

Procedure file

Basic information	
DEC - Discharge procedure	2012/2010(DEC)
Special report 13/2011 (2011 discharge): Does the control of customs procedure 42 prevent and detect VAT evasion?	Procedure lapsed or withdrawn
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	

Key players			
European Parliament			
Council of the European Union	Council configuration	Meeting	Date
	Economic and Financial Affairs ECOFIN	3153	13/03/2012
European Commission	Commission DG	Commissioner	
	Budget	ŠEMETA Algirdas	

Key events			
12/12/2011	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 99
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	CONT/7/08664

Documentation gateway				
Non-legislative basic document		N7-0004/2012	13/12/2011	CofA
				Summary

Committee draft report	PE485.900	18/10/2012	EP	
Committee report tabled for plenary, single reading	A7-0426/2012	18/12/2012	EP	Summary

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

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?

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 Commissions replies to the Courts 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 Courts 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?

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.