



Plenary sitting

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*****I**
REPORT

on the proposal for a directive of the European Parliament and of the Council
on the Union legal framework for customs infringements and sanctions
(COM(2013)0884 – C8-0033/2014 – 2013/0432(COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Kaja Kallas

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ■ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT.....	38
OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE LEGAL BASIS	42
OPINION OF THE COMMITTEE ON INTERNATIONAL TRADE	47
PROCEDURE – COMMITTEE RESPONSIBLE.....	58

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council on the Union legal framework for customs infringements and sanctions
(COM(2013)0884 – C8-0033/2014 – 2013/0432(COD))**

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2013)0884),
 - having regard to Article 294(2) and Article 33 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0033/2014),
 - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Lithuanian Parliament and the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - after consulting the European Economic and Social Committee,
 - having regard to Rules 59 and 39 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinion of the Committee on International Trade (A8-0239/2016),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive Citation 1

Text proposed by the Commission

Having regard to the Treaty on the Functioning of the European Union, and in particular **Article** 33 thereof,

Amendment

Having regard to the Treaty on the Functioning of the European Union, and in particular **Articles** 33 **and 114** thereof,

Justification

Article 114 on the establishment and the functioning of the internal market, and also part of the legal basis of the Union Customs Code, should be added to the legal basis of this Directive.

Amendment 2

Proposal for a directive Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) This Directive should be in line with Regulation (EU) No 952/2013 of the European Parliament and of the Council¹.

¹ **Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).**

Justification

This amendment reiterates the importance of this Directive to be in line with the provisions of the UCC.

Amendment 3

Proposal for a directive Recital 2

Text proposed by the Commission

(2) **Consequently**, customs infringements and sanctions follow 28 different sets of legal rules. As a result of that, a breach of Union customs legislation is not treated the same way throughout the Union and the sanctions that may be imposed in each case differ in nature and severity depending on the Member State that is imposing the sanction.

Amendment

(2) Customs infringements and sanctions follow 28 different sets of legal rules. As a result of that, a breach of Union customs legislation is not treated the same way throughout the Union and the sanctions that may be imposed in each case differ in nature and severity depending on the Member State that is imposing the sanction, **leading to possible losses of revenue for the Member States and trade distortions**.

Amendment 4

Proposal for a directive

Recital 3

Text proposed by the Commission

(3) That disparity of Member States' legal systems affects **not only** the optimal management of the customs union, but also prevents **that** a level playing field **is achieved** for economic operators in the customs union because it has an impact on their access to customs simplifications and facilitations.

Amendment

(3) That disparity of Member States' legal systems **not only** affects the optimal management of the customs union **and the transparency necessary to ensure the proper functioning of the internal market as regards ways in which infringements are handled by the different customs authorities**, but also prevents **the achievement of** a level playing field for economic operators in the customs union, **who are already subject to different sets of rules across the Union**, because it has an impact on their access to customs simplifications and facilitations.

Justification

The disparity of Member States legal systems creates a lack of transparency on how infringements are sanctioned or not sanctioned thereby undermining the functioning of the internal market.

Amendment 5

Proposal for a directive

Recital 6

Text proposed by the Commission

(6) A list of behaviour which should be considered as infringing Union customs legislation and give rise to sanctions should be established. Those customs infringements should be fully based on the obligations stemming from the customs legislation with direct references to the Code. This Directive ***does not determine whether*** Member States should apply ***administrative or criminal law*** sanctions in respect of those customs infringements.

Amendment

(6) A list of behaviour which should be considered as infringing Union customs legislation and give rise to sanctions should be established ***by this Directive***. Those customs infringements should be fully based on the obligations stemming from the customs legislation with direct references to the Code. This Directive ***provides that*** Member States should apply ***non-criminal*** sanctions in respect of those customs infringements. ***It should also be possible for Member States to provide for the imposition of criminal sanctions, in accordance of national laws and Union law, instead of non-criminal sanctions where the nature and gravity of the infringement in question so requires in order for the sanction imposed to be dissuasive, effective and proportionate.***

Amendment 6

**Proposal for a directive
Recital 7**

Text proposed by the Commission

(7) ***The first category of behaviour should include customs infringements based on strict liability, which does not require any element of fault, considering the objective nature of the obligations involved and the fact that the persons responsible to fulfil them cannot ignore their existence and binding character.***

Amendment

deleted

Amendment 7

**Proposal for a directive
Recital 8**

Text proposed by the Commission

Amendment

(8) *The second and third category of behaviour should include customs infringements committed by negligence or intentionally, respectively, where that subjective element has to be established for liability to arise.*

deleted

Amendment 8

Proposal for a directive Recital 10

Text proposed by the Commission

Amendment

(10) In order to ensure legal certainty, it should be provided that any act or omission resulting from an error on the part of the customs authorities should not be considered a customs infringement.

(10) In order to ensure legal certainty, it should be provided that any act or omission resulting from an error on the part of the customs authorities ***as referred to in the Code*** should not be considered ***to constitute*** a customs infringement.

Justification

Article 119 of the Union Customs Code defines what is an error on the part of the Customs authorities.

Amendment 9

Proposal for a directive Recital 12

Text proposed by the Commission

Amendment

(12) In order to approximate the national sanctioning systems of the Member States, scales of sanctions should be established reflecting the ***different categories of the customs infringements and their*** seriousness. For the purpose of imposing effective, proportionate and dissuasive sanctions, Member States should also ensure that their competent authorities take into account specific aggravating or mitigating circumstances

(12) In order to approximate the national sanctioning systems of the Member States, scales of sanctions should be established reflecting the seriousness ***of the customs infringements***. For the purpose of imposing effective, proportionate and dissuasive sanctions, Member States should also ensure that their competent authorities take into account specific aggravating or mitigating circumstances when determining the type and level of

when determining the type and level of sanctions to be applied.

sanctions to be applied.

Amendment 10

Proposal for a directive

Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) Only in cases where serious infringements are linked not to the duties evaded but to the value of the goods concerned, for instance in the case of infringements relating to intellectual property rights or prohibited or restricted goods, customs authorities should base the sanction imposed on the value of the goods.

Amendment 11

Proposal for a directive

Recital 13

Text proposed by the Commission

Amendment

(13) The limitation period for proceedings concerning a customs infringement should be fixed at four years from the day on which the customs infringement was committed or, in case of continuous or repeated infringements, ***where*** the behaviour constituting that infringement ceases. Member States should ensure that the limitation period is interrupted by an act relating to investigations or legal proceedings concerning the customs infringement. Member States ***may*** lay down cases ***where*** that period is suspended. ***The initiation or continuation of these proceedings should be precluded*** after ***an*** expiry period of eight years, while the limitation period for the enforcement of a sanction should be ***of*** three years.

(13) The limitation period for proceedings concerning a customs infringement should be fixed at four years from the day on which the customs infringement was committed or, in ***the*** case of continuous or repeated infringements, ***when*** the behaviour constituting that infringement ceases. Member States should ensure that the limitation period is interrupted by an act relating to investigations or legal proceedings concerning the ***same*** customs infringement, ***or by an act on the part of the person responsible for the infringement. It should be possible for*** Member States to lay down cases ***in which*** that period is suspended. ***Any proceedings should be time-barred, irrespective of any interruption of the limitation period,*** after ***the*** expiry ***of a*** period of eight years, while

the limitation period for the enforcement of a sanction should be three years.

Amendment 12

Proposal for a directive Recital 14

Text proposed by the Commission

(14) A suspension of administrative proceedings concerning customs infringements should be provided for where criminal proceedings have been initiated against the same person in connection with the same facts. The continuation of the administrative proceedings after the completion of the criminal proceedings should be possible only in strict conformity with the *ne bis in idem* principle.

Amendment

(14) A suspension of administrative proceedings concerning customs infringements should be provided for where criminal proceedings have been initiated against the same person in connection with the same facts. The continuation of the administrative proceedings after the completion of the criminal proceedings should be possible only in strict conformity with the *ne bis in idem* principle, ***meaning that the same offence must not be penalised twice.***

Justification

This amendment strengthens reference to the legal doctrine that no person should be penalised twice for the same offence.

Amendment 13

Proposal for a directive Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) The overall objective of this Directive is to ensure the effective enforcement of Union customs legislation. However, the legal framework provided for by this Directive does not allow an integrated approach to enforcement, including supervision, control, and investigation. The Commission should therefore be required to submit to the European Parliament and to the Council a report on those aspects, including on the

implementation of the common risk management framework, in order to assess whether further legislation is needed.

Justification

In order to have an integrated approach to enforcement, the Commission should assess all elements necessary to achieve the objective of uniform enforcement of Customs legislation, and in particular convergence in the ways controls are performed across the Union.

Amendment 14

**Proposal for a directive
Recital 18 a (new)**

Text proposed by the Commission

Amendment

(18a) This Directive is intended to strengthen customs cooperation by approximating national laws on customs sanctions. Given that, at present, the legal traditions of Member States differ greatly, total harmonisation in this area is impossible.

Justification

This recital restates the aims set out in the legal bases underlying the proposal for a directive.

Amendment 15

**Proposal for a directive
Article 1 – paragraph 1**

Text proposed by the Commission

Amendment

1. This Directive ***establishes a*** framework concerning ***the*** infringements of Union customs legislation and provides for sanctions for those infringements.

