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COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

Accompanying the document

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}
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Impact assessment on Proposal for a Directive of the European parliament and of the Council on the Union legal framework for customs infringements and sanctions

A. Need for action

Why? What is the problem being addressed? Maximum 11 lines

Although customs legislation is fully harmonised at EU level, its enforcement, which ensures the compliance with the customs rules and the lawful imposition of sanctions, lies within Member States' national legislation. Consequently, customs legislation enforcement obeys to 27 different legal sets of sanctioning rules and different administrative or judicial traditions. This affects the compliance of the EU with WTO rules regarding the uniform implementation of customs rules. It affects as well the consistent management of the customs union, the achievement of a levelled playing field for economic operators acting in the Internal Market and the appropriate implementation of certain EU policies (environmental, agricultural, etc.) that depend to a great extent on the homogeneous enforcement of the customs legislation by the Member States.

The most affected stakeholders 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 concerning the treatment that is given to infringements of Union customs law.

What is this initiative expected to achieve? Maximum 8 lines

The initiative is expected to ensure further compliance with EU's international obligations, provide for a Union framework for uniform enforcement of customs legislation in terms of infringements and sanctions and enhance the level playing field for economic operators in the customs union. An effective implementation and law enforcement in the EU customs union is expected to be achieved through this.

What is the value added of action at the EU level? Maximum 7 lines

The customs union is a fully harmonised policy area and its effective enforcement can be better achieved at EU level, as the EU is the only in a position to develop legislation that will be bidding for all Member States.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why? Maximum 14 lines

Four policy options have been identified: 1 non-legislative (Policy option A – Baseline scenario (do nothing)) and 3 legislative:

Policy option B – amending the Union customs legislation in force to include a list of non-criminal sanctions all Member States should apply when punishing the failure to comply with obligations and formalities stemming from the customs legislation and to establish an extended definition of the criteria "record of compliance with customs requirements" to grant AEO status and other customs simplifications, in order to assure infringements are equally assessed when applying to this status;

Policy option C - a new legislative act which would include a list of infringements, a range of non-criminal sanctions for each infringement and a common procedure to impose those sanctions, and

Policy option D - two new legislative acts which would include a list of infringements, a range of sanctions for each infringement and a common procedure to impose those sanctions, both in the criminal and non-criminal

field.

Who supports which option? Maximum 7 lines

Option A – 3 members of the TCG representatives in the first consultation and 12% of the respondents from the second consultation;

Option B – 36% of the respondents to the second consultation (it was considered after the first stakeholder consultation);

Option C – the majority of stakeholders from the first consultation and 26% of the companies who identified a preferred option in the second consultation;

Option D - 1 TCG representative in the first consultation and 21% of the companies in the second consultation.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise main ones)? Maximum 12 lines

Economic Impacts

Differences between Member States customs infringements and sanctioning regimes would be substantially reduced.

Equal treatment of the economic operators with regard to their access to AEO status and to customs simplifications would be strengthened.

Timely **collection of TOR** would be improved.

EU's compliance with **obligations under WTO** would be enhanced.

Policy option C would bring along **some savings for EU companies** dealing with international trade.

Significant progress in the fields of **incentives for trade distortion and loopholes for illicit trade** would also be expected as customs sanctions would be significantly approximated.

It is also expected to have an impact in the economic operators' competitiveness – as mentioned on section 7.2.4.1. of the IA draft report.

Environmental Impacts: improvements in the fight against illicit trade of good forbidden by CITES and other environmental legislation are expected under policy option C.

What are the costs of the preferred option (if any, otherwise main ones)? Maximum 12 lines

Neither additional administrative nor additional compliance costs are expected as no new obligations are introduced by this policy option, sanctions proposed will be already in use by most of the Member States and the eventual measures regarding a future sanctioning procedure will be based on principles already applied by all of them.

How will businesses, SMEs and micro-enterprises be affected? Maximum 8 lines

It is expected that business dealing with customs matters will be positively affected by the preferred option.

SMEs and micro-enterprises also to the same extent as general business.

The premise that micro-enterprises should be excluded from the scope of any Commission's proposed legislation cannot be applied in this case. Micro-enterprises active in the customs field, as all other economic operators, are subject to the obligations stemming from the customs Union legislation and no exemption has been provided in this legislation for that kind of enterprises. As such, no exemption can be justified when sanctioning breaches of obligations that stem from the legislation in question.

Will there be significant impacts on national budgets and administrations? Maximum 4 lines

No.

Will there be other significant impacts? Max 6 lines

Yes. It is expected to have an impact in fundamental rights – articles 41, 47 and 16 CFR – as identified in section 7.2.3.5 of the IA draft report.

D. Follow up

When will the policy be reviewed? Maximum 4 lines

The proposal will be monitored and evaluated in 5 years' time from its entering into force. The collection of the information needed to monitor the results of the initiative will be made by addressing Member States and by means of a questionnaire sent to the stakeholders.

1. INTRODUCTION

The European Union (referred to as the Union in this report) is the biggest importer and exporter of goods in the world, managing an internal market of nearly 500 million people. Customs legislation is fully harmonised and provides for a stable and comprehensive legal system which aims to ensure the proper and uniform application of Union autonomous and international rules, and sets out the obligations and rights of customs administrations and economic operators in a common and transparent way.

However, despite the fact that customs legislation is fully harmonised, its enforcement, which ensures compliance with the customs rules and the lawful imposition of sanctions, lies within the ambit of Member States' national law. Consequently, customs legislation enforcement follows 27 different sets of legal rules and different administrative or legal traditions (that number will rise to 28 in the near future). This means that Member States can impose sanctions that seem appropriate to them as penalties for infringements of certain obligations stemming from the harmonised Union customs legislation. Such sanctions differ in nature and severity according to the Member State that is competent for it.

The "common basis" for those different national sanction systems is the obligation defined in Article 4.3 of TEU[1], some acts of secondary law and the case law of the Court of Justice, obliging Member States to provide for sanctions for failure to comply with Union law (including customs legislation). Those sanctions, as interpreted by the Court of Justice and developed in secondary law, shall be effective, proportionate and dissuasive. Customs sanctions which are out of proportion with the seriousness of the irregularities, or which are more severe for breaches of the law in relation to imported or exported goods than for domestic transactions, have been recognised very early on by the European Court of Justice as measures having equivalent effect to quantitative restrictions.

The differences in the treatment of infringements of customs legislation has an impact not only on the effective management of the customs union through the uniform enforcement of its legislation, but also on the equal treatment of economic operators doing business with customs and on the equal access to customs facilitation measures by legitimate trade.

The present impact assessment addresses these issues and assesses different options aiming to ensure the uniform enforcement of Union customs legislation throughout the Union and to reinforcing the level playing field for economic operators.

2. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

The proposal to provide for a Union legal framework on customs infringements and sanctions was announced in the 2012 Commission Work Programme and further scheduled in the 2013 Commission Work Programme[2].

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1 "The Member States shall take appropriate measures, general or articular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union."

2 Commission Work Programme for 2012: http://ec.europa.eu/atwork/programmes/docs/cwp2012_annex_en.pdf

This initiative is in line with European Parliament recommendations, both in the Audy Report of 14.5.2008, on implementing trade policy through efficient import and export rules and procedures[3], and in the Salvini Report of 25.11.2011[4] on the Modernisation of Customs, both of which pointed out the need to have common and precise rules on customs sanctions. Otherwise, as the reports point out, existing differences will result in trade distortion.

2.1. Internal consultations

The preparation of this Impact Assessment was monitored by an Impact Assessment Steering Group (IASG), where the following Directorates Generals were included: Secretariat General, Legal Service, Agriculture and Rural Development, Budget, Enterprise and Industry, Justice, Home Affairs, Internal Market, European Anti-Fraud Office, Trade and Taxation and Customs Union.

The Steering Group met three times, its last meeting being held on 24.09.2012, and was consulted on the development of the Impact Assessment, until its finalisation.

2.2. Consultation of stakeholders

A stakeholder consultation was carried out. This was not a public consultation, given the specific and technical nature of customs infringements and sanctions. It was discussed and agreed with the IASG to consult only the most concerned stakeholders (economic operators, including SMEs and micro-enterprises, dealing with customs matters and Member States).

At the request of the stakeholders, their responses have been treated confidentially. All the contributions have been taken into consideration for the analysis in this impact assessment.

Four consultation tools were used:

– A questionnaire was addressed to the customs administrations of Member States concerning their national customs infringements and penalties systems (Working Document TAXUD 1718/2008 – Annex 1A). 24 Member States[5] answered that questionnaire. The replies included, among other issues, the nature of national penalties for infringements of customs legislation, the main and ancillary penalties, the persons liable in case of infringements, the treatment given to infringements committed in other Member States, the time limits involved, the impact of

[3] "Calls on the Commission to incorporate in its proposals precise rules on the administrative and penal sanctions for infringing the customs provisions laid down in Articles 27(a) and 280 of the EC Treaty as they would be amended by the Lisbon Treaty"
http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2011-0406+0+DOC+XML+V0//EN

[4] "calls too for increased cooperation and exchange of best practice in relation to the collection of VAT on imported goods, the opening hours of customs services, and fees and penalties for non-compliance with the Community Customs Code, as existing differences are resulting in trade distortions" http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&mode=XML&reference=A7-2011-0406&language=EN

[5] Austria, Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and United Kingdom. Czech Republic, Denmark and Sweden didn't provide any answers.
From now on reference will be made only to these 24 Member States who answered the questionnaire and participated in the Project Group.

infringements on AEO authorisations, the liability of the legal persons, and procedural issues. The answers served as a basis for a study carried out by a Project Group (Report from the Project Group on customs penalties – Annex 1B) in which several divergences were identified as follows: the diversity of legal systems and the diversity of the treatment of customs infringements in those legal systems, the difference in the nature of the penalties for the same customs infringement and the procedures according to which the customs penalties are imposed and executed (see Project Group's Report Executive Summary – Annex 1C).

– A High Level Seminar on Compliance and Compliance Risk Management with the participation of customs administrations from all Member States and Candidate Countries and representatives of economic operators was held in Copenhagen on 20-21 March 2012 (Copenhagen Declaration – Annex 2). The issue of customs offences and penalties was acknowledged as an element of a "compliance" scheme, although the seminar was not conclusive on that aspect.

– A first stakeholder consultation with DG TAXUD's consultative body on customs issues (the Trade Contact Group (TCG)[6]) was carried out. The TCG includes Union-level representatives of 45 European trade associations, including SMEs, involved in customs related activities[7]. All 45 TCG members were invited to a meeting on 26.03.2012 (Summary record of TCG meeting held on 26.03.2012 – Annex 3A). 9 members attended the discussion on divergent customs penalty systems in the Member States. The Commission also presented a questionnaire to the members of TCG (TCG questionnaire – Annex 3B[8]). The majority of the associations present at the meeting expressed their overall agreement on the relevance of DG TAXUD's initiative for their business activities. The questionnaire was sent to all the registered associations of traders, representing around 3,000 member companies (Overview of TCG membership – Annex 3D3D3D). The consultation ran from 27.03 to 5.06.2012[9]. Responses to the consultation were given by 1 company and 4 TCG members encompassing 137 federations and associations including the following economic sectors amongst others: freight forwarding, transport, logistic and customs services; ship brokers and agents; retail, wholesale and international trade; cigarette manufacturing (Summary of TCG questionnaire's answers – Annex 3C).

– A second stakeholder consultation was carried out through another questionnaire, (hereinafter referred to as the "Questionnaire" (see Stakeholder's second consultation – Annex 4)) and was sent to SMEs through the Enterprise Europe Network, concerning the effects that the different infringements and sanctions systems in force in different Member States in the area of customs legislation have on the commercial activity of companies dealing with import/export activities. Of the 169 questionnaires completed and returned 77% were from SMEs and microenterprises. The answers to

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6 Summary List of Trade Contact Group Member Associations: http://ec.europa.eu/taxation_customs/resources/documents/customs/policy_issues/customs_trade_consultations/members_of_the_tcg_en.pdf

7 For a full list of the members of the TCG refer to annex 3D.

8 In this questionnaire the members of TCG representatives were asked about their awareness of the differences in the customs infringements and sanctioning regimes of Member States and its effects on the granting of Authorised Economic Operator status throughout the Union. Consultation on the preferred option for action was also included in the questionnaire.

9 Although the questionnaire gives 14th May as the deadline, this period was extended until 5th June

the questionnaire were presented in two different ways – either as individual and or as collective answers. Most of them were individual answers (a total of 113). A total of 56 were collective answers, where individual answers had been aggregated in just one questionnaire. The identification of SMEs and micro-enterprises in this questionnaire was made only by reference to their number of employees.

2.3. Scrutiny by the Commission Impact Assessment Board

The following paragraphs address the changes made in the Impact Assessment report as a consequence of the Impact Assessment Board's opinion issued after its meeting of January, 30th 2013. The changes are presented following the main recommendations for improvements identified by the Board.

