



EUROPEAN
COMMISSION

Brussels, 13.12.2013
COM(2013) 884 final

2013/0432 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the Union legal framework for customs infringements and sanctions

{SWD(2013) 513 final}

{SWD(2013) 514 final}

{SWD(2013) 515 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. General context

Despite the fact that customs legislation is fully harmonised, its enforcement, which ensures compliance with the customs rules and the lawful imposition of sanctions, lies within the ambit of Member States' national law. Consequently, customs legislation enforcement follows 28 different sets of legal rules and different administrative or legal traditions. This means that Member States can impose sanctions that seem appropriate to them as penalties for infringements of certain obligations stemming from the harmonised Union customs legislation.

Such sanctions differ in nature and severity according to the Member State that is competent for it. Namely, they are of different types (e.g. fines, imprisonment, confiscation of goods, temporal or permanent disqualification from the practice of industrial or commercial activities), irrespective their nature, and even when assuming the same type and nature, like for instance a fine, have different levels/ranges from Member State to Member State.

An overview of the situation regarding Member States' customs infringements and sanctions systems took place through a Project Group established, on a voluntary basis, by the Commission with 24 Member States¹, under the Customs 2013 Program. This Project Group analysed the 24 national regimes for customs infringements and related sanctions and reported back to the Commission. Several substantial differences were noted:

Table 1 – Differences in Member States' customs sanctioning systems

The nature of national sanctions for customs infringements	16 out of 24 Member States provide for both criminal and non-criminal sanctions. 8 out of 24 Member States only have criminal sanctions.
Financial thresholds to distinguish between criminal and non-criminal infringements and sanctions	Member States whose systems foresee both criminal and non-criminal infringements and sanctions have different financial thresholds to decide on the nature of the customs infringement – whether criminal or non-criminal- and therefore the nature of the customs sanction. Thus the financial thresholds vary between 266 EUR and 50 000 EUR.
Member States' requirements to establish the economic operator's liability for the	11 out of 24 Member States consider that an economic operator is liable for certain

¹ Austria, Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and United Kingdom.

customs infringement	<p>customs infringements whenever there is a customs law breach, irrespective of the presence of intent, negligence or elements of careless or reckless behaviour (strict liability infringements).</p> <p>13 out of 24 Member States cannot sanction an economic operator for a customs infringement without the presence of intent, negligence or elements of careless or reckless behaviour.</p>
Time limits: -to initiate a customs sanction procedure -to impose a customs sanction -to execute the customs sanction	<p>The large majority of Member States have time limits to initiate a sanction procedure, to impose a customs sanction and to execute it. These time limits vary from 1 to 30 years.</p> <p>1 out of 24 Member States does not employ any time limit at all – it can initiate the sanction procedure or impose a sanction at any time.</p>
Legal Persons' liability	<p>An economic operator who is a legal person can be held liable for a customs infringement in 15 out of 24 Member States.</p> <p>In 9 out of 24 Member States legal persons cannot be held liable for infringements.</p>
Settlement	<p>Settlement refers to any procedure within the legal or administrative system of a Member State that allows the authorities to agree with an offender to settle the matter of a customs infringement as an alternative to initiating or completing customs sanction procedures.</p> <p>15 out of 24 Member States have this procedure for customs infringements.</p>

(Source: Report from the Project Group on Customs Penalties – Annex 1B of Impact Assessment for a legislative act laying down a Union legal framework on customs infringements and sanctions)

These differences in infringements to the customs legislation and sanctions have implications at several levels:

- from an international point of view, the different sanctioning systems existing in the Member States raise some concerns in certain WTO Member States regarding the compliance of the European Union with its international obligations in this field;

- within the European Union, the different enforcement of customs legislation makes the effective management of the customs union harder, as the same non-compliant behaviour may be treated in very different ways in each Member State as the previous table shows;

- for the economic operators, the differences in the treatment of infringements of Union customs legislation have an impact on the level playing field which should be inherent to the Internal Market, thus providing an advantage for those who breach the law in a Member State with lenient legislation for customs sanctions. This situation also has an impact on the access to customs simplifications and facilitations or to the process of being granted the AEO status as the criterion referring to compliance with customs legislation and the absence of serious infringements as a condition for obtaining the AEO status, is interpreted in a different way by national legislations.

In order to tackle those problems, the proposal sets a common legal framework for the treatment of customs infringements and sanctions, bridging the gap between different legal regimes through a common platform of rules and thus contributing 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.

