



## Experience of a European country in building the legal environment for the Single Window

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### Organizational and legal aspects of Single Window development in the Customs Union and Single Economic Space Member States

THE UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE and THE EURASIAN ECONOMIC  
COMMISSION

Third Joint Conference on Trade Facilitation and the Single Window

Almaty, Kazakhstan, 24-25 April 2014

# UN/CEFACT instruments

- UN/CEFACT Single Window Recommendation No. 33
- UN/CEFACT Recommendation No. 35 Establishing a legal framework for international trade Single Window
- draft Recommendation 36 addresses interoperability of Single Window systems
- Revised Recommendation No. 14 on authentication of trade documents should also be studied in the context of Single Window systems

# The European Union and the Single Window

- Single Window has existed as a policy recommendation for the Member States since the middle of the last decade, see Council Recommendation 2005/601/EC.
- Modernized Customs Code (Regulation 450/2008 of the European Parliament) and the Council aims for mandatory electronic customs clearance, but implementing guidelines need to be approved
- A centralized customs clearance is contemplated in the EU, this would be an extended practical application of the Single Window model
- In Europe, to have best benefits of simplified procedures, an organization should apply for an Authorized Economic Operator (AOE) status
- EU member states follow similar specs in their Customs IT systems but yet these are different. For small players, Internet-based systems will be available, but centralization is inevitable.

# Finland and the Single Window

- Finland applies the concept of Single Window in the Portnet system
- Moreover, outside the facilitation of trade in goods, the concept of Single Window is known in the legal framework created by the EU Services Directive (Directive 2006/123/EU)
- Finland has not expressly studied the legal requirements for the Single Window and has not streamlined its legislation especially with a view to facilitate the contracts Single Window
- However, Finland has created legislation to facilitate electronic administration, privacy, accounting, contracts etc., which is indirectly applicable to Single Window relationships

# PORTNET- the Finnish application of Single Window

- The Portnet-system is a cooperation project between the Finnish maritime administration and the Finnish Customs
- When a ship enters the port, one notice is enough, the message contains the relevant information for maintenance of proviant, various official charges (fairway, pilotage and port dues) and Customs as well as maritime safety (dangerous cargo etc.)
- A Portnet-notice is accepted by the Customs for declaration purposes as a general notice
- As an administrative matter, Portnet has not created significant legal problems, but substantive law behind the technicalities may be a different thing
- Various laws relating to payments by the shipowners (fairway charges etc.) have been amended so as require the ship's agent to practically guarantee these payments when making Portnet notifications on behalf of the ship. Unknown shipowners suffer.

