***I

DRAFT REPORT


Committee on the Internal Market and Consumer Protection

Rapporteur: Kaja Kallas
Symbols for procedures

* Consultation procedure
*** Consent procedure
*** 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.
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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

(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,

– having regard to the opinion of the European Economic and Social Committee of …¹,

– 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 (A8-0000/2016),

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,

Or. en

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 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 because it has an impact on their access to customs simplifications and facilitations.

Or. en

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 3
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. 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 administrative sanctions in respect of those customs infringements. **However, it should also be possible for Member States to apply criminal sanctions where a customs infringement is committed intentionally and where the financial consequences of the infringement exceed EUR 10 000 in duties evaded. This clarification is needed in order to ensure that criminal sanctions can only be used to combat unlawful trade.**

Or. en

*Justification*

To ensure consistency between this Directive and the Directive on the fight against fraud to the Union's financial interests by means of criminal law, it should be clarified that this Directive harmonises non-criminal sanctions, whereas in the case of an infringement committed intentionally and above a specific threshold, Member states may outside of the scope of this Directive use criminal sanctions instead of non-criminal sanctions.

Amendment 4
Proposal for a directive
Recital 7

Text proposed by the Commission

(7) The first category of behaviour should

Amendment

(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.

include customs infringements that are considered to constitute minor infringements.

Justification

Any sanction that might arise from an infringement should be based on an assessment of the degree of guilt with due respect to the presumption of innocence. This category therefore only refers to the seriousness of the infringement.

Amendment 5

Proposal for a directive
Recital 8

Text proposed by the Commission

(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.

Amendment

(8) The second category of behaviour should include customs infringements that are considered to constitute serious infringements.

Justification

Any sanction that might arise from an infringement should be based on an assessment of the degree of guilt with due respect to the presumption of innocence. This category therefore only refers to the seriousness of the infringement.

Amendment 6

Proposal for a directive
Recital 10

Text proposed by the Commission

(10) In order to ensure legal certainty, it

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.

Justification

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

Amendment 7

Proposal for a directive
Recital 12

Text proposed by the Commission

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

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 customs infringements and the degree of fault on the part of the person committing them. 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 sanctions to be applied.

Justification

Any sanction that might arise from an infringement should be based on an assessment of the degree of guilt with due respect to the presumption of innocence.

Amendment 8

Proposal for a directive
Recital 13
Text proposed by the Commission

(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.

Amendment

(13) The limitation period for proceedings concerning a customs infringement should be fixed at three years from the day on which the customs infringement was committed or, in the case of continuous or repeated infringements, the day on which the behaviour constituting the 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. It should be possible for Member States to specify cases in which that period is to be suspended. The initiation or continuation of such proceedings should be precluded after the expiry of a period of eight years, while the limitation period for the enforcement of a sanction should be three years.

Or. en

Justification

The time limitations should be in line with the time limitations to notify the Customs debt as defined in the Code.

Amendment 9

Proposal for a directive
Recital 15 a (new)

Text proposed by the Commission

(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.

Or. en

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 10

Proposal for a directive
Article 2 – paragraph 1 a (new)

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Member States shall ensure that the acts or omissions set out in Articles 3 to 6 constitute customs infringements where they are committed by negligence or intentionally.</td>
<td></td>
</tr>
</tbody>
</table>

Or. en

Justification

Member States should ensure that infringements are sanctioned on the basis of the degree of guilt, competent authorities should therefore determine whether an infringement is a genuine mistake, is committed by negligence or by intent.

Amendment 11 Proposal for a directive
Article 2 – paragraph 1 b (new)

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>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 and should have foreseen</td>
<td></td>
</tr>
</tbody>
</table>

PR\1084629EN.doc 11/36 PE575.381v01-00
the occurrence of circumstances which constitute the infringement, had the appropriate care and attention been exercised.

Justification

Member States should ensure that infringements are sanctioned on the basis of the degree of guilt, competent authorities should therefore determine whether an infringement is a genuine mistake, is committed by negligence or by intent.

Amendment 12

Proposal for a directive
Article 2 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

Custom authorities shall determine whether the infringement was committed intentionally, meaning that the person responsible acted in the knowledge that he or she was perpetrating an act or omission constituting an infringement.

Justification

Member States should ensure that infringements are sanctioned on the basis of the degree of guilt, competent authorities should therefore determine whether an infringement is a genuine mistake, is committed by negligence or by intent.

