

Guest Editorial eucrim 3/2014

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Editorial

EDITORIAL

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The entire European Union applies the same customs rules. Customs legislation is fully harmonised and provides for a stable and comprehensive legal system, which aims to ensure the proper and uniform application of the Union's autonomous and international rules. It also sets out the obligations and rights of customs administrations and economic operators in a common and transparent way. Their enforcement, however, remains within the exclusive competence of its Member States.

Despite differences in law enforcement structures, all EU Member States have the same responsibility to enforce EU legislation. This means that the Member States can choose the penalties that seem appropriate to them, with the result that penalties for the same infringement differ in nature and severity among Member States.

Significant national differences in the treatment of customs offences and their penalties may generate extra costs for companies operating in more than one Member State. These differences undermine the conditions of fair competition in the single market.

Indeed, the stakeholders affected most are EU economic operators who deal with customs in their daily business. They are the ones confronted with the lack of legal certainty that arises from the differences in Member States' legal systems with regard to the treatment that is given to infringements of Union customs law. These differences may even provide an unfair advantage to economic operators who break the law in a Member State having lenient legislation for customs penalties compared to those breaking the law in a Member State where even a minor error is treated as a criminal offence.

The differing enforcement of customs legislation makes the effective management of the customs union more difficult and has a serious impact on access to customs simplifications and facilitations or to the process of being granted Authorised Economic Operation (AEO) status, as key criteria for granting AEO status are compliance with customs legislation and the absence of serious infringements. Given the divergent legal systems, these criteria may be interpreted in a totally different manner, depending on the Member State in which the economic operator is carrying out his activities.

In order to remedy the situation, the European Commission has tabled a proposal for a Directive of the European Parliament and of the Council on the Union legal framework for customs infringements and sanctions (COM (2013) 884 final), which sets out a common legal framework for the treatment of customs offences and penalties, thus bridging the gap between different legal systems and contributing to equal treatment between economic operators in the EU. The proposed directive includes a list of possible offences as well as controversial situations persons may face when dealing with customs authorities. Moreover, it also establishes a common scale of effective, proportionate, and dissuasive sanctions linked to the infringements and, when determining the type and level of sanctions, it states the circumstances to be taken into account under which they would have been committed. The combination of the scope of the sanctions and their circumstances would ensure that infringements are addressed in a proportionate way, with an equal degree of severity – regardless of the Member State in which they take place.

The proposal was adopted by the College on 13.12.2014 and is currently before the Council and EP.

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