# Reporting Formalities Directive 2010 implementation in Finland

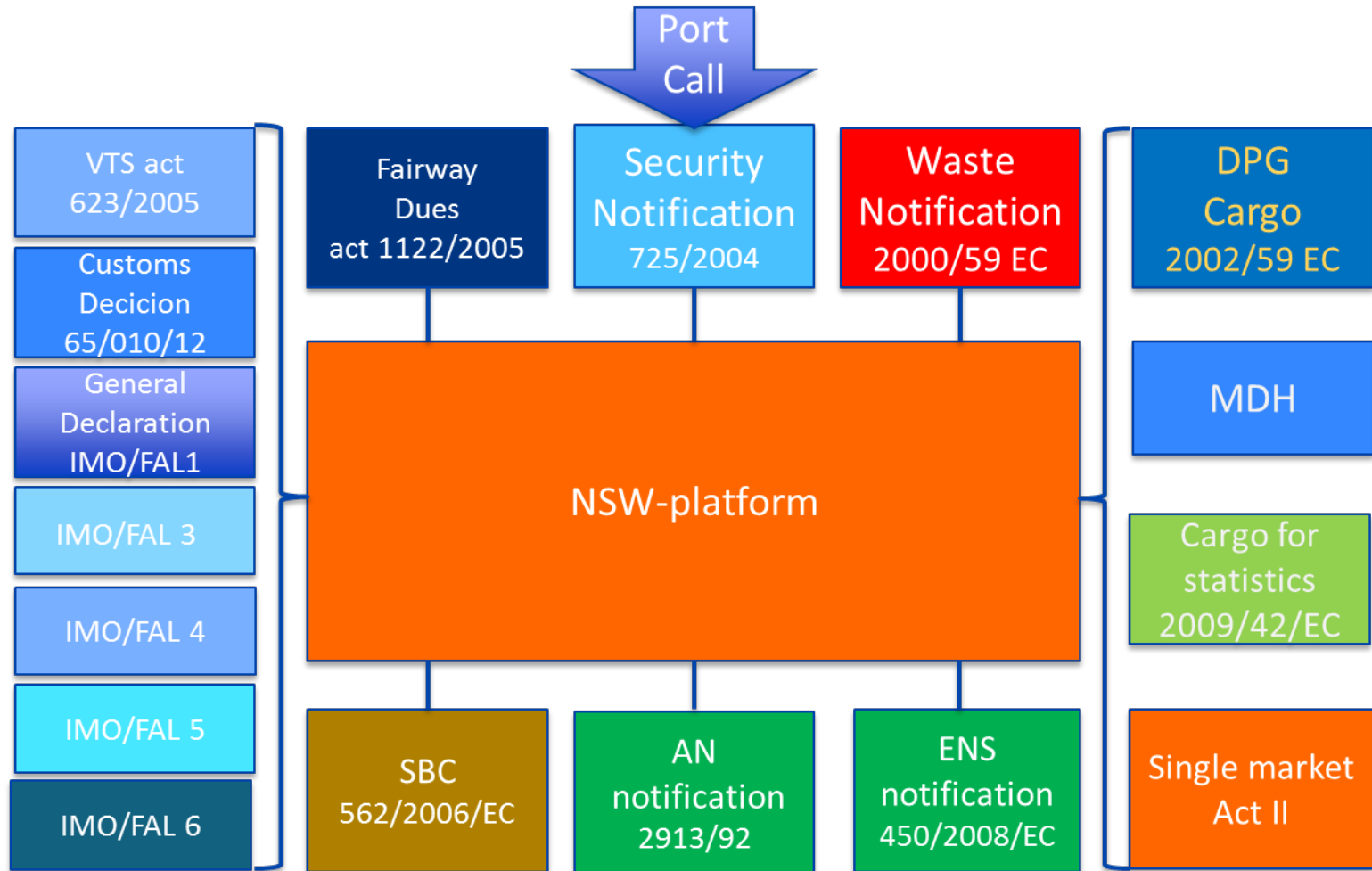
- Main objective of Directive 2010/65/EU on reporting formalities is to reduce administrative burden of the shipping industry by simplifying the administrative procedures in ports
- Electronic NSW-systems should be in place no later than 1.6.2015
- Data exchanged via NSW's can be divided into three Categories:
  - First category being information stemming from EU legislation
    - General declaration
    - ISPS-notification
    - Hazmat-notification
    - Waste notification
  - Second category being information stemming from International Conventions (IMO/FAL and IHR)
    - IMO/FAL forms 1-7 and maritime declaration of health
  - Third category is information stemming from national legislation and requirements for taxation and national security reasons

# Notifications to be exchanged through the Finnish national Single Window

- 24 hour pre-arrival/departure notifications
- 72 hour pre-arrival notification for ship's eligible to extended inspection
- ATA notification -> Complementary information to pre-arrival notification
- ATD notification -> Complementary information to pre-arrival notification
- Schengen Border Control
  - Information on passengers/crew in unofficial border crossing sites
  - Passenger lists for passenger ferries coming from third countries
- Dangerous cargo notification
- Cargo information for Maritime statistics
- Security notification
- Waste notification
- Maritime Declaration of Health
- ENS/EXS (Entry/Exit Summary Declaration) for third country cargo
- ..\TVM\_matsku\Dirsat\_lait\Tulli\_määräys\_EN.htm