1. Better substantiate the problem definition

Section 4 "Problem definition" has been totally restructured in order to present a different approach to the problem.

More evidence on the problem has been collected through a new questionnaire and the results of an additional case have been included in the report.

Regarding the **existence of external pressure**, section 4.1.1 (page 17) has been rephrased and new data on the TFA negotiations has been added.

Regarding the effects on the **Internal Market**, new data gathered through the new questionnaire and from external studies has been used (see section 4.1.3 – page 24). Regarding other possible irregularities in trade, some references have been made in section 4.1.3 to the fact that, to a certain extent, the effective enforcement of some other EU policies relies on the enforcement of the Union customs law.

Regarding the **different treatment of economic operators** and, in particular, in their granting of the AEO status, an enhanced comparison between Germany and France has been included (see section 4.1.4 – page 27) in order to better reflect the disincentive for economic operators engendered by severe sanctioning regimes.

Regarding **SMEs and micro-enterprises**, their opinions on the problem have been added to section 4.1.4. In addition, some extra costs borne by SMEs and micro-enterprises (as well as by some large companies) have been identified and included in the problem definition (see also section 4.1.4 – page 27). Finally, further reasons have been given as to why micro-enterprises are included in the scope of the initiative in section 6 of the report.

A section on "Foreseen evolution of the problem" has been included (section 4.2 – page 30).

2. Better present the options

Section 6 (page 32) has been completely rephrased. In particular, **reasons explaining the content of the options** have been included (i.e. section 6.3 points out the reasons why infringements are not

included in policy option B, and the first paragraph of section 6.4 identifies how the list of infringements and sanctions will be established in policy option C).

Measurable monitoring indicators have been added to section 9 (page 56) of the report.

Within section 7 (page 38) of the report, **advantages and disadvantages of the different options** have been analysed through the study of their impacts.

3. Better assess and compare impacts of the options

Section 7 (page 38) of the report has been completely restructured. In the assessment of each of the options the same sections have been included in order to ease their comparison. Impacts of the options in each of the three pillars (economic, social and environmental) have been studied.

A more detailed **explanation of the expected impact** of each policy option on additional administrative and compliance costs for economic operators and Member States has been added to section 67 (page 38) of the report.

Section 8 (page 53) has been also rephrased to better present the reasons for the preferred option.

4. Better present the impacts on SMEs and micro-enterprises

SMEs and micro-enterprises' concerns have been addressed through the issuing of a new questionnaire. The answers to that questionnaire have provided valuable information on the concerns of the SMEs and micro-enterprises and about the impacts of each policy option on them. This information has been included throughout the report, from section 4 to section 8 (inclusive).

Regarding the public consultation on the **TOP10 most burdensome EU legislative acts for SMEs**[10], a request for more information on the reasons that have led to customs controls and formalities appearing on the list has been sent to DG ENTR[11]. Once an answer to that request has been received, those reasons will be analysed and, if convenient, proposals for improvement will be made. Nevertheless, it should be pointed out that complaints from SMEs concerning controls and formalities fall outside the scope of the present initiative.

3. POLICY CONTEXT

3.1. International Context

The Union has been granted rights akin to those enjoyed by the **World Customs Organisation (WCO)** members and has ratified the revised Kyoto Convention which entered into force on February 3rd, 2006 and which promotes trade facilitation and effective controls. In one of the specific Annexes[12] to the Convention, there is a series of obligations which encompass, among others, the definition of customs infringements, the specification of those persons who can be held responsible for customs

[10] http://ec.europa.eu/enterprise/policies/sme/files/top10report-final_en.pdf

[11] Ares(2013)312422 - 08/03/2013

[12] Annex H Chapter 1 on Customs offences. The EU has not yet signed up to the Specific Annexes, including this Annex H.

infringements and the definition of a period after which customs sanction procedures may no longer be levied.

The Union has been a **World Trade Organisation (WTO)** member since January 1st, 1995 and therefore is bound by Article X3(a) of the GATT 1994[13]. That Article requires each contracting party to administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of a kind described in paragraph 1 of the Article[14].

Therefore, every contracting party, including the Union, has to provide for uniform application of the customs legislation including through the appropriate establishment and application of sanctions.

Currently negotiations on a Trade Facilitation Agreement (TFA) are on-going with a view to achieving an Agreement by the end of 2013. Among other issues the question of customs penalties, as well as appeals, are part of the negotiations.

3.2. Union Context

There is a general obligation foreseen by the Treaty[15] for Member States to "*take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union*". This obligation includes sanctions, without differentiating between those of a criminal and non- criminal nature.

With regard to protecting the Union's financial interests, Regulation (EC, EURATOM) No 2988/95[16] establishes the principle of administrative sanctions and ensures the minimum respect of the Union's obligations in all fields concerning the Union's financial interests. It also clarifies that it is Union law, and not national law, which shall determine the nature and scope of the administrative penalties. The relevance of this text is based on the fact that customs duties are considered as Traditional Own Resources (TOR)[17] and are collected by customs authorities throughout the Union and account for approximately 15% of the Union budget revenue.

The recent proposal by the Commission on a Directive on the fight against fraud in the field of the Union's financial interests by means of criminal law[18], which would repeal the Convention for the

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13 General Agreement on Tariffs and Trade: http://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm

14 "Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefor, or affecting their sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use […]".

15 Article 4.3 of TEU

16 Council Regulation (EC, EURATOM) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests, in OJ L312, of 23.12.1995 p.1 (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1995:312:0001:0004:EN:PDF). This Regulation partially concerns customs legislation in so far that customs duties are part of the EU's own resources.

17 Council Regulation (EC, EURATOM) No 1150/2000 of 22 May 2000 implementing the Decision 2007/436/EC, Euratom on the system of the European Communities own resources, in OJ L 130, 31.5.2000,p.1:http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2000R1150:20070101:EN:PDF

18 Proposal for a Directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law COM(2012)363/3 (http://ec.europa.eu/anti_fraud/documents/pif-report/pif_proposal_en.pdf)

protection of the European Communities' Financial Interests[19], is complementary to Regulation No 2988/95 (as it provides for criminal sanctions) and also to any future action in the field of customs non-criminal sanctions.

Indeed both texts, although very relevant to the present proposal for action, only partially cover the scope of customs infringements and sanctions as they are limited to the field of the Union's financial interests which in this case specifically refers to customs duties. However, customs infringements also cover other obligations stemming from the Customs Code and in that way any specific action in the field of customs infringements and sanctions will be complementary to those legislative acts.

Moreover, there has been an increased tendency to develop Union legal acts concerning the enforcement of legal obligations already harmonised at Union level. The area of Agriculture and Fisheries was one of the first to have sanctions established at Union level in relation to the lack of compliance with conditions or obligations attached to the granting of refunds or subsidies (as for instance in Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products[20]). More recently, actions have been taken at Union level concerning sanctions for infringement of certain obligations in connection with e.g. marketing authorisations for medical products (Commission Regulation (EC) No 658/2007 of 14 June 2007[21]), environment (Directive 2008/99/EC of the European Parliament and of the Council of 19 November on the protection of the environment through criminal law[22]) or ship sourced pollution (Directive 2005/35/EC of the European Parliament and the Council of 7 September 2005 on ship-source pollution and on the introduction of infringements[23], including criminal penalties, for pollution offences). Proposals in respect of sanctions were also made in 2011 e.g. to fight against market abuse (proposal for a Regulation of the European Parliament and of the Council on Insider Dealing and Market Manipulation (Market Abuse) and proposal for a Directive of the European Parliament and of the Council on Criminal Sanctions for Insider Dealing and Market Manipulation[24]).

Customs legislation referring to the trade in goods between the customs territory of the Union and third countries is completely harmonised and has been assembled in a **Community Customs Code** (CCC)[25] since 1992. A major overhaul of this Code was carried out in Regulation (EC) No 450/2008 of the European Parliament and of the Council of April 2008 laying down the Community Customs Code

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19 The Convention for the protection of the European Communities' Financial Interests of 26 July 1995, in OJ C316, of 27.11.1995 p.48 (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1995:316:0048:0057:EN:PDF), which is focused on fraud affecting the EU's financial interests

20 OJ L 351, 14.12.1987, p. 1–33, repealed by Commission Regulation (EC) No 800/1999 of 15 April 1999 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ L 102, 17.4.1999, p. 11–52).

21 OJ L 155, 15.6.2007, p. 10–19.

22 OJ L 328, 6.12.2008, p. 28–37.

23 OJ L 255, 30.9.2005, p. 11–21.

24 SEC(2011)1218 final.

25 The Community Customs Code, established by Council Regulation (EEC) 2913/92 of 12 October 1992 and applied from 1 January 1994, in OJ L 302, 19.10.1992, p. 1: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1992R2913:20070101:EN:PDF

(Modernised Customs Code or MCC)[26], now to be recast as "Union Customs Code" (UCC)[27], aiming at the adaptation of customs legislation to the electronic environment of customs and trade, to promote further the harmonisation and uniform application of customs legislation, and to provide Union economic operators with the appropriate tools for developing their activities in a global business environment.

However, the enforcement of customs legislation, which secures compliance with customs rules, the recovery of the customs debt and the lawful imposition of penalties and sanctions, still lies with the national legislation of the Member States. This might have a negative effect on the enforcement of customs legislation, as there are significant differences amongst the Member States in this field.

This has also been highlighted by the European Parliament in two reports[28], one from 2008 and another from 2011, calling for harmonisation in this field.

Previous efforts at "full harmonisation" of customs sanctions in the 1990s did not succeed, mainly because Member States at the time found it "intrusive" in their national legal systems.

Nevertheless, political and legal developments that have taken place since those initial efforts justify the re-examination of the question.

In 1992, the creation of an Internal Market in the Union introduced free circulation of products and services in the Internal Market thus transforming the customs union to a "pillar" of its good functioning. It also implied that economic operators doing business in the Union should receive equal treatment at the hands of customs.

During the same period the adoption and entry into force of the first Community Customs Code[29] assembled, for the first time, in one legislative act common obligations with regard to customs legislation.

The adoption of a Modernised Customs Code in 2008[30] aimed at providing electronic exchange of information between economic operators and customs administrations, as a principle, also implies

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[26] Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code), in OJ L145, 4.6.2008, p.1: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:145:0001:0064:EN:PDF

[27] Proposal for a Regulation of the European Parliament and of the Council laying down the Union Customs Code(Recast) - COM(2012) 64 final: http://ec.europa.eu/taxation_customs/resources/documents/common/legislation/proposals/customs/com(2012)64_en.pdf

[28] Report from the Committee on International Trade on implementing trade policy through efficient import and export rules and procedures (2007/2256(INI)). Rapporteur: Jean-Pierre Audy and Report from the Committee in the Internal Market and Consumer Protection on modernisation of customs (2011/2083(INI)). Rapporteur: Matteo Salvini

[29] The Community Customs Code, established by Council Regulation (EEC) 2913/92 of 12 October 1992 and applied from 1 January 1994, in OJ L 302, 19.10.1992, p. 1: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1992R2913:20070101:EN:PDF

[30] Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code), in OJ L145, 4.6.2008, p.1: http://eur-

also implies further streamlining of the way that customs rules are applied by customs administrations and economic operators. It also establishes common obligations and as well as a series of simplifications (e.g. Authorised Economic Operator status[31]) that depend on "compliance with customs requirements" requiring a level playing field between economic operators.

4. PROBLEM DEFINITION

Although customs legislation is harmonised in the Union, the definition of customs infringements and the imposition of sanctions, which are the main factors for Union customs legislation enforcement, are left to Member States' national legal systems. This fact can give rise to the non-uniform application of Union customs' legislation that not only affects the optimal management of the customs union, but has also repercussions in other fields of Union policy as well as at international level.

Indeed the consistent management of the customs union depends to a great extent on the effective implementation of its harmonised customs rules by the Member States. Nowadays, that implementation relies on a complex structure of 27 different legal national orders and administrative or judicial traditions. The diversity in the definitions of what is considered to be a customs infringement as well as the divergent sanctioning regimes in the Union prevent the uniform application of the Union customs law and affect the effective management of the customs union. They affect, as well, the enforcement of Union legislation in other policy fields (i.e. environmental policy, agricultural policy, Internal Market).

At international level there is pressure from the WTO for more uniformity in the application of customs rules by the Union, in its capacity, as a customs union as well as a WTO member, in order to fully comply with its international obligations.

The differences pointed out above also have repercussions for the equality of treatment and the concept of a level playing field that traders, including SMEs and microenterprises, expect the Internal Market to ensure. This has many practical effects, as it will be further developed in future sections of this report, such as unequal access to customs simplifications and facilitations or AEO status. It can also lead to economic operators searching for the Union Member State with the most lenient sanctions for the import or export of goods.