1. This Directive ***seeks to contribute to the proper functioning of the internal market and to lay down the*** framework concerning infringements of Union customs legislation, and provides for ***the imposition of non-criminal*** sanctions for those infringements ***by approximating the provisions laid down by law, regulation or administrative action in the Member States.***

Justification

Because Article 114 has been added to the legal basis, the wording of Article 1 needs to be changed as shown above.

Amendment 16

Proposal for a directive

Article 1 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. This Directive covers the obligations of the Member States towards the trading partners of the European Union, as well as the World Trade Organization and the World Customs Organization, with a view to establishing a homogeneous and effective internal market while facilitating trade and providing certainty.

Amendment 17

Proposal for a directive

Article 2

Text proposed by the Commission

Amendment

Article 2

Article 2

Customs infringements and sanctions

General principles

Member States shall lay down rules on sanctions in respect of the customs infringements set out in Articles 3 *to* 6.

1. Member States shall lay down rules on sanctions in respect of the customs infringements set out in Articles 3 and 6 in strict conformity with the ne bis in idem principle.

Member States shall ensure that the acts or omissions set out in Articles 3 and 6 constitute customs infringements where they are committed by negligence or intentionally.

Member States may provide for the imposition of criminal sanctions, in accordance with national laws and Union

law, instead of non-criminal sanctions where the nature and gravity of the infringement in question so requires in order for the sanction imposed to be dissuasive, effective and proportionate.

2. For the purposes of this Directive:

(a) custom authorities shall determine whether the infringement was committed by negligence, meaning that the person responsible failed to exercise reasonable care with respect to the control of his or her operations, or the act of taking measures which are manifestly insufficient, to avoid the occurrence of circumstances giving rise to the infringement, where the risk of its occurrence is reasonably foreseeable;

(b) custom authorities shall determine whether the infringement was committed intentionally, meaning that the act or omission was done by the person responsible in the knowledge that that act or omission constituted an infringement, or with the wilful and conscious aim of contravening customs legislation;

(c) clerical errors or mistakes shall not constitute a customs infringement unless it is clear from all the circumstances that they were committed as a result of negligence or with intent.

Amendment 18

Proposal for a directive Article 2 a (new)

Text proposed by the Commission

Amendment

Article 2a

Trade facilitation

In order to comply with the Union's obligations under the WTO Trade Facilitation Agreement, Member States shall work together to set up a

cooperation system including all Member States. That system shall aim at coordinating key performance indicators regarding customs sanctions (analysis of the number of appeals, rate of recidivism, etc.); disseminating best practice among customs services (efficiency of controls and sanctions, reduction of administrative costs, etc.); passing on the experiences of economic operators and creating links between them; monitoring the way in which customs services perform their activities; and performing statistical work on infringements committed by companies from third countries. Within the cooperation system, all Member States shall be notified without delay of investigations into customs infringements and of established infringements in such a way as to facilitate trade, prevent illegal goods from entering the internal market and improve the effectiveness of checks.

Amendment 19

Proposal for a directive Article 3

Text proposed by the Commission

Article 3

Strict liability customs infringements

Member States shall ensure that the following acts or omissions constitute customs infringements ***irrespective of any element of fault***:

- (a) failure of the person lodging a customs declaration, temporary storage declaration, entry summary declaration, exit summary declaration, re-export declaration or re-export notification to ensure the accuracy and completeness of the information given in the declaration, notification or application in accordance with Article 15(2)(a) of the Code;
- (b) failure of the person lodging a

Amendment

Article 3

Customs infringements

Member States shall ensure that the following acts or omissions constitute customs infringements:

- (a) failure of the person lodging a customs declaration, temporary storage declaration, entry summary declaration, exit summary declaration, re-export declaration or re-export notification to ensure the accuracy and completeness of the information given in the declaration, notification or application in accordance with ***point (a) of*** Article 15(2) of the Code;
- (b) failure of the person lodging a

customs declaration, temporary storage declaration, entry summary declaration, exit summary declaration, re-export declaration or re-export notification to ensure the authenticity, accuracy and validity of any supporting document in accordance with Article 15(2)(b) of the Code;

(c) failure of *the* person to lodge an entry summary declaration in accordance with Article 127 of the Code, a notification of arrival of a *sea going* vessel or of an aircraft in accordance with Article 133 of the Code, a temporary storage declaration in accordance with Article 145 of the Code, a customs declaration in accordance with Article 158 of the Code, a notification of activities in free zones in accordance with Article 244(2) of the Code, a pre-departure declaration in accordance with Article 263 of the Code, a re-export declaration in accordance with Article 270 of the Code, an exit summary declaration in accordance with Article 271 of the Code or a re-export notification in accordance with Article 274 of the Code;

(d) failure of an economic operator to keep the documents and information related to the accomplishment of customs formalities by any accessible means for the period of time required by customs legislation in accordance with Article 51 of the Code;

(e) removal of goods brought into the customs territory of the Union from customs supervision without the permission of the customs authorities, contrary to the first and second subparagraphs of Article 134(1) of the Code;

(f) removal of goods from customs supervision, contrary to the fourth subparagraph of Article 134(1) and Articles 158(3) and 242 of the Code;

(g) failure of a person bringing goods into the customs territory of the Union to comply with the obligations relating to the conveyance of the goods in the appropriate

customs declaration, temporary storage declaration, entry summary declaration, exit summary declaration, re-export declaration or re-export notification to ensure the authenticity, accuracy and validity of any supporting document in accordance with *point (b) of* Article 15(2) of the Code;

(c) failure of *a* person to lodge an entry summary declaration in accordance with Article 127 of the Code, a notification of arrival of a *seagoing* vessel or of an aircraft in accordance with Article 133 of the Code, a temporary storage declaration in accordance with Article 145 of the Code, a customs declaration in accordance with Article 158 of the Code, a notification of activities in free zones in accordance with Article 244(2) of the Code, a pre-departure declaration in accordance with Article 263 of the Code, a re-export declaration in accordance with Article 270 of the Code, an exit summary declaration in accordance with Article 271 of the Code or a re-export notification in accordance with Article 274 of the Code;

(d) failure of an economic operator to keep the documents and information related to the accomplishment of customs formalities by any accessible means for the period of time required by customs legislation in accordance with Article 51 of the Code;

(e) removal of goods brought into the customs territory of the Union from customs supervision without the permission of the customs authorities, contrary to the first and second subparagraphs of Article 134(1) of the Code;

(f) removal of goods from customs supervision, contrary to the fourth subparagraph of Article 134(1) and Articles 158(3) and 242 of the Code;

(g) failure of a person bringing goods into the customs territory of the Union to comply with the obligations relating to the conveyance of the goods in the appropriate

place in accordance with Article 135(1) of the Code, or to inform customs authorities when the obligations cannot be complied with in accordance with Article 137(1) and (2) of the Code;

(h) failure of a person bringing goods into a free zone, where the free zone adjoins the land frontier between a Member State and a third country, to bring those goods directly into that free zone without passing through another part of the customs territory of the Union in accordance with Article 135(2) of the Code;

(i) failure of the declarant for temporary storage or for a customs procedure to provide documents to the customs authorities where Union legislation so requires or where necessary for customs controls in accordance with Article 145(2) and Article 163(2) of the Code;

(j) failure of the *economic operator* responsible for non-Union goods which are in temporary storage to place those goods under a customs procedure or to re-export them within the time limit in accordance with Article 149 of the Code;

(k) failure of the declarant for a customs procedure to have in *their* possession and at the disposal of the customs authorities, at the time when the customs declaration or a supplementary declaration is lodged, the supporting documents required for the application of the procedure in question in accordance with Article 163(1) and the second subparagraph of Article 167(1) of the Code;

(l) failure of the declarant for a customs procedure, in the case of a simplified declaration pursuant to Article

place in accordance with Article 135(1) of the Code, or to inform customs authorities *without delay* when the obligations cannot be complied with in accordance with Article 137(1) and (2) of the Code *and of the whereabouts of the goods*;

(h) failure of a person bringing goods into a free zone, where the free zone adjoins the land frontier between a Member State and a third country, to bring those goods directly into that free zone without passing through another part of the customs territory of the Union in accordance with Article 135(2) of the Code;

(i) failure of the declarant for temporary storage or for a customs procedure to provide documents to the customs authorities where Union legislation so requires or where necessary for customs controls in accordance with Article 145(2) and Article 163(2) of the Code;

(j) failure of the *declarant for temporary storage, or of the person storing the goods in cases where they are stored in other places designated or approved by the customs authorities*, responsible for non-Union goods which are in temporary storage, to place those goods under a customs procedure or to re-export them within the time limit in accordance with Article 149 of the Code;

(k) failure of the declarant for a customs procedure to have in *his* possession and at the disposal of the customs authorities, at the time when the customs declaration or a supplementary declaration is lodged, the supporting documents required for the application of the procedure in question in accordance with Article 163(1) and the second subparagraph of Article 167(1) of the Code;

(l) failure of the declarant for a customs procedure, in the case of a simplified declaration pursuant to Article

166 of the Code or of an entry into the declarant's records pursuant to Article 182 of the Code, to lodge a supplementary declaration at the competent customs office and within the specific time-limit in accordance with Article 167(1) of the Code;

(m) removal or destruction of means of identification affixed by customs authorities in goods, packaging or means of transport without prior authorisation granted by the customs authorities in accordance with Article 192(2) of the Code;

(n) failure of the holder of the inward processing procedure to discharge a customs procedure within the time limit specified in accordance with Article 257 of the Code;

(o) failure of the holder of the outward processing procedure to export the defective goods within the time limit in accordance with Article 262 of the Code;

(p) construction of a building in a free zone without the approval of the customs authorities in accordance with Article 244(1) of the Code;

(q) non-payment of import or export duties by the person liable to pay within the period prescribed in accordance with Article 108 of the Code.

