**ORDINARY LEGISLATIVE procedure – First Reading**

**Follow-up to the European Parliament legislative resolution of 5 July 2017 on
the proposal for a Directive of the European Parliament and of the Council on the Union legal framework for customs infringements and sanctions**

**2013/0432 (COD)**

**1. Rapporteur:** Kaja KALLAS (ALDE/EE)

**2. EP reference number:** A8-0239/2016 / P8\_TA-PROV(2017)0300

**3. Date of adoption of the resolution:** 5 July 2017

**4. Subject:** Union legal framework for customs infringements and sanctions

**5. Inter-institutional reference number:** 2013/0432 (COD)

**6. Legal basis:** Articles 33 and 114 of the Treaty on the Functioning of the European Union

**7. Competent Parliamentary Committee:** Committee on the Internal Market and Consumer Protection (IMCO)

**8. Commission's position:**

The Commission welcomes Parliament's resolution, which supports the objectives of the Commission proposal and brings constructive suggestions.

*The following amendments can be accepted*:

The Commission generally agrees with the Parliament’s resolution. There are amendments, such as amendments 1, 2, 3, 4, 8, 24 and 25, which clarify and improve the text and are acceptable as such. Amendment 14 referring to the legal basis is also acceptable.

Amendments 18, 36 and 42 are in principle also acceptable to the Commission, on the condition that their implementation does not lead to undue administrative burdens for the Member States.

The main amendments (5, 6, 7, 9, 10, 15, 19, 20, 21, 27, 28, 29, 30, 31, 35) aim to focus the proposed Directive explicitly on non-criminal sanctions, and change the structure from three different classes of infringements to a single list of infringements, with a set of aggravating and mitigating factors which should enable authorities to distinguish between minor and serious ones. A focus on non-criminal sanctions and a differentiation of penalties as to the severity of the infringement could in principle be acceptable to the Commission. However, further work would be needed to make sure the proposed Directive remains coherent, implementable and effective.

In particular:

* The notion of "non-criminal sanctions" would need to be further clarified, given that the distinction between criminal and non-criminal sanctions is complex and linked to the diverse systems in the Member States (amendments 5 and 15).
* The relationship between the provisions of this directive and the Protection of the Union's Financial Interests (PIF) Directive should be clarified, since the scope of both directives could be seen as overlapping. In particular, the making of false statements and the use of false documents (having as its effect the evasion of customs duties superior to EUR 10000) appears to be treated differently in the two texts.
* Although the change of basis of the sanction is acceptable in principle, the proposed percentage of the evaded duties (amendment 31) should be further considered in the light of the proportionality and in order to avoid that the sanction falls to be regarded as "criminal" in nature.
* The Commission notes the exclusion of strict liability and the importance of ensuring that Member States can assess the impact of this change in their domestic legal order and suggests that the criteria to distinguish minor from serious infringements would need further clarification to ensure legal certainty (amendments 27-28).
* The change of the calculation of the penalties (based on customs duty evaded instead of value of goods) is acceptable (amendment 29-31), but the merit of applying non-criminal sanctions to both minor and serious infringements depends on a clear definition of non-criminal and whether such sanctions are effective, proportionate and dissuasive (Article 42 of the Union Customs Code (UCC).

*The following amendments can be partially accepted*:

Amendment 12, as the *"ne bis in idem"* principle should refer only to criminal matters.

Amendment 16: If this amendment is needed, it should be part of the recitals, as this Directive does not and cannot cover obligations towards third countries.

Amendment 17: Although the principle of the amendment is acceptable, it should be rephrased in order to clearly show that the *"ne bis in idem"* principle applies only to criminal proceedings. Equally the boundaries of the non-criminal infringements have to be clarified in this article. Moreover, paragraph 2c) on clerical errors should be rephrased, because with the deletion of strict liability infringements only intent and negligence remain.

Amendment 26: The Commission is neutral but suggests that consistency with other EU texts on this should be checked.

Amendment 32: The amendment has to be reformulated: "temporary confiscation" is "seizure" and there should be "revocation" of the Authorised Economic Operator (AEO) authorisation instead of "suspension".

Amendment 33: The effectiveness of this provision relies on the data to be provided by the Member States. The proportionality of this amendment needs to be assessed, given the fact that the Parliament proposes that the scope of the Directive should be limited to non-criminal infringements.

The reference to the "amounts" needs to be more precise and add "the amounts linked to the pecuniary fines for customs infringements linked neither to the duties evaded nor to the value of goods".

Amendment 34: settlement should remain an “option “and not an obligation in line with the possibility that exists in Article 42 UCC.

Amendment 38: the additional last sentence referring to the objective should be removed to the recitals, as that would be the appropriate place to state the objectives.

*The following amendments cannot be accepted*:

Amendment 13: This amendment goes beyond the scope of the proposed directive as it covers not only the consequence of the infringement, but also the stages before, i.e. supervision, control and investigation.

Amendment 22: If the Directive is limited to non-criminal infringements, then this Article has to be deleted and not amended in order to be consistent with the overall approach ("inciting, aiding and abetting" are purely criminal terms).

Amendment 23: The reference to Article 119 UCC is not relevant as it is about repayment and remission of customs duties. The liability of customs authorities where errors cause damage is not acceptable as it goes beyond the scope of the Directive which is about the obligations of economic operators stemming from the UCC.

Amendment 37 and its corresponding recital amendment 11: The modification to paragraph 1 is accepted as it clarifies the provision. However, the amendment to paragraph 3 is unclear. It does not specify which acts of the person responsible should interrupt the limitation period (should this be any act – while for acts by the authority we refer to "an investigation or legal proceedings", there is no such condition here – even if it was added, it remains unclear which acts should interrupt the period and why). If the act by the person responsible referred to an appeal, it would seem superfluous as the term "legal proceedings" would also cover any appeal by the person responsible. Furthermore, the difference between an "interruption" and a "suspension" is that after an interruption, the limitation period usually starts to run again (cf. Article 3(1) of Regulation 2988/95) while in the case of a "suspension" it continues to run (cf. Article. 103(3) UCC and Article 14 of the proposed Directive. The amendment seems to mix up the two terms by suggesting that the period should "continue to run" when the interrupting act "comes to an end" which would be the case of a "suspension" but not of an "interruption". Moreover in paragraph 4, the original wording "precluded" has been replaced by "time-barred", but the latter is rather used in criminal proceedings which would be inconsistent with the main amendments (5, 6, 7, 9, 15, 19, 20, 21, 27, 28, 29, 30, 31, 35) aiming to focus the proposed Directive explicitly on non-criminal sanctions.

Amendment 39: It would be inappropriate for the Commission to supervise cooperation between Member States. In addition, the issue of customs checks goes beyond the scope of the proposed Directive, which focuses on sanctions.

Amendment 40: Article 17 of the Directive refers to temporary measures. Therefore, the additional last sentence does not fit here as these measures are permanent. Moreover it is not necessary as the UCC in Article 197 and seq. foresees the confiscation, sale and destruction of the goods.

Amendment 41: This amendment goes beyond the scope of the Directive and therefore cannot be accepted.

**9. Outlook for amendment of the proposal:**

The Commission will not adopt a formal amended proposal. With a view to supporting rapid progress in the Council framework, the Commission intends to draw the Council's attention to the Commission's position on Parliament's first reading amendments orally.

**10. Outlook for the adoption of Council's position:**

The Council has never examined the proposal article by article. Therefore, it is not expected to accept all the amendments of Parliament. However, some Member States may agree with the majority of the amendments which could possibly lead to a compromise proposal by the Presidency.