidelines on “Establishing a Single Window mechanism” within the 12 mechanisms of the Single Window, review of which was conducted during the development of these Guidelines, the Customs often performs as a lead agency.

## Proposals for changes in the Customs Code of the Customs Union

The current section reviews provisions of the current Customs Code of the Customs Union and projects of a number of amended provisions of the Code, developed by experts of the Customs Union Member States and sent to the States for approval on July 12, 2011 (hereinafter - the proposed changes in the Customs Code of the Customs Union by experts).[[7]](#footnote-7)

Considering the situation in the context of the Customs Code of the Customs Union premise that One body in the Single Window mechanism will be the Customs authorities, the attention should be paid to the following.

### Article 6

The main tasks of Customs authorities are listed in article 6 of the Customs Code of the Customs Union. In order to create conditions for giving tasks related to the Single Window, and assuming that the imposition of these tasks will be carried out under the international agreement, it is proposed to supplement the last indent of subparagraph 10, paragraph 1, article 6 of the Customs Code of the Customs Union:

“By laws *and international agreements* of the Customs Union Member States can be formulated other objectives, which resolved by the Customs authorities”.[[8]](#footnote-8)

### Article 8

According to paragraph 1 of article 8 of the Customs Code of the Customs Union, any information received by the Customs authorities in accordance with the Customs legislation of the Customs Union and (or) the law of the Customs Union Member States, is used by such authorities only for Customs purposes. Therefore, it should be noted that the Customs Code of the Customs Union does not define the term “Customs objectives”. If, for example, in accordance with the laws of the Customs Union member state, the Customs authorities are entrusted with the implementation of other controls, it is unclear whether the received information is considered to be used exclusively for Customs purposes. In addition, the model "a" of the Single Window mechanism implies that the information coming into the Single body can be used not only by the Customs authorities but also by other control authorities, to which the Single Body has to send. In other words, current statement of the Customs Code of the Customs Union can prevent the implementation of the model "a" of the Single Window mechanism, i.e. limit the ability of Customs act as a Single body and use the information for the functioning of the Single Window that go beyond Customs purposes.

Paragraph 2 (first part), article 8 of the Customs Code of the Customs Union states that the Customs authorities with an access to the information, specified in paragraph 1 of Article 8, cannot divulgate or transfer to third parties, including government bodies, the information constituting state, commercial, banking , tax or another legally protected secret (secrets), and other confidential information, except cases established by the Customs Code of the Customs Union and (or) laws of the Customs Union Member States. As rules of this paragraph apply to the information specified in paragraph 1, the above mentioned uncertainties about this information also affect the interpretation of paragraph 2 to a certain extent. Moreover, the Customs Code of the Customs Union does not set exceptions to rules set by paragraph 2 concerning the possibility of transfer of received information to the Customs Union Commission or EurAsEC Court by the Customs authorities that may be necessary for the functioning of the Single Window mechanism».

The second part of paragraph 2, Article 8 of the Customs Code of the Customs Union specifies that the Customs authorities of one Customs Union Member State transfer information provided to the public authorities of that State, if such information is necessary to these bodies for the issues assigned to them by the legislation of this State with compliance with the laws of the State on protection the public, commercial, banking, tax or other legally protected secrets (secrets), and other confidential information, as well as international agreements of the Customs Union Member States. As seen, this statement does not cover the transfer of information to regulatory authorities of other Customs Union Member States, the Customs Union Commission and the Court of EurAsEC.

In order to eliminate mentioned disadvantages the following changes to article 8 of the Customs Code of the Customs Union can be offered:[[9]](#footnote-9)

«1. Any information received by the Customs authorities ~~in accordance with Customs legislation of the Customs Union and (or) the legislation of the Customs Union Member States~~, is used by these bodies exclusively for ~~Customs purposes~~ *problem solving [within the framework of their competence] [entrusted to them by the Customs legislation of the Customs Union, the legislation and (or) international agreements of the Customs Union Member States]*, including the prevention and suppression of administrative infraction and criminal acts.

2. The Customs authorities, their officials and other individuals, who received the access to the information specified in paragraph 1 of this Article in accordance with the legislation of the Customs Union Member States, cannot disclose, use for personal purposes or transfer to third parties, including governmental bodies, the information constituting state, commercial, banking, tax or other legally protected secrets (secrets), and other confidential information, except cases stated in this Code, ~~and (or)~~ legislation *and (or) international agreements* of the Customs Union Member States.

The Customs authorities of one Customs Union Member State transfer received information to the governmental bodies of this *and / or another* Customs Union Member State, *the Customs Union Commission* *and / or the Court of the EurAsEC*, if such information is necessary for mentioned authorities for solving the issues assigned to them by the law of the ~~current~~ *relevant* Customs Union Member States, *international agreements of the Customs Union Member States or decisions of its authorities*, in the manner and in compliance with the legislation of the ~~current~~ *relevant* Customs Union Member State on the protection of the public, commercial, banking, tax, or other legally protected secrets (secrets), and other confidential information, as well as international agreements of the Customs Union Member States.

### Article 43

According to proposed changes in the Customs Code of the Customs Union by experts, chapter 4 is called "The use of information and communication technologies in the field of Customs regulation," and article 43 - "General statements on the use of information and communication technologies in the field of Customs regulation". In the prospect to establish the Single Window mechanism with models that involve use of automated systems and the content of this chapter, it seems appropriate not to limit the scope of these items in a field of Customs regulation and change them as follows: "The use of information and communication technologies ~~in the field of Customs regulation~~" and accordingly, - "General statements on the use of information and communication technologies ~~in the field of Customs regulation~~».

Moreover, article 43 of the Customs Code of the Customs Union needs to be expanded in wording of the proposed changes by experts. [[10]](#footnote-10) The following is proposed:

«1. In the Customs Union the use of information and communication technologies in the field of Customs regulation ~~(hereinafter - information and communication technologies)~~ refers to the use of technologies for the joint implementation of information and communication processes in the field of Customs regulation.

1. In the Customs Union the information and communication technologies are applied in order to:
2. ensure sustainable processes of economic integration of Member States of the Customs Union;
3. create favorable conditions for activities of economic entities of the Customs Union Member States;
4. ensure the regulation of foreign and mutual trade within the Customs territory of *the Customs Union*;
5. implement effective Customs and other types of state controls ~~of foreign trade activities of the Customs Union~~ *while transfer of goods and vehicles across the Customs border, for that purpose the integrated information system are created in accordance with international agreements of the Customs Union Member States*;
6. ensure qualitative organization of work in the field of Customs regulation of ~~the Interstate Council of Eurasian Economic Community (the Legislative Body of the Customs Union) [[11]](#footnote-11) and~~ the Customs Union Commission.

3.  The information and communication technologies apply in accordance with international standards in the field of information according to the Customs legislation of the Customs Union and laws of the Customs Union Member States.

4. The Customs legislation of the Customs Union and laws of the Customs Union Member States determine an order of application of information and communication technologies and providing the information security requirements in the field of Customs regulation.

5. Integrated information systems are created in order to ensure an *effective* regulation of foreign and mutual trade *within the Customs territory* of the Customs Union, *the unification and standardization of processes of information exchange between individuals and State Control Authorities, harmonization of documents and information submitted to the State Control Authorities*, in accordance with ~~an international agreement~~ *international agreements* of the Customs Union Member States».

