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INFORMATION NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council
Subject: Proposal for a Directive of the European Parliament and of the Council on the Union legal framework for customs infringements and sanctions – Outcome of the European Parliament's proceedings (Strasbourg, 24 to 27 October 2016)

I. INTRODUCTION

The Rapporteur, Mrs Kaja KALLAS (ALDE - EE), presented a report consisting of 42 amendments (amendments 1 - 42) to the proposal for a Directive, on behalf of the Committee on Internal Market and Consumer Protection.

II. DEBATE

The debate, which took place on 24 October 2016, was dominated by the wish of the European Parliament to move forward in the negotiations. Most speakers urged the Council to take a position on this legislative proposal and to start discussions with the Parliament.

The Rapporteur, Mrs Kallas (ALDE - EE), stressed that her report has two aims: the harmonisation of the existing rules on sanctions for infringements of Customs law, and the creation of new rules which are fair and proportional and which should not lead to a "no-fault" liability. There should be a mix of non-criminal and criminal sanctions. She stressed that the differences between the Member States could lead to a distortion of the market and to unfair competition.

Speakers from the political groups (Mr SCHWAB / EPP -DE, Mrs ROZIÈRE / S&D - FR) and the INTA Committee, which delivered an opinion, (Mr PROUST / EPP- FR) supported Mrs Kallas' report and regarded the goals of simplification, harmonisation and less bureaucracy as key for undertakings.

Members from the ECR, ENF and EFDD political groups spoke against the legislative proposal.

The Vice-President of the Commission, Mr DOMBROVSKIS, deplored the lack of legal certainty for undertakings which arises because the 28 Member States have different definitions for customs infringements and because they apply different types and levels of sanctions. He stressed that the legislative proposal follows on from the entry into force of the Union's Customs Code in May 2016, and aims at enforcing the new rules. He thanked the Rapporteur for her excellent work. However, he pointed out that the amendments of the IMCO Committee limiting the scope to non-criminal offences, the definition of the scope, and the links to criminal law need to be further clarified in order to ensure legal certainty.

III. VOTE

When it voted on 25 October, the Parliament adopted 42 amendments (amendments 1 - 42), the text of which is annexed to this note.

The vote on the legislative resolution was postponed to a later session, thereby not closing the first reading. The matter was then referred back to the Committee on Internal Market and Consumer Protection, pursuant to Rule 61(2) of the European Parliament's Rules of Procedure.

Union legal framework for customs infringements and sanctions ***I

Amendments adopted by the European Parliament on 25 October 2016 on the proposal for a directive of the European Parliament and of the Council on the Union legal framework for customs infringements and sanctions (COM(2013)0884 – C8-0033/2014 – 2013/0432(COD))¹

(Ordinary legislative procedure: first reading)

Amendment 1

Proposal for a directive

Citation 1

Text proposed by the Commission

Having regard to the Treaty on the Functioning of the European Union, and in particular *Article* 33 thereof,

Amendment

Having regard to the Treaty on the Functioning of the European Union, and in particular *Articles* 33 **and 114** thereof,

Amendment 2

Proposal for a directive

Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) This Directive should be in line with Regulation (EU) No 952/2013 of the European Parliament and of the Council¹.

¹ **Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).**

¹ The matter was referred back to the committee responsible for reconsideration pursuant to Rule 61(2), second subparagraph (A8-0239/2016).

Amendment 3

Proposal for a directive Recital 2

Text proposed by the Commission

(2) **Consequently**, customs infringements and sanctions follow 28 different sets of legal rules. As a result of that, a breach of Union customs legislation is not treated the same way throughout the Union and the sanctions that may be imposed in each case differ in nature and severity depending on the Member State that is imposing the sanction.

Amendment

(2) Customs infringements and sanctions follow 28 different sets of legal rules. As a result of that, a breach of Union customs legislation is not treated the same way throughout the Union and the sanctions that may be imposed in each case differ in nature and severity depending on the Member State that is imposing the sanction, **leading to possible losses of revenue for the Member States and trade distortions**.

Amendment 4

Proposal for a directive Recital 3

Text proposed by the Commission

(3) That disparity of Member States' legal systems affects **not only** the optimal management of the customs union, but also prevents **that** a level playing field **is achieved** for economic operators in the customs union because it has an impact on their access to customs simplifications and facilitations.

Amendment

(3) That disparity of Member States' legal systems **not only** affects the optimal management of the customs union **and the transparency necessary to ensure the proper functioning of the internal market as regards ways in which infringements are handled by the different customs authorities**, but also prevents **the achievement of** a level playing field for economic operators in the customs union, **who are already subject to different sets of rules across the Union**, because it has an impact on their access to customs simplifications and facilitations.