166 of the Code or of an entry into the declarant's records pursuant to Article 182 of the Code, to lodge a supplementary declaration at the competent customs office and within the specific time-limit in accordance with Article 167(1) of the Code;

(m) removal or destruction of means of identification affixed by customs authorities in goods, packaging or means of transport without prior authorisation granted by the customs authorities in accordance with Article 192(2) of the Code;

(n) failure of the holder of the inward processing procedure to discharge a customs procedure within the time limit specified in accordance with Article 257 of the Code;

(o) failure of the holder of the outward processing procedure to export the defective goods within the time limit in accordance with Article 262 of the Code;

(p) construction of a building in a free zone without the *prior* approval of the customs authorities in accordance with Article 244(1) of the Code;

(q) non-payment of import or export duties by the person liable to pay within the period prescribed in accordance with Article 108 of the Code

(qa) failure of an economic operator to supply, in response to a request by the customs authorities, the requisite documents and information in an appropriate form and within a reasonable time and to provide all the assistance necessary for the completion of the customs formalities or controls in accordance with Article 15(1) of the Code;

(qb) failure of the holder of a decision relating to the application of customs legislation to comply with the obligations resulting from that decision in accordance

with Article 23(1) of the Code;

(qc) failure of the holder of a decision relating to the application of customs legislation to inform the customs authorities without delay of any factor arising after the taking of a decision by those authorities which influences its continuation or content, in accordance with Article 23(2) of the Code;

(qd) failure of the holder of the Union transit procedure to present the goods intact at the customs office of destination within the prescribed time limit in accordance with point (a) of Article 233(1) of the Code;

(qe) unloading or trans-shipping of goods from the means of transport carrying them without authorisation granted by the customs authorities or in places not designated or approved by those authorities in accordance with Article 140 of the Code;

(qf) storage of goods in temporary storage facilities or customs warehouses without authorisation granted by the customs authorities in accordance with Articles 147 and 148 of the Code;

(qg) failure of the holder of the authorisation or the holder of the procedure to fulfil the obligations arising from the storage of goods covered by the customs warehousing procedure in accordance with points (a) and (b) of Article 242(1) of the Code;

(qh) providing customs authorities with false information or documents required by those authorities in accordance with Articles 15 or 163 of the Code;

(qi) the use of inaccurate or incomplete information or inauthentic, inaccurate or invalid documents by an economic operator in order to obtain from the customs authorities an authorisation.

(i) to become an authorised economic operator in accordance with Article 38 of

the Code;

(ii) to make use of a simplified declaration in accordance with Article 166 of the Code;

(iii) to make use of other customs simplifications in accordance with Articles 177, 179, 182, or 185 of the Code;
or

(iv) to place the goods under special procedures in accordance with Article 211 of the Code;

(qj) introduction or exit of goods into or from the customs territory of the Union without presenting them to customs authorities in accordance with Articles 139, 245 or Article 267(2) of the Code;

(qk) processing of goods in a customs warehouse without an authorisation granted by the customs authorities in accordance with Article 241 of the Code;

(ql) acquiring or holding goods involved in one of the customs infringements set out in points (qd) and (qj) of this Article.

Amendment 20

Proposal for a directive Article 4

Text proposed by the Commission

Amendment

Article 4

deleted

Customs infringements committed by negligence

Member States shall ensure that the following acts or omissions constitute customs infringements where committed by negligence:

(a) failure of the economic operator responsible for non-Union goods which are in temporary storage to place those goods under a customs procedure or to re-export them within the time limit in

- accordance with Article 149 of the Code;*
- (b) failure of the economic operator to provide customs authorities with all the assistance necessary for the completion of the customs formalities or controls in accordance with Article 15(1) of the Code;*
- (c) failure of the holder of a decision relating to the application of customs legislation to comply with the obligations resulting from that decision in accordance with Article 23(1) of the Code;*
- (d) failure of the holder of a decision relating to the application of customs legislation to inform the customs authorities without delay of any factor arising after the decision was taken by those authorities which influences its continuation or content in accordance with Article 23(2) of the Code;*
- (e) failure of the economic operator to present the goods brought into the customs territory of the Union to the customs authorities in accordance with Article 139 of the Code;*
- (f) failure of the holder of the Union transit procedure to present the goods intact at the customs office of destination within the prescribed time limit in accordance with Article 233(1)(a) of the Code;*
- (g) failure of the economic operator to present the goods brought into a free zone to customs in accordance with Article 245 of the Code;*
- (h) failure of the economic operator to present the goods to be taken out of the customs territory of the Union to customs on exit in accordance with Article 267(2) of the Code;*
- (i) unloading or trans-shipping of goods from the means of transport carrying them without authorisation granted by the customs authorities or in places not designated or approved by*

those authorities in accordance with Article 140 of the Code;

(j) storage of goods in temporary storage facilities or customs warehouses without authorisation granted by the customs authorities in accordance with Articles 147 and 148;

(k) failure of the holder of the authorisation or the holder of the procedure to fulfil the obligations arising from the storage of goods covered by the customs warehousing procedure in accordance with points (a) and (b) of Article 242(1) of the Code.

Justification

All infringements can be committed either by negligence or intent, this article is therefore deleted and the list of infringements previously under this article are classified in respect to their seriousness.

Amendment 21

Proposal for a directive Article 5

Text proposed by the Commission

Amendment

Article 5

deleted

Customs infringements committed internationally

Member States shall ensure that the following acts or omissions constitute customs infringements where committed intentionally:

(a) providing customs authorities with false information or documents required by those authorities in accordance with Articles 15 or 163 of the Code;

(i) to become an authorised economic operator in accordance with Article 38 of the Code,

(ii) to make use of a simplified declaration in accordance with Article 166 of the

Code,

(iii) to make use of other customs simplifications in accordance with Articles 177, 179, 182, 185 of the Code,

(iv) to place the goods under special procedures in accordance with Article 211 of the Code;

(c) introduction or exit of goods into or from the customs territory of the Union without presenting them to customs authorities in accordance with Articles 139, 245, or Article 267(2) of the Code;

(d) failure of the holder of a decision relating to the application of customs legislation to comply with the obligations resulting from that decision in accordance with Article 23(1) of the Code;

(e) failure of the holder of a decision relating to the application of customs legislation to inform the customs authorities without delay of any factor arising after the decision was taken by those authorities which influences its continuation or content in accordance with Article 23(2) of the Code;

(f) processing of goods in a customs warehouse without an authorisation granted by the customs authorities in accordance with Article 241 of the Code;

(g) acquiring or holding goods involved in one of the customs infringements set out in point (f) of Article 4 and point (c) of this Article.

Amendment 22

Proposal for a directive Article 6

Text proposed by the Commission

Article 6

Incitement, Aiding, Abetting and Attempt

1. Member States shall take the

Amendment

Article 6

Incitement, aiding, abetting and attempt

1. Member States shall take the

necessary measures to ensure that inciting or aiding and abetting an act or omission referred to in Article 5 *is* a customs infringement.

2. Member States shall take the necessary measures to ensure that an attempt to commit an act or omission referred to in points (b) or (c) of Article 5 *is* a customs infringement.

Amendment 23

Proposal for a directive Article 7

Text proposed by the Commission

Article 7

Error on the part of the customs authorities

The acts or omissions referred to in Articles 3 *to* 6 *do* not constitute customs infringements where they occur as a result of an error on the part of the customs authorities.

necessary measures to ensure that inciting or aiding and abetting an act or omission referred to in Article 8b(2) *constitutes* a customs infringement.

2. Member States shall take the necessary measures to ensure that an attempt to commit an act or omission referred to in points (qi) or (qj) of Article 3 *constitutes* a customs infringement.

Amendment

Article 7

Error on the part of the customs authorities

The acts or omissions referred to in Articles 3 *and* 6 *shall* not constitute customs infringements where they occur as a result of an error on the part of the customs authorities, *in accordance with Article 119 of the Code, and the customs authorities shall be liable where errors cause damage.*

Amendment 24

Proposal for a directive Article 8 – paragraph 1 – introductory part

Text proposed by the Commission

1. Member States shall ensure that legal persons are held liable for customs infringements committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on any of the following:

Amendment

1. Member States shall ensure that legal persons are held liable for customs infringements *as referred to in Articles 3 and 6* committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on any of the following:

Amendment 25

Proposal for a directive

Article 8 – paragraph 2

Text proposed by the Commission

2. Member States shall also ensure that legal persons are held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of a customs infringement for the benefit of that legal person by a person under the authority of the person referred to in paragraph 1.

Amendment

(Does not affect the English version.)

Amendment 26

Proposal for a directive

Article 8 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. For the purposes of this Directive, ‘legal person’ shall mean any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and public international organisations.