So, **different enforcement of customs legislation throughout the Union is the problem** and has implications at several levels (international, Union and economic operators) as the following chart shows:

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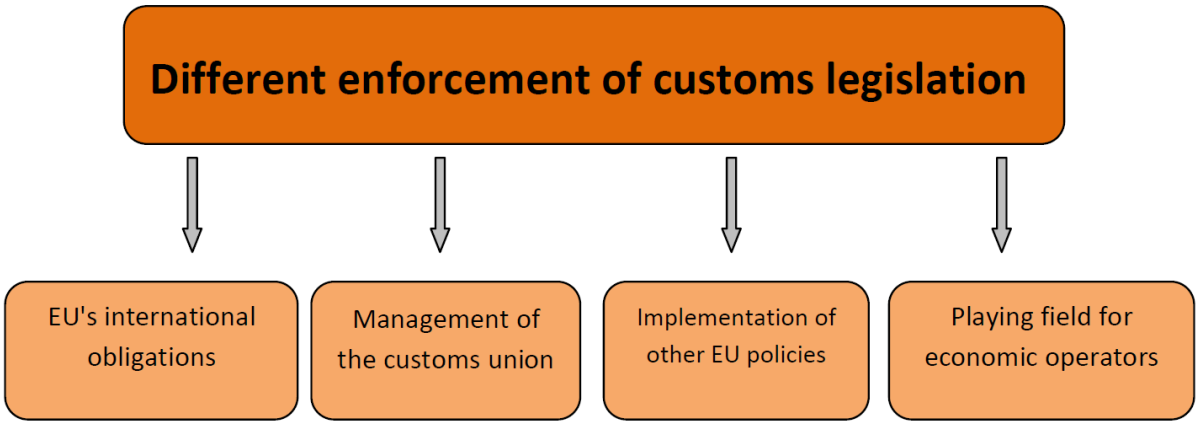
[31] See below 4.1.3



By trying to reduce the level of different enforcement of customs legislation, improvements in each of the mentioned fields are expected (direct improvements). Indeed, as each of those fields is connected to the others, those improvements can positively affect those other fields (indirect improvements). These indirect improvements can be produced in a series of consecutive waves thus triggering a kind of *snow-ball* effect which would imply that the final outcome of this proposal will not only be the sum of the direct improvements but also the indirect improvements of the first and subsequent waves.

In the next sections the implications of the different enforcement in the four mentioned areas will be demonstrated. Where possible, some measurable indicators have been pointed out in each of the sections.

4.1. Scope and scale of the problem

4.1.1. Differences in enforcement of Union customs legislation and the implications for the Union's compliance with its international obligations

The lack of uniform enforcement of customs legislation in the Union relates to the question of the Union's compliance with its international obligations.

The United States of America (US) filed a complaint on October 6th, 2004 against the Union, claiming that the Union violated its international obligations regarding the GATT and in particular Art. X:3 (a), which states that "*each contracting party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article*" and Art. X:3 (b) of GATT 1994. Other WTO members (such as India and Brazil) joined the US and have challenged the Union in a dispute case (WTO – EC Selected Customs Matters (WT/DS315). They argued, among other things, that the differences in Union Member States' customs sanctioning systems might put at risk a uniform approach throughout the territory of the customs union for dealing with the violation of customs rules.

For purely procedural aspects the WTO Dispute Settlement Body (DSB) did not follow up this complaint. Consequently the substance of the question was never analysed by the WTO. Nevertheless, it acknowledged indirectly the existence of divergent penalties.

This, however, does not mean that the question has been settled once and for all, as in the context of the Trade Facilitation Agreement (TFA) currently being negotiated in the WTO, the issue of customs

penalties is on the agenda. Moreover, a proposal for an '*appeal mechanism in a Customs Union*' is clearly targeting the Union, aiming to provide for a control of uniform approach in case of violation of customs rules in Member States. This shows the interest and the relevance that customs penalties present for WTO. In this context, there is continuous international pressure on the Union to tackle the differences in the treatment of customs infringements and sanctions between Union Member States. The negotiations on TFA are due to conclude at the end of 2013.

For confidential reasons it is not possible to go into further detail about the strong international pressure for the Union to tackle the issue of infringements and sanctions regarding Union customs law.

4.1.2. Differences in enforcement of Union customs legislation and the implications for the management of the customs union

The same customs violation is treated differently in the various Member States, as their national sanctioning regimes for customs legislation violations are very different.

In some Member States, the infringement results in an action for recovery of duties. In others, penalties are imposed on top. Some Member States provide for both criminal and non-criminal penalties. Others provide only for criminal penalties. Others do not even consider as punishable behaviour which is sanctioned criminally in another Member State.

We are confronted with different national sets of customs enforcement legislation for obligations that stem from a totally harmonised area as the customs union.

Furthermore, the analysis made by the Project Group on Customs Penalties (Annex 1) covered the customs offences and penalty systems in 24 Member States. Several substantial differences were noted:

Table 1 – Differences in Member States' customs sanctioning systems

The nature of national sanctions for customs infringements	16 out of 24 Member States provide for both criminal and non-criminal sanctions. 8 out of 24 Member States only have criminal sanctions.
Financial thresholds to distinguish between criminal and non-criminal infringements and sanctions	Member States whose systems foresee both criminal and non-criminal infringements and sanctions have different financial thresholds to decide on the nature of the customs infringement – whether criminal or non-criminal- and therefore the nature of the customs sanction. Thus the financial thresholds vary between 266 EUR and 50.000 EUR.
Member States' requirements to establish the	11 out of 24 Member States consider that an

economic operator's liability for the customs infringement	economic operator is liable for certain customs infringements whenever there is a customs law breach, irrespective of the presence of intent, negligence or elements of careless or reckless behaviour (strict liability infringements). 13 out of 24 Member States cannot sanction an economic operator for a customs infringement without the presence of intent, negligence or elements of careless or reckless behaviour.
Time limits: **-to initiate a customs sanction procedure** **-to impose a customs sanction** **-to execute the customs sanction**	The large majority of Member States have time limits to initiate a sanction procedure, to impose a customs sanction and to execute it. These time limits vary from 1 to 30 years. 1 out of 24 Member States does not employ any time limit at all – it can initiate the sanction procedure or impose a sanction at any time.
Legal Persons' liability	An economic operator who is a legal person can be held liable for a customs infringement in 15 out of 24 Member States. In 9 out of 24 Member States legal persons cannot be held liable for infringements.
Settlement	Settlement refers to any procedure within the legal or administrative system of a Member State that allows the authorities to agree with an offender to settle the matter of a customs infringement as an alternative to initiating or completing customs sanction procedures. 15 out of 24 Member States have this procedure for customs infringements.

(Source: Report from the Project Group on Customs Penalties)

One can observe differences regarding the nature (criminal/non-criminal) of national customs sanctions. Moreover, irrespective of their nature, the sanctions themselves are of different types (e.g. fines, imprisonment, confiscation of goods, temporary or permanent disqualification from the practice of industrial or commercial activities). For example, the same type of customs infringement could be sanctioned by imprisonment in one Member State and by a fine in another Member State.

Even when assuming the same type and nature of infringement, sanctions can have different levels/ranges from Member State to Member State[32].

In practice, this means that for the same infringement against Union customs rules there are different sanctions and procedures depending on the Member State dealing with it. This leads to the divergent enforcement of Union customs legislation in the Union.

A concrete example of that situation may be given regarding one of the case studies (case A) analysed within the Project Group of Customs Penalties, where for the same infringement – Lodging of an export declaration at a customs office in a Member State other than that where an export declaration should have been lodged – 15 Member States would not apply any sanctions, 5 would apply a criminal sanction and 4 a non-criminal sanction, as follows:

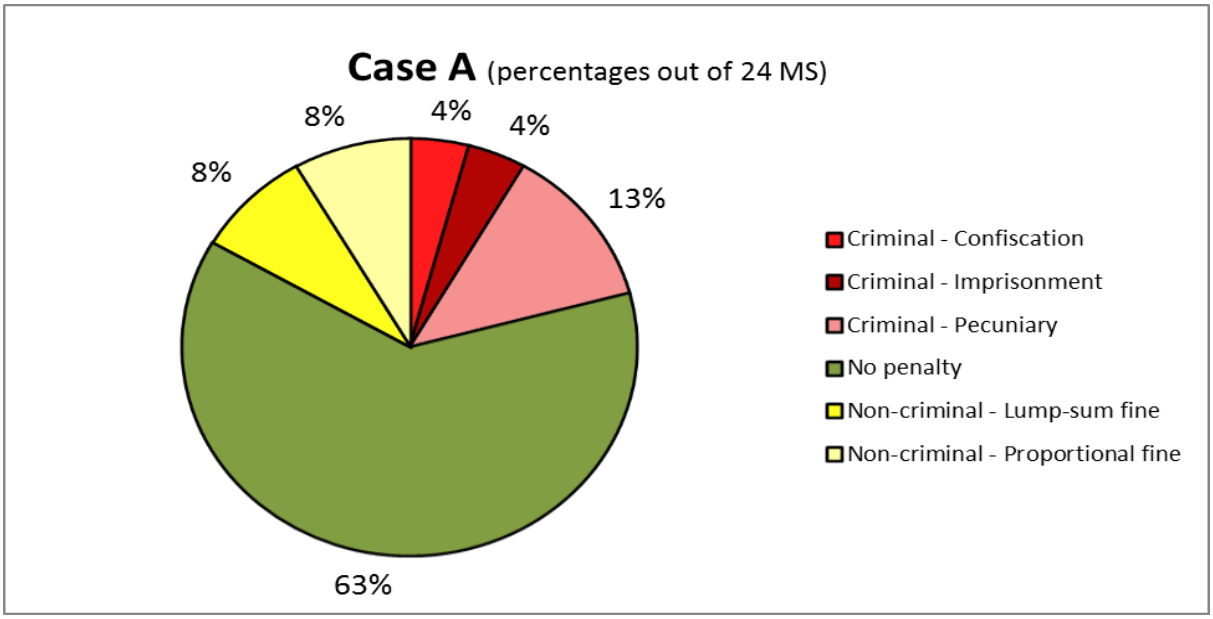


Figure 1 – Case A (Source: Report from the Project Group on Customs Penalties)

On the other hand, even in cases where Member States agree that there is an infringement which is liable to sanction, the variations regarding the infringement's nature and the corresponding procedure can be such as analysed in another case (case B) by the Project Group, as follows.

In case B – Company X lodged a supplementary declaration for release for free circulation 5 days after the date due – out of 22 Member States that consider this as behaviour to be sanctioned, 8 considered this infringement as criminal, 14 as non-criminal. A settlement to solve this case would be possible in 5 of the 8 Member States that consider the infringement as criminal and in 2 of the 14 that consider it as non-criminal.

[32] See Annex 1B: Chapters 5 and 6

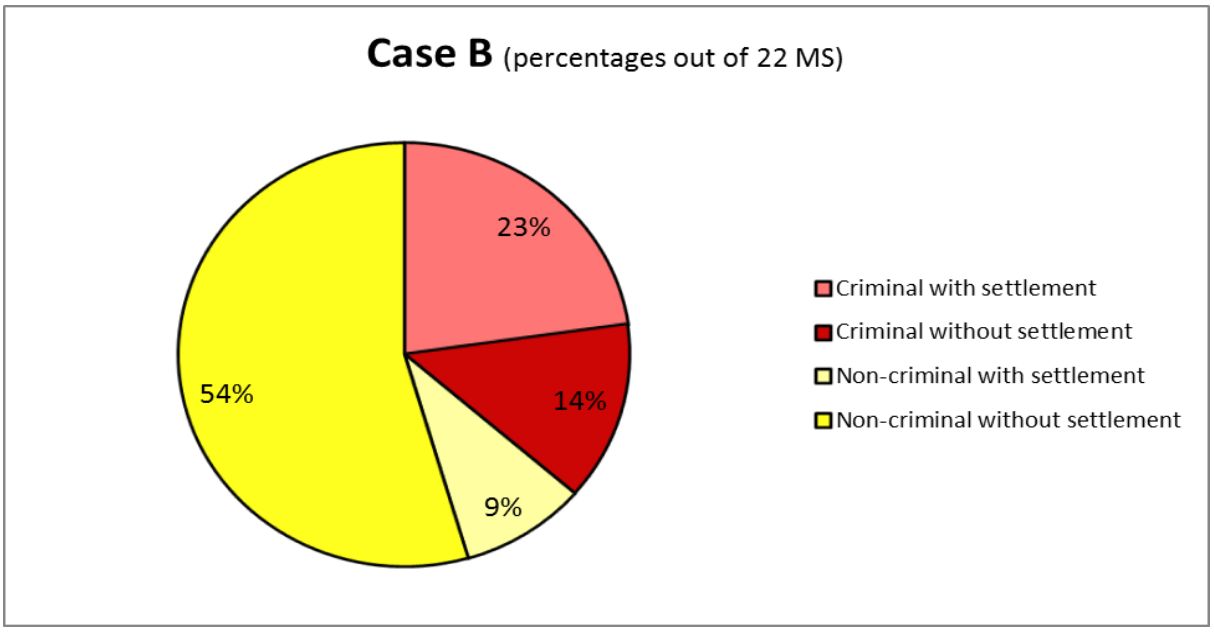


Figure 2 – Case B (Source: Report from the Project Group on Customs Penalties)

Additional and more detailed information regarding the diversity of sanctioning regimes in the Union is attached to the present report in Annex 5A (Results from the Project Group) and Annex 5B (External studies).