Amendment 5

Proposal for a directive Recital 6

Text proposed by the Commission

(6) A list of behaviour which should be considered as infringing Union customs legislation and give rise to sanctions should be established. Those customs infringements should be fully based on the obligations stemming from the customs legislation with direct references to the Code. This Directive ***does not determine whether*** Member States should apply ***administrative or criminal law*** sanctions in respect of those customs infringements.

Amendment

(6) A list of behaviour which should be considered as infringing Union customs legislation and give rise to sanctions should be established ***by this Directive***. Those customs infringements should be fully based on the obligations stemming from the customs legislation with direct references to the Code. This Directive ***provides that*** Member States should apply ***non-criminal*** sanctions in respect of those customs infringements. ***It should also be possible for Member States to 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.***

Amendment 6

Proposal for a directive
Recital 7

Text proposed by the Commission

(7) ***The first category of behaviour should include customs infringements based on strict liability, which does not require any element of fault, considering the objective nature of the obligations involved and the fact that the persons responsible to fulfil them cannot ignore their existence and binding character.***

Amendment

deleted

Amendment 7

Proposal for a directive
Recital 8

Text proposed by the Commission

Amendment

(8) *The second and third category of behaviour should include customs infringements committed by negligence or intentionally, respectively, where that subjective element has to be established for liability to arise.*

deleted

Amendment 8

Proposal for a directive

Recital 10

Text proposed by the Commission

Amendment

(10) In order to ensure legal certainty, it should be provided that any act or omission resulting from an error on the part of the customs authorities should not be considered a customs infringement.

(10) In order to ensure legal certainty, it should be provided that any act or omission resulting from an error on the part of the customs authorities ***as referred to in the Code*** should not be considered ***to constitute*** a customs infringement.

Amendment 9

Proposal for a directive

Recital 12

Text proposed by the Commission

Amendment

(12) In order to approximate the national sanctioning systems of the Member States, scales of sanctions should be established reflecting the ***different categories of the customs infringements and their*** seriousness. For the purpose of imposing effective, proportionate and dissuasive sanctions, Member States should also ensure that their competent authorities take into account specific aggravating or mitigating circumstances when determining the type and level of sanctions to be applied.

(12) In order to approximate the national sanctioning systems of the Member States, scales of sanctions should be established reflecting the seriousness ***of the customs infringements***. For the purpose of imposing effective, proportionate and dissuasive sanctions, Member States should also ensure that their competent authorities take into account specific aggravating or mitigating circumstances when determining the type and level of sanctions to be applied.

Amendment 10

Proposal for a directive Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) *Only in cases where serious infringements are linked not to the duties evaded but to the value of the goods concerned, for instance in the case of infringements relating to intellectual property rights or prohibited or restricted goods, customs authorities should base the sanction imposed on the value of the goods.*

Amendment 11

Proposal for a directive Recital 13

Text proposed by the Commission

Amendment

(13) The limitation period for proceedings concerning a customs infringement should be fixed at four years from the day on which the customs infringement was committed or, in case of continuous or repeated infringements, **where** the behaviour constituting that infringement ceases. Member States should ensure that the limitation period is interrupted by an act relating to investigations or legal proceedings concerning the customs infringement. Member States **may** lay down cases **where** that period is suspended. **The initiation or continuation of these proceedings should be precluded** after an expiry period of eight years, while the limitation period for the enforcement of a sanction should be **of** three years.

(13) The limitation period for proceedings concerning a customs infringement should be fixed at four years from the day on which the customs infringement was committed or, in **the** case of continuous or repeated infringements, **when** the behaviour constituting that infringement ceases. 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.

Amendment 12

Proposal for a directive Recital 14

Text proposed by the Commission

(14) A suspension of administrative proceedings concerning customs infringements should be provided for where criminal proceedings have been initiated against the same person in connection with the same facts. The continuation of the administrative proceedings after the completion of the criminal proceedings should be possible only in strict conformity with the ne bis in idem principle.

Amendment

(14) A suspension of administrative proceedings concerning customs infringements should be provided for where criminal proceedings have been initiated against the same person in connection with the same facts. The continuation of the administrative proceedings after the completion of the criminal proceedings should be possible only in strict conformity with the ne bis in idem principle, ***meaning that the same offence must not be penalised twice.***

Amendment 13

Proposal for a directive Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) The overall objective of this Directive is to ensure the effective enforcement of Union customs legislation. However, the legal framework provided for by this Directive does not allow an integrated approach to enforcement, including supervision, control, and investigation. The Commission should therefore be required to submit to the European Parliament and to the Council a report on those aspects, including on the implementation of the common risk management framework, in order to assess whether further legislation is needed.

Amendment 14

Proposal for a directive Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) *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.*

Amendment 15

Proposal for a directive Article 1 – paragraph 1

Text proposed by the Commission

Amendment

1. This Directive **establishes a** framework concerning **the** infringements of Union customs legislation and provides for sanctions for those infringements.