### Article 45

Article 45 of the Customs Code of the Customs Union also needs to be expanded in wording of the proposed changes by experts. The following is proposed:

«1. The Customs Authorities of the Customs Union Member States apply the information and communication technologies for resolving issues ~~under article 6 of this Code~~ *[within their competence] [entrusted to them by the Customs legislation of the Customs Union legislation and (or) international agreements of the Customs Union Member States].*

2. Information resources of Customs Authorities refers to organized set of documented information, which includes database that can be created, processed and accumulated in the information systems of mentioned Authorities.

3. Information resources of Customs Authorities of *the Customs Union Member State* are formed on the basis of documents and information provided by individuals *during a prior notification of the transit of goods across the Customs border of the Customs Union*, during the execution of Customs operations, *as well as provided by other authorities of this Customs Union Member State, Customs and other authorities of other Customs Union Member States, and authorities of third countries in accordance with the Customs legislation of the Customs Union, the legislation of the Customs Union Member States and international agreements of this Customs Union Member State.*

The laws and *international agreements* of the Customs Union Member States determine an order of formation of information resources of Customs and access to them.

4. Information resources of Customs Authorities of the Customs Union Member States, which concern Customs legislation of the Customs Union, are open and available to public, and posted on the websites of these bodies.

5. The procedure for obtaining the information contained in information resources with limited access and under the supervision of Customs bodies is determined by the legislation of the Customs Union Member States.

6. The information exchange between Customs Authorities of the Customs Union Member States shall be in accordance with international agreements of the Customs Union Member States.

7. The Customs Authorities of one Customs Union Member State provide the information, received by the Customs Authorities in accordance with the Customs legislation of the Customs Union and (or) the legislation of the Customs Union Member States, to anther State Authority of anther Customs Union Member State through the Customs Authority of anther Customs Union Member State in accordance with the Customs legislation of the Customs Union and the legislation of the Customs Union Member States. *In accordance with international agreements of the Customs Union Member States, the submitting of information can also be done through integrated information systems.* The provided information is free of charge.

The information referred to the information with limited distribution by the legislation of the Customs Union member state, can be exchanged in compliance with data protection legislation of the Customs Union Member States.

8. The Customs Authorities of the Customs Union Member States are involved in the international information exchange with Customs Authorities of foreign countries, as well as with international and other organizations in order and on conditions that are determined by legislation and international agreements of the Customs Union Member States.

### Article 62

With the prospects of using the information and communication technologies, and the work carried out within the framework of the International Chamber of Commerce on the development of electronic form of certificate of origin, it is proposed to supplement article 62, paragraph 3:

*«3. In accordance with the international agreements of the Customs Union Member States, the document certifying the country of goods’ origin, can be provided in electronic form»*.

### Articles 69, 111, 113

In order to create a legal framework for the transition to paperless technology and, taking into account article 98 of the Customs Code of the Customs Union, the following changes were proposed:

in paragraph 3, article 69:

«3. For the additional inspection of the predicated information on the Customs value of goods, the Customs Authority can request additional documents and information, and specify a sufficient date for the submission, but it cannot exceed the period established in article 170 of this Code.

A declarant has to submit to Customs Authorities additionally requested documents and information, or provide with written explanation of reasons why they cannot be submitted. *The specified documents and information, as well as explanations can be presented in electronic form.*

A declarant is entitled to prove the validity of his chosen method of determining the Customs value of goods and authenticity of documents and information submitted»;

in paragraph 3, Article 111:

«3. While carrying out Customs control, the Customs authority is entitled to reasonably request additional documents and information in writing form in order to verify the information contained in the Customs documents. *The submission of these requests and additional documents and information can be in electronic form*»;

in paragraph 2 and 3, Article 113:

«2. Explanations are made in written or *electronic form,* prescribed by the Customs Union Commission.[[12]](#footnote-12)

3. If it is necessary to call the individual to get an explanation Customs authority draws up a notice in writing, which is given to the called party. Such notice may be sent in electronic form and is delivered on the individual to whom it is directed, upon the confirmation of it in an electronic form of receipt of the notice».

### Article 151

The experts proposed changes to article 151 of the Customs Code of the Customs Union, according to which the preliminary notification of the transit of goods across the Customs border becomes obligatory. It appears that preliminary notification has to accelerate the further transit of goods across the Customs border, which depends not only on the timely and full implementation of the obligation of providing the preliminary notification by the carrier or his authorized representative (in case of failure of this obligation, an administrative responsibility appears), but also on how the Customs Authorities work with the received notification and take it into account at the arrival of goods at the Customs border. However, article 151 in the proposed by expert edition says nothing about the obligations of the Customs Authority on the use of the received notification. In this regard, it is proposed in this edition

to extend first indent of paragraph 3:

«3. Depending on the mode of transport that will be used for transit of goods across the Customs border, the Customs Union Commission determines the procedure for providing preliminary notification and formats for electronic forms of this notification, as well as an order of use of the preliminary notification by *Customs authorities*, *including as* a transit declaration»;

as well as to include new paragraph 8 (paragraph 8 will become paragraph 9):

«*8. The Customs Authority shall take into account received preliminary notification, including those that are submitted with the negotiated access to the information system of the carrier or his authorized representative, and has no rights to require the repeated submission of information that was not changed and contained in a preliminary notification from the carrier or his authorized representative during the transit of goods across the Customs border*».

### Article 158

Taking into consideration that the first paragraph of article 158 and article 159 of the Customs Code of the Customs Union refer to the submission of not only documents but also of data, and in order to create preconditions for the creation of the of Single Window mechanism it seems appropriate to make the following additions to paragraph 3 of article 158:

«3. The carrier is entitled to submit documents and *data* in ~~electronic documents~~ *electronic form". In case of documents and data submission in electronic form, including through the integrated information systems, the international agreements of the Customs Union Member States can establish that the individual data elements are submitted only once».*

### Articles 163 and 176

By analogy with the proposed addition of paragraph 3 of article 158 on the rights to the electronic submission not only of documents but the data, it is proposed to make the following additions:

in paragraph 2, article 163:

«2. The carrier is entitled to submit documents *and data* ~~in the form of electronic documents~~ in *electronic form*»;

in paragraph 4, article 176:

«4. Documents *and data* required for release of goods can be submitted in electronic form ~~electronic documents~~ in accordance with this Code».

## The Customs Code of the Customs Union and the national legislation

The Customs Code of the Customs Union contains a fairly large number of references to the national legislation of the Customs Union Member States. In particular, for the purposes of transition to the information interaction between traders and state control authorities through a Single Window and related standardization of documents and information, provisions of the Customs Code of the Customs Union, enshrining the right to establish order and form of delivery of certain documents in accordance with national law, can become a “barrier” for realization of these goals.

In this connection, it seems appropriate to pay attention to the following provisions of the Customs Code of the Customs Union, according to which the form and procedure for issuing the documents, making there changes or additions, as well as their revocation (cancellation) are defined by the legislation of the Customs Union Member States:

Article 244 – document on the conditions for goods’ recycling at Customs territory;

Article 257 – document on the conditions for goods’ recycling outside the Customs territory;

Article 269 – document on the conditions of goods’ recycling for domestic consumption;

Article 308 – conclusion of the relevant authorized government body on the possibility of destruction of goods placed under Customs procedure of destruction.