Amendment 27

Proposal for a directive

Article 8 a (new)

Text proposed by the Commission

Amendment

Article 8a

Factors to be taken into account in assessing whether an infringement is minor

1. When determining whether an infringement as referred to in Article 3 is minor, Member States shall ensure from the beginning of the process, that is to say, during the determination of whether

a customs infringement has been committed, that their competent authorities take into account all relevant circumstances that may apply, including the following:

(a) the infringement was committed as a result of negligence;

(b) the goods involved are not subject to the prohibitions or restrictions referred to in the second sentence of Article 134(1) of the Code and in point (e) of Article 267(3) of the Code;

(c) the infringement has little or no impact on the amount of customs duties to be paid;

(d) the person responsible for the infringement cooperates effectively with the competent authority in the proceedings;

(e) the person responsible for the infringement voluntarily discloses the infringement, provided that the infringement is not yet the subject of any investigation activity of which the person responsible for the infringement has knowledge;

(f) the person responsible for the infringement is able to show that he or she is making a significant effort to align with Union customs legislation by demonstrating a high level of control of his or her operations, for example by means of a compliance system;

(g) the person responsible for the infringement is a small or medium-sized enterprise, which had no prior experience in customs related matters.

2. Competent authorities shall consider an infringement as minor only where there is no aggravating factor with regard to the infringement as referred to in Article 8b.

Amendment 28

Proposal for a directive Article 8 b (new)

Text proposed by the Commission

Amendment

Article 8b

*Factors to be taken into account in
assessing whether an infringement is
serious*

1. When determining whether an infringement as referred to in Article 3 or 6 is serious, Member States shall ensure from the beginning of the process, that is to say, during the determination of whether a customs infringement has been committed, that, the competent authorities take into account any of the following circumstances that may apply:

- (a) the infringement was committed with intent;*
- (b) the infringement persisted over a lengthy period of time, reflecting an intention to maintain it;*
- (c) a similar or linked infringement is continuing or is repeated, that is to say, committed more than once;*
- (d) the infringement has a significant impact on the amount of the import or export duties evaded;*
- (e) the goods involved are subject to the prohibitions or restrictions referred to in the second sentence of Article 134(1) of the Code and in point (e) of Article 267(3) of the Code;*
- (f) the person responsible for the infringement refuses to cooperate, or to cooperate fully, with the competent authority;*
- (g) the person responsible for the infringement has committed previous infringements.*

2. The infringements referred to in points (f), (g), (p), (qi) and (qj) of Article 3 constitute, by their very nature, serious infringements.

Amendment 29

Proposal for a directive Article 9

Text proposed by the Commission

Article 9

Sanctions for customs infringements
referred to in Article 3

Member States shall ensure that effective, proportionate ***and*** dissuasive sanctions are imposed for ***the*** customs infringements referred to in Article 3 within the following limits:

- (a) where the customs infringement ***relates to specific goods***, a pecuniary fine ***from 1 % up to 5 %*** of the value of the goods;
- (b) where the customs infringement is not ***related to specific goods***, a pecuniary fine ***from EUR 150*** up to EUR 7 500.

Amendment

Article 9

Non-criminal sanctions for ***minor*** customs infringements

1. Member States shall ensure that effective, proportionate, dissuasive ***and non-criminal*** sanctions are imposed, ***in addition to recovering the duties evaded***, for ***those*** customs infringements referred to in Article 3 ***that are considered minor in accordance with Article 8a***, within the following limits:

- (a) where the customs infringement ***is linked to the duties evaded***, a pecuniary fine ***of up to 70 %*** of the ***duties evaded***;
- (b) where the customs infringement is not ***linked to the duties evaded***, a pecuniary fine ***of up to EUR 7 500***.

2. When determining the level of sanctions to be imposed within the limits laid down in paragraph 1 of this Article, Member States shall ensure that all relevant circumstances listed in Article 8a are taken into account.

Amendment30

Proposal for a directive Article 10

Text proposed by the Commission

Article 10

Amendment

deleted

*Sanctions for customs infringements
referred to in Article 4*

*Member States shall ensure that effective,
proportionate and dissuasive sanctions
are imposed for the customs
infringements referred to in Article 4
within the following limits:*

- (a) where the customs infringement
relates to specific goods, a pecuniary fine
up to 15 % of the value of the goods;*
- (b) where the customs infringement is
not related to specific goods, a pecuniary
fine up to EUR 22 500.*

Justification

This article is deleted to be in line with the deletion of article 4.

Amendment 31

**Proposal for a directive
Article 11**

Text proposed by the Commission

Article 11

Sanctions for customs infringements
referred to in Article 5 and 6

Member States shall ensure that effective,
proportionate **and** dissuasive sanctions are
imposed for the customs infringements
referred to in **Articles 5 and 6** within the
following limits:

- (a) where the customs infringement
relates to specific goods, a pecuniary fine
up to 30 % of the value of the goods;

Amendment

Article 11

Non-criminal sanctions for **serious**
customs infringements

1. Member States shall ensure that
effective, proportionate, dissuasive **and**
non-criminal sanctions are imposed, **in**
addition to recovering the duties evaded,
for **those** customs infringements referred to
in **Articles 3 and 6 that are considered**
serious in accordance with Article 8b,
within the following limits:

- (a) where the customs infringement **is**
linked to the duties evaded, a pecuniary
fine **of between 70% and 140 %** of the
duties evaded;
- (aa) **where the customs infringement is**
linked not to the duties evaded but to the
value of the goods, a pecuniary fine **of**
between 15% and 30% of the value of the
goods;

(b) where the customs infringement is *not related to specific goods*, a pecuniary fine *up to* EUR 45 000.

(b) where the customs infringement is *linked neither to the duties evaded nor to the value of the goods*, a pecuniary fine of *between EUR 7 500 and* EUR 45 000.

2. *When determining the level of sanctions to be imposed within the limits laid down in paragraph 1 of this Article, Member States shall ensure that all relevant circumstances listed in Article 8a and Article 8b(1) are taken into account.*

Amendment 32

Proposal for a directive Article 11 a (new)

Text proposed by the Commission

Amendment

Article 11a

Other non-criminal sanctions for serious infringements

1. *In addition to the sanctions listed in Article 11, and in accordance with the Code, Member States may impose the following non-pecuniary sanctions where a serious infringement is committed:*

(a) *permanent or temporary confiscation of the goods;*

(b) *suspension of an authorisation which has been granted.*

2. *In accordance with the Code, Member States shall provide that decisions granting the status of authorised economic operator are to be revoked in the case of a serious or repeated infringement of customs legislation.*

Amendment 33

Proposal for a directive Article 11 b (new)

Article 11b

Review

- 1. The amounts of the fines applicable pursuant to Articles 9 and 11 shall be reviewed by the Commission, together with the competent authorities of the Member States, five years from ... [the date of entry into force of this Directive]. The aim of the review procedure shall be to ensure that the amounts of fines imposed under the Customs Union are more convergent, with a view to harmonising the operation thereof.**
- 2. Each year the Commission shall publish details of the sanctions imposed by the Member States for the customs infringements referred to in Articles 3 and 6.**
- 3. Member States shall ensure compliance with customs legislation within the meaning of point (2) of Article 5 of Regulation (EU) No 952/2013, as well as Regulation (EU) No 978/2012 of the European Parliament and of the Council¹.**

¹ Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 (OJ L 303, 31.10.2012, p. 1).

Amendment 34

**Proposal for a directive
Article 11 c (new)**

Article 11c

Settlement

Member States shall ensure the possibility of a settlement as a procedure allowing the competent authorities to enter into an agreement with the person responsible for the infringement in order to settle the matter of a customs infringement as an alternative to the initiation or pursuit of judicial proceedings, in return for acceptance by that person of an immediately enforceable sanction.

However, once judicial proceedings have been instituted, the competent authorities may reach a settlement only with the agreement of the judicial authority.

The Commission shall provide guidelines on settlement procedures to ensure that a person responsible for an infringement is given the opportunity of a settlement in accordance with the principle of equal treatment and in a transparent manner, and that any settlement concluded includes publication of the outcome of the procedure.

Amendment 35

Proposal for a directive Article 12

Text proposed by the Commission

Amendment

Article 12

deleted

Effective application of sanctions and exercise of powers to impose sanctions by competent authorities

Member States shall ensure that when determining the type and the level of sanctions for the customs infringements referred to in Articles 3 to 6, the competent authorities shall take into account all relevant circumstances, including, where appropriate:

(a) the seriousness and the duration of the infringement;

the fact that the person responsible for the infringement is an authorized economic operator;

the amount of the evaded import or export duty;

the fact that the goods involved are subject to the prohibitions or restrictions referred to in the second sentence of Article 134(1) of the Code and in Article 267(3)(e) of the Code or pose a risk to public security;

the level of cooperation of the person responsible for the infringement with the competent authority;

previous infringements by the person responsible for the infringement.

Amendment 36

Proposal for a directive Article 12 a (new)

Text proposed by the Commission

Amendment

Article 12a

Compliance

Member States shall ensure that guidelines and publications on how to comply and continue to comply with Union customs legislation are made available to interested parties in an easily accessible, understandable and up-to-date form.

Justification

This amendment broadly defines what the guidelines and publications should look like. This amendment also specifies that the guidelines and publications should be made available to interested parties.