1.2. Legal context

Customs legislation referring to the trade in goods between the customs territory of the Union and third countries is completely harmonised and has been assembled in a Community Customs Code (CCC)² since 1992. A major overhaul of this Code was carried out in Regulation (EC) No 450/2008 of the European Parliament and of the Council of April 2008 laying down the Community Customs Code (Modernised Customs Code or MCC)³, now recast and repealed by Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (UCC)⁴, aiming at the adaptation of customs legislation to the electronic environment of customs and trade, to promote further the harmonisation and uniform application of customs legislation, and to provide Union economic operators with the appropriate tools for developing their activities in a global business environment.

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

² The Community Customs Code, established by Council Regulation (EEC) 2913/92 of 12 October 1992 and applied from 1 January 1994, in OJ L 302, 19.10.1992, p. 1: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1992R2913:20070101:EN:PDF>

³ Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code), in OJ L145, 4.6.2008, p.1: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:145:0001:0064:EN:PDF>

⁴ Regulation No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast) in OL L 269, 10.10.2013, p. 1 (corrigendum in OJ L 287, 29.10.2013, p. 90): <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:269:0001:0101:EN:PDF>

the European Parliament in two reports⁵, one from 2008 and another from 2011, calling for harmonisation in this field.

All this efforts are supported on the general obligation foreseen by the Treaty⁶ for Member States to *"take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union"*. This obligation includes sanctions, without differentiating between those of a criminal and non- criminal nature.

More specifically the Modernised Customs Code and the Union Customs Code include for the first time a provision⁷ concerning administrative customs penalties.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

2.1. Consultation with interested parties

Four consultation tools were used, none of them being public consultations (given the specific and technical nature of customs infringements and sanctions), and, following the request of the stakeholders, with a confidential treatment of the responses.

– A questionnaire was addressed to the customs administrations of Member States concerning their national customs infringements and penalties systems and answers from 24 Member States were collected as has been previously stated in this memorandum. The comparison of the data gathered showed the relevant differences among the customs sanctioning systems of the Member States.

– A High Level Seminar on Compliance and Compliance Risk Management with the participation of customs administrations from all Member States and Candidate Countries and representatives of economic operators was held in Copenhagen on 20-21 March 2012, where the issue of customs offences and penalties was acknowledged as an element of a "compliance" scheme, and an issue to be further explored.

– A first stakeholder consultation with DG TAXUD's consultative body on customs issues (the Trade Contact Group (TCG)) was carried out. The TCG includes Union-level representatives of 45 European trade associations, including SMEs, involved in customs related activities. As a response to this consultation, the majority of the associations present at the meeting expressed their overall agreement on the relevance of DG TAXUD's initiative for their business activities.

⁵ Report from the Committee on International Trade on implementing trade policy through efficient import and export rules and procedures (2007/2256(INI)). Rapporteur: Jean-Pierre Audy and Report from the Committee in the Internal Market and Consumer Protection on modernisation of customs (2011/2083(INI)). Rapporteur: Matteo Salvini

⁶ Article 4.3 of TEU

⁷ Article 21 MCC, becoming Article 42 UCC.

– A second stakeholder consultation was carried out through another questionnaire, and was sent to SMEs through the Enterprise Europe Network, concerning the effects that the different infringements and sanctions systems in force in different Member States in the area of customs legislation have on the commercial activity of companies dealing with import/export activities.

2.2. Impact Assessment

The Commission conducted an impact assessment of policy alternatives (available at:...). Four policy options were analysed: A – baseline scenario; B – a modification of the legislation within the Union legal framework in force; C – a legislative measure on the approximation of the types of customs infringements and non-criminal sanctions and D – two separate legislative measures aiming at approximation of customs infringements and non-criminal sanctions on the one hand and criminal customs infringements and sanctions on the other hand.

After considering the possible options, the impact assessment concludes that 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 them (option C), is to be preferred.

The resubmission of the impact assessment received a positive opinion of the Impact Assessment Board on 14 June 2013.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. The legal basis

The proposal is based on Article 33 of the Treaty on the Functioning of the European Union (TFEU).

Article 33 TFEU states that customs cooperation between Member States and between the latter and the Commission should be strengthened within the scope of the application of the Treaties.

According to the Code, a decision taken by a Member State is applied in all other Member States and therefore requires consultation between the authorities to enhance its uniform application.

Likewise the introduction of certain facilitations and simplifications in the Union customs legislation and the AEOs access to them, is a strong reason to further strengthen the cooperation between Member States. In particular the assessment of the criteria required to be granted the AEO status and in particular the criterion related to the absence of any serious infringement or repeated infringement by the AEO requires comparable sanctioning systems throughout the EU in order to ensure a level playing field between economic operators.