1. 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.**

Amendment 16

Proposal for a directive Article 1 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. *This Directive covers 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.*

Amendment 17

Proposal for a directive Article 2

Text proposed by the Commission

Article 2

Customs infringements and sanctions

Member States shall lay down rules on sanctions in respect of the customs infringements set out in Articles 3 to 6.

Amendment

Article 2

General principles

1. Member States shall lay down rules on sanctions in respect of the customs infringements set out in Articles 3 **and 6 in strict conformity with the ne bis in idem principle.**

Member States shall ensure that the acts or omissions set out in Articles 3 and 6 constitute customs infringements where they are committed by negligence or intentionally.

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.

2. ***For the purposes of this Directive:***

(a) custom authorities shall determine whether the infringement was committed by negligence, meaning that the person responsible failed to exercise reasonable care with respect to the control of his or her operations, or the act of taking measures which are manifestly insufficient, to avoid the occurrence of circumstances giving rise to the infringement, where the risk of its occurrence is reasonably foreseeable;

(b) custom authorities shall determine whether the infringement was committed intentionally, meaning that the act or omission was done by the person responsible in the knowledge that that act or omission constituted an infringement, or with the wilful and conscious aim of

contravening customs legislation;

(c) clerical errors or mistakes shall not constitute a customs infringement unless it is clear from all the circumstances that they were committed as a result of negligence or with intent.

Amendment 18

Proposal for a directive Article 2 a (new)

Text proposed by the Commission

Amendment

Article 2a

Trade facilitation

In order to comply with the Union's obligations under the WTO Trade Facilitation Agreement, Member States shall work together to set up a cooperation system including all Member States. That system shall aim at coordinating key performance indicators regarding customs sanctions (analysis of the number of appeals, rate of recidivism, etc.); disseminating best practice among customs services (efficiency of controls and sanctions, reduction of administrative costs, etc.); passing on the experiences of economic operators and creating links between them; monitoring the way in which customs services perform their activities; and performing statistical work on infringements committed by companies from third countries. 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.

Amendment 19

Proposal for a directive Article 3

Text proposed by the Commission

Article 3

Strict liability customs infringements

Member States shall ensure that the following acts or omissions constitute customs infringements **irrespective of any element of fault**:

- (a) failure of the person lodging a customs declaration, temporary storage declaration, entry summary declaration, exit summary declaration, re-export declaration or re-export notification to ensure the accuracy and completeness of the information given in the declaration, notification or application in accordance with Article 15(2)(a) of the Code;
- (b) failure of the person lodging a customs declaration, temporary storage declaration, entry summary declaration, exit summary declaration, re-export declaration or re-export notification to ensure the authenticity, accuracy and validity of any supporting document in accordance with Article 15(2)(b) of the Code;
- (c) failure of **the** person to lodge an entry summary declaration in accordance with Article 127 of the Code, a notification of arrival of a **sea going** vessel or of an aircraft in accordance with Article 133 of the Code, a temporary storage declaration in accordance with Article 145 of the Code, a customs declaration in accordance with Article 158 of the Code, a notification of activities in free zones in accordance with Article 244(2) of the Code, a pre-departure declaration in accordance with Article 263 of the Code, a re-export declaration in accordance with Article 270 of the Code, an exit summary declaration in accordance with Article 271 of the Code or a re-export notification in accordance with Article 274 of the Code;
- (d) failure of an economic operator to

Amendment

Article 3

Customs infringements

Member States shall ensure that the following acts or omissions constitute customs infringements:

- (a) failure of the person lodging a customs declaration, temporary storage declaration, entry summary declaration, exit summary declaration, re-export declaration or re-export notification to ensure the accuracy and completeness of the information given in the declaration, notification or application in accordance with **point (a) of** Article 15(2) of the Code;
- (b) failure of the person lodging a customs declaration, temporary storage declaration, entry summary declaration, exit summary declaration, re-export declaration or re-export notification to ensure the authenticity, accuracy and validity of any supporting document in accordance with **point (b) of** Article 15(2) of the Code;
- (c) failure of **a** person to lodge an entry summary declaration in accordance with Article 127 of the Code, a notification of arrival of a **seagoing** vessel or of an aircraft in accordance with Article 133 of the Code, a temporary storage declaration in accordance with Article 145 of the Code, a customs declaration in accordance with Article 158 of the Code, a notification of activities in free zones in accordance with Article 244(2) of the Code, a pre-departure declaration in accordance with Article 263 of the Code, a re-export declaration in accordance with Article 270 of the Code, an exit summary declaration in accordance with Article 271 of the Code or a re-export notification in accordance with Article 274 of the Code;
- (d) failure of an economic operator to

keep the documents and information related to the accomplishment of customs formalities by any accessible means for the period of time required by customs legislation in accordance with Article 51 of the Code;

(e) removal of goods brought into the customs territory of the Union from customs supervision without the permission of the customs authorities, contrary to the first and second subparagraphs of Article 134(1) of the Code;