In addition to that, the pending proposal on the UCC (MCC recast[33]) states in Article 35 that "*each Member Stat shall provide for penalties for failure to comply with Community customs legislation. Such penalties shall be effective, proportionate and dissuasive*". The current legal framework on sanctions does not allow any assessment of the proportionality or dissuasiveness of the sanctioning system enforced by each Member State, as there is no common base to which to compare them. For the time being, an economic operator established in a Member State which only provides for criminal penalties for customs infringements may consider a pecuniary administrative penalty imposed by another Member State on a second economic operator as not dissuasive whilst this last economic operator may consider the criminal penalty as disproportionate. These conclusions may vary if we change one of the Member States involved in the comparison as their customs infringements and sanctions rules and procedures are quite different. That lack of transparency is aggravated by the possible replacement of a sanction by a settlement (often confidential).

In the absence of a common Union framework which would provide the tools to interpret in a uniform way what is proportionate and dissuasive, each Member State assesses it from the perspective of its national law. Consequently, the fact that the treatment of customs infringements is different puts the effective management of the customs union at stake, as it is not managed in the same way, irrespective of the Member State.

The inconsistent management of the customs union that derives from the differences in enforcement of Union customs legislation can also influence **the effective and timely collection of revenues for the Union and Member States**. National customs authorities and the Commission share

[33] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0064:FIN:EN:PDF

the responsibility for protecting the financial interests of the Union. Customs duties charged on imported products represent around 15% of the Union budget revenue, as they are considered Traditional Own Resources (TOR).

The large majority of Union customs infringements lead to a customs debt[34]. This has a financial impact on the Union budget, in the sense that the TOR, which are equal to 75% of the total amount of the customs debt[35] that are collected by Member States' customs administrations, are one of the sources of Union revenues.

If there are loopholes in the legal framework of the customs infringements and penalties, then the risk of not collecting TOR is real.

Even in the case where TOR are properly collected, differences in the sanctioning regime (criminal or non-criminal) may affect their timely collection. A criminal infringement gives the possibility for recovering the customs debt beyond the normal three-year period in which the customs authorities have to communicate the amount of the debt to the debtor[36]. This means that the notification and recovery of the customs debt depends on the sanctioning regime of each Member State and this might have an impact on the timely collection of own resources.

In this sense, the study "Administrative performance differences between Member States recovering Traditional Own Resources of the European Union"[37], elaborated at the request of the European Parliament's Committee on Budgetary Affairs and published in February 2013, states that "*regulations, instructions and procedures determine both speed and success of the recovery process*". The Member State's customs infringements and sanctions regime has an influence on the effective and timely recovery process. Not only because it is the main deterrence against breaches of the customs legislation but also because the different sanctioning processes may lead to the postponement of the effective collection of the revenue. The latter is a huge concern because, as the above-mentioned study states, "*experience shows that every day of non-recovery that passes increases exponentially the risk of non-recoverability*".

The lack of recovery of these customs duties has a very important impact not only on the Union's budget but also on the Member States' budgets. The customs duties linked to irregularities, which are outstanding in the Member States' debt accountancy and accordingly entered in what is known as B-account, may never be recovered and consequently be written off in the special TOR book keeping[38]. In such cases, unless the Commission considers that the non-recovery is attributable to the Member State concerned, giving rise to financial responsibility for the loss occurred, the losses are compensated to the Union's Budget by Member States' increased contributions of the Gross National

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34 See definition in the Glossary

35 Council Decision 2007/436/EC, Euratom of 7 June 2007 on the system of the European Communities' own resources: see Article 2(1)(a) and (3): http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:163:0017:0021:EN:PDF

36 Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1): see Article 221(4)

37 Administrative performance differences between Member States recovering Traditional Own Resources of the European Union. http://www.europarl.europa.eu/committees/en/studiesdownload.html?languageDocument=EN&file=91816

38 Article 17 (2) Regulation 1150/2000

Income (GNI) based own resource. In a time of financial crisis this might have serious consequences for both the Union and the Member States' budgets.

To be aware of the size of the implications we are referring to, some figures about the customs union are shown in the following paragraphs.

The volume of trade between the Union and its trading partners has been constantly increasing over the years. The higher the volume of trade with third countries, the bigger the number of customs declarations, and the bigger the number of irregularities and/or infringements of customs legislations even without the intention to do so.;

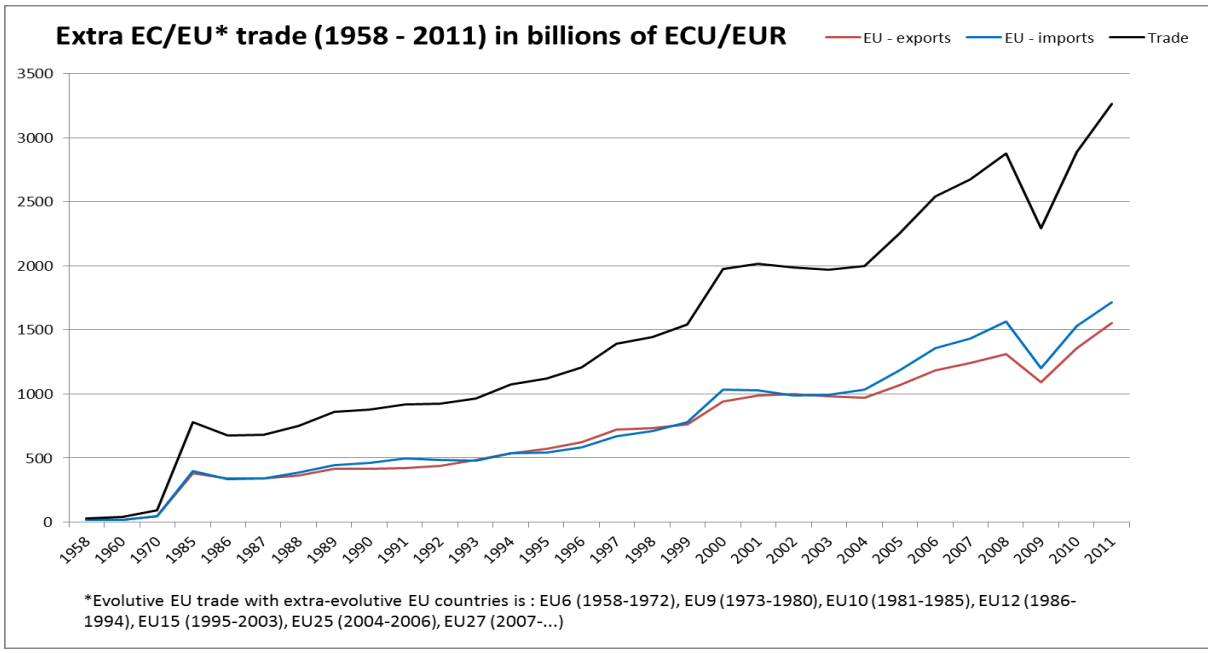

Figure 3 - Volume of extra Union trade 1958-2011 (Source: Eurostat)

The differences in enforcement of customs legislation in the Member States affects a large number of customs declarations processed per year. Every second an average of 8.9 declarations is handled by the Member States' customs administrations[39].

DG Taxation and Customs Union's Measurement of Results Annual Report for 2011 (this report is not public), presents the total number of customs declarations in the Union. This number has been continuously increasing and reached the highest level ever monitored by DG Taxation and Customs Union's Measurement of Results in 2011. Based on the quarterly data reported by the 27 Member States in 2011, the basic figures concerning customs declarations can be summarised as follows:

The customs administrations of Union Member States processed in year 2011[40]:

39 DG Taxation and Customs Union's Measurement of Results Annual Report for 2011 (this report is not public), presents the total number of customs declarations in the EU. This number has been continuously increasing and reached the highest level ever monitored by DG Taxation and Customs Union's Measurement of Results in 2011.

- 36 million pre-arrival cargo declarations (entry summary declarations),
- 140 million import customs declarations,
- 96 million export declarations,
- 9 million transit declarations.

Besides what is declared to customs, and although the consensus is that the overwhelming proportion of trade is lawful, the illicit international trade in non-declared goods grows proportionally. A recent paper issued by the World Economic Forum suggests that "*illicit trade is now thought to represent between 7% and 10% of the global economy*"[41][42].

The inconsistent management of the customs union has effects, even indirectly, in other relevant fields like trade, including illicit trade, as it will be mentioned in the next section.

4.1.3. Differences in enforcement of Union customs legislation and the implications on the implementation of other Union policies

The creation of the Single Market meant that all customs formalities at the borders between Member States were abolished. National Customs authorities became responsible for the protection of the external border in relation to goods, thus becoming the only firewall between international illicit or dangerous trade and the freedom of movement of goods within the Single Market. National Customs authorities not only share the responsibility for protecting the financial interests of the Union as efficiently as possible, since duties charged on imported products represent 15% of the total revenue of the Union's budget, but are also responsible for the correct application of legislation applying to the goods which is related to other policies such as non-tariff commercial policies, product safety, environmental protection, agricultural legislation, etc.

Consequently, the enforcement of customs legislation is a catalyst for the enforcement of Union legislation in other policy fields such as IPR, environment-related legislation (such as CITES, ozone depleting substances, etc.), market surveillance, agricultural policy, etc. The enforcement of these other policies depends on the uniform application of Union customs legislation, as customs authorities are the ones who control the goods' compliance with the requirements provided in those policies. If enforcement of customs legislation is different according to the Member State where the banned goods enter or the infringement of agricultural policy rules (related to the import or export of goods) takes place, then the enforcement of these other policy rules is at stake.

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40 Source: TAXUD's Measurement of Results – Annual Report for the year 2011.

41 World Economic Forum, New Models for Addressing Supply Chain and Transport Risk, An initiative of the Risk Response Network, 2012. P9. No separate figures exist for the EU.

42 The World Economic Forum Global Agenda Council on Illicit Trade has adopted the following definition for "illicit trade": "is trade that involves money, goods or value gained from illegal and generally unethical activity". According to the Council, it encompasses a wide variety of illegal trading activities, including human trafficking, environmental crime, illegal trade in natural resources, various types of intellectual property infringements, trade in certain substances that cause health or safety risks, smuggling of excisable goods, and trade in illegal drugs, as well as a variety of illicit financial flows. These activities generate a wide range of economic, social, environmental or political harms.

In this context, the customs infringements would relate to the relevant obligations resulting from customs formalities and controls (e.g. the failure by the declarant to present a certificate confirming that the product is safe for the consumer) and not to the specific (non- customs) legislation that persons dealing with goods in external trade have to comply with.

Therefore, customs law enforcement at the Union borders is essential; once infringing goods have been introduced into the Single Market, it becomes difficult to recover the customs duties or to stop them from being placed on the market (in case they are dangerous). The weakness in the legislative framework of customs sanctions was also mentioned in the study by the Centre of European Policy Studies (CEPS)[43] as a factor in non-effective management of the external borders.

The differences in Member States' customs infringements and sanctioning systems might also influence economic operators' choices concerning the Member State in which to have their import/export activities. Hence, the risk of **trade distortion**[44] is real. It may even make them have their customs formalities carried out in a different Member State from the one they would choose if such differences did not exist. This has been confirmed in the stakeholders' consultation, as 44% of the companies replying to the Questionnaire identified the existence of differences in customs infringements and sanctions in Member States as the main reason (19%) or one of the reasons (25%) why they avoid engaging in customs formalities in other Member States, although it would be positive for them in other respects. Hence, it can be said that the current Union customs infringements and sanctions regimes do not meet the neutrality standards that are desirable in a customs union as it obviously is affecting economic decisions, diverting them from what would be optimal.

The European Parliament, in its report on the modernisation of customs, called for increased cooperation and exchange of best practice in relation to, amongst others, the "*penalties for non-compliance with the Community Customs Code, as existing differences are resulting in trade distortions"*[45].

The recent "Study on the evaluation of the EU customs union"[46] provides a robust, evidence-based evaluation of the customs union. It is stated in that report that "*differences in interpretation of EU legislation lead to so-called "shopping" by companies searching for the most lenient or favourable rulings, mainly upon importing goods under anti-dumping legislation (unfair trade); they are potential distortions of competition and encourage companies to shop around for their customs activities (or part thereof)*". Indeed it is not difficult for a company to divert its trade flows to the point of entry into the customs territory of the Union where the customs formalities are applied more flexibly.