Elimination of such "barriers" for the realization of intention to implement the Single Window in the Customs Union could be carried out through the unification of legislation concerning these documents, including the establishment of the possibility of their use in electronic form. However, it seems that the unification through the conclusion of the relevant international agreement between the Customs Union Member States would be more efficient and faster. Another option would be the amendment of the articles of the Customs Code of the Customs Union involving the Commission's right to establish the form and procedure for issuing such documents, making changes or additions there, as well as their revocation (cancellation).

# Analysis of IISVVT in the context of implementation of the Single Window in the Customs Union

## Brief review of the documents of the Customs Union concerning IISVVT

Although the Single Window mechanism does not necessarily require the implementation and application of information and communication technologies and allows the use of paper documents, the transition of documents to electronic forms and the use of information systems for processing and transmission can significantly improve the performance of the Single Window.

The Customs Union adopted a number of documents in order to create IISVVT, which will be as a basis for the Single Window mechanism.

The original concept of IISVVT was approved by EurAsEC Interstate Council, decision No. 22 on November 27, 2009 № 22. The Agreement on the Implementation, Operation and Development of IISVVT (hereinafter - the Agreement on the Implementation of IISVVT) and the Agreement on the Application of Information Technologies in the Electronic Documents Exchange for Foreign and Mutual Trade within the Customs Union (hereinafter - the Agreement on the Application of Information technologies) [[13]](#footnote-13) were signed on 21 of September, 2010. The Feasibility Study (FS) on the creation of IISVVT was developed in the summer of 2010.

In pursuance of these decisions and agreements, the EurAsEC Interstate Council approved the concept of IISVVT by its decision No 60 on November 19, 2010. In August 2011 the Customs Union Commission approved Terms of Reference (Техническое задание) for the creation of IISVVT.[[14]](#footnote-14)

 According to the analysis of mentioned documents, a number of provisions have important legal significance in the context of possible implementation of a Single Window in the Customs Union.

Thus, the Agreement on the Implementation of IISVVT relates to the goals of this system the following: creation of the favorable conditions for economic entities of the Customs Union Member States; ensuring the efficient regulation of foreign and mutual trade in the common Customs territory of the Customs Union; execution the Customs, taxation, transport and other forms of state control with the use of information and telecommunication technologies.

The Agreement on the Application of Information Technologies declares the desire of the Parties to develop a common approach to the objectives in order to remove legal barriers for the use of electronic documents in foreign and mutual trade within the common Customs territory of the Customs Union.

According to the concept of creating IISVVT, the objectives of this system include, in particular, the development of the integrated information structure of the intergovernmental data and electronic documents exchange in the Customs territory of the Customs Union; the organization of information interaction within the Member States authorities in order to ensure the full collection of Customs duties, taxes and fees; information ensuring of control of the international Customs transit; ensure the feasibility of the preliminary information and electronic declaration; the organization of information interaction within authorities performing the state control (phytosanitary, veterinary, sanitary and quarantine, transport, export, and others) in the Customs territory of the Customs Union.

Mentioned Agreement on the Implementation of IISVVT and the Concept say about using IISVVT for interaction and electronic documents exchange between the offices of the Customs Union, and the Feasibility Study says about the need of the opportunity to provide the participants of foreign activities with the electronic documents with the legally relevant electronic document flow, keeping in mind that this will occur within the Single Window, which is considered as subsystem of IISVVT by developers of Feasibility Study.

Feasibility Study indicates that for the implementation of a Single Window mechanism in the Customs territory of the Customs Union[[15]](#footnote-15) it is necessary to create a unified automated tools for receiving, processing and distribution standardized documents used in the performance of Customs operations, in application of Customs procedures for goods, in the Customs and other controls. According to Feasibility Study it is appropriate to use the integration segment of IISVVT in the Single Window system for the interaction within participants. The entered information into the Single Window after registration should be disseminated among supervisory authorities of the Customs Union Member States. In the frame of a Single Window subsystem, traders should be provided with data processing, used in carrying out Customs procedures, Customs and other controls in the Customs checkpoints on the border of the Customs Union and at the places of goods’ arrival and its Customs clearance; reception and processing of unified documents for preliminary information about goods, intended for transfer through the Customs border of the Customs Union, about the vehicles of international carriage that transport such goods, time and place of goods’ arrival at the Customs territory of the Customs Union or departure from the territory.

The idea of ​​using one of the subsystems IISVVT as Single Window was further developed in the mentioned Feasibility Study for the creation of IISVVT.

Terms of Reference, in particular, indicates that there are no common technical solutions in the Customs Union to provide the participants of foreign activities with the information about Single Window. To implement the Single Window mechanism in the Customs territory of the Customs Union, based on the provisions of the Recommendation No 33 UNECE, it is necessary to ensure documents of participants in foreign activities to be electronic with the legal value of electronic document flow, and creation of the automated tools for their reception, distribution and processing for the Customs and other controls.

For this purpose the IISVVT can be used, but at the same time it should not substitute the national information systems of the Customs Union Member States.

### The legal basis, structure and organization of the Single Window mechanism using IISVVT

According to the analysis of documents relating to IISVVT, we can conclude that they do not contain provisions that point on the legal basis, structure and organization of the Single Window mechanism in the Customs Union. The mention of the possibility of using IISVVT for the Single Window and some general provisions about its functioning within IISVVT were found only in the Feasibility Study and Terms of Reference, which are not [legislative act](http://multitran.ru/c/m.exe?t=4968318_1_2)s.

For the purpose that idea of establishing a mechanism for IISVVT "single window" in the Customs Union was provided with legal support, it is necessary to conclude a separate international agreement on the establishment of the Single Window mechanism in the Customs Union (or make appropriate changes to existing agreements and the Concept for the “connection” of traders to IISVVT).[[16]](#footnote-16) At the same time, it will be necessary to supplement the documents or take a separate document concerning work on the standardization of data and information submitted by participants of foreign economic activities for the registration of import, export and transit of goods, as well as to pay attention to the use of International standards (UN and WCO) undertaking this work.

In addition, it will be necessary to remove the legal barriers for the use of IISVVT as a Single Window that occurs due to the fact that many regulations of the Customs Code of the Customs Union, other international agreements, acts of internal law that are applicable in the Customs union, directly establish obligations for traders to submit documents for import, export or transit of goods to Customs and other State control bodies. In other words, if the document is not submitted to the government body by a trader directly, but through the Single Window mechanism in IISVVT, it could be considered as a violation of the order of established regulations. It seems that it would be unreasonable to make changes in the Customs Code of the Customs Union, other International Agreements and acts of internal legislation that contain these provisions. It would be more practical to establish the following rule (with approximate content) in the international agreement (a new one or already existing) of the Customs Union Member States:

*“In case of the implementation of the Customs and other forms of State control during goods and vehicles crossing the Customs border of the Customs Union, using the integrated information systems, the representation to individuals under the control of documents and information and information interaction between them and the State control bodies can be implemented through such integrated information systems”.*

### Data protection

Recommendation No 35 UNECE indicates that one of the most important issues in establishing a Single Window mechanism is the data protection.

This issue is reflected in the following documents relating to IISVVT.

The concept of implementing IISVVT contains several provisions concerning the information security and assumes that the system has to ensure compliance with the requirements for documents, such as authenticity, reliability, integrity and suitability for use in accordance with international standard ISO 15489-1:2001 Information and Documentation. Records management. General; the development of information security tools, security systems for electronic document flow, control systems for governmental bodies’ actions to work with information. The Concept indicates that at the first phase of implementing IISVVT the agreements, an order and rules of information security system should be developed. As far as known, such documents are not developed until now.