Red colour code stands for data sets that are not implemented yet

# Legal framework for reporting formalities in Finland



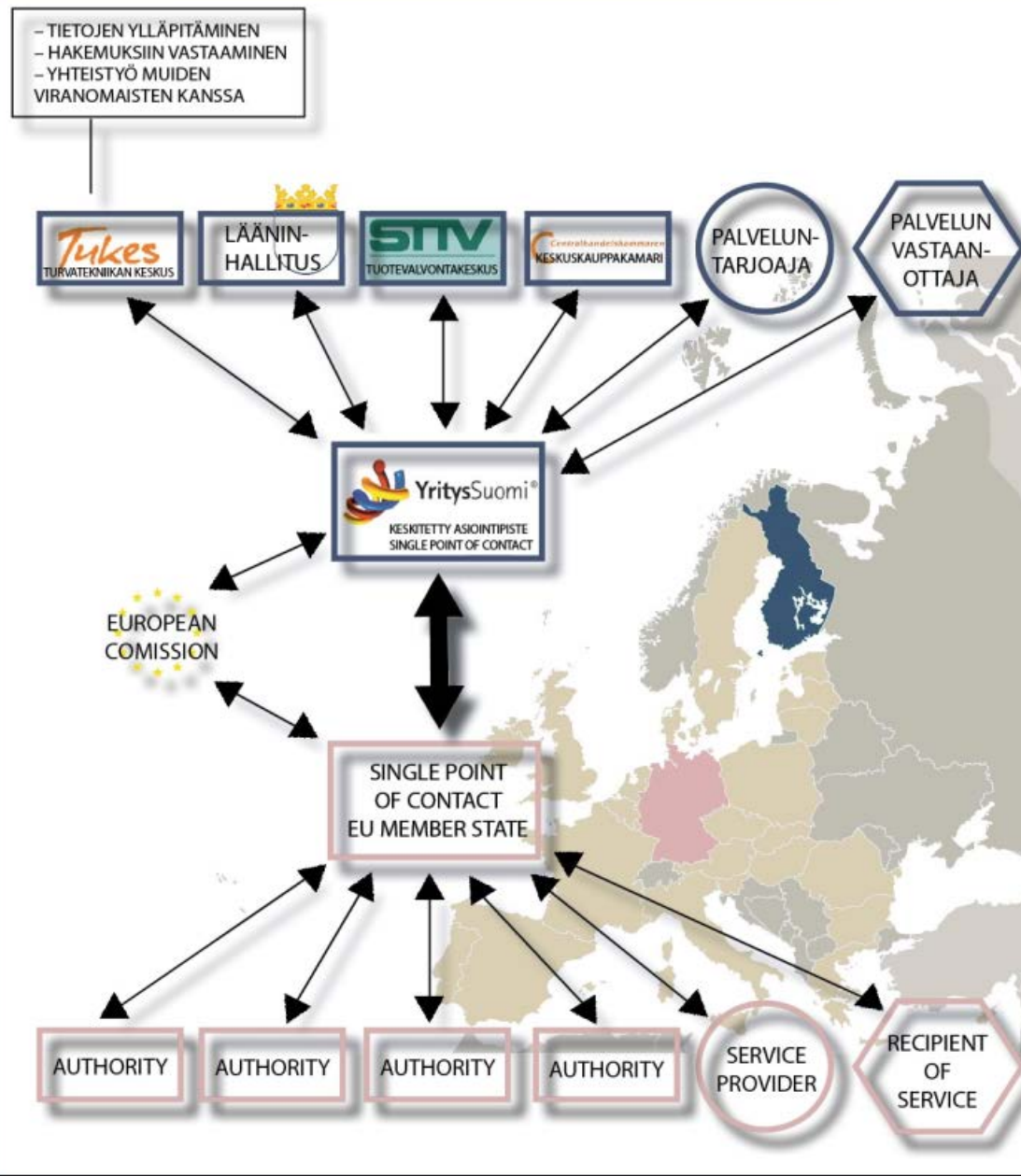


# Electronic customs clearance in Finland

- The Finnish Customs has many years of experience of electronic customs clearance
- The whole chain of customs clearance can be managed by electronic communications
- Clearance on the Internet is possible for everybody
- Message-based clearance is recommended for regular communications
- authorization/agreement with Customs, special software, operator
- agents may be used, freight forwarders are used as agents
- Electronic customs clearance is based on the electronic declaration. No other documents are required in the first place. Therefore, the invoice, transport documents and other documents can be electronic or not, and they have to be presented only at an *ex post tax* inspection, if any.