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43 Customs cooperation in the Area of Freedom, Security and Justice, The role of customs in the management of the EU's external border, Peter Hobbing, CEPS, Liberty and Security in Europe, June 2011, p. 19.

44 The expression trade distortion is used in the present report with a meaning slightly different from its more traditional use. Here, trade distortion should be understood as an activity having as a consequence the diversion of trade flows to ease the entrance of goods to or the exit from the customs union territory.

45 Report from the Committee in the Internal Market and Consumer Protection on modernisation of customs (2011/2083(INI)). Rapporteur: Matteo Salvini – point 27. The term is used by the Rapporteur.

46 Conducted, on behalf of DGTAXUD, by Price Waterhouse & Coopers on 2012 and under publication.

Collecting detailed evidence on the existence of trade distortion in the sense this term is used in this report (see footnote 31) is not an easy task. Nevertheless, the answers to the Questionnaire (Annex 4B) show that some of the economic operators do not always choose the optimal economic option due to the existence of different infringements and sanctions rules and procedures in the Member States. Combining this fact with the practice of shopping around by companies when dealing with common and fully harmonised customs procedures leads easily to the conclusion that this phenomenon may also be a real threat when talking about Union customs infringements and sanctions.

Therefore, one can assume that one of the factors influencing economic operators in choosing a Member State where they will carry out their legitimate business activities could be less severe customs sanctions (e.g. to differentiate between non- criminal and criminal and, in terms of fines, not to have very high amounts imposed for mere errors without major consequences in terms of payment of duties). This situation, combined with other factors such as the number and frequency of customs controls and access to customs simplifications, might ultimately create a trade distortion, meaning that the flow of the goods and the economic activities related to it would be modified: this might happen because economic operators would avoid taking the risk heavy sanctions being imposed in case of customs infringements.

In addition to what is mentioned above, it can be presumed that the divergent treatment of customs infringements and the existence of different customs sanctions in the Union might also create **loopholes for illicit trade** and attract illicit trade to parts of the territory of the customs union where the law is more lenient. In fact, for illicit business, the lack of convergence of Member States' customs infringements and sanctions can be seen as a big advantage, as it allows the possibility for the business operators concerned to choose where to base their illicit activities according to the most lenient system. Such situations were reported by the members of one of the Trade Contact Group representatives. They argued that "*intelligence suggests that criminal networks, involved in cigarette smuggling and other activities are operating on the basis of risk-reward analysis, e.g. they use as entry points countries with the lowest level of sanctions*".

Although data on trade of illicit goods exists at Union level, in annual WCO reports[47] and in some studies (the Union being the biggest importer of goods banned by the CITES Convention (e.g. ivory from Africa[48]) according to the data provided to the CRIME Committee of the European Parliament), it is difficult to obtain data regarding the inflow and movements of illicit trade. Nevertheless, the reasoning is the same as that presented in the previous paragraphs: the economic operators concerned might choose to practice *shopping around*, just like legal traders, because it presents less "risks" in terms of sanctions.

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47 Annual WCO's Customs and Tobacco Report
Annual WCO's Customs and IPR Report
Annual WCO's Customs and Drugs Report

48 Study on the Enforcement of the EU Wildlife Trade Regulations in the EU-25 Study Contract n° 07-07010406/2005/411826/MAR/E.2

4.1.4. Differences in enforcement of Union customs legislation and the implications on the level playing field for economic operators

The differences in the treatment of infringements of Union customs legislation have an impact on the **level playing field for economic operators** in the Internal Market, providing an unfair advantage to economic operators who break the law in a Member State having lenient legislation for customs sanctions compared to those who do the same in a Member State where even very minor errors are treated as criminal infringements.

These differences not only create trade distortion, as mentioned in section 4.1.3 above, but also affect the granting of simplifications provided in the customs legislation, such as AEO status and the simplified procedures, and might generate extra costs for economic operators. These extra costs have a negative impact on their competitiveness, as the following paragraphs show.

The differences in infringements and sanctions regimes may affect economic operators' **access to customs simplifications and facilitations**. This is more obvious regarding the granting of the status of Authorised Economic Operator (AEO) for economic operators established in the Union[49]. Subject to conditions, this status either gives access to the various customs simplifications specifically provided for under the customs legislation or allows economic operators to benefit from particular facilitations related to customs controls relating to security and safety when goods enter or leave the customs territory of the Union . It is also possible for an AEO to benefit from both those simplifications and facilitations. These benefits, once granted, are valid throughout the customs territory of the Union. Therefore it is very important for an economic operator to become an AEO.

The "*record of compliance with customs requirements*" (Article 5a (2), first indent of the Customs Code[50]) is one of the criteria for granting the status of AEO. This record, as stated in Article 14h (1) of the Customs Code Implementing Provisions[51], "*shall be considered as appropriate if over the last three years preceding the submission of the application no serious infringement or repeated infringements of customs rules have been committed* (…)". Given the fact that the treatment of the infringements of customs rules is still within Member States' national competence, the assessment of the above-mentioned criteria will depend exclusively on the way each Member State deals with infringements of Union customs rules. This means that if the same behaviour which constitutes a customs infringement is punishable by a criminal sanction in Member State "A" and a non-criminal one in Member State "B", an economic operator of Member State "A" is likely to be refused access to the status and benefits of the AEO and thus to suffer discrimination compared with an economic operator from Member State "B", who will be granted the status, provided the infringement was not serious. In the case of economic operators engaged in customs formalities in several Member States, AEO rules provide for a consultation among Member States concerned in order to verify the compliance with the requirement mentioned in this paragraph. In this context and in the

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49 Article 5a of the Community Customs Code

50 The Community Customs Code, established by Council Regulation (EEC) 2913/92 of 12 October 1992 and applied from 1 January 1994, in OJ L 302, 19.10.1992, p. 1: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1992R2913:20070101:EN:PDF

51 Customs Code Implementing Provisions, established by Commission Regulation (EEC) No 2454/93 of 2 July 1993 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1993R2454:20120101:EN:PDF

hypothetical case of a consultation of a Member State "C", the current situation also means that Member State "A" may object to its granting on the basis of what it considers a serious infringement while Member State "B" would not have any real grounds to refuse the granting due to similar behaviour in that Member State.

Consequently, economic operators' access to AEO status varies considerably among the Member States, thus limiting the level playing field that should exist throughout the Union.

The consequence would be that of two economic operators in the same conditions, one would be prevented from accessing the status for not having an "*appropriate record of compliance with customs requirements*", while the other would not meet the same obstacle.

This has been stressed during the first stakeholder consultation by one TCG member federation, who reported the fact that in two Member States all customs infringements – including a typing error in the customs declaration – were considered to be "criminal" infringements. As such, they were penalised irrespective of the offender's intention ("objective liability"). This has consequences in terms of the granting/suspension/revocation of AEO status as the criterion of "*compliance*" with customs rules will not be fulfilled. Consequently for a simple error the economic operator is being refused the granting of AEO status or his certificate is being revoked as in these two Member States the error is only treated criminally.

This variation in the access to AEO status can be especially relevant for SMEs, as in 2010 the percentage of SMEs among the certified AEO companies was more than 50% in 17 Member States and in some even more than 70% (according to the data included in the AEO database).

This concern has been explicitly raised in the first stakeholder consultation. In the second consultation, 3 out of 4 companies that answered the Questionnaire do not find it easy to comply with customs infringements and sanctions rules and procedures in Member States other than the one they are established in, thus adding more obstacles to the achieving of AEO status.

Moreover, by comparing some statistics from Germany and France it is possible to stress the lack of a fully level playing field for companies throughout the Union regarding the granting of AEO status. Data from Germany and France is compared as those countries are in general terms comparable in terms of international commerce and economic activity.

With these similar characteristics and with customs legislation fully harmonised at Union level regarding the customs procedures and facilitations and operations in the Internal Market, it would be reasonable to expect similar behaviour of economic operators, regardless of where they are established. Nevertheless, this similar behaviour does not exist. Indeed, if we measure the numbers of registered economic operators dealing with customs matters (EORI) established in each Member State, we find that the proportion of those economic operators that apply for AEO status is very much lower in France than in Germany. There may not be a single reason for this finding, but as one of the requirements for being granted AEO status is having a record of compliance with customs requirements, which means not having committed any serious or repeated infringements in the last three years, it is less likely that this status will be granted in those Member States having only criminal sanctions, as it is the case of France.

A similar result is found if we compare the number cases where AEO status is granted to the number of economic operators established.

MS	2011				
	EORI	AEO Applications	%	AEO granted	%
DE	216,415	3,280	1.52%	3,200	1.48%
FR	245,231	250	0.10%	218	0.09%

The same situation exists with regard to the granting of customs simplifications provided for in the Customs Code Implementing Provisions Part 1 – Title IX (Simplified Procedures), in particular the simplified declaration procedure and the local clearance procedure. The access of economic operators to these also depends on the fulfilment of the conditions and criteria laid down in Article 14(h) of the Customs Code Implementing Provisions[52] (not having committed any serious infringement or repeated infringements of customs rules over the last three years preceding the submission of the application). It has to be recalled that, in the Union, currently 70% of the customs procedures are simplified procedures.

Within the Questionnaire, 68% of companies claim to find it rather difficult to comply with customs infringements and sanctions rules and procedures in other Member States even if they have all the information needed, as they find the rules and procedures in other Member States quite different from the ones in force in their country of establishment. On the presumption that these companies are included in the 75% of companies that do not find easy to comply with customs infringements and sanctions rules and procedures in other Member States, we can come to a conclusion on the reason why it may be difficult to comply – that is the differences in customs infringements and sanctions rules and procedures.

The proportion of companies referred to in the two previous paragraphs remains the same if we take into account only those answers provided by SMEs and micro-enterprises.

The differences in Member States' customs infringements and sanctions regimes lead also economic operators to face **uncertainty about applicable law**. For an economic operator, having to cope and comply with 27 different customs sanction legal systems while doing business in the Union results in legal uncertainty about the type and level of customs sanctions in the customs union, unless he invests in the thorough analysis of the Member States' legal systems, which would require legal advice services[53] and generate extra costs for the business.

This uncertainty and its expected costs related to consultancy fees or lawyer fees might have a bigger impact for SMEs and micro-enterprises than for larger companies, as the former have generally a much lower turnover than the latter. In this sense, already in 2007, the Report of the Expert Group

[52] Article 253c (1) first and second subparagraphs.

[53] No official information was found regarding legal advising fees in the different Member States.

on “Models to reduce disproportionate regulatory burden on SMEs”[54] stated that on average where a large company spent EUR 1 to comply with a regulatory duty, medium companies spent EUR 4 and small and micro-enterprises spent up to EUR 10.

According to the answers collected in the Questionnaire, although it is not an easy task to estimate the costs directly linked to the existence of different rules and procedures on infringements and sanctions in the various Member States of the Union, some companies (29.59% of respondents) provided some data[55]. These companies identified an average of EUR 3,460 per year per company as extra costs they bear as a consequence of different customs infringements and sanctions regimes in each Member State. When reporting to SMEs and micro-enterprises the average of these extra costs' is EUR 3,170.

On top of the costs referred to in the previous paragraph, economic operators established in Member States which only provide for criminal sanctions in the customs field may bear greater uncertainty regarding the customs debt, which is also usually the basis for the sanctions. Indeed, the existence of criminal sanctions in the customs fields allows Member States' administrations to collect customs duties beyond the ordinary limit of three years. The limit in those cases would be established by the national law of the Member State concerned, and in some cases it can reach even ten years or more. That situation exposes economic operators to an uncertainty about the final amount of customs duties and sanctions they will pay for a long period of time, what means an extra cost for their business that may cause them to go through severe financial difficulties.

In the above-mentioned "Study on the evaluation of the EU customs union" (see section 4.1.3 and footnote 33), the lack of uniformity in the application of customs legislation was an issue for both SMEs and large enterprises, with regard to its effect on the ability to maximise effectiveness and efficiency.

4.2. Expected evolution of the problem

The evolution of the situation as described above if no action is taken would not in any way contribute to a uniform enforcement of Union’s customs rules, as Member States would continue to sanction these violations of the rules according to their own systems, which as such show large divergences amongst them.

Lack of transparency and legal uncertainty about the level of customs penalties would remain and even grow in proportion with the volume of trade.

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54 http://ec.europa.eu/enterprise/policies/sme/files/support_measures/regmod/regmod_en.pdf. For the purposes of this report from the Expert Group the definition of regulatory burden included all costs that result from mandatory obligations placed on businesses by public authorities on the basis of a law, decree or similar act.

55 Some data on costs and potential savings is included in this section and also in the following ones. The data provided is based on the answers gathered through the second questionnaire (Annex 4). Although only references to the average value of the observations will be made in the text, it is important to take into account that this average has a remarkable deviation. Indeed, the median of the sample for the costs (value of the observation that divides the sample into two equal parts) is EUR 1,000. The observations gathered range from EUR 0.00 to EUR 15,300. To better understand the data provided in the report, references to the median and the range of the observations will be included within a footnote.