At the same time, the concept indicates that the subjects of information exchange relevant in law within the Customs Union are the national system, and the Customs Union Member States is responsible for the authenticity and security of information during its movement from the border crossing points to the gateway between the national system and IISVVT.

You can also pay attention to several provisions of the Agreement on the Establishment of IISVVT. In particular, the Agreement defines the term "information security", which is understood as a complex of legal, organizational and technical measures aimed at ensuring the integrity (stability), confidentiality, availability and security of information. To ensure the maintenance of an adequate level of data protection, the secretariat of the Customs Union Commission coordinates the development of projects of technical and organizational documents approved by the Commission.

The Agreement on the Application of Information Technologies does not provide with specific rules on data protection. It states that one of the main objectives of the Coordinating Council created under the Customs Union Commission is to develop decisions to ensure the data protection of accounting systems and general infrastructure of the data documentation in electronic form. The Agreement also provides that matters related to the subject of regulation and not reflected in it, are governed by the laws of the Customs Union Member States.

More details on the data protection are reflected in Terms of Reference for the establishment of IISVVT.

Terms of Reference indicates that the state (national) integration segments IISVVT should implement secure and protected data transfer using services of “trusted third party” and include such tools of information protection as the certification authority based on the use of public key infrastructure and a hardware and software complex “trusted third party” that was built in accordance with the recommendations of ITU-T series X.842 (Information technology – Methods of protection - Guidelines for the implementation and management of services of the trusted third party).

Among supportive subsystems IISVVT, Terms of Reference provides for the establishment of information security subsystem. According to the description of this subsystem, it has to ensure:

the availability of information - by installing firewalls and tools of the “trusted third party”;

the integrity of information - by using protected services of “trusted third party” based on the public key infrastructure (PKI) and by using such tools as channels protection (VPN) and antivirus;

the confidentiality of information – by using such tools as the channels protection (VPN), application of secure services based on PKI, encryption of the confidential information in storage, user authentication for the access to confidential information and the use of antivirus;

the validity for the electronic interaction – by using the tools such as protected (trusted) “trusted third party” services with the requirements and regulations for information documentation in electronic form based on common infrastructure for the validity of electronic documents.

Tasks which should be provided by security subsystem include such tasks as:

the management of tools for user’s authentication;

the management of tools for cryptographic of information, including tools for issuance, revocation and control of certificates, and services performing cryptographic processes, installing and processing of electronic (digital) signature;

backup and information restore.

Terms of Reference also assumes that while implementing the Registry Systems[[17]](#footnote-17) in the IISVVT, among other things, the standardization of the organization of access to information should be ensured (for example, cross-border Single Window facility in accordance with the UNCITRAL developments).

Based on the above mentioned statements’ analysis we can conclude that their developers have paid considerable attention to data protection in the operation of IISVVT. At the same time more detailed and mostly from a technical point of view, these issues are reflected in Terms of Reference for the establishment of IISVVT that is not an act for establishing rights and obligations for future users of IISVVT in general, and for participants in information exchange within the subsystems of Single Window, in particular. This means that even if all measures for ensuring data protection planned in Terms of Reference will be technically implemented, the questions of commitments to implement them, and, therefore, the liable for the failure or violation of this implementation remain outside the legal regulations of the Customs Union.

In essence (and, to some extent, this follows from mentioned Agreements), the regulation of issues on data protection is the responsibility of the Customs Union Member States. The regulation of these issues in the States may not coincide. It follows, for example, from the provision of the Agreement on the Application of Information Technologies assuming that third trusted parties shall cooperate to establish trust while organizing the cross-border electronic document flow between the subjects of electronic interaction of countries that *use different mechanisms to protect electronic documents.*[[18]](#footnote-18)

Although the Agreement on the Application of Information Technologies says about the necessity of harmonization of national legislation in areas covered by it (including the issues on data protection), this process may take some time. Therefore, in terms of creating the Single Window, it would be more rational to have an additional settlement of such questions using international agreements (s) between participants of the Customs Union.

While harmonization of legislation of the Customs Union in the field of regulation of issues on data protection in electronic document flow, it would seem advisable to carry out this work with the international experience. In particular, in relation to the management of personal data protection, which can also be part of information provided and processed through the Single Window mechanism, it would draw attention to such documents as:

* OECD Council Recommendation on the Guidelines on the Protection of Privacy and Transborder Flows of Personal Data, dated 23 September, 1980;
* Guidelines for the regulation of computer card files, containing personal data, adopted by the resolution 45/95 by United Nations General Assembly;
* Directive 95/46 EU of the European Parliament and the Council on the Protection of Individuals with regard to automatic processing of personal data and on the free movement of this data, dated 24 October, 1995;
* Council of Europe Convention for the Protection of Individuals with regard to automatic processing of personal data.

### The right of access to data and its transfer

Considering the question of which government bodies can require information from the Single Window and provide it with data within IISVVT, it seems appropriate to note the following.

The concept of creating IISVVT systems directly attributed such problems as:

-organization of information exchange within authorities that implement the State control (phytosanitary, veterinary, sanitary and quarantine, transport, export and others) in the Customs territory of the Customs Union;

-provision of the information exchange based on the intergovernmental and interagency agreements;

-provision of authorities that provide with state control, information that is necessary and sufficient for all types of State control over for the movement of goods across the Customs border of the Customs Union;

-provision of personal identification and access control to information on the principles of unification;

-access to regulatory legal acts of Customs Union Member States in the field of foreign and mutual trade.

The main requirements for the construction of IISVVT according to the Concept is the need to maintain the System of regulated access of the participants to shared information resources that is necessary for interstate cooperation of government bodies.

With regard to the Agreement on Establishing the IISVVT and the Agreement on the Application of Information Technologies, they do not contain specific provisions on what exact authorities can require information from IISVVT and provide it with data. They say about cross-border electronic document flow based on the interaction of trusted third parties. It can be concluded that the issues of access to IISVVT data (Single Window) has to be developed later, as it comes from the concept, but at the level of data access national subsystems IISVVT the issues will be governed by the laws of the Customs Union Member States.

A number of issues concerning the information exchange between Customs and other State control authorities, including the use of information systems, are regulated in the Customs Code of the Customs Union. [[19]](#footnote-19)

It seems that at the time of implementation of the Single Window mechanism, the general provisions of the concept regarding access to data of IISVVT and its exchange need to be developed in the international agreements (bilateral and intergovernmental[[20]](#footnote-20)), as well as by agreements on information exchange within State control authorities of one state.[[21]](#footnote-21)

### Mechanisms of identification, authentication and authorization

In order to ensure protection, quality, accuracy and integrity of data while using the Single Window, it needs to have appropriate mechanisms for identification, authentication and authorization of users.

In the Customs Union the common position on these matters are set by the Agreement on the Application of Information Technologies. From the Agreement definition of "electronic document on the external and mutual trade" it follows that such documents refer only to documents, certified with electronic digital signature (EDS). Electronic digital signature verification in such documents will be carried by a trusted third parties which will be performed by government bodies of the Customs Union Member States, or their accredited organization.

In accordance with the Agreement, a trusted third party performs the legalization (authentication) of electronic documents, provides guarantees of trust in the international (transboundary) exchange of electronic documents, ensures the validity of electronic signatures in outgoing and (or) incoming electronic documents and reports in accordance with the rules and requirements of laws of the State where the trusted third party is located.

