

Procedure file

Basic information			
COD - Ordinary legislative procedure (ex-codecision procedure) Directive 2013/0432(COD)		Procedure lapsed or withdrawn	
Union legal framework for customs infringements and sanctions			
Subject 2.10.01 Customs union, tax and duty-free, Community transit 6.20.04 Union Customs Code, tariffs, preferential arrangements, rules of origin 7.30.02 Customs cooperation			
Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	IMCO Internal Market and Consumer Protection		
	Former committee responsible		
	IMCO Internal Market and Consumer Protection		
	Committee for opinion	Rapporteur for opinion	Appointed
	INTA International Trade		
	CONT Budgetary Control		
	ECON Economic and Monetary Affairs		
	JURI Legal Affairs		
	Former committee for opinion		
INTA International Trade			
CONT Budgetary Control			
ECON Economic and Monetary Affairs			
JURI Legal Affairs			
Committee for opinion on the legal basis	Rapporteur for opinion	Appointed	
JURI Legal Affairs			
Council of the European Union	Commission DG	Commissioner	
European Commission	Taxation and Customs Union	MOSCOVICI Pierre	

Key events			
13/12/2013	Legislative proposal published	COM(2013)0884	Summary
13/01/2014	Committee referral announced in Parliament, 1st reading		
14/07/2016	Vote in committee, 1st reading		

19/07/2016	Committee report tabled for plenary, 1st reading	A8-0239/2016	Summary
24/10/2016	Debate in Parliament		
25/10/2016	Results of vote in Parliament		
25/10/2016	Decision by Parliament, 1st reading	T8-0400/2016	Summary
25/10/2016	Matter referred back to the committee responsible		
05/07/2017	Decision by Parliament, 1st reading	T8-0300/2017	Summary
29/09/2020	Proposal withdrawn by Commission		

Technical information

Procedure reference	2013/0432(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	Rules of Procedure EP 59-p4; Treaty on the Functioning of the EU TFEU 033
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	IMCO/8/00290

Documentation gateway

Legislative proposal		COM(2013)0884	13/12/2013	EC	Summary
Document attached to the procedure		SWD(2013)0513	13/12/2013	EC	
Document attached to the procedure		SWD(2013)0514	13/12/2013	EC	
Document attached to the procedure		SWD(2013)0515	13/12/2013	EC	
Committee draft report		PE575.381	03/02/2016	EP	
Amendments tabled in committee		PE578.842	17/03/2016	EP	
Specific opinion	JURI	PE580.715	25/04/2016	EP	
Committee opinion	INTA	PE576.978	25/05/2016	EP	
Committee report tabled for plenary, 1st reading/single reading		A8-0239/2016	19/07/2016	EP	Summary
Text adopted by Parliament, partial vote at 1st reading/single reading		T8-0400/2016	25/10/2016	EP	Summary
Text adopted by Parliament, 1st reading/single reading		T8-0300/2017	05/07/2017	EP	Summary
Commission response to text adopted in plenary		SP(2017)538	06/09/2017	EC	

Additional information

European Commission	EUR-Lex
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Union legal framework for customs infringements and sanctions

PURPOSE: to establish a framework for breaches of the Unions Customs legislation and provide for penalties applicable where they are infringements.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: despite the fact that customs legislation is fully harmonised, its enforcement and the lawful imposition of sanctions lie within the ambit of Member States' national law.

A Project Group established by the Commission with 24 Member States, under the Customs 2013 Program analysed the 24 national regimes for customs infringements and related sanctions and reported back to the Commission.

Several substantial differences were noted regarding Member States' customs infringements and sanctions systems.

Within the European Union, the different enforcement of customs legislation makes the effective management of the customs union harder. For economic operators, the differences in the treatment of infringements of Union customs legislation have an impact on the level playing field, thus providing an advantage for those who breach the law in a Member State with lenient legislation for customs sanctions.

A major overhaul of this Code was carried out in Regulation (EC) No 450/2008 (Modernised Customs Code), now recast and repealed by [Regulation \(EU\) No 952/2013](#) of the European Parliament and of the Council laying down the Union Customs Code (UCC).

This harmonised customs legislation needs to be strengthened with common rules regarding its enforcement. The need to take some steps in this direction has already been pointed out by the European Parliament in two reports, one from [2008](#) and another from [2011](#).

IMPACT ASSESSMENT: the impact assessment concludes that the preferred option is a legislative measure that would identify customs obligations to which special protection should be given through the establishment of non-criminal sanctions for any breaches of such obligations.

CONTENT: the proposal sets a common legal framework for the treatment of customs infringements and sanctions. It aims to bridge the gap between different legal regimes through a common platform of rules and thus contribute to an equal treatment between economic operators in the EU, as well as the effective protection of the Union's financial interests and law enforcement in the field of customs.

Specifically, the proposal:

- includes a common list of different infringements (strict liability, committed with negligence and committed with intent) that breach the rules of the Union Customs Code;
- establishes a common scale of effective proportionate and dissuasive sanctions linked to the infringements and sets out relevant circumstances that should be taken into account by the competent authorities from Member States when determining the type and level of sanctions for customs infringements;
- defines certain cases where behaviour falling within the categories defined as strict liability infringements shall not be considered as such when they are due to an error on the part of the competent customs authorities;
- deals with the liability of persons playing a relevant role in the commission of customs infringements with intent (including legal persons), stating an equivalent treatment to that of the persons committing the infringement to those inciting, aiding or abetting these infringements;
- includes some necessary procedural provisions in order to avoid overlap of sanctions for the same facts and persons: the time limit within the competent authorities must initiate the procedure against the person responsible of the infringement; the possibility of suspending the sanctioning proceeding in those cases where criminal proceedings are being carried out with regard to the same facts; territorial competence by defining which Member State is considered competent to deal with the case when the infringement involves more than one Member State.

Union legal framework for customs infringements and sanctions

The Committee on the Internal Market and Consumer Protection adopted the report by Kaja KALLAS (ADLE, EE) 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 committee recommended that the European Parliaments position adopted at first reading under the ordinary legislative procedure should amend the Commission proposal 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: the Directive shall provide 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.

Moreover, it shall 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, with a view to establishing a homogeneous and effective internal market while facilitating trade and providing certainty.

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.

The scope of the Directive has been clarified to ensure that only infringements committed by negligence or intentionally constitute infringements, thereby removing the strict liability element which does not require a degree of fault. It also strengthens reference to the legal doctrine that no person should be penalised twice for the same offence.

Trade facilitation: Members proposed that Member States shall work together to set up a cooperation system including all Member States. That system shall aim at: (i) coordinating key performance indicators regarding customs sanctions; (ii) disseminating best practice among customs services; (iii) passing on the experiences of economic operators and creating links between them; (iv) monitoring the way in which customs services perform their activities; (v) performing statistical work on infringements committed by companies from third countries.

Customs infringements: Members 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 in an appropriate form and 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 its serious.

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.

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.

Union legal framework for customs infringements and sanctions

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 its 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.

Union legal framework for customs infringements and sanctions

The European Parliament adopted, without a vote, a legislative resolution 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 report was referred back to committee on 25 October 2016 for interinstitutional negotiations.

Parliament adopted the position reached at first reading on 25 October 2016, following the ordinary legislative procedure.

For details of the position adopted by Parliament, see the summary dated 25 October 2016.