



**UNIVERSITÀ DEGLI STUDI
DELL'INSUBRIA**

**DIPARTIMENTO DI DIRITTO,
ECONOMIA E CULTURE
- DiDEC**

THE SANCTIONS SYSTEM AND THE NEW CUSTOMS CODE

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Proposal for a New Union Customs Code

Whereas (61)

Customs penalties ... **vary greatly** across Member States and are subject to evolution over time. A common framework establishing a **minimum core** of customs infringements and of non-criminal sanctions should be laid down. Such framework is necessary to address the lack of uniform application and the significant divergences between Member States in the application of sanctions against breaches of customs legislation that can lead to a **distortion of competition**, loopholes and '**customs shopping**'.



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

2013

... 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.



Penalties under the Union Customs Code 952/2013

Article 42

Each Member State shall provide for penalties for failure to comply with the customs legislation. Such penalties shall be **effective, proportionate** and **dissuasive**.

Whereas (23): “*the streamlining of customs procedures within an electronic environment requires the sharing of responsibilities between the customs authorities of different Member States. It is necessary to ensure an appropriate level of effective, dissuasive and proportionate penalties throughout the internal market*”.



ECJ: C-326/88, *Hansen*, 1990

Treaty requires the Member States to take all measures necessary to guarantee the application and effectiveness of Community law. For that purpose, whilst the choice of penalties remains within **their discretion**, they must ensure in particular that infringements of Community law are penalized under conditions, both procedural and substantive, which are **analogous** to those applicable to infringements of national law of a similar nature and importance and which, in any event, make the penalty **effective, proportionate and dissuasive**.



ECJ: C-387/97, *Commission vs. Hellenic Republic*, 2000

The basic criteria which must be taken into account in order to ensure that penalty payments have coercive force and Community law is **applied uniformly** and **effectively** are, in principle, the **duration of the infringement**, its **degree of seriousness**.



ECJ: C-564/15, *Farkas*, 2017

Penalties must not exceed what is necessary to ensure the **accurate collection of the tax** and to **prevent fraud**. In order to assess whether a sanction complies with the principle of proportionality, account must be taken, in particular, of the **nature and gravity of the infringement** which that sanction is intended to punish, as well as the **manner in which the amount of the sanction is determined**.



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ECJ: C-205/20, *NE*, 2022

The principle of the **primacy** of EU law must be interpreted as imposing on national authorities the obligation to **disapply national legislation** of which a part is contrary to the requirement of **proportionality of penalties**.



Infringements under the proposal for a new Customs Code

General requirements: Article 246

Kinds of actions: Acts or omissions, **inciting** or **aiding** and **abetting** an act or omission referred, **attempt to commit** an act or omission.

Minor infringements: **clerical or minor errors** shall not constitute a customs infringement unless the customs authority can establish that they were committed intentionally, or as a result of obvious negligence or manifest error.

Abnormal circumstances: in case of an act or an omission resulting in a customs infringement committed as a reaction to **abnormal and unforeseeable circumstances** extraneous to the person concerned, the consequences of which, in spite of the exercise of **all due care**, could not have been avoided, the responsibility of the person that committed it is excluded.



Aggravating circumstances

Article 248

*The following circumstances shall be taken into account for **aggravating the sanction** to be applied for the customs infringements*

* the person responsible for the customs infringement has been **sanctioned previously** for a customs infringement, or has committed continuous and repeated customs infringements;

* the customs infringement has a **significant impact** on other legislation applied by the customs authorities;

* the customs infringement has a **significant financial impact** on collecting customs duties or other charges;

* the customs infringement poses a threat to the **security** and **safety** of the Union and its residents.

Extenuating and mitigating circumstances

Article 247

*The following circumstances shall be taken into account for **reducing the sanction** to be applied for the customs infringements:*

* the goods involved are not subject to the **other legislation** applied by the customs authorities;

* the customs infringement has **no impact** on the determination of the amount of customs duties and other taxes to be paid;

* the person responsible for the customs infringement **cooperates effectively** with the customs authority.