Trusted third parties should interact in order to establish trust in the organization of cross-border electronic document flow between the subjects of electronic interaction within the Customs Union Member States that use different mechanisms to protect electronic documents.

According to Terms of Reference for the establishment of IISVVT, the common infrastructure of documentation of information in electronic form in this system should contain several components that provide information IT-based formalization of the legal procedures and conditions, including:

-public key infrastructure - may be the technological basis of IISVVT for the implementation of electronic confirmation of the individuals’ will - participants of information exchange. One of the main elements of this infrastructure is a provider of certification services (certification authority) [[22]](#footnote-22);

-infrastructure of trusted time - may be the technological basis of IISVVT for the implementation of electronically confirm of the time of issuance of electronic document using timestamps;

-infrastructure of trusted third party - may be the technological basis of IISVVT for the implementation of electronically confirm of place of issuance of electronic document, fact related to the performance of any legal action, and may also be the technological basis for realizing electronically the notary and apostil verification of the paper documents.

In a number of issues of electronic document flow, in particular, with respect to a trusted third party to ensure the legality of use of electronic digital signature in electronic documents, the Agreement on the application of information technology has not yet set overall standards, but refers to national legislation.

As it follows from the mentioned statements in the Customs Union in matters, relating to identification, authentication and authorization, an approach was selected based on the use of electronic digital signature and the establishment of trusted third parties (certification authorities). This approach is fully justified and applied in international practice. However, it should be noticed that a number of international organizations follow the principle that the technology should not limit the ways to ensure protection, quality, accuracy and integrity of data. Recommendations of the UNECE and the instruments of UNCITRAL are based on this principle. Texts of UNCITRAL - technologically neutral, i.e. they do not recommend, but rather, do not support the adoption of any specific compulsory technologies for electronic signatures, including specific technologies of EDS. Such approach, adopted in accordance with the UNCITRAL Model Law on Electronic Signatures, is based on the "two-level" model, which provides with better reliability origin and existing of the certain signatures that are described in the technologically neutral terms. In the near future we can expect rapid technological development in this area and, in particular, the introduction of the identification management systems (IDM) by the authorized economic operators, which may negate the use of EDS.

Agreement on the application of information technology, establishing the general principles, specific regulatory issues of the electronic digital signature and activity of trusted third parties, leaves in the scope of national legislation. [[23]](#footnote-23) However, the Agreement does not regulate the question how to resolve the situation in case of the "inconsistencies" of applicable laws of two states.

Thus, in these matters we need to work on the harmonization of national legislation (including, for example, developing a model law) or, it would be faster and, probably, better, to develop common for all Customs Union Member States regulations in these areas and their implementation in international agreement.

### Data quality

The quality of data (i.e. their accuracy and integrity), which processed in the Single Window environment, is significant. Accordingly, it is necessary to determine responsibility for entering data into the Single Window mechanism and the following processing of this data within the mechanism. For these purposes, the systems of the control chain can be set using the means of registration, identification, authentication and authorization, and appropriate mechanisms for monitoring and recording books.

According to the analysis of documents related to IISVVT, we can conclude that these issues[[24]](#footnote-24) were not regulated by legal documents of the Customs Union. At the same time, some statements related to the quality of data in IISVVT can be found in Terms of Reference. Thus, the Terms of Reference notifies that the validity of the original input data has to be confirmed with signature of authorized individual of the data owner. The correctness of the control of entered data into the database should be confirmed by identification signature of the responsible official of inspection services. Among other functions of the integration platform IISVVT, Terms of Reference includes control of message delivery. Terms of Reference also says about the audit of operators’ activities of accounting systems and general infrastructure or its individual services, which implies created in accordance with an international agreement or customary trading practice, the international system of monitoring of the implementation of the requirements for documenting information in electronic form. The activities of the operators of accounting systems and general infrastructure services of documentation of information in electronic form shall be formalized in the framework approved provisions and regulations by the Customs Union Commission.

### Responsibility

During the Single Window mechanism operation some situations may occur if parties, interacting within it, do not comply or violate established norms and rules. For example, a participant of the foreign economic activity provides the Single Window with inaccurate, incomplete or incorrect data; the distortion or loss of data appears during the transfer "within the Single Window; data loaded into the Single Window with restrict access is transferred to unauthorized bodies or to the third parties; an operator of accounting system do not follow established requirements for the information documenting; electronic digital signature is using after certificate’s expiration of the certification center, etc.

The issues of responsibility are not resolved in the documents related to IISVVT. In some cases, when legal relations during the operation of the Single Window do not go beyond one State, the issues of responsibility can be governed by laws of the State, as well as by interagency agreements. When the violation of rights or obligations occurs, involving in the work process with data of different States that entered into the Single Window, the issues of responsibility should be regulated at the interstate level. The most practical way of their regulation in such cases would be an international agreement of the Customs Union Member States. For example, there is the agreement on characteristics of criminal and administrative responsibility for violations of Customs laws of the Customs Union and the Customs Union Member States, dated July 5, 2010.

### Dispute settlements

During the functioning of the Single Window mechanism, when the legal relations between various parties, government bodies and supranational bodies (in the case of creation of the regional Single Window) occurs, conflicts related to these legal relations are inevitable between them.

In order to resolve certain conflicts, the Court of the EurAsEC was created under the Customs Union. According to the Statute of the Court dated July 5, 2010, the Court hears the cases on compliance of acts of bodies under the Customs Union with international agreements that make up its legal and treaty base, and litigate decisions, actions (inaction) of these bodies; interprets international agreements that make up the legal and treaty base of the Customs Union and acts adopted by its bodies; resolves conflicts between the Customs Union Commission and Member States of the Customs Union, as well as between these States on fulfillment of their commitments under the Customs Union.

On the 9 of December, 2010 the Interstate Council of Eurasian Economic Community adopted the Agreement on the use of the Court of the EurAsEC by business entities concerning conflicts within the Customs Union. According to this Agreement, the Court of the EurAsEC considers cases on statements of entities on disputing acts of the Customs Union Commission or its actions (inaction). The reason for this disputing is the contradiction of the Customs Union Commission acts or actions (inaction) with international agreements concluded within the Customs Union, which has involved a violation of rights and legitimate interests of businesses in the area of ​​entrepreneurial and other economic activities provided by international agreements. [[25]](#footnote-25)

As seen from the documents, the Court of the EurAsEC can work only partly as a body for resolving conflicts, which may arise during the functioning of the Single Window mechanism in the Customs Union. At the same time, the Statute of the Court indicates that the competence of the Court of the EurAsEC may comprise and other conflicts, the resolution of which is provided by international agreements within the EurAsEC and the Customs Union. Thus, this principle is the legal basis for extending the jurisdiction of this Court (concluding the international agreement) with respect to conflicts within the Single Window.

Undoubtedly, some conflicts, which may arise during the operation of the Single Window in connection with legal relations outside the framework of one State, can be resolved by judicial authorities of that State in accordance with its procedural rules. For example, according to the Arbitration Procedure Code of the Russian Federation, the cases on economic conflicts and other matters related to entrepreneurial and other economic activities with the participation of legal entities, individual entrepreneurs, as well as with the participation of the Russian Federation, government bodies and officials are under the jurisdiction of the Arbitration Court.