Amendment 37

Proposal for a directive Article 13

Article 13

Article 13

Limitation

Limitation

1. Member States shall ensure that the limitation period for proceedings concerning a customs infringement referred to in Articles 3 *to* 6 is four years and starts to run on the day on which the customs infringement was committed.
2. Member States shall ensure that, in the case of continuous or repeated customs infringements, the limitation period starts to run on the day on which the act or omission constituting the customs infringement ceases.
3. Member States shall ensure that the limitation period is interrupted by any act of the competent authority, notified to the person in question, relating to an investigation or legal proceedings concerning the same customs infringement. The limitation period shall *start* to run on the day of the interrupting act.
4. Member States shall ensure that the initiation or continuation of any proceedings concerning a customs infringement referred to in *Articles 3 to 6* is precluded after the expiry of a period of eight years from the day referred to in paragraph 1 or 2.
5. Member States shall ensure that the limitation period for the enforcement of a decision imposing a sanction is three years. That period shall start to run on the day on which that decision becomes final.
6. Member States shall lay down the cases where the limitation periods set out

1. Member States shall ensure that the limitation period for *initiating* proceedings concerning a customs infringement referred to in Articles 3 *and* 6 is four years and *that it* starts to run on the day on which the customs infringement was committed.
2. Member States shall ensure that, in the case of continuous or repeated customs infringements, the limitation period starts to run on the day on which the act or omission constituting the customs infringement ceases.
3. Member States shall ensure that the limitation period is interrupted by any act of the competent authority, notified to the person in question, relating to an investigation or legal proceedings concerning the same customs infringement, *or by an act on the part of the person responsible for the infringement*. The limitation period shall *continue* to run on the day *on which* the interrupting act *comes to an end*.
4. *Without prejudice to Article 14(2)*, Member States shall ensure that any proceedings concerning a customs infringement referred to in *Article 3 or 6 are time-barred, irrespective of any interruption of the limitation period as referred to in paragraph 3 of this Article*, after the expiry of a period of eight years from the day referred to in paragraph 1 or 2 *of this Article*.
5. Member States shall ensure that the limitation period for the enforcement of a decision imposing a sanction is three years. That period shall start to run on the day on which that decision becomes final.
6. Member States shall lay down the cases where the limitation periods set out

in paragraphs 1, 4 and 5 are suspended.

in paragraphs 1, 4 and 5 are suspended.

Amendment 38

Proposal for a directive Article 16 – paragraph 1

Text proposed by the Commission

Member States shall co-operate and exchange any information necessary for the proceedings concerning an act or omission constituting a customs infringement referred to in Articles 3 *to* 6, in particular in *case* more than one Member State has started proceedings against the same person in connection with the same facts.

Amendment

Member States shall co-operate and exchange any information necessary for the proceedings concerning an act or omission constituting a customs infringement referred to in Articles 3 *and* 6, in particular in *cases where* more than one Member State has started proceedings against the same person in connection with the same facts. *The objective of cooperation between Member States shall be to increase the effectiveness of customs checks on goods and to harmonise procedures within the Union.*

Amendment 39

Proposal for a directive Article 16 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

The Commission shall supervise cooperation between Member States to create key performance indicators applicable to customs checks and sanctions, the dissemination of best practices and the coordination of training of customs officers.

Amendment 40

Proposal for a directive Article 17

Text proposed by the Commission

Article 17

Seizure

Member States shall ensure that the competent authorities have the possibility *to* temporarily *seize* any goods, means of transport *and any* other instrument used in committing the customs infringements referred to in Articles 3 *to* 6.

Amendment

Article 17

Seizure

Member States shall ensure that the competent authorities have the possibility *of* temporarily *seizing* any goods, means of transport *or* other instrument used in committing the customs infringements referred to in Articles 3 *and* 6. *If, following the imposition of a sanction, a Member State permanently confiscates such goods, it may opt to destroy, reuse or recycle the goods, as appropriate.*

Amendment 41

Proposal for a directive

Article 18 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

By 31 December 2017, the Commission shall submit a report on the other elements of the enforcement of Union customs legislation, such as supervision, control, and investigation, to the European Parliament and the Council, accompanied if appropriate by a legislative proposal to supplement this Directive.

Justification

This clarifies that enforcement of Customs legislation includes other elements than sanctions, such as controls, supervision and investigation that should also be better harmonised to meet the overall objective of uniform enforcement and application of Union Customs legislation.

Amendment 42

Proposal for a directive

Article 18 a (new)

Article 18a

Reporting by Member States

Member States shall send to the Commission statistics regarding infringements and showing which sanctions were imposed as a result of those infringements, in order to enable the Commission to assess the application of this Directive. The information thus provided shall be sent annually following the entry into force of this Directive. The Commission may use those data when revising this Directive in order to better approximate national sanctioning systems.

EXPLANATORY STATEMENT

The European Commission published a proposal for a Directive on the Union legal framework for customs infringements and sanctions on 13 December 2013.

Although the Customs Union is considered as one of the foundations of the European Union, and the backbone of the single market, there is still no integrated approach for the enforcement of Customs legislation, including sanctions. This means that the rules are the same but when those rules are infringed, the sanctions applied significantly differs.

The Customs Union and the commercial policy are exclusive competences of the European Union, therefore only the EU can develop a common approach that enforces the Customs legislation. The Member States have committed themselves to work towards two objectives, in particular: the interaction and performance of customs administrations as efficiently as if they were one administration, ensuring controls with equivalent results and the support of legitimate business activity, but also the necessary protection of the financial interests of the Union. However, this is quite clear that without an integrated approach to enforcement, including sanctions, it is not possible for the Member States' customs administrations to act as one, in particular in light of the significant differences between Member States sanctioning systems, as shown by the 2010 report from the Project Group on Customs Penalties.

These differences create a lack of mutual trust between administrations, whereas confidence and cooperation between customs authorities is essential to the good administration of the Customs Union and the protection of the EU financial interests. They additionally undermine a level playing field for economic operators in the European Union. The divergences of customs sanctions have been considered by the European Court of Justice as measures having equivalent effect to quantitative restrictions. The risks of market distortion and lack of level playing field are likely to increase with the new provisions related to the Authorised Economic Operator (AEO) status whereby serious and repeated infringements can lead to a loss of the status (article 39 UCC), and therefore link a trade facilitation measure to a record of compliance with EU customs legislation.

Should the differences between the sanctioning systems of the Member States remain, it will eventually mean that a company might lose the AEO status in one country whereas for the same infringement, another company operating in another Member State would not lose it. This is increasingly pertinent in light of the increase of e-commerce, especially by microbusinesses and individuals, which require more legal certainty as far as compliance systems are concerned and more transparency in the way infringements are handled by the different customs authorities.

Last but not least, convergence between sanctioning systems is necessary in order for the EU to meet its external obligation under the General Agreement on Tariffs and Trade (GATT) GATT 94, Article X.3 (a) states that:

Each contracting party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article.

Requirements of the Union Customs Code

The Union Customs Code requires Member States to have effective, proportionate and dissuasive Customs sanctions systems. This Directive should therefore aim at improving convergence of the Member States approaches to enforce the EU customs legislation, on the basis of Article 114 of TFEU on the establishment and functioning of the internal market and Article 33 of TFEU on Customs cooperation, and in line with the implementation of the Modernised Customs Code and the development of electronic Customs.

Facilitating trade and improving compliance

This Directive should acknowledge that most of the economic operators involved in customs matters are legitimate businesses which aim to comply with customs legislation. Customs-related activities require considering economic operators as partners, which justify the need to mostly use non-criminal sanctions in cases of infringements, as an effective means to ensure compliance, rather than criminal sanctions.

This report clarifies the scope of the Directive to ensure that only infringements committed by negligence or intentionally constitute infringements, thereby removing the strict liability element which does not require a degree of fault. The definition of a negligent behaviour is essential in this Directive that harmonises non-criminal sanctions, as negligence should not be sanctioned as a crime, even if objective circumstances such as serious financial consequences are present. If it is established that a person was not negligent, and he/she was unaware of the facts and could not have foreseen the occurrence even if exercising reasonable care, this person should not be sanctioned. In addition, a mistake should not be sanctioned except if it is part of a pattern of negligent or intentional behaviour. Infringements committed with intent may be sanctioned under criminal law above a specific threshold to allow Member States to take measures that are dissuasive enough to sanction fraudulent behaviours.

In order to ensure that sanctions are effective, proportionate and dissuasive, it is important to leave the door open enough for customs authorities to assess the relevant circumstances and decide on that basis on the most appropriate sanction, as this has proven to be an effective means of reducing non-compliance. This Directive should however set a framework to ensure common understanding between Member States on what are these mitigating and aggravating circumstances, from voluntary disclosure for the former to refusal to cooperate for the latter. Strict liability provisions contradict this approach, in addition to questioning some basic legal principles such as the presumption of innocence, as it does not require an element of fault to sanction. Strict liability provisions could undermine growth and legitimate trade and are also unlikely to be effective and improve compliance.

There should however be a classification of the infringements divided between minor infringements and serious infringements, in particular in light of the possibility for an AEO to lose its status if they commit serious or repeated infringements, and the lack of definition of a serious infringement in the Union Customs Code. The initial logic of categorisation of the infringements of the European Commission has been maintained with different categories and the list of what Member states consider minor infringements, such as the failure to respect time limits for instance has been taken into account.

