

Basic information

2012/2010(DEC)

DEC - Discharge procedure

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

Subject

2.10.01 Customs union, tax and duty-free, Community transit
2.70.02 Indirect taxation, VAT, excise duties
6.20.04 Union Customs Code, tariffs, preferential arrangements, rules of origin
8.70.03.07 Previous discharges

Procedure lapsed or withdrawn

Key players

Council of the European Union

Council configuration

Meetings

Date

Economic and Financial Affairs ECOFIN

3153

2012-03-13

European Commission

Commission DG

Commissioner

Budget

ŠEMETA Algirdas

Key events

Date	Event	Reference	Summary
13/12/2011	Non-legislative basic document published	N7-0004/2012	Summary
02/02/2012	Committee referral announced in Parliament		
13/03/2012	Resolution/conclusions adopted by Council		Summary
06/12/2012	Vote in committee		
18/12/2012	Committee report tabled for plenary	A7-0426/2012	Summary

Technical information

Procedure reference

2012/2010(DEC)

Procedure type

DEC - Discharge procedure

Legal basis

Rules of Procedure EP 101

Other legal basis

Rules of Procedure EP 165

Stage reached in procedure

Procedure lapsed or withdrawn

Committee dossier

CONT/7/08664

Documentation gateway

European Parliament				
Document type	Committee	Reference	Date	Summary
Committee draft report		PE485.900	18/10/2012	
Committee report tabled for plenary, single reading		A7-0426/2012	18/12/2012	Summary
Other institutions and bodies				
Institution/body	Document type	Reference	Date	Summary
CofA	Non-legislative basic document	N7-0004/2012	13/12/2011	Summary

Additional information		
Source	Document	Date
European Commission	EUR-Lex	

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

2012/2010(DEC) - 13/12/2011 - Non-legislative basic document

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.

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

2012/2010(DEC) - 13/03/2012

The Council adopted **conclusions on the Court of Auditors Special Report No 13/2011** entitled "Does the control of customs procedure 42 prevent and detect VAT evasion?"

It takes note of the European Commission's replies to the Court's Report, in particular the explanations given by the Commission in response to the specific remarks of the Court on the regulatory shortcomings which were observed, as well as of the Court's recommendations, while pointing out that since the reporting period (2009) measures to improve the regulatory framework have been stepped up: among other things, Article 143(2) of the VAT Directive has been modified and in the customs area a unanimously agreed administrative arrangement for the Single Administrative Document has been made and will be implemented by all Member States at the latest by 1 January 2013.

The Council encourages Member States to continue to strengthen cooperation in the field and to stay vigilant as to the prevention and detection of VAT evasion in connection with customs procedure 42.

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

2012/2010(DEC) - 18/12/2012 - Committee report tabled for plenary, single reading

The Committee on Budgetary Control unanimously adopted the report by Bart STAES (Greens/EFA, BE) concerning Special Report No 13/2011 of the Court of Auditors entitled 'Does the control of customs procedure 42 prevent and detect VAT evasion?'

Members believe that, in the current economic climate, the emphasis should move to revenue collection systems stressing that **VAT fraud estimates amount to annual figures of around EUR 1 400 million**, leading to exorbitant losses for the Union budget and the economies of Member States.

Members also regret, the estimated average **VAT gap in the Union is 12 %**, attributable mainly to fraud, non-transparent rules, incoherent control systems and non or partial implementation of Union law in Member States

In this context, Members are profoundly concerned about the Court of Auditors' findings, in particular that the application of customs procedure 42 alone accounted for **extrapolated losses of approximately EUR 2 200 million in the seven Member States audited by the Court of Auditors in 2009**, representing 29 % of the VAT theoretically applicable on the taxable amount of all the imports made under customs procedure 42 in 2009 in those Member States.

The committee is particularly concerned that the Court of Auditors found that **the Union's regulatory framework does not ensure the uniform and sound management of this VAT exemption** by Member States' customs authorities, leaving the system vulnerable to misuse by organised crime.

It condemns the poor-quality audits, which have led to unjustified losses to the Union budget, noting that the Commission did not take appropriate measures to remedy this over the last 10 years.

Overall, Members note with regret that since its introduction, the VAT collection model has remained unchanged; that it is outdated, and that it should be reformed in order to respond to both existing and new trends in fraud. Accordingly, they ask the Commission to inform the committee by September 2013 which temporary and permanent measures are taken to improve the situation. They call, in particular, for:

- simplification of the law on VAT;
- a standard form for the notification of the implementation of VAT to tax authorities;
- uniform and proper management of cases of exemption from VAT by the customs authorities of Member States.

More coordination between Member States: Members stress the importance of more intensive cooperation between Member States, better monitoring of exchanges of information and more direct contacts between local tax and customs offices, including by means of the online VAT Information

Exchange System (VIES), so as to ensure that Member States provide efficient assistance to each other. Technical cooperation measures are proposed and Members recommend that customs authorities should be given **online access to the VAT identification numbers contained in VIES**, in order to enable the latter to fulfil their obligations to verify the VAT numbers collected in customs declarations.

The Commission is called upon to create a system that would combine assistance in the customs area and administrative cooperation in the area of VAT to ensure effective information flows, so that the relevant authorities in one field are routinely informed about action in the other field.

Members stress that documented, electronic, non-cash transactions make participating in the black economy more difficult, and encourage Member States to lower their thresholds for compulsory non-cash payments.

Strengthen European tools: the committee deplores the postponement of the entry into force of the [Modernised Customs Code](#) and **considers the proposed new date of 31 December 2020 to be unacceptable**. However, it endorses the [proposal for a Council Directive](#) amending Directive 2006/112/EC on the common system of value added tax as regards tax evasion linked to import and other cross-border transaction, which aims to introduce joint liability of traders in intra-Union transactions, holding importers jointly and severally liable in cases where false, late or incomplete reporting of the transaction to the VAT authority has resulted in VAT loss and subjecting them to appropriate penalties.

Lastly, Members endorse the Court of Auditors' recommendations (please see the summary of the Court of Auditors' report) and they call on the Commission to report on a six-monthly basis on how and when it will implement those recommendations.