(f) removal of goods from customs supervision, contrary to the fourth subparagraph of Article 134(1) and Articles 158(3) and 242 of the Code;

(g) failure of a person bringing goods into the customs territory of the Union to comply with the obligations relating to the conveyance of the goods in the appropriate place in accordance with Article 135(1) of the Code, or to inform customs authorities when the obligations cannot be complied with in accordance with Article 137(1) and (2) of the Code;

(h) failure of a person bringing goods into a free zone, where the free zone adjoins the land frontier between a Member State and a third country, to bring those goods directly into that free zone without passing through another part of the customs territory of the Union in accordance with Article 135(2) of the Code;

(i) failure of the declarant for temporary storage or for a customs procedure to provide documents to the customs authorities where Union legislation so requires or where necessary for customs controls in accordance with Article 145(2) and Article 163(2) of the Code;

(j) failure of the *economic operator* responsible for non-Union goods which are in temporary storage to place those goods under a customs procedure or to re-export them within the time limit in accordance

keep the documents and information related to the accomplishment of customs formalities by any accessible means for the period of time required by customs legislation in accordance with Article 51 of the Code;

(e) removal of goods brought into the customs territory of the Union from customs supervision without the permission of the customs authorities, contrary to the first and second subparagraphs of Article 134(1) of the Code;

(f) removal of goods from customs supervision, contrary to the fourth subparagraph of Article 134(1) and Articles 158(3) and 242 of the Code;

(g) failure of a person bringing goods into the customs territory of the Union to comply with the obligations relating to the conveyance of the goods in the appropriate place in accordance with Article 135(1) of the Code, or to inform customs authorities *without delay* when the obligations cannot be complied with in accordance with Article 137(1) and (2) of the Code *and of the whereabouts of the goods*;

(h) failure of a person bringing goods into a free zone, where the free zone adjoins the land frontier between a Member State and a third country, to bring those goods directly into that free zone without passing through another part of the customs territory of the Union in accordance with Article 135(2) of the Code;

(i) failure of the declarant for temporary storage or for a customs procedure to provide documents to the customs authorities where Union legislation so requires or where necessary for customs controls in accordance with Article 145(2) and Article 163(2) of the Code;

(j) failure of the *declarant for temporary storage, or of the person storing the goods in cases where they are stored in other places designated or approved by the customs authorities*, responsible for non-Union goods which are

with Article 149 of the Code;

(k) failure of the declarant for a customs procedure to have in *their* possession and at the disposal of the customs authorities, at the time when the customs declaration or a supplementary declaration is lodged, the supporting documents required for the application of the procedure in question in accordance with Article 163(1) and the second subparagraph of Article 167(1) of the Code;

(l) failure of the declarant for a customs procedure, in the case of a simplified declaration pursuant to Article 166 of the Code or of an entry into the declarant's records pursuant to Article 182 of the Code, to lodge a supplementary declaration at the competent customs office and within the specific time-limit in accordance with Article 167(1) of the Code;

(m) removal or destruction of means of identification affixed by customs authorities in goods, packaging or means of transport without prior authorisation granted by the customs authorities in accordance with Article 192(2) of the Code;

(n) failure of the holder of the inward processing procedure to discharge a customs procedure within the time limit specified in accordance with Article 257 of the Code;

(o) failure of the holder of the outward processing procedure to export the defective goods within the time limit in accordance with Article 262 of the Code;

(p) construction of a building in a free zone without the approval of the customs authorities in accordance with Article 244(1) of the Code;

(q) non-payment of import or export duties by the person liable to pay within the period prescribed in accordance with Article 108 of the Code.

in temporary storage, to place those goods under a customs procedure or to re-export them within the time limit in accordance with Article 149 of the Code;

(k) failure of the declarant for a customs procedure to have in *his* possession and at the disposal of the customs authorities, at the time when the customs declaration or a supplementary declaration is lodged, the supporting documents required for the application of the procedure in question in accordance with Article 163(1) and the second subparagraph of Article 167(1) of the Code;

(l) failure of the declarant for a customs procedure, in the case of a simplified declaration pursuant to Article 166 of the Code or of an entry into the declarant's records pursuant to Article 182 of the Code, to lodge a supplementary declaration at the competent customs office and within the specific time-limit in accordance with Article 167(1) of the Code;

(m) removal or destruction of means of identification affixed by customs authorities in goods, packaging or means of transport without prior authorisation granted by the customs authorities in accordance with Article 192(2) of the Code;

(n) failure of the holder of the inward processing procedure to discharge a customs procedure within the time limit specified in accordance with Article 257 of the Code;

(o) failure of the holder of the outward processing procedure to export the defective goods within the time limit in accordance with Article 262 of the Code;

(p) construction of a building in a free zone without the *prior* approval of the customs authorities in accordance with Article 244(1) of the Code;

(q) non-payment of import or export duties by the person liable to pay within the period prescribed in accordance with Article 108 of the Code;