The different treatment between economic operators throughout the Union would still exist and it may be likely to increase with the consequent and constant threat to the level playing field that should exist in a customs union and under a common commercial policy and have a negative impact in the competitiveness of certain economic operators.

There will be a real risk of a boost in incentives for illicit trade, as it would still be possible to continue to profit from the lack of convergence of Member States' customs infringements and sanctions, and to choose the Member State with the most lenient sanctioning system to operate in.

External pressure, under the trade facilitation negotiations within the WTO would continue to rise with the associated risk of new complaints against the Union, such as the one raised by the US in the recent past. In addition to this, the issue of customs penalties is part of the negotiations on TFA intended to be concluded by the end of 2013.

Moreover, as Union's GDP is estimated to grow by 0.1% in 2013 and 1.6% in 2014[56], which undoubtedly will be reflected in an increase in trade and customs operations, the problem would increase as more customs operations would take place and the number of declarations would rise accordingly, with the associated risk of errors by the economic operators.

4.3. Who is affected by the identified problem?

The Union's economic operators who deal with customs in their daily business are the main persons affected by the existence of 27 different systems enforcing Union customs law. They are the ones confronted with the lack of legal certainty that arises from the differences in Member States' legal systems concerning the treatment that is given to infringements of Union customs law.

The Member States' customs administrations are prevented from "acting as if they were one" because of the absence of a Union approach regarding the treatment of customs infringements and sanctions. This difference can create a lack of confidence between these customs administrations.

4.4. Right of the EU to act

4.4.1. The legal basis

The Union has exclusive competence in the area of the customs union and common commercial policy (which includes its customs aspects) as provided for in paragraph 1 of Article 3 of TFEU. Article 207 of the TFEU defines common commercial policy. Furthermore, Article 32 TFEU establishes that, in carrying out the promotion of the customs union, the Commission shall be guided, inter alia, by: developments in conditions of competition within the Union in so far as they lead to an improvement in the competitive capacity of undertakings and the need to avoid serious disturbances in the economies of Member States and to ensure rational development of production and an expansion of consumption within the Union. In addition, Article 206 TFEU stipulates that by establishing a customs union in accordance with Articles 28 to 32, the Union shall contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs and other barriers. Moreover,

[56] Source of Eurostat (last updated 11/03/2013) http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tec00115

Article 33 TFEU states that customs cooperation between Member States and between the latter and the Commission should be strengthened within the scope of the application of the Treaties.

4.4.2. Subsidiarity

As far as the Union has exclusive competence, the principle of subsidiarity does not apply, in accordance with Article 5(3) TEU.

In case a legislative action in the criminal field is proposed, following the results of the impact assessment, it will fall under Article 83 (2) of the TFEU. As this article concerns a shared competence (according to Article 4(2) (j) of the TFEU), special attention must be given to the subsidiarity principle, according to which the Union should only legislate when the scale or effects of the proposed measure can be better achieved at Union level. Since the aim of the action proposed is the approximation of customs sanctioning legislation throughout the Member States, only the Union is in a position to develop it through binding legislation. Moreover, in the specific case we are in a fully harmonised policy area (customs union) with fully harmonised rules, whose effective implementation determines the very existence of the customs union.

5. OBJECTIVES

The **general objective** of this initiative is to ensure the effective implementation and law enforcement in the Union's customs union. In particular, the initiative has the following **specific objectives**:

(1) Ensure further compliance with the Union's international obligations.

(2) Provide for a Union framework for uniform enforcement of customs legislation in terms of infringements and sanctions.

(3) Enhance the level playing field for economic operators in the customs union.

The specific objectives listed under (2) and (3) above require the attainment of the following **operational objectives:**

• Uniformity regarding the elements that trigger a sanction across the customs union (ensure that the same type of behaviour which constitutes a breach of one or more customs rules, qualifies for the same type of infringement).

• Achieve a common scale of sanctions per type of infringement across Union Member States.

• Reduce costs and obstacles associated with the existence of different regimes on customs infringements and sanctions for companies wishing to engage in customs formalities in other Member States.

6. POLICY OPTIONS

Five policy options have been identified. The baseline scenario is outlined as Option A to map out how the situation could be expected to develop if no Union action were taken. An option concerning a soft law approach was included in the first stakeholder consultation but has been discarded for the

reasons explained below (section 6.1). Therefore, no further analysis of its impact has been carried out.

The other three options have been conceived as a crescendo depending on the level of ambition of the legislative action taken at Union level. Option B consists in amending the Union customs legislation in force to include a list of non-criminal sanctions all Member States should apply when punishing the failure to comply with obligations and formalities stemming from the customs legislation and to establish an extended definition of the criteria "record of compliance with customs requirements" to grant AEO status and other customs simplifications, in order to ensure that infringements are assessed equally when applying for this status. Option C proposes a new legislative act which would include a list of infringements, a range of non-criminal sanctions for each infringement and a common procedure to impose those sanctions. Finally, option D proposes two new legislative acts which would include a list of infringements, a range of sanctions for each infringement and a common procedure to impose those sanctions, both in the criminal and the non-criminal field.

Option B was considered after the first stakeholder consultation, but included in the second consultation (Questionnaire). Options C and D were included in both consultations.

As regards the premise that micro-enterprises should be excluded from the scope of any legislation proposed by the Commission, this cannot be applied in this case. Micro-enterprises active in the customs field, like all other economic operators, are subject to the obligations stemming from Union customs legislation and no exemption has been provided in this legislation for that kind of enterprise. As such, no exemption can be justified when sanctioning the breach of these obligations. Moreover, in a sanctioning field, such as the one in question here, an exemption for micro enterprises could become a "Trojan horse" with regard to the enforcement of customs legislation, allowing illicit businesses to establish themselves as micro-entities in order better to avoid sanctions for any breaches/infringements. The same reasoning could also be applied to SMEs. Thus, no special measures for SMEs and micro-enterprises are to be included in any of the policy options presented in the following sections.

6.1. Discarded option – "soft law" scenario: To issue guidelines on the interpretation of the customs compliance concept and develop monitoring measures in Member States

This policy option would consist in issuing guidelines or recommendations for Member States on the interpretation of the legal concept of customs compliance, which is the basis for economic operators to be able to access the customs simplifications foreseen in Union legislation and is directly related to customs infringements and sanctions.

These guidelines and recommendations would not be legally binding and would be regularly revised. The success of any proposed measure would depend on Member States' willingness to implement it and on the proper monitoring of this implementation. Thus Member States would maintain their own systems of customs infringements and sanctions.

Although this option was presented to the stakeholders in the first consultation, in the meantime new AEO Guidelines were adopted and already tackle this issue in point 2.1 thereof, "Appropriate record of compliance with customs requirements".

Given this, the guidelines became part of the baseline scenario in section 6.2 and, therefore, it turned out not to be a relevant option. Consequently it will not be further developed.

6.2. Policy option A – Baseline scenario

The baseline scenario consists of doing nothing and maintaining the current situation, namely 27 different sets of legislation addressing customs infringements and sanctions. If the situation is maintained as such, the problem described in section 4 could be expected to remain or even grow. Indeed, with the volume of trade between the Union and its trading partners constantly increasing, customs operations are expected to increase. More declarations will be lodged, more documents will be submitted, and the volume of data to be exchanged will be huge since most of it will be exchanged electronically. Thus the number of error is likely to increase. Therefore the associated risk of infringements of Union customs legislation would also be increasing. Moreover, taking into consideration that illicit trade grows proportionally, and that because of the crisis Member States cut resources in the customs field and controls at the border might be suffering from these cuts, illicit trade would continue to benefit from the existence of different customs sanctioning systems in the Union and be able to choose the Member State with the lowest level of sanctions in which to base those illicit activities. Although the Commission has recently adopted a proposal on a Directive on the fight against fraud to the Union's financial interests by means of criminal law, its potential effects will only partially cover the customs infringements area, as they are limited to cases where customs duties arise and also to the criminal field.

This expected evolution of the problem with regard to this option has been confirmed by some of the stakeholders from the first consultation, who consider that illicit business would continue to take advantage of the lack of convergence of Member States' customs infringements and sanctions, as they would still be able to choose the more lenient sanctions system. Only three members of the TCG representatives identified this as the preferred option in the first consultation. In the second stakeholder consultation, only 12% of the respondents to the questionnaire were of the opinion that nothing has to be done in the field of customs infringements and sanctions. 53% of the individual respondents to the questionnaire stated that the baseline scenario does not have any impact on their decisions about engaging in customs formalities in other Member States. However, 80% prefer to change this situation and to act on it. This means that even those who do not consider the present situation as currently being an important issue for them acknowledge the need for action to be taken in this field.

Concerning the AEO aspect only, as previously mentioned in the discarded option, although aiming to provide some interpretation of the criteria allowing access to AEO status, the new AEO guidelines still rely on national definitions in terms of compliance and moreover they do not have a binding effect. Therefore they do not constitute a remedy to the current situation in terms of a level playing field for AEO, not to mention the overall enforcement problems that are not covered by those guidelines.

6.3. Policy option B – A modification of the legislation within the Union legal framework in force

In this option the Commission would propose amending the Union's Customs Code (Union Customs Code - UCC), which is currently under discussion at the European Parliament and Council and is scheduled to be adopted by June 2013.

The UCC is aimed at replacing Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code - MCC) which aimed at the adaptation of customs legislation to fit, but also to govern, the electronic environment for customs and trade. By doing so, it took the opportunity to carry out a major overhaul of the customs rules in order to make them simpler and better structured.

This Regulation (MCC) entered into force on 24 June 2008, but it is not yet applicable, as it is only a basic act (a sort of framework law) that needs to be implemented. Therefore, it shall only be applicable once its implementing provisions are in force and on **June 24th, 2013** at the latest.

The Commission found it was appropriate to proceed to a recast of the MCC before its currently scheduled application, due to technical and procedural considerations. This recast is the current proposal on the UCC mentioned above.

The idea is to introduce some elements for the uniform treatment of customs infringements and penalties, but within the limits of the scope of the new Customs Code.

One could argue that this could have been done during the recast of the Customs Code, but the reason why it has not been done is simple: the scope of the recast was the same as the MCC and there was a tacit agreement between the three institutions not to "open the Pandora's box" by introducing a new wish list. In this sense, it is not possible to introduce a list of infringements in the currently discussed UCC as it would go beyond the limits imposed by the recast mandate.

It will not be possible to amend the future UCC with implementing or delegated acts either, as introducing a list of infringements would imply modifying a basic element of the legal text, which would require an amendment of the basic act.

The third possibility would be to propose an amendment to the UCC once it is in force, by introducing a list of the types of administrative (non-criminal) sanctions, which Member States would have to apply for failure to comply with customs legislation. This third possibility would therefore go further than what is currently provided in the MCC[57], which only enumerates possible non-criminal penalties, leaving to Member States the decision of having it or not. In this case, the list of sanctions would be mandatory.

[57] See Article 21(2) of Regulation (EC) No 450/2008:
"Where administrative penalties are applied, they may take, inter alia, one of the following forms, or both:
(a) a pecuniary charge by the customs authorities, including, where appropriate, a settlement applied in place of and in lieu of a criminal penalty;
(b) the revocation, suspension or amendment of any authorisation held by the person concerned."

The amendment of the UCC could be complemented with an extended definition of the criterion of "*record of compliance with customs requirements*". However, even if this notion can be further clarified, the basis would still be different as there would be no common list of infringements to build upon and infringements would still remain in national legislation.

It must be pointed out that considering the current process of modernisation and recast of the Customs Code stated above, any such amendment could occur only after the Union Customs Code and the relevant delegated and implementing acts are in force. Thus it will only be feasible in a very long term[58] and will follow the same complex and time-consuming adoption procedure as the Recast.

Moreover, it would not be possible to add other important elements, such as a common list of infringements because this would be out of the scope of the UCC.

It should be pointed out that this possibility was not considered in 2005, in the proposal for a Modernised Customs Code (MCC), because the main scope of MCC was the simplification of the customs rules and computerisation of the procedures. Article 21 concerning an indicative list of customs penalties was introduced into the MCC only to recall the principles well established by the Court of Justice.

As far as the MCC is concerned, since it is not yet applicable and shall be replaced by the UCC, it could not be evaluated in respect of the enforcement of customs legislation.

Criminal sanctions were not included in this option because the implementation of such measures would need a different legal act (as reasoned in section 6.5 below). To provide for criminal sanctions in this option is not only contrary to the crescendo design of the options stated in the introduction of this section, but also incompatible with only amending the future UCC.

This option has been presented to the second stakeholder consultation. 36% of the respondents identified this policy option B as their preferred option.

