

Special report 13/2011 (2011 discharge): Does the control of customs procedure 42 prevent and detect VAT evasion?

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PURPOSE: to present [special report No 13/2011](#) from the European Court of Auditors (ECA) on whether the control of customs procedure 42 prevents and detects Value Added Tax (VAT) evasion.

CONTENT: the report recalls that the customs procedure 42 is a **mechanism an EU importer uses in order to obtain a VAT exemption**. It is applied when goods imported from outside the EU into a Member State will be transported to another. In such cases, the VAT is due in the latter - the Member State of destination. There is a risk that imports may remain in the Member State of importation without payment of VAT. Imports may be also consumed in the Member State of destination without VAT being collected there.

This performance audit assessed whether there is a sound regulatory framework in the fight against VAT evasion under customs procedure 42. A control model was designed to review whether there is sound management of this VAT exemption in the seven audited Member States of importation (Belgium, Denmark, Spain, France, Austria, Slovenia and Sweden).

The Court also asked the 21 destination Member States of the goods transported in the sample to examine whether VAT was indeed charged.

The ECA observed that the application of customs procedure 42 has led to significant losses to national budgets.

Based on results of the sample tests, the extrapolated amount of the losses in 2009 is approximately €2.2 billion. This represents **29% of the VAT theoretically applicable** on the taxable amount of all the imports made under customs procedure 42 in 2009 in the seven selected Member States. Of the losses in 2009, €1800 million were incurred in the seven audited Member States of importation and €400 million in the twenty one destination Member States of the goods imported in the sample.

Court of Auditors conclusions: the Court found that the Commission has proposed some improvements to the EU regulatory framework. Nevertheless, more needs to be done. **The regulatory framework does not ensure the uniform management of this VAT exemption by customs authorities**. It does not ensure that the information concerning these transactions is always made available to the tax authorities in the destination Member State either. All these deficiencies can be exploited by fraudsters.

The ECA also found that control in Member States was also deficient. Member States do not ensure that exemption conditions are met. Essential information is not made available to tax authorities to ensure that VAT is eventually paid. Furthermore, tax authorities do not exploit the possibilities offered by the information available to them to detect and prevent VAT evasion.

And last but not least, **there was no agreement to impose joint and several liability for not reporting information relating to such intra-Community transactions**.

ECA recommendations to improve the existing framework: the Court recommends that the Commission take the following actions:

- amend the Customs Code Implementing Provisions to implement uniform **communication of the complete VAT data for each intended transport**;
- importers should be held jointly and severally liable for VAT losses in the Member State of destination when the VAT statement is not submitted by them;
- the Member States' custom electronic clearance system should carry out **automatic verification of VAT data**;
- create a common EU risk profile for these imports; and
- legislation should be changed to improve the exchange of information necessary for correct charging of VAT in the Member State of destination.

It can be concluded that the control of customs procedure 42 does not prevent and detect VAT evasion.