Union legal framework for customs infringements and sanctions

2013/0432(COD) - 25/10/2016 - Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament adopted **amendments** on the proposal for a directive of the European Parliament and of the Council on the Union legal framework for customs infringements and sanctions.

The matter was referred back to the committee responsible. The vote on the legislative resolution was postponed to a later date.

The main amendments adopted in plenary are as follows:

Legal basis: Member States considered that **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.

Subject matter and scope: 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**.

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;
- **cover 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.

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.

Parliament noted that the **acts or omissions constitute customs infringements where they are committed by negligence or intentionally**. It deleted the competent concerning strict liability, which does not require any element of fault, and clarified that the same offence must not be penalised twice.

Trade facilitation: Members proposed that Member States shall work together to set up a **cooperation system** including all Member States. 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.

Customs infringements: Parliament proposed adding to the list of infringements the acts and omissions such as:

- failure of an economic operator to supply, in response to a request by the customs authorities, the requisite documents and information within a reasonable time and to provide all the assistance necessary for the completion of the customs formalities or controls;

- 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;
- 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;
- 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;
- storage of goods in temporary storage facilities or customs warehouses without authorisation granted by the customs authorities;
- providing customs authorities with false information or documents;
- the use of inaccurate or incomplete information or inauthentic, inaccurate or invalid documents by an authorised economic operator in accordance with Article 38 of the Code;
- processing of goods in a customs warehouse without an authorisation granted by the customs authorities.

Serious and minor infringements: Members listed the factors and the circumstances to be taken into account to determine whether an infringement is minor or if it's serious:

- **an infringement is minor** if for instance the infringement was committed as a result of negligence; the goods involved are not subject to the prohibitions or restrictions referred to in the Code; the infringement has little or no impact on the amount of customs duties to be paid; the person responsible for the infringement cooperates effectively with the competent authority in the proceedings;
- **an infringement is serious** if for instance the infringement was committed with intent; it persisted over a lengthy period of time, reflecting an intention to maintain it; it has a significant impact on the amount of the import or export duties evaded.

Non-criminal sanctions for customs infringements:

Non-criminal sanctions for minor customs infringements: Member States shall ensure that effective, proportionate and dissuasive sanctions are imposed, in addition to recovering the duties evaded, for the customs infringements within the following limits:

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

Non-criminal sanctions for serious customs infringements: Member States shall ensure that effective, proportionate, dissuasive and non-criminal sanctions are imposed within the following limits:

- where the customs infringement is linked to the duties evaded, a pecuniary fine of between 70% and 140 % of the duties evaded;
- 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;
- 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.

Other non-criminal sanctions for serious infringements include 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.

Review: the amounts of the fines applicable to customs infringements 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.

In addition, **each year the Commission shall publish details of the sanctions** imposed by the Member States for the customs infringements.

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.

Limitation period: 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.

Confiscation: 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.

Guidelines and publications: 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.

Moreover, 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.