6.4. Policy option C – A legislative measure on the approximation of the types of customs infringements and non-criminal sanctions

This option would go one step beyond option B as it would encompass a list of infringements and non-criminal sanctions. In order to reduce as much as possible the intrusive effect of this proposal into national law, it would have as a basis the specific convergences of national systems identified in the Report from the Project Group on Customs Penalties and in particular concerning:

- a fine or pecuniary charge as the main penalty;
- the persons who should be held liable for the infringement;
- the conditions for imposing a sanction;
- the sanctioning of attempted infringements;
- the existence of time limits;

[58] Not later than 2020.

- the existence of aggravating and mitigating factors, and;
- the legal persons' liability.

It would set up a common nomenclature of customs infringements based on the obligations from Union customs legislation. For each infringement, this proposal would include a range of non-criminal sanctions. Member States would then choose from within that range the particular level of sanction to punish each infringement. In order to avoid different interpretations by Member States of any concepts included in the legislative act, a set of common definitions would also be provided.

If necessary, some rules on the way to impose sanctions could be included in the legislative act.

By introducing a common list of infringements for all Member States, no extended definition on the concept 'record of compliance with customs requirements' would be needed, as the basis would be the same (common nomenclature of infringements instead of 27 different definitions).

It would facilitate the correct application of the proportionality principle, as for certain infringements where a non-criminal sanction was foreseen, imposing a criminal sanction would be disproportionate. Thus, it would mark out the scope for further action in the criminal field if this appears necessary and proportionate after the assessment of the situation following the application of the specific instruments in the field of the protection of the Union's financial interests (see option D).

This option was the one supported by the majority of the stakeholders from the first consultation, stating they were in favour of further approximation in the field of customs infringements and sanctions. As regards the second consultation, 26% of the companies who identified a preferred option indicated this one as such.

6.5. Policy Option D – Two separate legislative measures aiming at approximation of customs infringements and non-criminal sanctions on the one hand and criminal customs infringements and sanctions on the other hand

This option would go further than Option C to the extent that it would comprise both Option C's legislative measure as well as another legislative measure for criminal offences and penalties, thus expanding the scope of action. Therefore, it would provide a holistic approach to customs infringements and offences through an approximation of both non-criminal and criminal sanctions. Each of the two legislative measures would set out common nomenclature of customs infringements among Member States based on the obligations from Union customs legislation and a list of sanctions within a common scale related to a particular infringement. Some rules on the way to impose sanctions could be added as well to the legislative measure in the criminal field, if necessary.

The need to have two legal acts under this option has to do with the existence of different legal bases and legislative procedures for Union legislative action. Article 207 TFEU (which falls under the exclusive competence of the Union) would be the basis for the customs infringements and non-criminal sanctions. The approximation of criminal customs offences and penalties would be based on Article 83(2) TFEU (which is an area of shared competence between the Union and the Member States and with a possibility of opting out for some of them). In both legislative measures the specific convergences of national systems identified in the Report from the Project Group on Customs

Penalties would be taken into account. Nevertheless, as regards the legislative measure in the criminal field, only minimum rules could be established in accordance with Article 83(2) TFEU.

Regarding the criminal legislative act, it would be complementary and not duplicate any other Union action, such as the proposal for a Directive on the protection of the Union's financial interests[59].

In the first stakeholder consultation, one TCG representative reported that this was the preferred option of all its associates. This representative argued that, taking into consideration the involvement of serious organised crime, this would be the only really viable option. One member federation of another TCG representative also indicated that it was in favour of Option D. The other representatives said that some of their associates also supported it, but with some concerns regarding an increase in bureaucracy or the existence of a minimum amount of room for national variations. During the second stakeholder consultation, 21% of the companies indicated this option as their preferred option.

7. ANALYSIS OF IMPACTS

7.1. Introduction

For the assessment of options A to D, a comparison was established according to the following criteria:

– Economic and environmental impacts;
– Policy coherence, and;
– Fundamental Rights.

Regarding the economic and environmental impacts, several indicators have been used:

(a) the reduction of divergences between Members States' customs infringements and sanctions regimes by enhancing uniformity in the application of sanctions;
(b) the improvement in the equal treatment of economic operators in accessing Union customs simplifications;
(c) the further compliance with the Union's international obligations;
(d) the homogenous and timely collection of Traditional Own Resources (customs duties), and;
(e) the effectiveness of Union law enforcement in other policy areas.

These criteria are directly linked to the problems that this Report refers to.

7.2. Assessment of the options

7.2.1. Policy option A – Baseline Scenario

In this option the problems already identified in this Impact Assessment would remain.

[59] COM (2012)363/3

7.2.1.1. Economic Impacts

Internal Market

As each Member State would continue to have its own system for sanctioning customs infringements, **the differences in customs law enforcement** throughout the customs union territory would still exist and the risk for the limitation of the equal treatment of economic operators irrespective of the Member State where they are established would continue to be a reality. Therefore, no reduction in the differences between Member States' customs infringements and sanctions regimes would be expected, nor any improvement in the **equal treatment of economic operators** in accessing AEO status and Union's customs simplifications. Indeed the criterion regarding the "record of compliance with customs requirements" for economic operators to access this status and these simplifications would continue to be interpreted differently among the Member States because of the different sanctioning systems, as analysed in point 4.1.3 above.

Moreover, the **negative impact on the timely revenue collection of duties among Member States** would remain as the absence of common enforcement of Union customs legislation leads to divergent ways of collecting customs duties. Moreover, the existence of different sanctioning regimes for the same customs infringements amongst the Member States results in different time limits for recovering a customs debt, which might adversely affect the collection of TOR by Member States.

In fact, as more customs operations take place and the number of declarations rises accordingly, the problem would grow, with the associated higher risk of infringements committed by economic operators (see Table 1 above). In this sense, as the different enforcement of customs legislation will still exist, so will the **incentives for trade distortion** referred to in section 4. That means economic operators will direct their trade flows to Member States other than those they would choose if the infringements and sanctions were approximated, thus suffering drawbacks that will weigh down their competitiveness.

The already existing **loopholes that permit illegal trade** to divert to those Member States with more lenient sanctions regimes will continue to exist. Therefore, as explained in the previous section, no improvement in the fight against illicit trade is expected under this policy option.

In a time of economic and financial crisis such an evolution for both the Union budget and the competitiveness of Union businesses should be seriously taken into consideration.

International obligations

Under this option, the **Union would still be under the pressure of WTO** to further comply with its GATT obligations by improving uniformity in the way national administrations enforce Union customs law.

Competitiveness

According to the answers to the Questionnaire and as already mentioned in the problem definition, some companies have been able to identify some **costs associated to the existence of different**

infringements and sanctions regimes in each Member State. The average amount of these costs adds up to EUR 3,460 per company per year. Companies also were able to work out potential savings that would be achieved if any of the options B, C or D was implemented. Regardless of the option, the average savings identified amount to EUR 1,420 per company per year.

Although not identified as one of the major problems to be tackled directly with this initiative, the data provided by economic operators shows that approximating the infringements and sanctions regimes in each Member State may help to increase the competitiveness of Union companies. In other words, option A (baseline scenario) will not improve this situation in any way, so the extra costs will still remain or increase in proportion to the volume of trade, thus weighing down competitiveness.

The same reasoning would apply to SMEs and micro-enterprises as they have also identified some extra costs. In their case the average costs amount to EUR 3,170 per company per year, with potential savings of EUR 1,410.

Additional administrative and compliance costs

No new or additional costs are expected as no new legislative act is provided in this option.

7.2.1.2. Environmental Impacts

As we mentioned in the problem definition, customs legislation is essential to the effective application of other rules in different policy areas. One of these policy areas is the protection of the environment. Examples of the environmental legislation which to some extent rely on an effective enforcement of customs procedures are, among others, the legal framework to protect the ozone layer, control of radioactive products and Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

The Union is the biggest importer of goods banned by CITES Convention (e.g. ivory from Africa) according to certain studies (see footnote 35). One of the factors that favours this type of commerce, just as we argued before, is the lack of common enforcement in the field of customs sanctions. Under this policy option no changes will be provided for this unequal enforcement, thus no improvements in this trend are expected.

7.2.1.3. Policy coherence

Under this option, since no Union action is taken with the aim of providing uniform enforcement of customs union legislation, the question of coherence is not relevant.

7.2.1.4. Fundamental Rights

Article 41 of the Charter of Fundamental Rights of the European Union (CFREU) states that "*every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time* […]". If the current different enforcement of customs legislation continues to exist, as we have pointed out in when assessing the economic impacts, economic operators would not be treated equally throughout the Union. That would put at stake the right to good administration, as laid down in Article 41 CFREU. Indeed, no fair treatment of economic operators could be expected when the

access to simplifications and facilitations provided by a harmonised legislation depends on the Member State that the economic operator is established in. As no action in this field is foreseen under this option, this situation will not show any improvement.

Also, some constraints on certain freedoms and rights provided by the CFREU (namely, the freedom to conduct a business and right to an effective remedy, Articles 16 and 47) would not be eliminated and, consequently, these rights would continue to be undermined.

7.2.2. Policy Option B – A legislative measure within the Union legal framework in force

7.2.2.1. Economic Impacts

Internal Market

In this option, as each Member State would be bound to provide for the same type of non-criminal customs sanctions (while keeping the possibility of having in parallel criminal sanctions or not for other types of infringements), **differences between Member States' customs sanctioning regimes** would tend to be mitigated.

Nevertheless, the decision on which infringements should be punished with the non-criminal customs sanctions that would be provided in the Union customs legislation would still remain with Member States. This means that economic operators, although having legal certainty about the nature and type of sanctions in the customs union, would still not have it as regards the infringements to be punished with those sanctions. This could mean that the basis of the sanction (the infringement) would still be divergent. Thus, the approximation of the sanctioning regimes under this option is quite limited.

As this option would also include the establishment of a provision with an extended definition of the criterion of 'record of compliance with customs requirements' to be fulfilled by persons applying for AEO status and/or various customs simplifications, an improvement in the **equal treatment of economic operators** in accessing Union customs simplifications would be expected. With the definition at Union level of what should be considered as "serious and repeated infringements", as well as "infringements of negligible importance", when assessing the fulfilment of the criteria for granting AEO status and customs simplifications to economic operators, Member States would no longer be left to interpret it according only to their own system. Therefore, economic operators' access to AEO status and customs simplifications would no longer rely only what each Member State considers to be a "serious and repeated infringement" or an "infringement of negligible importance".

However, as it would still be up to Member States to establish which particular sanction would be applicable for each infringement; this option would not have the expected effect on the playing field for the economic operators. Moreover, and as pointed out earlier, as some breaches may not be punished in certain Member States, this policy option does not manage either to fully level the conditions within which economic operators develop their activities.

Although the enumeration, at Union level, of the types of non-criminal customs sanctions would permit some approximation in Member States' customs sanctioning regimes, this approximation would not have any direct positive effect on **the timely collection of duties** for Member States

throughout the customs union. Indeed, if Member States continued to determine what infringements should be punished with the non-criminal sanctions laid down at Union level, the differences in the nature (criminal/non-criminal) of customs infringements within Member States would also continue to exist. Having such differences in the customs union would still allow the communication of a customs debt in case of non-compliance to go beyond the normal three-year period in a Member State where the infringement was considered criminal, while in another Member State where it was considered non-criminal that collection could only take place within the three-year period. That is not only because each Member State would have its own classification of non-criminal and criminal infringements, but also because each Member State would have its own sanctioning procedure, which may have important impacts on the length of the process and, consequently, on the likelihood of the effective collection of duties.

Regarding the **incentives for trade distortion and the loopholes for illicit trade**, we cannot expect relevant improvements under this option. As has been stressed, each Member State would still be able to decide which breaches of the customs legislation to punish and with what grade of severity. This means that significant differences would still exist in the various Member States so negligible progress, if any, would be achieved under this option.

International obligations

Moreover, Member States would maintain their own legislation regarding the concrete application of non-criminal customs sanctions, which would encompass the decision on the requirements to establish the economic operator's liability for the customs non-criminal infringement, the definition of e.g. financial thresholds to distinguish between criminal and non-criminal infringements and the existence, or not, of time limits to initiate the sanctioning procedure, to impose and to execute it. This would imply that the **Union's further compliance with its international obligations** would still not be optimal because the risk of differences among the Member States in administering customs sanctions would continue to exist.

Competitiveness

As we mentioned in the problem definition, some companies identified some extra costs linked to the existence of different rules and procedures on infringements and sanctions throughout the Union. Those companies were asked to identify also potential savings in those costs if policy option B were to be enforced. So, in addition to the effects assessed so far and according to the answers collected, policy option B would yield the **potential savings for Union companies** dealing with international trade that are presented in the following table:

	Average costs	**Potential savings[60]**
Companies	EUR 3,470	EUR 1,330
SMEs and micro	EUR 3,170	EUR 1,470

[60] For all answers: Median: EUR 0,00 – Range: from EUR 0,00 to EUR 12,000
For SMEs and micro-enterprises' answers: Median: EUR 0,00 – Range: from EUR 0,00 to EUR 12,000

As this option does not foresee the approximation of infringements and the nature of their sanctions, there is no expected impact on the costs bore by those economic operators established in Member States which only apply criminal sanctions.