Amendment 13

Proposal for a directive
Article 2 – paragraph 1 d (new)

Text proposed by the Commission

Amendment

Clerical errors or mistakes committed by the person responsible for the infringement shall not constitute customs infringements unless they form part of a
pattern of negligent or intentional conduct.

Justification

Member States should ensure that infringements are sanctioned on the basis of the degree of guilt, competent authorities should therefore determine whether an infringement is a genuine mistake, is committed by negligence or by intent.

Amendment 14
Proposal for a directive
Article 3 – title

Text proposed by the Commission

Amendment

**Strict liability** customs infringements  
**Minor** customs infringements

Justification

Any sanction that might arise from an infringement should be based on an assessment of the degree of guilt with due respect to the presumption of innocence. This category therefore only refers to the seriousness of the infringement.

Amendment 15
Proposal for a directive
Article 3 – introductory part

Text proposed by the Commission

Amendment

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

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

Justification

Any sanction that might arise from an infringement should be based on an assessment of the
degree of guilt with due respect to the presumption of innocence. This category therefore only refers to the seriousness of the infringement.

Amendment 16

Proposal for a directive
Article 3 – point c a (new)

Text proposed by the Commission

<table>
<thead>
<tr>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(ca) 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 to provide all the assistance necessary for the completion of the customs formalities or controls referred to in Article 15(1) of the Code;</td>
</tr>
</tbody>
</table>

Or. en

Justification

This infringement initially listed under article 4 is moved under the minor infringement category.

Amendment 17

Proposal for a directive
Article 3 – point c b (new)

Text proposed by the Commission

<table>
<thead>
<tr>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(cb) 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;</td>
</tr>
</tbody>
</table>

Or. en
Justification

This infringement initially listed under article 4 is moved under the minor infringement category.

Amendment 18

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 19
Proposal for a directive
Article 5 – title

Text proposed by the Commission Amendment

Customs infringements committed seriously
intentionally

Or. en

Justification

Any sanction that might arise from an infringement should be based on an assessment of the degree of guilt with due respect to the presumption of innocence. This category therefore only refers to the seriousness of the infringement.

Amendment 20
Proposal for a directive
Article 5 – introductory part

Text proposed by the Commission Amendment

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

Or. en

Justification

Any sanction that might arise from an infringement should be based on an assessment of the degree of guilt with due respect to the presumption of innocence. This category therefore only refers to the seriousness of the infringement.

Amendment 21
Proposal for a directive
Article 5 – point e a (new)
Text proposed by the Commission

Amendment

(ea) 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;

Or. en

Justification

This infringement initially listed under article 4 is moved under the serious infringement category.

Amendment 22

Proposal for a directive
Article 5 – point e b (new)

Text proposed by the Commission

Amendment

(eb) 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;

Or. en

Justification

This infringement initially listed under article 4 is moved under the serious infringement category.

Amendment 23

Proposal for a directive
Article 5 – point e c (new)

Text proposed by the Commission

Amendment

(ec) failure of the economic operator to present the goods brought into a free zone
to customs in accordance with Article 245 of the Code;

Or. en

Justification

This infringement initially listed under article 4 is moved under the serious infringement category.

Amendment 24

Proposal for a directive
Article 5 – point f a (new)

Text proposed by the Commission

(fa) 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;

Or. en

Justification

This infringement initially listed under article 4 is moved under the serious infringement category.

Amendment 25

Proposal for a directive
Article 5 – point g a (new)

Text proposed by the Commission

(ga) 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;
### Justification

*This infringement initially listed under article 4 is moved under the serious infringement category.*

#### Amendment 26

**Proposal for a directive**  
**Article 5 – point g b (new)**

<table>
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<th>Text proposed by the Commission</th>
<th>Amendment</th>
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</thead>
<tbody>
<tr>
<td><em>(gb)</em> 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;</td>
<td></td>
</tr>
</tbody>
</table>

#### Justification

*This infringement initially listed under article 4 is moved under the serious infringement category.*

#### Amendment 27

**Proposal for a directive**  
**Article 5 – point g c (new)**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>(gc)</em> 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.</td>
<td></td>
</tr>
</tbody>
</table>

#### Justification

*This infringement initially listed under article 4 is moved under the serious infringement category.*
Amendment 28
Proposal for a directive
Article 7

Text proposed by the Commission
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.