With regard to alternative dispute settlement (arbitration, mediation), the use of them to resolve conflicts, that may arise during operation of the Single Window in the Customs Union between traders and government bodies, is hardly a prospect, taking into account that it is not commercial but administrative and other public relations.

### The equivalence of paper and electronic documents

Many acts of the national legislation of the Customs Union Member States, the acts of its bodies, as well as the international agreements within the Customs Union provide the requirements for submission of documents relating to the registration of the import, export or transit of goods in writing ("paper") form. In the context of creating a Single Window with the use of electronic document flow within IISVVT, the question arises on how to maintain these requirements.

In this regards, it is advisable to pay attention to how the international organizations, such as UNCITRAL, suggest to resolve these questions.

The developed by UNCITRAL Guide to Enactment of the Model Law on Electronic Commerce indicates that the legal requirements prescribing the use of traditional paper documents, is the main barrier to the development of modern means of data interaction transfer. The Model Law is based on the approach that sometimes is called the "functional equivalent approach" and based on the analysis of the objectives and functions of the traditional requirements for the preparation of documents on paper, in order to determine how those objectives or functions could be fulfilled by means of electronic turnover. For example, the number of functions performed by a paper document includes ensuring that the document will be clear to all, will not be changed over time, opportunities for document regenerating for the authentication of data by signature, as well as ensuring that the document will have the form acceptable to public authorities and courts. The Manual says that for all the above mentioned features of paper documents, electronic records can provide the same level of security as documents on the paper, and in most cases, the higher level of reliability and speed of its processing, especially in regard to the determination of the source and content data, in terms of following the technical and legal requirements. The Model Law should allow the States to adapt their domestic legislation to reflect to changes in communication technology from the standpoint of commercial law, at the same time not forcing them to completely abandon the requirements associated with the use of paper documents, or reviewing the legal concepts and approaches underlying those requirements.

Analysis of documents relating to IISVVT allows to conclude that their developers have chosen the approach of equating electronic documents to paper documents.

For example, a number of important provisions on the functioning of the equivalence of paper and electronic documents that is in the Agreement on the application of information technology. The Agreement states that if the legislation of the Customs Union member state requires that the document was issued in writing or that the document in paper form was stamped, the electronic document issued under the rules and requirements of the documentation and determined by the Customs Union Commission is considered as appropriate to these requirements. Electronic document, issued according to rules and requirements of documentation, determined by the Commission, is recognized the equal validity to similar document on paper certified by the signature of an electronic document author or signature and seal. The document cannot be denied its legal effect based on the reason that it is in the form of electronic document. The agreement also provides that the use of the electronic document of the Customs Union Member States as an evidence of legitimacy cannot be banned because of its electronic form.

It is difficult to say now, how much these provisions will assist in resolving these issues during the implementation of the Single Window mechanism using IISVVT. Moreover, the rules and requirements for documentation, which should be made out for electronic documents, has not yet adopted by the Customs Union Commission.

Certainly, it is advisable to keep in mind that many of the nuances of complex issues of equivalence of paper and electronic documents can be resolved in accordance with the national legislation of the Customs Union Member States that can be used in cases when matters relating to the subject of this Agreement are not reflected in it. However, the problem of possible differences in national laws of different countries arises and, consequently, the possibility and expediency of its harmonization.

If we talk about the harmonization of national legislation on these issues, then we should pay attention to the development[[26]](#footnote-26) of the UNCITRAL: the Model Law on Electronic Commerce and Guide of its implementation; the Model Law on Electronic Signatures and Guide of its implementation, as well as the UN Convention on the Use of Electronic Communications in International Agreements. [[27]](#footnote-27)

Concerning the possibility of using electronic documents as evidence in court, this provision of the Agreement on the application of information technology in regard to inability to ban the use of an electronic document as evidence of legitimacy because of its electronic form, also will require its development at both national[[28]](#footnote-28) and intergovernmental levels, for example, by making appropriate amendments to the Statute of the Court Community

### Electronic archiving

In contrast to the regulation of archiving paper documents, which developed and perfected over many decades, the need to establish legal requirements for archiving electronic documents emerged relatively recently.

As part of the legal and treaty base of the Customs Union there are no special provisions concerning the order of electronic archiving. Respectively, the national rules shall apply. First, we can assume that the rules of data storage and electronic archiving in the Customs Union Member States are not the same. Second, taking into consideration that within the Single Window in the Customs Union electronic document flow will occur that produced by participants of foreign trade activity and government bodies of different states, and in some cases, by the Customs Union Commission, the use of national rules for electronic archiving in some cases will be impossible or cause the controversy.

Therefore, it is advisable to arise the issue on the development of international agreement (or harmonization of the rules) between the of Customs Union Member States on e-archiving issues where, among other things, it would consider the confidentiality and data protection, as well as potential needs of search and use of archival information, such as for law enforcement purposes.

### Intellectual property rights

The Recommendation No 35 UNECE states that while creating the Single Window, the issues can raise on the owner of the data, which there processed or has the intellectual property rights for them, if this right does not restrict the transfer of the data to the third parties.

Since there are no rules on the protection of databases and computer programs in the Customs Union, these issues are regulated by national legislation. Analysis of the provisions of Russian legislation on these issues showed that they will not create barriers to the functioning of the Single Window.

It is needed also to analyze the legislation of Belarus and Kazakhstan concerning the presence (absence) of possible legal barriers to the transfer of information outside of national jurisdiction during the establishing in the Customs Union, including whether the law does not restrict the transfer of this data to third parties and whether the Single Window will not be such third party?

Recommendation No 35 UNECE also draws attention to the need to study the possibility of influence on the activity of Single Window of third party that may own the patent rights (or other intellectual property rights) to the process that may be similar to the process that will be used for Single Window. In this regard, it can be noted that Terms of Reference for the establishment of IISVVT provides that the hardware and software, technology, data processing algorithms and other components should have a patent IISVVT in all Customs Union Member States.

### Competition issues

Based on the fact that the creation of a system or systems of the Single Window in the Customs Union will be based on the involvement into its mechanism of the government bodies, and given the stated objectives IISVVT, it seems unlikely that the operation of the Single Window can cause concerns antitrust law and protectionism.

Analysis of the Russian antitrust law allows to conclude that, except the providing the business entity with access to information in a matter of priority, it is unlikely that other legislation listed in the above violations of antitrust laws may arise during the activity of the Single Window. If the Single Window breaks the Russian antitrust law, the antimonopoly authority will be entitled to issue a mandatory injunction to stop the violations and to bring officers of Single Window to justice.

It would be desirable to analyze the same issues concerning antitrust laws of Belarus and Kazakhstan.

# Conclusions and suggestions

1. So far, the main activities are carried out in terms of creation the Customs Union of Belarus, Kazakhstan and Russia, including the creation its legal and treaty base. This is a good reason to raise the issue of creating of the system or systems of Single Window for registration of import, export and transit of goods within the Customs Union.

One of the main tasks of the implementation of the mechanism is to study the issues related to the readiness of the legal base of the Customs Union in order to implement the Single Window mechanism, is.

1. One of the most important legal acts out of all acts that regulate the document flow associated with import, export and transit of goods within the Customs Union is Customs Code of the Customs Union. According to the analysis results of its statements in order to understand if they contribute or hinder the creation of the Single Window in framework of the Customs Union, the present study indicates ​​a number of proposals for changes and additions in the Customs Code of the Customs Union.