(qa) 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 in accordance with Article 15(1) of the Code;

(qb) failure of the holder of a decision relating to the application of customs legislation to comply with the obligations resulting from that decision in accordance with Article 23(1) of the Code;

(qc) 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, in accordance with Article 23(2) of the Code;

(qd) 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 in accordance with point (a) of Article 233(1) of the Code;

(qe) 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 in accordance with Article 140 of the Code;

(qf) storage of goods in temporary storage facilities or customs warehouses without authorisation granted by the customs authorities in accordance with Articles 147 and 148 of the Code;

(qg) failure of the holder of the authorisation or the holder of the procedure to fulfil the obligations arising from the storage of goods covered by the customs warehousing procedure in accordance with points (a) and (b) of

Article 242(1) of the Code;

(qh) providing customs authorities with false information or documents required by those authorities in accordance with Articles 15 or 163 of the Code;

(qi) the use of inaccurate or incomplete information or inauthentic, inaccurate or invalid documents by an economic operator in order to obtain from the customs authorities an authorisation:

(i) to become an authorised economic operator in accordance with Article 38 of the Code;

(ii) to make use of a simplified declaration in accordance with Article 166 of the Code;

(iii) to make use of other customs simplifications in accordance with Articles 177, 179, 182 or 185 of the Code;
or

(iv) to place the goods under special procedures in accordance with Article 211 of the Code;

(qj) introduction or exit of goods into or from the customs territory of the Union without presenting them to customs authorities in accordance with Articles 139, 245 or Article 267(2) of the Code;

(qk) processing of goods in a customs warehouse without an authorisation granted by the customs authorities in accordance with Article 241 of the Code;

(ql) acquiring or holding goods involved in one of the customs infringements set out in points (qd) and (qj) of this Article.

Amendment 20

Proposal for a directive Article 4

Text proposed by the Commission

Amendment

Article 4

deleted

*Customs infringements committed by
negligence*

Member States shall ensure that the following acts or omissions constitute customs infringements where committed by negligence:

(a) failure of the economic operator responsible for non-Union goods which are in temporary storage to place those goods under a customs procedure or to re-export them within the time limit in accordance with Article 149 of the Code;

(b) failure of the economic operator to provide customs authorities with all the assistance necessary for the completion of the customs formalities or controls in accordance with Article 15(1) of the Code;

(c) failure of the holder of a decision relating to the application of customs legislation to comply with the obligations resulting from that decision in accordance with Article 23(1) of the Code;

(d) 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 decision was taken by those authorities which influences its continuation or content in accordance with Article 23(2) of the Code;

(e) failure of the economic operator to present the goods brought into the customs territory of the Union to the customs authorities in accordance with Article 139 of the Code;

(f) 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 in accordance with Article 233(1)(a) of the Code;

(g) failure of the economic operator to present the goods brought into a free zone to customs in accordance with Article 245 of the Code;

(h) failure of the economic operator to present the goods to be taken out of the customs territory of the Union to customs on exit in accordance with Article 267(2) of the Code;

(i) 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 in accordance with Article 140 of the Code;

(j) storage of goods in temporary storage facilities or customs warehouses without authorisation granted by the customs authorities in accordance with Articles 147 and 148;

(k) failure of the holder of the authorisation or the holder of the procedure to fulfil the obligations arising from the storage of goods covered by the customs warehousing procedure in accordance with points (a) and (b) of Article 242(1) of the Code.

Amendment 21

Proposal for a directive Article 5

Text proposed by the Commission

Amendment

Article 5

deleted

Customs infringements committed internationally

Member States shall ensure that the following acts or omissions constitute customs infringements where committed intentionally:

(a) providing customs authorities with false information or documents required by those authorities in accordance with Articles 15 or 163 of the Code;

(b) the use of false statements or any other irregular means by an economic operator in order to obtain an

authorisation from the customs authorities:

(i) to become an authorised economic operator in accordance with Article 38 of the Code,

(ii) to make use of a simplified declaration in accordance with Article 166 of the Code,

(iii) to make use of other customs simplifications in accordance with Articles 177, 179, 182, 185 of the Code,

(iv) to place the goods under special procedures in accordance with Article 211 of the Code;

(c) introduction or exit of goods into or from the customs territory of the Union without presenting them to customs authorities in accordance with Articles 139, 245, or Article 267(2) of the Code;

(d) failure of the holder of a decision relating to the application of customs legislation to comply with the obligations resulting from that decision in accordance with Article 23(1) of the Code;

(e) 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 decision was taken by those authorities which influences its continuation or content in accordance with Article 23(2) of the Code;

(f) processing of goods in a customs warehouse without an authorisation granted by the customs authorities in accordance with Article 241 of the Code;

(g) acquiring or holding goods involved in one of the customs infringements set out in point (f) of Article 4 and point (c) of this Article.