## Points of single contact

- The EU Services Directive 2006/123/EC aims to put in practice the Treaty provisions on the free movement of services, see also the E-commerce Directive 2000/31/EC.
- The Services Directive required the Member States to set up “points of single contact” as single interlocutors for service providers to provide for the possibility to complete procedures at a distance and by electronic means and to make information on national requirements and procedures easily accessible by web for service providers and service recipients, see the list of single points of contact at [http://ec.europa.eu/internal\\_market/eu-go/index\\_en.htm](http://ec.europa.eu/internal_market/eu-go/index_en.htm)
- The Finnish point of single contact at <http://www.yrityssuomi.fi/en/> is not an authority but a portal of services



# The Act on Information Society Services 2002

- Based on Directive 2000/31/EC on e-commerce
- freedom to provide information society services
- country of origin principle = home member state control of service provider except for public policy, public health, public security and protection of consumers
- the establishment of service providers, commercial communications, electronic contracts, the liability of intermediaries, codes of conduct, out-of-court dispute settlements, court actions
- In Finland, the implementation act of 2002 addressed only very special forms of contracts since the principle of freedom of form in contract law facilitates interpretations allowing for electronic contracting without legislative changes

# The Act on Electronic Signatures and Identification 2003 (amended)

- Based on Directive 1999/93/EC
- very formalistic approach → advanced electronic signatures based on a qualified certificate and created by a secure signature-creating device → "qualified signature", which should be equivalent with hand-written signatures, but in practice this requirement is superfluous in most cases
- Population Registration Centre as a commercially operating certification authority, which issues also identity cards with chips
- the issue of signature is less important than electronic identification
- banks have the market in electronic identification and signatures since many authorities as well as the private sector accept bank ID-systems, the Law on electronic signatures has been amended to cover also electronic identification

# Electronic identification

- The eIDAS regulation has been approved in practice by the EU legislative bodies. This means that there will exist EU-wide legal framework for electronic identification as well
- However, the practical implementation will be done nationally by differing initiatives, which may lead to legal fragmentation
- The Finnish public sector has created programs for electronic identification which include identification of individuals and entity authentication; the Finnish tax administration has been in a central role in this process

# E-government

- E-Government, a general concept of using ICT for the management of political and administrative processes and activities and is divided into
  - E-Administration, internal processes, information systems, and exchange of information between authorities;
  - E-Services, services by electronic means for public
  - E-Democracy, use of electronic systems in voting and other influencing
  - E-Governance, development of administration by electronic means
- the European Union has programmes for E-government, but the Member States all have their own administrative law to build on, therefore little harmonisation

# Act on Electronic Communication with Public Authorities 2003

- Scope: public administration (state, municipal), courts, execution
- Addresses information security and the responsibilities of authorities and users
- As the main rule, the user bears the risk of interruption of interchange
- The Act contains a reference to the "qualified signature" requirement, however the general rule is that signature is not needed in an electronic document, the origin or integrity is not to be suspected



# The Act on Transparency of Public Administration 1999

- This Act is based on the Finnish Constitution and is an essential element of e-government. The main principle is that all government documents with listed exceptions (privacy, preparatory nature etc.) are public documents
- public documents are accessible by electronic means as well if they are extracts from electronic registries, otherwise under discretion
- the Act calls for "good ICT management practice" in administration  
→ relevant authorities issue recommendations on specific issues such as information security

# Finnish privacy laws

- Personal Data Act 1999 is based on Directive 1995/46/EC, this Directive is under revision to be replaced by a regulation
- Protection of Personal Data in Telecommunications Act 2004 is based on EC Directive 2002/58/EC but goes further since it also regulates "Community Subscribers", which are not telecommunication operators but companies or authorities which maintain their own information network
- Privacy Act in Employment Relations 2004
- Protection of business secrets is, however, regulated in three different laws, but the protection is usually enhanced contractually in business and employment contracts in addition. Protection of business secrets is provided for in the WTO TRIPS agreement

## Other laws relevant to the E-government and the Single Window

- The Archives Act 1994 contains provisions on electronic archiving
- Tax laws, especially those relating to the VAT
- Electronic invoicing is promoted in the EU, the latest legal text is the Second Directive on VAT Invoicing (Council Directive 2010/45/EU)
- Accounting laws
- Public procurement laws

# Legal problem areas

- Electronic identification at a distance, cfr. EU money laundering Directives, see also the new eIDAS Regulation
- Identification of entities such as trade companies
- authentication in an electronic environment, the requirement of qualified electronic signatures differs from country to country, cfr. the revised UN/CEFACT Recommendation No. 14 on the authentication of trade documents
- electronic document exchange and recognition, which standards to use etc.
- Access to public documents differs from country to country, so do the laws on privacy and the protection of business secrets

# Thank you for your attention!



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