Proportionality

In order to ensure that a proportionate system of sanctions is in place, the amount of the fine cannot be based on the value of the goods. The sanction should be based on the amount of evaded duties as it should be linked to the financial consequences of the infringement. A sanction based on the value of the goods might lead to a disproportionate system whereby a minor infringement on a high-valued good could have disastrous consequences on the company. To provide some flexibility in cases where the good has either no customs duty rate or the infringement is not linked to a specific good, a fixed amount should be set. Although a harmonised framework needs to be set, a range with upper limits is necessary to provide room for discretion to customs authorities to adjust the fine depending on aggravating or mitigating circumstances. Other sanctions than a pecuniary fine should also be allowed such as the loss of the status of AEO, as set out in the Union Customs Code, and the confiscation of goods. Custom authorities should also take into account the costs of litigation, in particular for small businesses, and therefore provide the possibility of a settlement procedure, which should be defined to ensure consistency across the EU.

A fine line to be drawn between criminal and non- criminal sanctions

This Directive should aim at harmonising non-criminal sanctions in case of breaches of customs legislation as the most appropriate framework to improve compliance and reduce the number of infringements. When infringements are committed with intent to commit fraud, Member states may take criminal sanctions above a certain threshold, in line with the Directive on the fight against fraud to the Union's financial interests by means of criminal law (PIF directive), which gives the possibility to Member states to use non-criminal sanctions below this same threshold. This interlink between the two Directive is in line with the practices in most Member states that have a mix between non-criminal and criminal sanctions to ensure compliance with Customs legislation. The PIF Directive is however not enough on its own as there is no European legislation that sanctions infringements committed by negligence which however constitute most of the infringements to Customs legislation.

Some provisions such as incitement, aiding, abetting, and attempt are criminal law terms in some Member states, but are also punishable under non-criminal law in seven Member states. It should be clarified that those actions are committed with intent and therefore may give rise to non-criminal sanctions under the scope of this directive or criminal sanctions outside the scope of this Directive.

A necessary move from ex-post compliance to ex-ante compliance

Member states should ensure that persons dealing with customs and trade are actively informed on how to comply and how to maintain compliance with customs legislation. Member states administrative sanctioning systems should therefore be a last resort tool to sanction negligent behaviour in light of what the person responsible for the infringement should have known and done to prevent such infringements to take place. The question of whether the person was negligent should become a central part of the application of the sanctions system.

The use of ICT tools should lead to a possibility to monitor in real time compliance with the rules, and this requires close cooperation with operators to ensure full compliance as well as for Member States to implement the electronic systems provisions set out in Union Customs Code. In addition the Member states committed themselves also in line with the requirement set out in the Union Customs Code, in taking part in a common risk management system that the European Commission should further develop. This is one of the pillars of a common approach to enforcement and it complements the establishment of a common sanction system.

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE LEGAL BASIS

Mrs Vicky Ford
Chair
Committee on the Internal Market and Consumer Protection
BRUSSELS

Subject: Opinion on the legal basis of the Directive of the European parliament and of the Council on the Union legal framework for customs infringements and sanctions (COM(2013)0884 – C8-0033/2014 – 2013/0432(COD))

Dear Madam Chair,

By letter of 29 February 2016 you asked the Committee on Legal Affairs pursuant to Rule 39(2) for an opinion on the appropriateness of the legal basis for the above-mentioned proposal.

The committee considered this question at its meeting of 21 April 2016.

I - Background

By letter of 29 February 2016 the Committee on the Internal Market and Consumer Protection (IMCO) asked the Committee on Legal Affairs, pursuant to Rule 39(2) of the Rules of Procedure, for an opinion on the appropriateness of the legal basis for the above-mentioned proposal.

The Commission's proposal is based on Article 33 TFEU, which concerns customs cooperation, giving competence to the Union to act on this matter on the basis of the ordinary legislative procedure.

The rapporteur for the proposal in the IMCO Committee considered that 114 TFEU, which relates to the approximation of laws for the establishment and functioning of the internal market, would better reflect the objectives of the proposal and that align the proposal with the Union Customs Code¹, which is also based on Article 114 TFEU.

II - The proposal

Although the customs legislation is harmonised and within the sphere of competence of the EU, the possibility to adopt legislative measures regarding sanctions and customs infringements remain in the Member States arena.

¹ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast), OJ L 269, 10.10.2013, p. 1–101.

Under the Customs 2013 Program, the Commission carried an assessment of 24 Member States' national systems regarding customs infringements and sanctions.¹ The Commission found a significant number of variances in the regimes and considered that those differences have negative implications. The consequences may be felt not only in the international level but also within the European space, since the different enforcement of customs legislation may turn the effective management of the customs union harder. Moreover, the impact of the different rules would also be felt on the economic operators and in the level playing field which is in the core of the internal market. These discrepancies are acknowledged by the Commission as justifications for the necessity of this legislative act in the paragraph 1.1 of the Explanatory Memorandum and in Recital 3 of the proposal.

According to the Explanatory Memorandum, in the proposal's impact assessment (2.2) the Commission pointed out that "(...) *likewise the introduction of certain facilitations and simplifications in the Union customs legislation and the [Authorised Economic Operators] access to them is a strong reason to further strengthen the cooperation between Member States.*"

The proposal entails a common list of acts and omissions that should be considered violations of the Union Customs Code (UCC) and other customs legislation, stipulating strict liability cases and infringements committed intentionally or by negligence (Articles 1 to 5 of the proposal). Article 6 elaborates on the incitement, aiding, abetting and attempt of the acts previously mentioned as infringements. Article 7 of the proposal relates to errors made by the customs authority and Article 8 refers to the liability of legal persons. Article 9 to 12 lay down the substantive limits of the sanctions and the principles that should guide its application. Article 13 and 14 are procedural provisions, dealing with limitation periods and with the suspension of the administrative procedure. Article 15 defines where the jurisdiction should be exercised. Article 16 refers to cooperation between Member States, obliging Member States to exchange information and enforcing the *ne bis in idem* principle, guaranteeing that no one should be facing proceedings for the same facts in more than one Member State. Article 17 obliges Member States to give the possibility of seizure of any instrument used in committing the customs infringements. Finally, the proposal includes provisions on report and review of the compliance and transposition of the Directive (Article 18 to 21).

III - The proposed legal basis

The proposed legal basis for this proposal is Article 33 TFEU, which reads as follows:

CHAPTER 2 CUSTOMS COOPERATION

Article 33

¹ Austria, Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and the UK.

(ex Article 135 TEC)

Within the scope of application of the Treaties, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall take measures in order to strengthen customs cooperation between Member States and between the latter and the Commission.

The following Article 114 TFEU is proposed to be included in the legal basis (emphasis added):

CHAPTER 3
APPROXIMATION OF LAWS

Article 114
(ex Article 95 TEC)

1. Save where otherwise provided in the Treaties, the following provisions shall apply for the achievement of the objectives set out in Article 26. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market. (...)

IV - Case-Law

According to the settled case law of the Court of Justice, "*the choice of legal basis for a Community measure must rest on objective factors amenable to judicial review, which include in particular the aim and content of the measure*"¹. The choice of an incorrect legal basis may therefore justify the annulment of the act in question.

In principle, a measure is to be founded on only one legal basis. A dual legal basis can only be used if a measure simultaneously pursues a number of objectives or has several linked components, without one being secondary and indirect in relation to the other,² subject to the condition that the procedures laid down for each legal basis are not incompatible.³

V - Analysis

Article 33 TFEU has been included in the legal basis for other legislative acts adopted in the field of customs cooperation, such as the UCC and the Customs 2020 Regulation.⁴ There is no

¹ Case C-45/86, *Commission v. Council* (Generalised Tariff Preferences) [1987] ECR 1439, para. 5; Case C-440/05 *Commission v. Council* [2007] E.C.R. I-9097; Case C-411/06 *Commission v. Parliament and Council* [2009] ECR I-7585.

² Case C-411/06 *Commission v Parliament and Council* [2009] ECR I-07585, para. 47.

³ Case C-300/89 *Commission v Council* ("Titanium dioxide") [1991] ECR I-2867, paras 17-25.

⁴ Regulation (EU) No 1294/2013 of the European Parliament and of the Council of 11 December 2013

explicit definition of the notion of customs cooperation, but as it is collocated within Title II 'Free Movement Of Goods', Chapter 2 'Customs Cooperation' of the TFEU it has been used extensively in relation to the Customs Union, for instance as regards customs duties, prevention of fraud and checks on goods entering the EU customs territory.¹ Article 33 TFEU is therefore the correct legal basis when working on a framework of cooperation between the customs authorities.

Article 114 TFEU is the legal basis for measures of harmonisation concerning the internal market. Harmonisation measures under this article require as a prerequisite that there are divergences in Member States legislation on this issue which could lead to a disruption of trade within the internal market. The article could be used when it is likely that such divergences of national legislation may arise, but the likelihood cannot be purely hypothetical. The Court has repeatedly used this formula in its case-law, while it has not actually defined "likelihood". Nevertheless, the Court has never accepted Article 114 TFEU as a legal basis for legislation where it has found that divergences in national law do not exist and are not likely to arise.

According to the Court's case-law, the measures referred to in Article 114 TFEU are intended to improve the conditions for the establishment and functioning of the internal market and must genuinely have that object, actually contributing to the elimination of obstacles to the free movement of goods or to the freedom to provide services, or to the removal of distortions of competition.²

The Commission's proposal aims to correct the problems arising from the disparity of regimes governing the customs infringements and subsequent sanctions within the European market. As stated in the preamble of the proposal and in its Explanatory Memorandum, those differences arise in three dimensions: firstly, at an international level, where the EU has to guarantee the compliance with the international obligations to which it is bound; secondly, within the Customs Union framework, aiming at a more effective management of the Customs Union; and thirdly at an internal market level, where the Commission recognizes that the actual *status quo* does not ensure a level-playing field, where economic operators do not act under the same conditions and rules. The proposal, therefore, does not only aim at strengthening customs cooperation, but also aimed correct the distortion of the internal market, using a uniform set of rules to be applied in all 28 Member States.