Amendment 22

Proposal for a directive Article 6

Text proposed by the Commission

Article 6

Incitement, Aiding, Abetting and Attempt

1. Member States shall take the necessary measures to ensure that inciting or aiding and abetting an act or omission referred to in Article 5 *is* a customs infringement.
2. Member States shall take the necessary measures to ensure that an attempt to commit an act or omission referred to in points (b) or (c) of Article 5 *is* a customs infringement.

Amendment

Article 6

Incitement, aiding, abetting and attempt

1. Member States shall take the necessary measures to ensure that inciting or aiding and abetting an act or omission referred to in Article 8b(2) *constitutes* a customs infringement.
2. Member States shall take the necessary measures to ensure that an attempt to commit an act or omission referred to in points (qi) or (qj) of Article 3 *constitutes* a customs infringement.

Amendment 23

**Proposal for a directive
Article 7**

Text proposed by the Commission

Article 7

Error on the part of the customs authorities
The acts or omissions referred to in Articles 3 *to* 6 *do* not constitute customs infringements where they occur as a result of an error on the part of the customs authorities.

Amendment

Article 7

Error on the part of the customs authorities
The acts or omissions referred to in Articles 3 *and* 6 *shall* not constitute customs infringements where they occur as a result of an error on the part of the customs authorities, *in accordance with Article 119 of the Code, and the customs authorities shall be liable where errors cause damage.*

Amendment 24

**Proposal for a directive
Article 8 – paragraph 1 – introductory part**

Text proposed by the Commission

1. Member States shall ensure that legal persons are held liable for customs infringements committed for their benefit

Amendment

1. Member States shall ensure that legal persons are held liable for customs infringements *as referred to in Articles 3*

by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on any of the following:

and 6 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on any of the following:

Amendment 25

Proposal for a directive Article 8 – paragraph 2

Text proposed by the Commission

2. Member States shall also ensure that legal persons are held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of a customs infringement for the benefit of that legal person by a person under the authority of the person referred to in paragraph 1.

Amendment

(Does not affect the English version.)

Amendment 26

Proposal for a directive Article 8 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. For the purposes of this Directive, ‘legal person’ shall mean any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and public international organisations.

Amendment 27

Proposal for a directive Article 8 a (new)

Text proposed by the Commission

Amendment

Article 8a

Factors to be taken into account in assessing whether an infringement is

minor

1. When determining whether an infringement as referred to in Article 3 is minor, Member States shall ensure from the beginning of the process, that is to say, during the determination of whether a customs infringement has been committed, that their competent authorities take into account all relevant circumstances that may apply, including the following:

- (a) the infringement was committed as a result of negligence;**
- (b) the goods involved are not subject to the prohibitions or restrictions referred to in the second sentence of Article 134(1) of the Code and in point (e) of Article 267(3) of the Code;**
- (c) the infringement has little or no impact on the amount of customs duties to be paid;**
- (d) the person responsible for the infringement cooperates effectively with the competent authority in the proceedings;**
- (e) the person responsible for the infringement voluntarily discloses the infringement, provided that the infringement is not yet the subject of any investigation activity of which the person responsible for the infringement has knowledge;**
- (f) the person responsible for the infringement is able to show that he or she is making a significant effort to align with Union customs legislation by demonstrating a high level of control of his or her operations, for example by means of a compliance system;**
- (g) the person responsible for the infringement is a small or medium-sized enterprise, which had no prior experience in customs related matters.**

2. Competent authorities shall consider an infringement as minor only where there is no aggravating factor with

regard to the infringement as referred to in Article 8b.

Amendment 28

Proposal for a directive Article 8 b (new)

Text proposed by the Commission

Amendment

Article 8b

Factors to be taken into account in assessing whether an infringement is serious

1. When determining whether an infringement as referred to in Article 3 or 6 is serious, Member States shall ensure from the beginning of the process, that is to say, during the determination of whether a customs infringement has been committed, that, the competent authorities take into account any of the following circumstances that may apply:

(a) the infringement was committed with intent;

(b) the infringement persisted over a lengthy period of time, reflecting an intention to maintain it;

(c) a similar or linked infringement is continuing or is repeated, that is to say, committed more than once;

(d) the infringement has a significant impact on the amount of the import or export duties evaded;

(e) the goods involved are subject to the prohibitions or restrictions referred to in the second sentence of Article 134(1) of the Code and in point (e) of Article 267(3) of the Code;

(f) the person responsible for the infringement refuses to cooperate, or to cooperate fully, with the competent authority;

(g) the person responsible for the infringement has committed previous

infringements.

2. The infringements referred to in points (f), (g), (p), (qi) and (qj) of Article 3 constitute, by their very nature, serious infringements.