Limitation

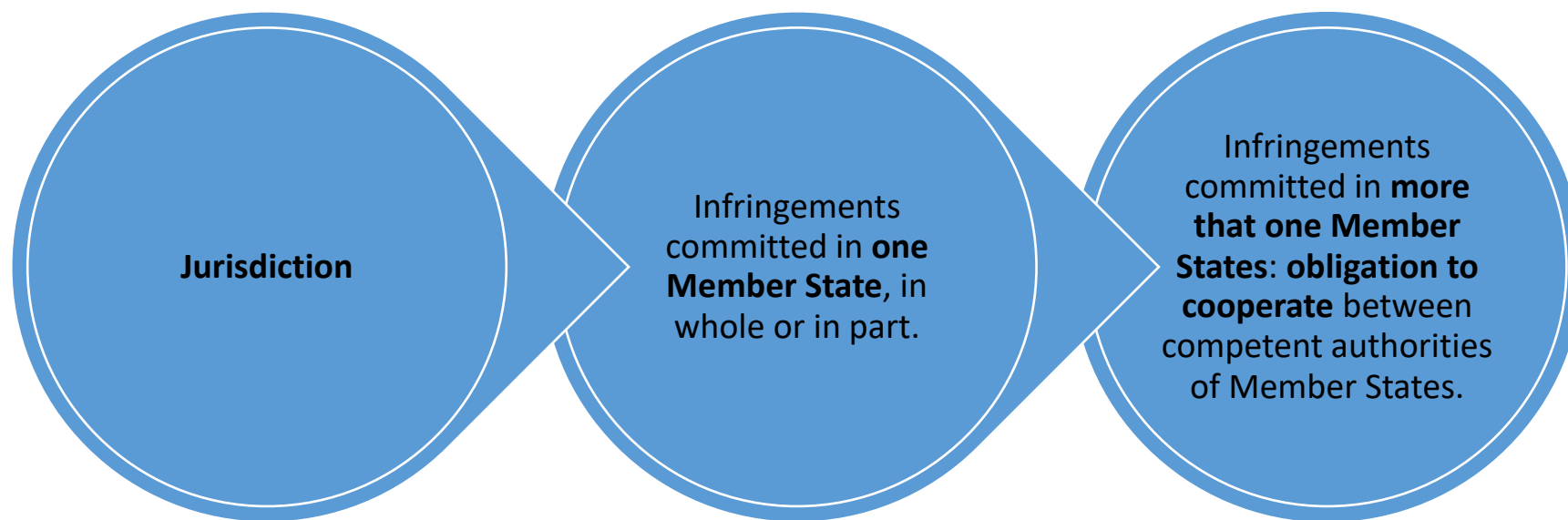
Article 249

Limitation for **initiating proceedings**: **from 5 to 10 years** from the date on which the infringement was committed (for continuous or repeated infringements, from the date the infringement ceases).

The limitation period is **interrupted** by an act of investigation concerning the customs infringement.

Limitation for **enforcement**: **three years** from the final decision.

General preclusion: **eight years** from the date the infringement was committed or the continuous or repeated infringement ceased.





Types of infringement

Failure in **cooperation** + Failure in providing and keeping **documents and information** + Failure in **compliance**

(a) Failure of the holder of a decision relating to the application of customs legislation to comply with the obligations resulting from that **decision** and 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; (b) failure to comply with the obligation to **provide information** to customs in accordance with this Regulation, including the failure to lodge a customs declaration; (c) provision of incomplete, inaccurate, invalid, inauthentic, false or falsified **information or documents** to customs; (d) failure of the person responsible to **keep the documents** and information related to the accomplishment of customs formalities; (e) removal of goods from **customs supervision**; (f) failure of the person responsible to comply with the obligations related to **customs procedures**; (g) **non-payment** of import or export duties by the person liable to pay within the period prescribed.



Types of sanctions

1

Pecuniary charge

2

Revocation, suspension
or amendment of
customs decisions

3

Confiscation of goods
and means of transport



Minimum non-criminal sanctions

The customs infringement has an impact on customs duties and other charges, the pecuniary charge shall be calculated based on the **amount of customs duties** and other charges eluded, as follows:

- * where the customs infringement has been committed **intentionally**, the pecuniary charge shall comprise an amount equal to between 100% and 200% of the amount of customs duties and other charges eluded;
- * in other cases, the pecuniary charge shall comprise an amount equal to between 30% and 100% of the amount of customs duties and other charges eluded.

Minimum non-criminal sanctions *

If it is not possible to calculate the pecuniary charge in accordance with point (i), the pecuniary charge shall be calculated based on the **customs value of the goods**, as follows:

- * where the customs infringement has been committed **intentionally**, the pecuniary charge shall comprise an amount equal to between 100% and 200% of the amount of the customs value of the goods;
- * in other cases, the pecuniary charge shall comprise an amount equal to between 30% and 100% of the amount of the customs value of the goods.

* Where the customs infringement is not related to specific goods, the pecuniary charge shall comprise an **amount equal to** between EUR 150 and EUR 150 000