Most of the provisions in the proposal are indeed intended to set up a uniform list of administrative sanctions to the infringements and of which acts and omissions should be in fact considered infringements. Although some provisions strictly concern cooperation matters (Article 15(2) and Article 16), regarding the exchange of information as an example, most of the provisions are intended to approximate the national rules.

establishing an action programme for customs in the European Union for the period 2014-2020 and repealing Decision No 624/2007/EC, OJ L 347, 20.12.2013, p. 209–220.

¹ Council of the European Union, Conclusions on the Progress on the Strategy for the Evolution of the Customs Union, Brussels, 10 and 11 December 2012, available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/intm/134129.pdf.

² Case C-491/01 *British American Tobacco (Investments) Ltd and Imperial Tobacco Ltd*, ECR [2002], I-11453, para. 60.

As recognized by the Court, it is possible to have a dual legal basis when both of the legal provisions are inherently linked to the legislative act. In this case, having regard to the aim and content of the proposed Directive, the objectives of attaining an more effective management of the Customs Union while ensuring that economic operators are being subject to the same rules, without advantages in more lenient Member States, cannot be separated.

The proposal in question is not limited to strengthening customs cooperation between Member States, it actively attempts to tackle a distortion in the internal market, created by the different national regimes. Therefore, Article 114 TFEU should be added to Article 33 TFEU. Both provisions are strictly linked, while one is not ancillary to the other.

It should be noted that in accordance with the procedure under Article 114 TFEU, the consultation of the European Economic and Social Committee is obligatory.

VI - Conclusion and recommendation

Articles 33 and 114 TFEU constitute the correct legal basis for the proposal.

At its meeting of 21 April 2016 the Committee on Legal Affairs accordingly decided, by 17 votes to 3, with no abstentions¹, to recommend that the appropriate legal basis for the proposal for a Directive of the European parliament and of the Council on the Union legal framework for customs infringements and sanctions should be Articles 33 and 114 TFEU.

Yours sincerely,

Pavel Svoboda

¹ The following were present for the final vote: Jean-Marie Cavada, Mady Delvaux, Lidia Joanna Geringer de Oedenberg, Axel Voss (Vice-Chairs), Max Andersson, Joëlle Bergeron, Marie-Christine Boutonnet, Kostas Chrysogonos, Therese Comodini Cachia, Angel Dzhambazki, Rosa Estaràs Ferragut, Enrico Gasbarra, Heidi Hautala, Sylvia-Yvonne Kaufmann, Gilles Lebreton, Dietmar Köster, Emil Radev, József Szájer, Cecilia Wikström and Josef Weidenholzer (pursuant to Rule 200(2)).

25.5.2016

OPINION OF THE COMMITTEE ON INTERNATIONAL TRADE

for the Committee on the Internal Market and Consumer Protection

on the proposal for a directive of the European Parliament and of the Council on the Union legal framework for customs infringements and sanctions
(COM(2013)0884 – C8-0033/2014 – 2013/0432/(COD))

Rapporteur: Franck Proust

SHORT JUSTIFICATION

Background

The European Union Customs Code has enabled customs legislation to be harmonised. However, its enforcement, to ensure it complies with the customs rules and the lawful imposition of sanctions, is governed by the national law of the Member States.

Consequently, customs legislation enforcement follows 28 different sets of legal rules and different administrative or legal traditions. As a result, there is a very wide variation of definitions and severity depending on the Member State.

An overview of the situation regarding Member States' customs infringements and sanctions systems took place through a Project Group established, on a voluntary basis, by the Commission with 24 Member States, under the Customs 2013 Programme.

The rapporteur's position:

Your rapporteur's approach focuses on three aspects: the framework, the substance and the form of this proposal for a directive.

(1) The framework of this directive constitutes a real constraint. In the title alone, certain terms (infringements, sanctions) relate back to the principle of subsidiarity.

In order for the INTA Committee opinion to be respected and to be fully taken into account, your rapporteur preferred to take an approach relating to international trade.

(2) The results of the Customs 2013 Programme show disparities in infringement thresholds or time limits, such as to put the credibility and the very functioning of our customs union in an awkward position in relation to our trading partners.

There is therefore a need for transparency and clarity, which should also lead to savings. Our

international obligations within the WTO must be respected in order to protect our market as a whole. The USA has already drawn the WTO's attention to the inconsistency of the European internal market.

Above all, your rapporteur wishes to consider this proposal for a directive in the context of the Trade Facilitation Agreement. An agency or body would enable the assessment and coordination role to be fulfilled without encroaching on subsidiarity. Exchanges of information, ranging from controls to the application of sanctions, are necessary for the business community of the European Union and third countries.

The ability to simplify the system of sanctions and infringements should lead to consistency. Accordingly, Member States need to approximate their sanctions in a consistent manner, no longer in the form of thresholds, but in the form of bands of sanctions. It is not acceptable for economic operators to be able to escape sanction on the internal market, or for huge disparities still to exist.

Lastly, your rapporteur proposes to opt for the territoriality of the infringement as one of the main criteria for determining jurisdiction, in order to combat 'forum shopping', and to improve the registration of goods by customs in the case of anti-dumping investigations, in order to prevent stockpiling, with a view to sanctions in the form of taxes.

(3) As regards form, your rapporteur would like the proposal for a directive to be in an effective and clear format so that ambitious proposals can be submitted to the committee responsible while demonstrating the urgency of the situation with regard to the failure to comply with our international obligations and the needs of our economic operators.

AMENDMENTS

The Committee on International Trade calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive Recital 2

Text proposed by the Commission

(2) Consequently, customs infringements and sanctions follow 28 different sets of legal rules. As a result of that, a breach of Union customs legislation is not treated the same way throughout the Union and the sanctions that may be imposed in each case differ in nature and

Amendment

(2) Consequently, customs infringements and sanctions follow 28 different sets of legal rules. As a result of that, a breach of Union customs legislation is not treated the same way throughout the Union and the sanctions that may be imposed in each case differ in nature and

severity depending on the Member State that is imposing the sanction.

severity depending on the Member State that is imposing the sanction, ***leading to possible losses of revenue for the Member States and trade distortions.***

Amendment 2

Proposal for a directive

Recital 3

Text proposed by the Commission

(3) That disparity of Member States' legal systems affects not only the optimal management of the customs union, but also prevents that a level playing field is achieved for economic operators in the customs union because it has an impact on their access to customs simplifications and facilitations.

Amendment

(3) That disparity of Member States' legal systems affects not only the optimal management of the customs union, but also prevents that a level playing field is achieved for economic operators in the customs union, ***who are already subject to different sets of rules across the Union***, because it has an impact on their access to customs simplifications and facilitations.

Amendment 3

Proposal for a directive

Recital 17

Text proposed by the Commission

(17) In order to facilitate the investigation of customs infringements, the competent authorities should be allowed to temporarily seize any goods, means of transport or any other instrument used in committing the infringement.

Amendment

(17) In order to facilitate the investigation of customs infringements, the competent authorities should be allowed to temporarily seize any goods, means of transport or any other instrument used in committing the infringement ***and to use an early-warning system to notify competent authorities of the other Member States of the infringement.***

Amendment 4

Proposal for a directive

Article 1 – paragraph 1

Text proposed by the Commission

1. This Directive establishes a framework concerning the infringements of Union customs legislation and provides for sanctions for those infringements.

Amendment

1. This Directive establishes a framework concerning the infringements of Union customs legislation and provides for ***bands of*** sanctions for those infringements.

Amendment 5

Proposal for a directive

Article 1 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. This Directive covers the obligations of the Member States towards the trading partners of the European Union, as well as the World Trade Organization and the World Customs Organization, with a view to establishing a homogeneous and effective internal market while facilitating trade and providing certainty.

Amendment 6

Proposal for a directive

Article 1 a (new)

Text proposed by the Commission

Amendment

Article 1a

Trade facilitation

In order to comply with the Union's obligations under the WTO Trade Facilitation Agreement, Member States shall work together to set up a cooperation system including all Member States. That system shall aim at coordinating key performance indicators regarding customs sanctions (analysis of the number of appeals, rate of recidivism,

etc.); disseminating best practice among customs services (efficiency of controls and sanctions, reduction of administrative costs, etc.); passing on the experiences of economic operators and creating links between them; monitoring the way in which customs services perform their activities; and performing statistical work on infringements committed by companies from third countries. Within the cooperation system, all Member States shall be notified without delay of investigations into customs infringements and of established infringements in such a way as to facilitate trade, prevent illegal goods from entering the internal market and improve the effectiveness of checks.

Amendment 7

Proposal for a directive Article 5 a (new)

Text proposed by the Commission

Amendment

Article 5a

Register of imports by Member States

Member States shall ensure that their customs authorities take the appropriate measures to register imports, without waiting for a request from the Commission, so that measures related to compliance with Council Regulation (EC) No 1225/2009^{1a} may subsequently be applied to those imports from the date of registration. Imports may be made subject to registration following a request from any European Union company supported by sufficient evidence to justify such action.