In particular, based on the possible option of model of the Single Window mechanism in the Customs Union, suggesting the submission of documents through a "single authority", that such body will be Customs authorities, and taking into account the prospects of using information and communication technologies, the changes are offered to article 6, 8, 43, 45, 62, 69, 111, 113, 151, 158, 163, 176 of the Customs Code of the Customs Union. The suggestions on the harmonization of national legislation that, according to the Articles 244, 257, 269 and 308 of the Customs Code of the Customs Union used to order of the issuance of the indicated in those Articles documents.

1. The foundation to create Single Window, its structure and organization of the mechanism of its functioning are not fixed in the constitutive acts of the Customs Union. The mention of the possibility of using IISVVT for Single Window purposes and some general provisions about its functioning within IISVVT are only in the Feasibility Study and Terms of Reference for the establishment of IISVVT which are not regulations.

In order to make the idea of ​​the Single Window mechanism (systems of the Single Windows) in the Customs Union to receive the legal assistance, it is suggested to sign international agreement on the establishment of the Single Window mechanism (system of the Single Windows) in the Customs Union, or to make appropriate changes and additions to the signed documents (for example, by the conclusion the additional Protocols), including those that are related to IISVVT. At the same time it will be necessary to supplement the documents or take a separate document on the work on standardization of data and information submitted by participants of foreign economic activity in the registration of the import, export and transit of goods, and also to pay attention to the international standards (UN and WCO) during undertaking this work.

1. Many provisions of the Customs Code of the Customs Union, other international agreements, acts of domestic legislation that applicable in the Customs Union, directly establish obligations of traders to provide with the relevant documents for the import, export or transit of goods to the Customs and other state control authorities. These provisions create the legal barrier to the use of IISVVT as a Single Window, as in this case, the documents should be submitted not directly to these bodies, but through the Single Window. The study proposes the wording of provision that could be added into the international agreement to eliminate the mentioned legal barrier.
2. In accordance with the Recommendation 35 UNECE, the analysis was made for documents relating IISVVT concerning the legal issues that arise in connection with the establishment and operation of the Single Window. According to the analysis, the following conclusions and suggestions were made:

a) *Data protection* - all examined documents related to IISVVT contain some statements on these issues. In the most detailed way they are reflected in the Terms of Reference for the establishment of IISVVT, which is not the legal document. In essence, the regulation of data protection is the responsibility of the Customs Union Member States. In this connection it is necessary to work towards the unification and harmonization of legislation, taking into consideration the international experience. The efficient and faster way would be the conclusion of the international agreement on these issues.

b) *The right of access to data and its transfer* - a number of general statements on these matters are in the Concept and agreements related to IISVVT, as well as in the Customs Code of the Customs Union. It seems appropriate their development and consolidation with international agreements (bilateral and interagency), as well as agreements on information exchange between state control bodies of one state.

c) *Mechanisms of identification, authentication and authorization* – the general provisions on these matters are set by the Agreement on the Application of Information technologies, where the approach is fixed based on the use of electronic digital signature and the establishment of trusted third parties (certification authorities). A number of international organizations pay attention to trends of the use of other technologically "neutral" approach. This Agreement leaves the questions of a specific regulation of EDS and trusted third parties within the scope of national legislation, but does not regulate the question of how to resolve the situation in the case of the "inconsistencies" of applicable laws of two states. Considering this, it is necessary to work towards the harmonization of national legislation (including, for example, by developing a model law), or it would be faster and probably better, to develop common regulations in these areas to all Customs Union Member States and their implementation in the international agreement.

d) D*ata quality* - not yet settled by legal documents of the Customs Union. Some of the provisions related to the data quality in IISVVT can be found in Terms of Reference, which assumes that the activities of operators of accounting systems and services of general infrastructure of information documentation in electronic form shall be formalized in the framework within provisions and regulations approved by the Customs Union Commission. Thus, an assessment of the regulatory completeness of data quality issues and responsibility for the violations could be done after approval of these documents by the Commission.

e) *Responsibility* - in the documents related to the IISVVT these issues were not yet settled. When legal relations arising from the operation of the Single Window will not go beyond a single State, the responsibility may be governed by the laws of this state. When a violation of the rights or obligations will occur involving in the process of working with the data received by the Single Window of different states, the liability should be regulated at the intergovernmental level. The most practical way of their regulation in such cases would be the international agreement (amendment of an existing international agreement (the existing international agreements)).

f) *Dispute settlements* – the EurAsEC Court is for the resolution of some conflicts within the Customs Union there, which, taking into account its Statute, can be used only at the small level, as a body for resolving conflicts that can arise during the functioning of the Single Window in the Customs Union. However, the Statute of the Court admits the possibility of extending its authority by the international agreement. Accordingly, it is proposed to extend the competence of the Court (by the addition of an international agreement (agreements))[[29]](#footnote-29) to resolve conflicts that may arise within the Single Window. In this case it is assumed that some conflicts that may arise in the operation of a Single Window in connection with legal relations, which are not outside the framework of one state, can be resolved by the judicial authorities of that State in accordance with its procedural rules.

With regard to alternative ways of conflicts’ resolution (arbitration, mediation), their use to resolve conflicts that may arise during operation of the Single Window in the Customs Union between the traders and government bodies, is hardly a prospect, taking into account that it is not commercial but administrative and other public relations.

g) *The equivalence of paper and electronic documents* – in the documents related to IISVVT the approach of equating electronic to paper documents is chosen. A number of important provisions on the issue of functional equivalence between paper and electronic documents are in the Agreement on the Application of Information Technologies. It is difficult to assess how these provisions will cover all issues of equivalence of paper and electronic documents that can occur while creation and operation of the Single Window mechanism using IISVVT, taking into consideration, in particular, that the Customs Union Commission has not adopted rules and requirements for documentation, which should be used for the registration of electronic documents.

Since many issues relating to the subject of this Agreement, but not reflected there, can be resolved in accordance with national legislation of the Customs Union Member States; the problem of possible differences in national laws of different states and, consequently, the possibility and expediency of its harmonization. During the harmonization of national legislation on these issues, the developments of UNCITRAL should be noticed, including the Model Law on Electronic Commerce and Electronic Signatures and the Guide to their adoption, as well as the UN Convention on the Use of Electronic Communications in International Agreements.

As for the possibility of using electronic documents as evidence in court, it is advisable to make certain amendments to the Statute of the Court of the EurAsEC in the development of provisions of the Agreement on the Application of Information Technologies concerning the inability to ban the use of electronic document as evidence of legitimacy because of its electronic forms.

h) *Electronic archiving* - there are no special provisions on the subject in the Customs Union. Taking into account that under the Single Window in the Customs Union the electronic document flow will occur that produced by participants of foreign trade activity and governmental bodies of different states, and in some cases, by the Customs Union Commission, the use of national rules for electronic archiving in some cases will be impossible or cause controversy. Therefore, now the need to develop an international agreement between the Customs Union Member States on e-archiving should be on the agenda, where among other things, would say about confidentiality and data protection, as well as the potential need to search and use archival information, for example, for the law-enforcement purposes.

i) *Intellectual property rights* - there are no rules on the protection of databases and computer programs in the Customs Union, these issues are regulated by national legislation. Analysis of the provisions of Russian legislation on these issues allowed us to conclude that they do not create barriers to the functioning of the Single Window. It is required to analyze the legislation of Belarus and Kazakhstan concerning these issues.