Amendment
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, in accordance with Article 119 of the Code.

Justification
Article 119 of the Union Customs Code defines what is an error on the part of the Customs authorities and should therefore be the basis of this article.

Amendment 29
Proposal for a directive
Article 9 – title

Text proposed by the Commission
Sanctions for customs infringements referred to in Article 3

Amendment
Non-criminal sanctions for customs infringements referred to in Article 3

Justification
This clarifies that the sanctions provided under this Directive are non-criminal sanctions.

Amendment 30
Proposal for a directive
Article 9 – introductory part

Text proposed by the Commission
Member States shall ensure that effective, proportionate and dissuasive sanctions are

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

**criminal** sanctions are imposed for the customs infringements referred to in Article 3, within the following limits:

Justification

_This clarifies that the sanctions provided under this Directive are non-criminal sanctions._

Amendment 31

Proposal for a directive

Article 9 – point a

**Text proposed by the Commission**

(a) _where the customs infringement relates to specific goods_, a pecuniary fine _from 1 % up to 5 % of the value of the goods_;

**Amendment**

(a) a pecuniary fine _of up to 50 % of the duties evaded_; or

Justification

_The level of sanction should be based on the financial consequences of the infringement rather than on the value of the good._

Amendment 32

Proposal for a directive

Article 9 – point b

**Text proposed by the Commission**

(b) _where the customs infringement is not related to specific goods_, a pecuniary fine _from EUR 150 up to EUR 7 500._

**Amendment**

(b) a pecuniary fine from EUR 150 up to EUR 7 500.

Justification

_In cases where the infringement is not related to an amount of evaded duties or a specific_
good, the level of sanction should be based on a fixed amount.

Amendment 33

Proposal for a directive
Article 10

Text proposed by the Commission

Article 10 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.

Or. en

Justification

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

Amendment 34

Proposal for a directive
Article 11 – title

Text proposed by the Commission

Non-criminal sanctions for customs infringements referred to in Articles 5 and 6

Or. en
Justification

This clarifies that the sanctions provided under this Directive are non-criminal sanctions.

Amendment 35

Proposal for a directive
Article 11 – introductory part

Text proposed by the Commission
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:

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

Or. en

Justification

This clarifies that the sanctions provided under this Directive are non-criminal sanctions.

Amendment 36

Proposal for a directive
Article 11 – point a

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

Amendment
(a) a pecuniary fine of up to 100 % of the duties evaded; or

Or. en

Justification

The level of sanction should be based on the financial consequences of the infringement rather than on the value of the good.
Amendment 37
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) a pecuniary fine of up to EUR 45 000;

Justification

In cases where the infringement is not related to an amount of evaded duties or a specific good, the level of sanction should be based on a fixed amount.

Amendment 38
Proposal for a directive
Article 11 a (new)

Text proposed by the Commission

Article 11a
Possibility to impose criminal sanctions

In cases of infringements committed intentionally and involving damage of more than EUR 10 000 in duties evaded, Member States may provide instead for the imposition of criminal sanctions.

Justification

When infringements are committed with the intent to commit fraud, Member states may take criminal sanctions instead above a specific threshold.

Amendment 39
Proposal for a directive
Article 11 b (new)
Other non-criminal sanctions for customs infringements referred to in Articles 3 and 6

In addition to the sanctions listed in Articles 9 and 11, Member States may impose the following non-pecuniary sanctions:

(a) confiscation of the goods;
(b) revocation of the status of authorised economic operator in the case of a serious infringement as referred to in Article 5 of this Directive or repeated infringements as referred to in Articles 3 to 6 of this Directive, in accordance with Article 39 of the Code;
(c) suspension of an authorisation which has been granted.

Justification

This gives the possibility to Customs authorities to use other types of sanctions that might be needed for the sanctions systems to be dissuasive, in line with article 39 of the Code as regards to the status of authorised economic operator.

Proposal for a directive
Article 12 – title

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

Mitigating and aggravating circumstances

Or. en
**Justification**

This clarifies the content of this article.