Therefore the approximation of customs infringements and sanctions shall not only require customs cooperation between Member States but also shall contribute to the correct and uniform application and enforcement of the Union customs legislation.

3.2. Subsidiarity, proportionality and the respect for fundamental rights

The approximation of customs infringements and non-criminal sanctions shall be seen as integral part of secondary law that the Union may adopt with a view to strengthening the cooperation between the customs authorities of the Member States and between the Member States and the Commission in its role of implementing the legislation of the customs union, being an area of Union exclusive competence. Union action in that area does not therefore deserve being assessed with regard to the principle of subsidiarity laid down in Article 5(3) of the Treaty on European Union.

However, even if subsidiarity would have to be considered, although in the specific case we are in a fully harmonised policy area (customs union) with fully harmonised rules, whose effective implementation determines the very existence of the customs union, only the Union is in a position to meet the objectives of this directive also because of the fact of the important disparity in national legislations.

In accordance with the principle of proportionality, as set out in Article 5(4) of the Treaty on European Union, this proposal does not go beyond what is necessary to achieve that objective. The content of this proposal is in line with the requirements enshrined in the European Charter of Fundamental Rights. Particularly, certain provisions under the chapter of procedural rules have been inserted in line with the principle of the right to good administration and fair trial, but also in the light of the principle *ne bis in idem*.

3.3. Choice of instruments

This proposal for an approximation of national laws in the area of customs cooperation in the Union, will take the form of a Directive which Member States will have to transpose in their national legislation.

3.4. Specific provisions

The proposal addresses infringements linked to the obligations stemming from the Union Customs Code. To do so, it includes a common list of different infringements (strict liability, committed with negligence and committed with intent) breaching the rules of the Union Customs Code and as such encompasses all possible situations that persons may face in that respect when dealing with customs authorities. The proposal considers as infringement not only the complete performance of the behaviours listed in the proposal but also its intentional attempt.

In parallel to those conducts, this proposal also establishes a common scale of effective proportionate and dissuasive sanctions linked to the infringements and 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 which contribute to the adaptation of the sanction to the specific situation. The combination of the scale of the

sanctions along with the relevant circumstances permits to establish several levels of severity in order to respect the principle of proportionality of the sanctions. Moreover, the proposal defines certain cases where a behaviour falling in the categories defined as strict liability infringements by this proposal shall not be considered as such when they are due to an error on the part of the competent customs authorities.

The proposal refers to the liability of persons playing a relevant role in the commission of customs infringements with intent, stating an equivalent treatment to that of the persons committing the infringement to those inciting, aiding or abetting these infringements. It refers, as well, to the liability of legal persons, as customs infringements can also result from conducts attributable to legal persons.

Finally the proposal includes some necessary procedural provisions in order to avoid overlap of sanctions for the same facts and persons. In particular it concerns 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 and the territorial competence by defining which Member State is considered competent to deal with the case when the infringement involves more than one Member State.

The implementation of those articles in the national legislation of Member States will ensure a homogeneous treatment of economic operators regardless the Member State where they fulfil their customs formalities and commercial operations. It will also ensure the compliance with the international obligations stemming from the Kyoto Convention.

4. BUDGETARY IMPLICATION

The proposal will not have an impact on human resources and on the European Union budget and is therefore not accompanied by the financial statement foreseen under Article 31 of the Financial Regulation (Regulation (EC, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002).

This proposal has no budgetary implications for the Union.

5. EXPLANATORY DOCUMENTS

It is important for the Commission to ensure the correct transposition of the Directive to national legislation. In order to achieve this and given the different structure of the national legal orders, Member States should communicate the exact reference to the national provisions and how it transposes each specific provision of the Directive. This does not go beyond what is necessary for the Commission to ensure that the Directive's main aim, an effective implementation and enforcement of Union customs legislation in the customs union, is achieved.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the Union legal framework for customs infringements and sanctions

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Provisions in the field of the customs union are harmonised by Union law. However, their enforcement lies within the scope of Member States' national law.
- (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.
- (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.
- (4) Regulation (EC) No 952/2013 of the European Parliament and of the Council⁸ (hereinafter referred to as “the Code”) has been conceived for a multinational electronic environment where there is real time communication between customs authorities and where a decision taken by a Member State is applied in all the other Member States. That legal framework therefore requires a harmonised enforcement. The Code also includes a provision requiring Member States to provide for effective, dissuasive and proportionate sanctions.
- (5) The legal framework for the enforcement of Union customs legislation provided for in this Directive is consistent with the legislation in force regarding the safeguarding of the financial interests of the Union⁹. The customs infringements covered by the framework established by this Directive include customs infringements that have an impact on those financial interests while not falling under the scope of the legislation safeguarding them by means of criminal law and customs infringements that do not have an impact on the financial interests of the Union at all.

