



EUROPEAN COMMISSION

Brussels, 23/07/2014
C(2014) 5187 final

Dear President,

The Commission would like to thank the Senát for its Opinion concerning the 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}.

As regard the doubts expressed in the Opinion about the fact that the legal basis for the Directive (Article 33 of the Treaty on the Functioning of the European Union (TFEU)) falls within the scope of the exclusive competences of the Union, following a further assessment, the Commission acknowledges that the legislative proposal based on Article 33 TFEU falls under a shared competence in accordance with Article 4 TFEU. Accordingly, the Commission has adopted, on 5 June 2014 a corrigendum to the explanatory memorandum for the proposal confirming this and enhancing the subsidiarity test. As a consequence, the proposal has been transmitted again to national Parliaments on the basis of Protocol No 2.

The Commission welcomes that the Senát has no doubts regarding the proposal's compatibility with the principle of subsidiarity.

As regards the concerns that the proposal is not fully compatible with the principle of proportionality because it “interferes in the general system of administrative penalisation in national law, without this being necessary to achieve the objective of the directive”, the Commission is of the opinion, taking into account the divergent national legislation, that a common framework for customs infringements and sanctions is the most appropriate way to ensure an effective enforcement of the Union customs legislation and the proper functioning of the customs union and the internal market.

This said, regarding the first concern, the Commission would like to emphasise the following:

- With the strict liability infringements, the proposal aims to address minor infringements, based on inadvertent behaviours or delays on the fulfilment of certain obligations that do not have a strong impact in the protected legal customs interests. These strict liability infringements exist already in certain Member States systems. They are meant to give rise to smooth proceedings, where the subjective element does*

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need to be proved, which will not only prevent the economic operator from a time consuming procedure but also allow the Member States to avoid the costs of a normal proceeding that can be much higher than the ones related with the infringement itself, and, as such, disproportionate.

Moreover, the Commission would like to emphasise that the Directive has the same scope as the Union Customs Code, which concerns mainly persons who, in the course of their business, are professionally involved in activities covered by the customs legislation. Therefore the obligations at stake in the objective liability infringements relate mainly to economic operators and not consumers.

- *The customs infringements identified in Article 5 of the proposal do not cover the incitement, aiding, abetting and attempt, but only the acts and omissions foreseen there. As such, the Commission would like to point out that to foresee these forms of conduct as an autonomous customs infringement is deemed to be necessary for a question of legal certainty and clarity.*

The points made above are based on the initial proposal presented by the Commission which is currently in the legislative process involving both the European Parliament and the Council at which your government is represented.

The Commission hopes that these clarifications address the concerns raised by the Senát and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*