**Amendment 41**

**Proposal for a directive**

**Article 12 – introductory part**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>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 <strong>shall</strong> take into account all <em>relevant</em> circumstances, including, where <em>appropriate</em>:</td>
<td>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 take into account the <strong>mitigating and aggravating</strong> circumstances as follows, resulting in the sanction being decreased or increased within the limits set in Articles 9 and 11.</td>
</tr>
</tbody>
</table>

**Aggravating circumstances:**

The basic amount of the sanction may be increased where the competent authorities find that there are aggravating circumstances, as follows:

| Or. en |

**Justification**

This clarifies that the level and type of sanctions should take into account aggravating and mitigating circumstances.

**Amendment 42**

**Proposal for a directive**

**Article 12 –point a a (new)**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>(aa) the same or a similar infringement continues or is repeated</strong>;</td>
<td></td>
</tr>
</tbody>
</table>

| Or. en |
Amendment 43
Proposal for a directive
Article 12 – point b

Text proposed by the Commission

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

Amendment

deleted

Or. en

Justification

An authorised economic operator is expected to have high levels of compliance and not to commit any serious or repeated infringement, therefore infringements committed by an AEO should be sanctioned by the loss of its status rather than being considered as an aggravating or mitigating factor.

Amendment 44
Proposal for a directive
Article 12 – point e

Text proposed by the Commission

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

Amendment

(e) the person responsible for the infringement refused to cooperate with the competent authority;

Or. en

Justification

This clarifies that the refusal to cooperate is an aggravating circumstance.

Amendment 45
Proposal for a directive
Article 12 – paragraph 1 a (new)

Text proposed by the Commission

Mitigating circumstances:
The basic amount of the sanction may be decreased where the competent authorities find that there are mitigating circumstances, such as:

(a) the effective cooperation of the person responsible for the infringement with the competent authority in the proceedings;

(b) voluntary disclosure of the infringement provided that the infringement is not yet the subject of any investigation of which the person responsible for the infringement had formal knowledge;

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

Justification

To improve compliance with Customs legislation, mitigating circumstances should be taken into account, including the compliance programmes put in place by economic operators to avoid infringements.

Amendment 46

Proposal for a directive

Article 12 a (new)

Text proposed by the Commission

<table>
<thead>
<tr>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 12a</td>
</tr>
<tr>
<td>Settlement</td>
</tr>
</tbody>
</table>

Member States shall ensure the possibility of a settlement as a procedure that allows the competent authorities to enter into an agreement with the person responsible for the infringement to settle the matter of a customs infringement as an alternative to initiating or completing legal proceedings.
for the imposition of a sanction.

Or. en

Justification

Settlement procedures for customs infringements are available in 15 out of 24 Member states and should be a possibility to settle the penalty in cases where there is a litigation risk and costs of litigation could be high especially for small businesses.

Amendment 47

Proposal for a directive
Article 12 b (new)

Text proposed by the Commission

Amendment

Article 12b
Compliance

Member States shall ensure that guidelines and publications are available to actively inform the public how to comply and continue to comply with Union customs legislation.

Or. en

Justification

Much more effort should be made to help the public maintain compliance with Customs legislation which therefore requires actively informing and providing guidance on Customs related issues and legislation.

Amendment 48

Proposal for a directive
Article 13 – paragraph 1

Text proposed by the Commission

Amendment

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

1. Member States shall ensure that the limitation period for proceedings concerning a customs infringement referred to in Articles 3 to 6 is three years and that it starts to run on the day on which
customs infringement was committed. the customs infringement was committed.

Or. en

Justification

The time limitations should be in line with the time limitations to notify the Customs debt as defined in the Code.

Amendment 49

Proposal for a directive
Article 13 – paragraph 3

Text proposed by the Commission

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.

Amendment

3. Member States shall ensure that the limitation period is interrupted by any act on the part of the person responsible for the infringement relating to an investigation or legal proceedings concerning the same customs infringement. The limitation period shall start to run again on the day on which the interrupting act comes to an end.

Or. en

Justification

There should be a possibility to interrupt the proceedings if the person responsible commits an act that impacts the course of the proceedings, hindering the process. However the limitation period should start again one the interrupting act is over and not before.

Amendment 50

Proposal for a directive
Article 13 – paragraph 4

Text proposed by the Commission

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

Amendment

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.
eight years from the day referred to in paragraph 1, 2 or 3, as the case may be.

Or. en

Justification

This clarifies that even in cases of acts interrupting the procedures, the legal proceedings cannot last forever and require therefore to be included under this paragraph.

Amendment 51

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.

Or. en

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.
EXPLANATORY STATEMENT


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.