Amendment 29

Proposal for a directive Article 9

Text proposed by the Commission

Article 9

Sanctions for customs infringements
referred to in Article 3

Member States shall ensure that effective, proportionate ***and*** dissuasive sanctions are imposed for ***the*** customs infringements referred to in Article 3 within the following limits:

- (a) where the customs infringement ***relates to specific goods***, a pecuniary fine ***from 1 % up to 5 %*** of the value of the goods;
- (b) where the customs infringement is not ***related to specific goods***, a pecuniary fine ***from EUR 150*** up to EUR 7 500.

Amendment

Article 9

Non-criminal sanctions for ***minor*** customs infringements

1. Member States shall ensure that effective, proportionate, dissuasive ***and non-criminal*** sanctions are imposed, ***in addition to recovering the duties evaded***, for ***those*** customs infringements referred to in Article 3 ***that are considered minor in accordance with Article 8a***, within the following limits:

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

2. When determining the level of sanctions to be imposed within the limits laid down in paragraph 1 of this Article, Member States shall ensure that all relevant circumstances listed in Article 8a are taken into account.

Amendment 30

Proposal for a directive Article 10

Text proposed by the Commission

Amendment

Article 10

deleted

**Sanctions for customs infringements
referred to in Article 4**

Member States shall ensure that effective, proportionate and dissuasive sanctions are imposed for the customs infringements referred to in Article 4 within the following limits:

(a) where the customs infringement relates to specific goods, a pecuniary fine up to 15 % of the value of the goods;

(b) where the customs infringement is not related to specific goods, a pecuniary fine up to EUR 22 500.

Amendment 31

**Proposal for a directive
Article 11**

Text proposed by the Commission

Amendment

Article 11

Article 11

**Sanctions for customs infringements
referred to in Article 5 and 6**

***Non-criminal* sanctions for *serious*
customs infringements**

Member States shall ensure that effective, proportionate **and** dissuasive sanctions are imposed for the customs infringements referred to in **Articles 5 and 6** within the following limits:

1. Member States shall ensure that effective, proportionate, dissuasive **and non-criminal** sanctions are imposed, **in addition to recovering the duties evaded**, for **those** customs infringements referred to in **Articles 3 and 6 that are considered serious in accordance with Article 8b**, within the following limits:

(a) where the customs infringement relates to specific goods, a pecuniary fine up to 30 % of the value of the goods;

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

(aa) where the customs infringement is linked not to the duties evaded but to the

(b) where the customs infringement is *not related to specific goods*, a pecuniary fine *up to* EUR 45 000.

value of the goods, a pecuniary fine of between 15% and 30% of the value of the goods;

(b) 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.

2. When determining the level of sanctions to be imposed within the limits laid down in paragraph 1 of this Article, Member States shall ensure that all relevant circumstances listed in Article 8a and Article 8b(1) are taken into account.

Amendment 32

Proposal for a directive Article 11 a (new)

Text proposed by the Commission

Amendment

Article 11a

Other non-criminal sanctions for serious infringements

1. In addition to the sanctions listed in Article 11, and in accordance with the Code, Member States may impose 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.

2. In accordance with the Code, Member States shall provide that decisions granting the status of authorised economic operator are to be revoked in the case of a serious or repeated infringement of customs legislation.

Amendment 33

Proposal for a directive Article 11 b (new)

Text proposed by the Commission

Amendment

Article 11b

Review

- 1. The amounts of the fines applicable pursuant to Articles 9 and 11 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]. The aim of the review procedure shall be to ensure that the amounts of fines imposed under the Customs Union are more convergent, with a view to harmonising the operation thereof.**
- 2. Each year the Commission shall publish details of the sanctions imposed by the Member States for the customs infringements referred to in Articles 3 and 6.**
- 3. Member States shall ensure compliance with customs legislation within the meaning of point (2) of Article 5 of Regulation (EU) No 952/2013, as well as Regulation (EU) No 978/2012 of the European Parliament and of the Council¹.**

¹ Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 (OJ L 303, 31.10.2012, p. 1).

Amendment 34

**Proposal for a directive
Article 11 c (new)**

Text proposed by the Commission

Amendment

Article 11c

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.

However, once judicial proceedings have been instituted, the competent authorities may reach a settlement only with the agreement of the judicial authority.

The Commission shall provide guidelines on settlement procedures to ensure that a person responsible for an infringement is given the opportunity of a settlement in accordance with the principle of equal treatment and in a transparent manner, and that any settlement concluded includes publication of the outcome of the procedure.

Amendment 35

Proposal for a directive Article 12

Text proposed by the Commission

Amendment

Article 12

deleted

Effective application of sanctions and exercise of powers to impose sanctions by competent authorities

Member States shall ensure that when determining the type and the level of sanctions for the customs infringements referred to in Articles 3 to 6, the competent authorities shall take into account all relevant circumstances, including, where appropriate:

(a) the seriousness and the duration of the infringement;

(b) the fact that the person responsible for the infringement is an authorized economic operator;

(c) the amount of the evaded import or export duty;

(d) the fact that the goods involved are subject to the prohibitions or restrictions referred to in the second sentence of Article 134(1) of the Code and in Article 267(3)(e) of the Code or pose a risk to public security;

(e) the level of cooperation of the person responsible for the infringement with the competent authority;

(f) previous infringements by the person responsible for the infringement.

