



**2013/0432(COD)**

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

##### *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, ***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

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

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<sup>1a</sup> 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.***

---

***<sup>1a</sup> Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51).***

## **Amendment 8**

### **Proposal for a directive Article 10 – point a**

*Text proposed by the Commission*

*Amendment*

(a) where the customs infringement relates to specific goods, a pecuniary fine

(a) where the customs infringement relates to specific goods, a pecuniary fine

**up to** 15 % of the value of the goods;

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

*Amendment*

(a) where the customs infringement 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<sup>1a</sup>.**

---

<sup>1a</sup> 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<sup>1a</sup> shall be considered an aggravating factor.*

---

*<sup>1a</sup> 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*

*Amendment*

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

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 *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.

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 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

*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.

*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 *case* more than one Member State has started proceedings against the same person in connection with the same facts.

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

<b>Title</b>	Directive of the European parliament and of the Council on the Union legal framework for customs infringements and sanctions	
<b>References</b>	COM(2013)0884 – C8-0033/2014 – 2013/0432(COD)	
<b>Committee responsible</b> Date announced in plenary	IMCO 13.1.2014	
<b>Opinion by</b> Date announced in plenary	INTA 13.1.2014	
<b>Rapporteur</b> Date appointed	Franck Proust 3.9.2014	
<b>Discussed in committee</b>	16.2.2016	15.3.2016
<b>Date adopted</b>	24.5.2016	
<b>Result of final vote</b>	+: 28	–: 9
	0: 2	
<b>Members present for the final vote</b>	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	
<b>Substitutes present for the final vote</b>	Reimer Böge, Edouard Ferrand, Sander Loones, Georg Mayer, Lola Sánchez Caldentey, Judith Sargentini, Jarosław Wałęsa	
<b>Substitutes under Rule 200(2) present for the final vote</b>	Dominique Bilde	