

## EEA input on the Proposal for a Directive on customs infringements and sanctions

Brussels, 11 January 2016

*Following the adoption of the Union Customs Code (UCC) in 2013, the proposal for a Directive on a Union legal framework for customs infringements and sanctions was presented by the European Commission (EC) with a view to harmonising national rules related to customs infringements and sanctions throughout the European Union (EU).*

The European Express Association (EEA) is the representative organisation for the express industry in Europe, which has a long-standing and daily involvement in EU customs activities.

The EEA **supports the principle of taking actions aimed at achieving a certain level of alignment** between the currently distinct 28 national procedures for customs infringements and sanctions. This would offer better legal certainty for businesses and create a more level playing field that encourages businesses to invest in all Member States (MS), thus stimulating economic growth on a wider basis.

However, **any initiative should take into consideration the extreme variety of existing national legal systems as well as the business-case reality for trade.**

To this end, the EEA would like to offer the following comments with regard to the EC proposal, based on the following objectives:

- ▶ **To establish a more balanced approach with regard to the types of sanctions imposed**
- ▶ **To ensure a clearer understanding of customs infringements across the whole of the EU**
- ▶ **To align the time period for notification of a customs infringement with the time period specified to notify the customs debt**

## **I. A balanced approach on penalties, taking into account settlement procedures**

The EEA agrees with the principle of establishing a set of sanctions according to the proven level of infringement. However, the automatic imposition of such sanctions at EU level does not reflect the reality of a certain number of MS who have put into place successful mitigation procedures to take into account the circumstances of the infringement. Customs infringements should only lead to penalties in cases where there is evidence of negligence or when they are committed intentionally. The automatic imposition of sanctions does not take into account some basic principles embodied in compliance programmes (e.g. for Authorised Economic Operators), where voluntary disclosure and respectively mitigation factors are encouraged. These are absent from the EC proposal, thereby leaving businesses with the direct risk of facing costly penalties in a complex legal environment. Of course, **sanctions must act as a deterrent to those intent on not complying. However, mitigation must also be a key element of any proposed change.**

## **II. The necessity to propose clear and sound definitions for all types of infringements**

Establishing **levels and types of infringements should be based on clear definitions**, which for the moment are non-existent, although the definitions should be at the cornerstone of the proposal. Certain definitions such as “repeated customs infringement” or “serious customs infringement” are not legally defined although they remain present in the UCC base and secondary legislation. The notion of “intention” behind an infringement is also not defined and leaves a heavy reliance upon interpretation. A non-exhaustive and inflexible list of examples for each type of infringement cannot in this respect offer a satisfactory solution as the interpretation of the terms used can vary tremendously.

In this respect, **certain examples are questionable**, notably with regard to Article 5 (“customs infringements committed intentionally”), where the “failure to comply” with the obligations resulting from a decision on the application of customs legislation may not necessarily be intentional on the part of an operator. Defining, or at least clarifying, the notion of deliberate intention would therefore be better suited.

## **III. Align the time period to notify a customs infringement with the time period to notify the customs debt**

The proposal provides the Member States four years to start proceedings concerning a customs infringement. This limitation period is interrupted by any act of the competent authority and will be precluded after a period of eight years. This disregards the Community Customs Code, which establishes that a customs debt can only be notified within three years from the time the relevant import took place. In our opinion, both time periods should be aligned to provide more legal certainty to economic operators.