Amendment 36

Proposal for a directive Article 12 a (new)

Text proposed by the Commission

Amendment

Article 12a

Compliance

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.

Amendment 37

Proposal for a directive Article 13

Text proposed by the Commission

Amendment

Article 13

Article 13

Limitation

Limitation

1. Member States shall ensure that the

1. Member States shall ensure that the

limitation period for proceedings concerning a customs infringement referred to in Articles 3 *to* 6 is four years and starts to run on the day on which the customs infringement was committed.

2. Member States shall ensure that, in the case of continuous or repeated customs infringements, the limitation period starts to run on the day on which the act or omission constituting the customs infringement ceases.

3. Member States shall ensure that the limitation period is interrupted by any act of the competent authority, notified to the person in question, relating to an investigation or legal proceedings concerning the same customs infringement. The limitation period shall *start* to run on the day *of* the interrupting act.

4. Member States shall ensure that the initiation or continuation of any proceedings concerning a customs infringement referred to in *Articles 3 to 6* is precluded after the expiry of a period of eight years from the day referred to in paragraph 1 or 2.

5. Member States shall ensure that the limitation period for the enforcement of a decision imposing a sanction is three years. That period shall start to run on the day on which that decision becomes final.

6. Member States shall lay down the cases where the limitation periods set out in paragraphs 1, 4 and 5 are suspended.

limitation period for *initiating* proceedings concerning a customs infringement referred to in Articles 3 *and* 6 is four years and *that it* starts to run on the day on which the customs infringement was committed.

2. Member States shall ensure that, in the case of continuous or repeated customs infringements, the limitation period starts to run on the day on which the act or omission constituting the customs infringement ceases.

3. Member States shall ensure that the limitation period is interrupted by any act of the competent authority, notified to the person in question, relating to an investigation or legal proceedings concerning the same customs infringement, *or by an act on the part of the person responsible for the infringement*. The limitation period shall *continue* to run on the day *on which* the interrupting act *comes to an end*.

4. *Without prejudice to Article 14(2)*, Member States shall ensure that any proceedings concerning a customs infringement referred to in *Article 3 or 6 are time-barred, irrespective of any interruption of the limitation period as referred to in paragraph 3 of this Article*, after the expiry of a period of eight years from the day referred to in paragraph 1 or 2 *of this Article*.

5. Member States shall ensure that the limitation period for the enforcement of a decision imposing a sanction is three years. That period shall start to run on the day on which that decision becomes final.

6. Member States shall lay down the cases where the limitation periods set out in paragraphs 1, 4 and 5 are suspended.

Amendment 38

Proposal for a directive Article 16 – paragraph 1

Text proposed by the Commission

Member States shall co-operate and exchange any information necessary for the proceedings concerning an act or omission constituting a customs infringement referred to in Articles 3 *to* 6, in particular in *case* more than one Member State has started proceedings against the same person in connection with the same facts.

Amendment

Member States shall co-operate and exchange any information necessary for the proceedings concerning an act or omission constituting a customs infringement referred to in Articles 3 *and* 6, in particular in *cases where* more than one Member State has started proceedings against the same person in connection with the same facts. ***The objective of cooperation between Member States shall be to increase the effectiveness of customs checks on goods and to harmonise procedures within the Union.***

Amendment 39

**Proposal for a directive
Article 16 – paragraph 1 a (new)**

Text proposed by the Commission

Amendment

The Commission shall supervise cooperation between Member States to create key performance indicators applicable to customs checks and sanctions, the dissemination of best practices and the coordination of training of customs officers.

Amendment 40

**Proposal for a directive
Article 17**

Text proposed by the Commission

Amendment

Article 17

Article 17

Seizure

Seizure

Member States shall ensure that the competent authorities have the possibility *to* temporarily *seize* any goods, means of transport *and any* other instrument used in committing the customs infringements referred to in Articles 3 *to* 6.

Member States shall ensure that the competent authorities have the possibility *of* temporarily *seizing* any goods, means of transport *or* other instrument used in committing the customs infringements referred to in Articles 3 *and* 6. ***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.

Amendment 41

Proposal for a directive Article 18 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

By 31 December 2017, the Commission shall submit a report on the other elements of the enforcement of Union customs legislation, such as supervision, control, and investigation, to the European Parliament and the Council, accompanied if appropriate by a legislative proposal to supplement this Directive.

Amendment 42

Proposal for a directive Article 18 a (new)

Text proposed by the Commission

Amendment

Article 18a

Reporting by Member States

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. The information thus provided shall be sent annually following the entry into force of this Directive. The Commission may use those data when revising this Directive in order to better approximate national sanctioning systems.