^{1a} Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community

Amendment 8

Proposal for a directive Article 10 – point a

Text proposed by the Commission

(a) where the customs infringement relates to specific goods, a pecuniary fine **up to** 15 % of the value of the goods;

Amendment

(a) where the customs infringement relates to specific goods, a pecuniary fine **of between 5% and** 15 % of the value of the goods **or of the duties evaded**;

Justification

In the case of high-value cargoes (e.g. oil or commodities), fines based on the value of the goods concerned may be huge. Member States must therefore be given the option of issuing fines based either on the value of the goods concerned or on the amount of customs duties which should have accrued to them.

Amendment 9

Proposal for a directive Article 10 – point b

Text proposed by the Commission

(b) where the customs infringement is not related to specific goods, a pecuniary fine **up to** EUR 22 500.

Amendment

(b) where the customs infringement is not related to specific goods, a pecuniary fine **of between EUR 7 500 and** EUR 22 500.

Amendment 10

Proposal for a directive Article 11 – point a

Text proposed by the Commission

(a) where the customs infringement

Amendment

(a) where the customs infringement

relates to specific goods, a pecuniary fine *up to* 30 % of the value of the goods;

relates to specific goods, a pecuniary fine *of between 10% and 30 %* of the value of the goods *or of the duties evaded*;

Justification

In the case of high-value cargoes (e.g. oil or commodities), fines based on the value of the goods concerned may be huge. Member States must therefore be given the option of issuing fines based either on the value of the goods concerned or on the amount of customs duties which should have accrued to them.

Amendment 11

Proposal for a directive Article 11 – point b

Text proposed by the Commission

(b) where the customs infringement is not related to specific goods, a pecuniary fine *up to* EUR 45 000.

Amendment

(b) where the customs infringement is not related to specific goods, a pecuniary fine *of between EUR 15 000 and* EUR 45 000.

Amendment 12

Proposal for a directive Article 11 a (new)

Text proposed by the Commission

Amendment

Article 11a

1. The amounts of the fines applicable pursuant to Articles 9, 10 and 11 shall be reviewed by the Commission, together with the competent authorities of the Member States, five years after the entry into force of this Directive. The aim of the review procedure shall be to ensure that the amounts of fines imposed under the Customs Union are more convergent, with a view to harmonising the operation thereof.

2. Each year the Commission shall publish details of the sanctions imposed by the Member States for the customs

infringements referred to in Articles 3 to 6.

3. Member States shall ensure compliance with customs legislation within meaning of point (2) of Article 5 of Regulation (EU) No 952/2013, as well as Regulation No 978/2012 of the European Parliament and of the Council^{1a}.

^{1a} *Regulation No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 (OJ L 303, 31.10.2012, p. 1).*

Amendment 13

Proposal for a directive Article 12 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

The fact that the goods concerned are subject to prohibitions, quantitative restrictions or surveillance measures on grounds of, in particular, public morality, public policy or public security, or the protection of health and life of humans as referred to in Article 24(2) of Regulation (EU) 2015/478 of the European Parliament and of the Council^{1a} shall be considered an aggravating factor.

^{1a} *Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports (OJ L 83, 27.3.2015, p. 16).*

Amendment 14

Proposal for a directive Article 15 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that they exercise jurisdiction over the customs infringements referred to in Articles 3 to 6 in accordance with *any* of the following criteria:
- (a) the customs infringement is committed in whole or in part within the territory of that Member State;
 - (b) the *person committing* the customs infringement *is a national* of that Member State;
 - (c) the *goods related to* the customs infringement *are present in the territory* of that Member State.

Amendment

1. Member States shall ensure that they exercise jurisdiction over the customs infringements referred to in Articles 3 to 6 in accordance with, *and in the order of priority* of, the following criteria:
- (a) the customs infringement is committed in whole or in part within the territory of that Member State;
 - (b) the *goods related to* the customs infringement *are present in the territory* of that Member State;
 - (c) the *person committing* the customs infringement *is a national* of that Member State.

(New positioning of points (b) and (c))

Amendment 15

Proposal for a directive Article 15 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that in *case* more than one Member State claims jurisdiction over the same customs infringement, the Member State in which criminal proceedings are pending against the same person in connection with the same facts exercises jurisdiction. *Where jurisdiction cannot be determined pursuant to the first subparagraph, Member States shall ensure that the Member State whose competent authority first initiates the proceedings concerning the customs infringement against the same person in connection with the same*

Amendment

2. Member States shall ensure that, in *cases where* more than one Member State claims jurisdiction over the same customs infringement, the Member State in which criminal proceedings are pending against the same person in connection with the same facts exercises jurisdiction.

facts exercises jurisdiction.

Amendment 16

Proposal for a directive Article 16

Text proposed by the Commission

Member States shall co-operate and exchange any information necessary for the proceedings concerning an act or omission constituting a customs infringement referred to in Articles 3 to 6, in particular in *case* more than one Member State has started proceedings against the same person in connection with the same facts.

Amendment

Member States shall co-operate and exchange any information necessary for the proceedings concerning an act or omission constituting a customs infringement referred to in Articles 3 to 6, in particular in *cases where* more than one Member State has started proceedings against the same person in connection with the same facts. ***The objective of cooperation between Member States shall be to increase the effectiveness of customs checks on goods and to harmonise procedures within the Union.***

Amendment 17

Proposal for a directive Article 18

Text proposed by the Commission

The Commission shall, by [1 May 2019], submit a report on the application of this Directive to the European Parliament and the Council, assessing the extent to which the Member States have taken the necessary measures to comply with this Directive.

Amendment

The Commission shall, by [1 May 2019], submit a report on the application of this Directive to the European Parliament and the Council, assessing the extent to which the Member States have taken the necessary measures to comply with this Directive. ***The report shall incorporate performance criteria demonstrating progress made as regards strengthening the Customs Union and convergence of procedures.***

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Directive of the European parliament and of the Council on the Union legal framework for customs infringements and sanctions	
References	COM(2013)0884 – C8-0033/2014 – 2013/0432(COD)	
Committee responsible Date announced in plenary	IMCO 13.1.2014	
Opinion by Date announced in plenary	INTA 13.1.2014	
Rapporteur Date appointed	Franck Proust 3.9.2014	
Discussed in committee	16.2.2016	15.3.2016
Date adopted	24.5.2016	
Result of final vote	+: 28	–: 9
	0: 2	
Members present for the final vote	Maria Arena, Tiziana Beghin, Daniel Caspary, Salvatore Cicu, Marielle de Sarnez, Santiago Fisas Aixelà, Karoline Graswander-Hainz, Ska Keller, Jude Kirton-Darling, Alexander Graf Lambsdorff, Bernd Lange, David Martin, Emmanuel Maurel, Emma McClarkin, Anne-Marie Mineur, Sorin Moisă, Alessia Maria Mosca, Artis Pabriks, Franck Proust, Godelieve Quisthoudt-Rowohl, Viviane Reding, Inmaculada Rodríguez-Piñero Fernández, Tokia Saïfi, Marietje Schaake, Helmut Scholz, Joachim Schuster, Joachim Starbatty, Adam Szejnfeld, Hannu Takkula, Iuliu Winkler, Jan Zahradil	
Substitutes present for the final vote	Reimer Böge, Edouard Ferrand, Sander Loones, Georg Mayer, Lola Sánchez Caldentey, Judith Sargentini, Jarosław Wałęsa	
Substitutes under Rule 200(2) present for the final vote	Dominique Bilde	

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Directive of the European parliament and of the Council on the Union legal framework for customs infringements and sanctions			
References	COM(2013)0884 – C8-0033/2014 – 2013/0432(COD)			
Date submitted to Parliament	13.12.2013			
Committee responsible Date announced in plenary	IMCO 13.1.2014			
Committees asked for opinions Date announced in plenary	INTA 13.1.2014	CONT 13.1.2014	ECON 13.1.2014	JURI 13.1.2014
Not delivering opinions Date of decision	CONT 11.6.2014	ECON 22.7.2014	JURI 3.9.2014	
Rapporteurs Date appointed	Kaja Kallas 17.7.2014			
Legal basis disputed Date of JURI opinion	JURI 21.4.2016			
Discussed in committee	22.1.2015	14.1.2016	22.2.2016	23.5.2016
	13.6.2016			
Date adopted	14.7.2016			
Result of final vote	+: –: 0:	24 4 3		
Members present for the final vote	Carlos Coelho, Sergio Gaetano Cofferati, Nicola Danti, Vicky Ford, Ildikó Gáll-Pelcz, Evelyne Gebhardt, Maria Grapini, Sergio Gutiérrez Prieto, Robert Jarosław Iwaszkiewicz, Liisa Jaakonsaari, Jiří Maštálka, Eva Paunova, Jiří Pospíšil, Virginie Rozière, Christel Schaldemose, Andreas Schwab, Ivan Štefanec, Catherine Stihler, Richard Sulík, Mylène Troszczynski, Anneleen Van Bossuyt, Marco Zullo			
Substitutes present for the final vote	Jan Philipp Albrecht, Pascal Arimont, Kaja Kallas, Julia Reda, Ulrike Trebesius, Lambert van Nistelrooij, Kerstin Westphal			
Substitutes under Rule 200(2) present for the final vote	Gesine Meissner, Lieve Wierinck			
Date tabled	19.7.2016			