⁸ 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).

⁹ Proposal for a Directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law (COM(2012)363).

- (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.
- (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.
- (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.
- (9) Inciting or aiding and abetting a behaviour being a customs infringement committed intentionally and attempt to commit certain customs infringements intentionally should be considered customs infringements.
- (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.
- (11) Member States should ensure that liability can arise for legal persons as well as natural persons for the same customs infringement where the customs infringement has been committed for the benefit of a legal person.
- (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.
- (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.
- (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.
- (15) In order to avoid positive conflicts of jurisdiction, rules should be laid down to determine which of the Member States with jurisdiction should examine the case.
- (16) This Directive should provide for the cooperation between Member States and the Commission to ensure effective action against customs infringements.

- (17) In order to facilitate the investigation of customs infringements, the competent authorities should be allowed to temporarily seize any goods, means of transport or any other instrument used in committing the infringement.
- (18) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents¹⁰, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (19) Since this Directive aims to provide for a list of customs infringements common to all Member States and for the basis for effective, dissuasive and proportionate sanctions to be imposed by Member States in the area of the customs union, which is fully harmonised, those objectives cannot be sufficiently achieved by the Member States based on their different legal traditions, but can rather, by reason of the scale and effect, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve those objectives.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter and scope

1. This Directive establishes a framework concerning the infringements of Union customs legislation and provides for sanctions for those infringements.
2. This Directive applies to the violation of the obligations laid down in Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013, laying down the Union Customs Code (hereinafter referred to as 'the Code') and of identical obligations laid down in other parts of the Union customs legislation as defined in Article 5(2) of the Code.

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.

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:

¹⁰ OJ C 369, 17.12.2011, p. 14.

- (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 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 sub-paragraphs of Article 134(1) of the Code;
- (f) removal of goods from customs supervision, contrary to the fourth sub-paragraph 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 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.

Article 4

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.

Article 5

Customs infringements committed intentionally

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.

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.

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.

Article 8

Liability of legal persons

1. Member States shall ensure that legal persons are held liable for customs infringements 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:
 - (a) a power of representation of the legal person;
 - (b) an authority to take decisions on behalf of the legal person;
 - (c) an authority to exercise control within the legal person.
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.
3. Liability of a legal person under paragraphs 1 and 2 shall be without prejudice to the liability of natural persons who have committed the customs infringement.

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.

Article 10

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.

Article 11

Sanctions for customs infringements referred to in Article 5 and 6

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:

- (a) where the customs infringement relates to specific goods, a pecuniary fine up to 30 % of the value of the goods;
- (b) where the customs infringement is not related to specific goods, a pecuniary fine up to EUR 45 000.

Article 12

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.

Article 13

Limitation

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.

Article 14

Suspension of the proceedings

1. Member States shall ensure that administrative proceedings concerning a customs infringement referred to in Articles 3 to 6 are suspended where criminal proceedings have been initiated against the same person in connection with the same facts.
2. Member States shall ensure that the suspended administrative proceedings concerning a customs infringement referred to in Articles 3 to 6 are discontinued where the criminal proceedings referred to in paragraph 1 have finally been disposed of. In other cases, the suspended administrative proceedings concerning a customs infringement referred to in Articles 3 to 6 may be resumed.

Article 15

Jurisdiction

1. Member States shall ensure that they exercise jurisdiction over the customs infringements referred to in Articles 3 to 6 in accordance with any of the following criteria:
 - (a) the customs infringement is committed in whole or in part within the territory of that Member State;
 - (b) the person committing the customs infringement is a national of that Member State;
 - (c) the goods related to the customs infringement are present in the territory of that Member State.
2. Member States shall ensure that in case more than one Member State claims jurisdiction over the same customs infringement, the Member State in which criminal proceedings are pending against the same person in connection with the same facts exercises jurisdiction. Where jurisdiction cannot be determined pursuant to the first subparagraph, Member States shall ensure that the Member State whose competent authority first initiates the proceedings concerning the customs infringement against the same person in connection with the same facts exercises jurisdiction.

Article 16

Cooperation between Member States

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.

Article 17

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.

Article 18

Reporting by the Commission and review

The Commission shall, by [1 May 2019], submit a report on the application of this Directive to the European Parliament and the Council, assessing the extent to which the Member States have taken the necessary measures to comply with this Directive.

Article 19

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [1 May 2017] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 20

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 21

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President