



*President  
Kumitat Permanenti dwar  
l-Affarijiet Barranin u Ewropej*

*Chairman  
Standing Committee on  
Foreign and European Affairs*

16 July 2014

H.E. José Manuel Barroso  
President  
European Commission

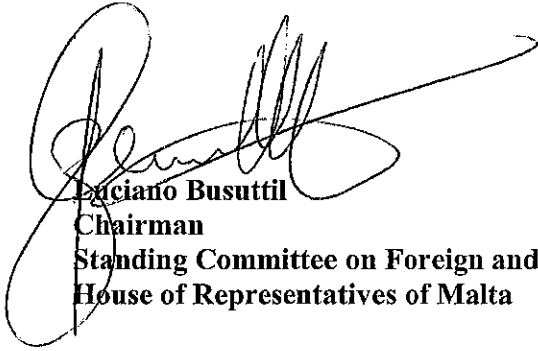
***Proposal for a Directive of the European Parliament and of the Council on the Union legal framework for customs infringements and sanctions Com(2013)884***

The Standing Committee on Foreign and European Affairs, acting in its scrutiny function, does not question the European Union's exclusive competence with regard to customs union. However, there are certain concerns which the Committee would like to communicate to the Commission as part of the on-going political dialogue.

While acknowledging the positive side of this proposal, if implemented and enforced adequately, in promoting level playing field through a single penalty regime, the Committee wishes to bring forth the following concerns:-

- i. the proposed harmonised penalties regime is inflexible as it provides no scope for administrative or judicial discretion in terms of how to respond to customs infringement which could disproportionately affect smaller Member States which would be obliged to instigate proceedings irrespective of cost-effectiveness;
- ii. it also provides limited scope for judicial or administrative discretion as to the penalty to be applied which in particular could have a disproportionate effect on weaker economies, since the penalty to be applied is determined solely with reference to the value of the goods involved – in this regard the Committee contends that it would be more proportionate if the penalty were to be based on the amount of duty endangered;
- iii. the stated objective of harmonisation is unlikely to be achieved to any significant degree in the absence of an EU-wide definition of certain legal concepts such as negligence or strict liability, which is not recognised within the jurisdiction of a number of Member States;
- iv. it is difficult to envisage how the proposed scheme would either promote customs cooperation or improve the functioning of the single market.

Article 33 the Treaty on the Functioning of the European Union, which is the legal basis of this proposal, provides for the application of measures intended to strengthen customs cooperation between the Member States and between the Member States and the Commission, however, it leaves ample room for interpretation as to what exactly constitutes strengthened cooperation. It is felt that this proposal stretches that interpretation to its limit by proposing harmonised common rules applicable Union wide with little room for manoeuvre despite the theoretical flexibility afforded by the choice of a Directive as the legal instrument.



**Luciano Busuttil**  
**Chairman**  
**Standing Committee on Foreign and European Affairs**  
**House of Representatives of Malta**