



THE SENATE
OF THE PARLIAMENT OF THE CZECH REPUBLIC
9TH TERM

458th

RESOLUTION OF THE SENATE

Delivered on the 20th session held on 23rd April 2014

on the Proposal for a Directive of the European Parliament and of the Council on the Union legal framework for customs infringements and sanctions (Senate Press no. N 109/09)

The Senate

I.

1. Considers

the harmonisation of definitions of administrative offences and general range of sanctions to be a reasonable and suitable instrument that supplements the unification of customs regulations in the European Union and aims to secure a level playing field in the customs union;

2. Adds, however,

that even if the directive is adopted, the effectiveness of sanctioning of customs infringements will continue to depend in decisive measure on the capacities and actual conduct of customs authorities in the individual member states and on their mutual coordination;

3. Supports

the written opinion of the Government of Czech Republic including the reservations related to individual provisions of the proposal for a directive and to the proposal's compliance with the principle of proportionality;

II.

1. Expresses doubts about

the Commission's assessment that the legal basis for the directive, i.e. Article 33 of the Treaty on the Functioning of the European Union, falls within the scope of exclusive competences of the Union, which has not been sufficiently explained; the Senate is led by the following considerations:

- the fact that "customs union" is counted among the Union's exclusive competences according to Article 3(1)(a) of the Treaty on the Functioning of the European Union does not mean that all the other laws related to customs (such as the general rules on the proceedings of administrative authorities in customs matters, general rules on the liability for administrative or criminal

offences consisting in customs deception, or the very establishment and organisation of customs authorities) also pertain to this exclusive competence; customs union only includes matters expressly assigned to it by the Treaties;

- Article 33 of the Treaty on the Functioning of the European Union is located outside the Treaty's chapter on "Customs Union", in a separate chapter entitled "Customs Cooperation"; such cooperation may include precisely the enforcement of general rules on administrative sanctions that are outside the area of Union's exclusive competence;

2. Points out

that an insufficiently reasoned and extensive interpretation of the scope of Union's exclusive competence limits the applicability of the principle of subsidiarity enshrined in Article 5(3) of the Treaty on the European Union and, as a result, also the controlling powers of national parliaments related to this principle, which does not contribute to the democratic legitimacy of measures adopted at Union level; however, the Senate adds that in the present case it has no doubts regarding the proposal's compatibility with the principle of subsidiarity;

3. Asks the Commission,

in view of the aforementioned, to clarify in detail the considerations that guided the Commission in its assessment whether the proposal for a directive pertains to the area of exclusive or shared competence of the Union, and to respond to the Senate's arguments mentioned above;

4. Concurr

with the Government's opinion that the proposal for a directive is not fully compatible with the principle of proportionality because, in the following aspects, the proposal interferes in the general system of administrative penalisation in national law, without this being necessary to achieve the objective of the directive:

- the conception of liability for public law infringements in the Czech Republic, taking into consideration the case law of the European Court of Human Rights, does not allow to prescribe strict liability for infringements committed by natural persons that are not entrepreneurs/professional businessmen (with respect to customs regulations, these may be especially consumers), and requires the demonstration of fault in such cases; a breach of this principle in the proposed wording of Article 3 of the directive is not necessary to achieve the objectives of the directive;
- the Commission's requirement that, in certain cases, also the incitement, aiding, abetting and attempt of a customs infringement should be penalised in the administrative proceedings is superfluous because the penalisation of these forms of conduct (if and when they are uncovered at all on the basis of inspections and customs documentation) is in principle ensured already by the broad definitions of individual types of customs infringements;

III.

1. Requests

the Government to inform the Senate about the way this position was taken into account and about the further proceeding of negotiations;

2. Authorises

the President of the Senate to forward this Resolution to the European Commission.

Milan Štěch
sign manual
President of the Senate

Hassan Mezian
sign manual
Senate Verifier