With regard to the question of possible influence on the activity of Single Window by a third party that may own the patent rights to the process, which may be similar to the process that will be used for Single Window, it should be noted that the Terms of Reference for the establishment of IISVVT says that software and hardware technologies, algorithms, data processing and other components should have a patent IISVVT in all Customs Union Member States.

k) *Competition issues* - based on the fact that the establishment of the Customs Union Single Window will be based on involving the government mechanism, and considering the stated objectives of IISVVT it seems unlikely that the operation of the Single Window can cause concerns about antitrust and protectionism. In any case, from the perspective of the Russian legislation, the occurrence of problems is unlikely. It would be desirable to analyze the antitrust laws of Belarus and Kazakhstan.

6. In the prospects of the Customs Union development, including the possible expansion of its participants from other EurAsEC Member States, it seems appropriate to use experience and organizational capacity of the EurAsEC for the work on harmonization of the national legislation of the EurAsEC Member States on issues not covered (and not assumed to be covered in the near future) by international agreements within the Customs Union, but are important for the establishment of the Single Window mechanism (system of the Single Windows) in the Customs Union, and possibly in other Member States of the EurAsEC.

Along with the questions, which could become a subject of harmonization and referred to paragraph 5, it would be also useful to consider the possibility of harmonization concerning the quality of processed electronic data, including issues on responsibility for their entry (including the Single Window mechanism and the subsequent processing of such data as part of this mechanism), establishing systems of control chains using the means of registration, identification, authentication and authorization, and appropriate mechanisms for monitoring and recording books, and in the field of electronic archiving.

1. See the Report of Executive Secretary of the Customs Union on the main outcomes of the Customs Union functioning within the EurAsEC framework and on priorities for 2011 - 2012 years (Annex to the Decision of EurAsEC Interstate Council on May 19, 2011 № 80) [↑](#footnote-ref-1)
2. Although the Customs Code of the Customs Union is one of the most important document in the context of legal prerequisites for creation of the Single Window, it would be hardly appropriate to include there the provision regarding the mechanism or organizational structure for the implementation and operation of the Single Window, as some related issues are beyond the scope of the Customs Code of the Customs Union. The proposals on these issues are below in the paragraph 3 of “Conclusions and suggestions”. [↑](#footnote-ref-2)
3. With the understanding that at the first stages of the Single Window full transition to the paperless document flow between traders and state control authorities is unlikely. [↑](#footnote-ref-3)
4. By the way, if you select another body as a Single Window, it will require many changes in the Customs Code of the Customs Union, providing traders with the obligation to submit documents and data directly to the customs authorities. [↑](#footnote-ref-4)
5. See the Rules of control at border-crossing checkpoints of the Russian Federation that approved by the Government of the Russian Federation on November 20, 2008 № 872. [↑](#footnote-ref-5)
6. See the Federal Law of December 28, 2010 № 394-FZ “On Amendments to Certain Legislative Acts of the Russian Federation in connection with the transfer of authority for certain types of state control to the customs authorities of the Russian Federation”. [↑](#footnote-ref-6)
7. The main tasks of proposed by experts changes in the Customs Code of the Customs Union were: to bring the norms into conformity with the provisions of the International Convention on the Simplification and Harmonization of Customs Procedures, 1973 as amended by the Protocol of 1999; and to develop a set of legal norms of the Customs Code of the Customs Union governing the use of information and communication technologies in the field of customs regulations and arrangements of Single Window. [↑](#footnote-ref-7)
8. The supplement is in italics. [↑](#footnote-ref-8)
9. Provisions proposed to be deleted from the article are crossed out. Provisions proposed to add an article are in italics. Alternative wordings are in brackets. [↑](#footnote-ref-9)
10. In addition to above mentioned arguments we should also refer to the concept of implementation of the Integrated Information System for Foreign and Mutual Trade of the Customs Union, approved by the decision of the EurAsEC Interstate Council No 60, dated 19 November 2010. [↑](#footnote-ref-10)
11. The proposed deletion of the reference to the Interstate brings the provision into conformity with the proposed wording changes by experts, paragraph 3 of Article 1, according to which customs regulation is the responsibility of the Customs Union Commission, and in which nothing is said about the Interstate. [↑](#footnote-ref-11)
12. An appropriate addition to the decision of the Customs Union Commission dated 20.05.2010, № 260 “On the forms of customs documents” will also need to be done. [↑](#footnote-ref-12)
13. Although IISVVT is not mentioned in this Agreement, the rules that set by it should definitely apply to the exchange of electronic documents within IISVVT in general and to create the Single Window, in particular. [↑](#footnote-ref-13)
14. The decision of the Customs Union Commission dated 16 August 2011 г. № 771. [↑](#footnote-ref-14)
15. At the same time it states that it should be based on the Recommendation No 33 UNECE. [↑](#footnote-ref-15)
16. Although, at the beginning of the Concept it is declared that it takes into account international experience and practices to ensure harmonization and standardization of processes of information exchange between citizens, organizations and government bodies, then the concept says only about the interaction between government bodies. With regard to the Agreement on Information Interaction, it does not disclose the features of the interaction of these entities with government bodies, while includes to the definition of “subjects of information exchange” of individuals and entities. [↑](#footnote-ref-16)
17. Registry System developed in accordance with the UNCITRAL definition - is the registry information system, containing information from the documents of the subjects of electronic interaction, which is the basis for prepared or issued electronic transferred records that have legal force. [↑](#footnote-ref-17)
18. It is made in italics by the author of this study. [↑](#footnote-ref-18)
19. See, for example, Articles 8, 45, 124 (taking into account the proposed changes). [↑](#footnote-ref-19)
20. The above mentioned provides by the Concept of IISVVT implementation. [↑](#footnote-ref-20)
21. The practice of conclusion of such agreements is already presented in Russia. [↑](#footnote-ref-21)
22. According to the Terms of Reference for the creation of IISVVT, the verifying center is one of the components of hardware and software complex of the Trusted third party. [↑](#footnote-ref-22)
23. It is interesting to note that in accordance with the recent changes in Russia’s legislation, the term “electronic signature” was introduced and the word “digital” is excluded from all the regulations and should not be applied to this term. [↑](#footnote-ref-23)
24. Except the issues of identification, authentication and authorization that were described above. [↑](#footnote-ref-24)
25. It also can be noted that the Expert Council was created within the Customs Union, which considers the application of economic entities of the Customs Union member states on the issue of compliance with decisions of the Customs Union Commission to the legal and treaty basis of the Customs Union. Its conclusions are sent to business entities and to the Union Commission, which examines them and informs the Interstate about its results. [↑](#footnote-ref-25)
26. Based on this Typical law, the appropriate laws were adopted in more than 40 countries. [↑](#footnote-ref-26)
27. The Concept was signed by 18 countries, including Russia, but it was ratified by 2 countries yet and is not in the force (3 ratifications are needed). [↑](#footnote-ref-27)
28. In Russia, for example, the juridical practice on this issue is forming already on the basis of the provisions of the Code of Civil Procedures of the Russian Federation and a number of other acts. [↑](#footnote-ref-28)
29. According to paragraph 5 of Article 13 of the Statute of the Court of the EurAsEC to its jurisdiction may be assigned, and other (not listed in this article) disputes, resolution of which is stipulated by international treaties within the framework of the EurAsEC Customs Union. [↑](#footnote-ref-29)