Additional administrative and compliance costs

Policy option B creates a list of common sanctions for Member States and an improved definition of the criterion 'record of compliance with customs requirements' regarding AEO status. This option does not affect the infringements currently applied by Member States. The list of common sanctions included in this policy option will be based on those sanctions more commonly used by Member States in the field of customs or in other areas of administrative sanctioning.

The possible existence of new sanctions, whether already included in other fields of the national law or not, does not have any impact on the economic operator's activity as such, because only the infringement has a certain impact on their activity but not the sanction it is punished with. Even introducing a brand new set of sanctions would not mean any additional cost for the activity of European businesses, as the rules under which they must act would still be the same. Only the punishment for breaching those rules would change. So, unless not respecting the rules is considered an ordinary decision of economic operators, sanctions are not an element affecting their ordinary activity.

Regarding Member States, the sanctions proposed in this option are not new for them. They derive from the data gathered in the Project Group as the most common among the participating Member States. For those Member States who do not have the same customs sanctions as proposed in this policy option, the administrative cost of transposing these sanctions into national law should be very low, as they are sanctions that may be commonly be used in other fields of the law.

The compliance costs may be higher in those Member States with only criminal sanctions in other current legal framework. Nevertheless, it should be borne in mind that less than a third of the Member States who took part in the Project Group for customs penalties belong to this category. Thus, the costs associated with the introduction of a new nature of customs sanctions in those countries have a limited impact on the general costs of the initiative. Again, it should be stressed that, although changing the nature of the sanctions in this set of countries, the sanctions themselves are not new for those countries, as they are broadly provided for in their national legislation in other fields.

The same reasoning may be applied when assessing the costs associated to the second part of policy option B, that regarding the improved definition of the 'record of compliance with customs requirements'. In this case, although a necessary change in order to smooth the access to certain simplification provided in the customs legislation, the new addition to the future Union Customs Code would not be a dramatic change in concepts already applied.

For the reasons stated, additional administrative and compliance costs attached to policy option B are deemed to be negligible.

The conclusions from the Study on the legal framework for the protection of EU financial interests by criminal law RS 2011/07[61] reached to support the argument presented in previous paragraphs. This study attempted to assess the compliance cost for Member States of similar proposals to the ones included in this policy option. Particularly, compliance costs for 23 different proposals were worked out. For our purposes, proposal 21 (minimum – maximum absolute sanctions[62]) and any of the proposals 8 to 10 (for instance, proposal 8 that defines the concept of official[63]) together are quite similar to the content of policy option B. The study concludes that the aggregated cost for all Member States of drafting and implementing the legislation linked to those proposals amounts to EUR 2,532,700[64].

7.2.2.2. Environmental Impacts

We argued that Member States would be able to decide which breaches of the customs legislation to punish with the common sanctions included in this policy option. So, differences in the enforcement of Union customs law would still remain. Just having a common list of sanctions for Member States to apply would not be a deterrent for those trading in goods forbidden by CITES or other environmental legislation, thus no improvements in this trend are expected.

7.2.2.3. Policy coherence

This option, only for the part related to non-criminal sanctions and only for the aspect concerning customs duties as they are part of TOR, is consistent with Regulation (EC, EURATOM) No 2988/95 which establishes the principle of administrative sanctions and ensures the minimum respect of the Union's obligations in all fields concerning the Union's financial interests.

It is also consistent with and complementary to the recent proposal by the Commission on a Directive on the fight against fraud to the Union's financial interests by means of criminal law mentioned in point 3.2 below.

Indeed both texts, although very relevant to the present proposal for action, cover only partially the scope of customs infringements and sanctions as they are limited to the field of the Union's financial interests which in this case refer to customs duties.

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61 This study was produced in the process of elaboration of the Impact Assessment for a Proposal for a Directive on the fight against fraud against the financial interests of the European Union, through criminal law.
http://ec.europa.eu/justice/criminal/files/study-protection-of-eu-financial-interests_en.pdf

62 The content of this proposal as described in the study is the following: "the European Commission introduces a Legal act to create minimum-maximum absolute sanctions of at least 15 years for each offence currently found within the national criminal law of Member States (including the new offences)".

63 The content of this proposal as described in the study is the following: "the EU adopts legislation to add a provision that the definition of an official will in all cases be any employee within or entrusted by a public organisation with involvement in financial processes involving EU funds. This assumes that no changes are imposed on the criminal liability of officials as currently provided for within individual Member States".

64 See details on Annex 8 of the Study.

7.2.2.4. Fundamental Rights

Under this option, not only the infringements punished by Member States would still be different, but also the nature of the punishment. There would be Member States who would consider certain breaches as criminal while other Member States would not. Those differences would continue to undermine the right to good administration in the sense of fair handling of economic operators' affairs by the Member States.

In addition to that, potential improvements in the enforcement of the freedom to conduct a business (Article 16 CFREU) and in the right to an effective trial (Article 47 CFREU) that are present in other options would not be achieved.

7.2.3. Policy Option C – A legislative measure on the approximation of the types of customs infringements and non-criminal sanctions

7.2.3.1. Economic Impacts

Internal Market

This option would be done on a basis of a common nomenclature of infringements and, therefore, would ensure common and simpler legislation (insofar the main obligations and list of infringements would be common and the type and scale of customs sanctions would also be common), easier implementation by Member States and improved enforcement of customs law via significant improvements in detection of infringements of customs legislation. Thus, the **differences between Member States' customs infringements and sanctioning regimes** would be substantially reduced. A further clarification of the “proportionality” of the sanction will be achieved in the sense that a series of infringements will be sanctioned by non-criminal sanctions. This means that if a criminal sanction were imposed for these infringements it would be considered as disproportionate (unless there were aggravating factors).

The **equal treatment of the economic operators** with regard to their access to AEO status and to customs simplifications would be strengthened because the definition at Union level of customs infringements and non-criminal sanctions would permit Member States to have an identical approach to the treatment of "serious infringements", as well as to the ones not foreseen as non-criminal at Union level. In this way the interpretation of the “compliance with customs legislation” criterion would be more uniform. For economic operators, it would mean, as well, the simplification and the streamlining of compliance obligations in so far as there would be a common core of obligations included in the legislative act.

This option would as well enhance certainty regarding the applicable law which, through the introduction of minimum and maximum sanctions, would become for economic operators an effective element of compliance throughout the customs union territory. Moreover this legal certainty would contribute to economic operators being able to reduce extra costs, such as those related to legal advice, because economic operators' lawyers would not need to investigate different sanctioning regimes.

On top of that, some other benefits are expected by implementing the measures proposed in this option. Assuming that the possibility of breaching the law by an economic operator is the same in

every Member State (as the obligations are the same), levelling the sanctions that punish each infringement will also level these particular costs attached to international commerce, which for the time being are unbalanced. In other words, two economic operators in two different Member States would be sanctioned with similar types of sanctions imposed by customs authorities, in case of infringement, thus improving the level playing field for competition.

The timely **collection of TOR** would be improved. As customs infringements and non-criminal sanctions would be the same in all Member States, the time limits to recover the customs debt associated with these infringements would also be the same throughout the customs union. Moreover, the effectiveness of the sanction systems will be improved, on the one hand, because a clear distinction between non-criminal and criminal sanctions would be provided and, on the other hand, because the main elements of the sanctioning procedure would be the same for every Member State.

Significant progress as regards **incentives for trade distortion and loopholes for illicit trade** would also be expected. As there would be a common list of infringements in the Member States, punishable with sanctions of the same nature and type, only incentives linked to the amount of the sanction imposed by each Member State would continue to exist. As the amount of the sanctions would be within the range provided for in the legislative act, those incentives would be minimal. The same can be said regarding loopholes for illicit trade, where the different sanctioning regimes would no longer be an important reason to locate the illicit trade flows in one Member State or another.

International obligations

The Union's compliance with **obligations under WTO** would be enhanced with the existence of a legal instrument where a Union definition would be established of what violations of Union customs rules should be considered as infringements to be punished by a common range of non-criminal sanctions.

In addition, and with regards to the current negotiations on the TFA, the Members of the WTO tend to focus exclusively on the non-criminal sanctions. As mentioned in the problem definition, those negotiations are expected to finish by the end of 2013. It means that, even if the Union does not produce any legal measure in this context on its own, it will be bound to do that by this time.

Competitiveness

In addition to the effects assessed so far and according to the answers collected in the second questionnaire, policy option C would bring some savings for Union companies involved in international trade. Those potential savings are presented in the following table:

	Average costs	**Potential savings[65]**
Companies	EUR 3,470	EUR 1,310

65 For all answers: Median: EUR 0,00 – Range: from EUR 0,00 to EUR 10,000
For SMEs and micro-enterprises' answers: Median: EUR 0,00 – Range: from EUR 0,00 to EUR 10,000

SMEs and micro	EUR 3,170	EUR 995

This option envisages the approximation of the infringements and the non-criminal sanctions with which they will be punished. In this sense, as every Member State would be bound to have non-criminal sanctions, those economic operators currently established in Member States with only criminal procedures enforced in the customs field would be exposed to the same time limits to recover the customs duties as their competitors established in other Member States.

Additional administrative and compliance costs

As under policy option B, no relevant additional administrative costs are expected if option C is implemented. As mentioned before, no new obligations for economic operators are introduced by this initiative. Those obligations stem from the Customs Code and will remain the same. So the basic rules by which economic operators are bound when dealing with international trade would remain constant. Hence, no additional administrative costs would be expected. Establishing a common list of infringements and sanctions would not affect their ordinary activity, as breaching the law is not expected to be a part of it.

Regarding Member States, the reasoning is not very different to that offered on policy option B. The following key issues should be considered when assessing additional compliance costs for Member States:

a) policy option C is not introducing new obligations. Those obligations stem already from the Customs Code. For this reason, the creation of a common list of infringements at Union level is not expected to produce any significant costs for Member States as they already have a similar list in their national law.

b) the sanctions proposed in this option are not new for Member States. They derive from the data gathered in the Project Group as the most common among the participating Member States. For those Member States who do not have the same customs sanctions as proposed in policy option C, the administrative cost of transposing these sanctions into the national law should be very low as they are sanctions that may be commonly used in other fields of the law.

c) finally, regarding the procedural rules which may be proposed in this option, it should be noted that those would be in line with other measures governing the administrative procedures already applied in the Member States. Hence, it is expected that the implementation of this part of the proposed legislative act could be made with minor changes to the currently administrative procedures on sanction. In addition to that, we should also bear in mind that there is an administrative procedure already envisaged in the Customs Code regarding decisions taken by Customs Administrations. This administrative procedure would have many elements in common with the one proposed by this initiative.

Regarding those countries with only criminal customs sanctions, it should be borne in mind that less than a third of the Member States who took part in the Project Group for customs penalties only have criminal sanctions punishing breaches of the customs law. Thus, the costs associated to the

introduction of a new nature of customs sanctions in those countries would have a limited impact on the general costs of the initiatives.

Therefore, no significant additional compliance costs for national administrations is expected in policy option C. Preparatory legal work that might be needed but should not involve extra costs (apart from participation in some additional meetings and seminars) at least for current Member States, because it is part of anticipating change and progress. Concerning new Member States, these costs are already planned and budgeted for the implementation of the "acquis".

A reference to the Study on the legal framework for the protection of EU financial interests by criminal law RS 2011/07 has been made in the assessment of the impacts of policy option B. In the case of policy option C, the proposals included in that study that are comparable to its content are any of the proposals 16 to 19 (for instance, proposal 16 which adds the offence of "embezzlement/ misappropriation"[66]) and 21 (minimum – maximum absolute sanctions). The study concludes that the aggregated cost for all Member States of drafting and implementing the legislation linked to those proposals amounts to EUR 3,583,572.

Other considerations

The common rules for the treatment of customs infringements and non-criminal sanctions that this option comprises would be established through a Union legislative act to bridge the gap between very different legal regimes. While not covering all types of infringements, but only the non-criminal, this option would constitute a significant legal step towards approximating Member States' rules on sanctions, without prejudice to a later Union action in the criminal field.

It would fully respect national systems in so far as its purpose would not be a harmonisation of rules and procedures in the field of customs sanctions, but their approximation based on a common nomenclature of customs non-criminal infringements and a "scale" of customs sanctions applied for a particular infringement.

Moreover it would contribute to preventing the impact that the absence of a common terminology regarding infringements and its consequences has on the statistics and evaluation of irregularities in the Union. This absence of common terminology and a common definition of what is considered "fraud" versus "irregularity" was highlighted in the Commission Staff Working Paper "Statistical Evaluation of Irregularities – Own Resources, Agriculture, Cohesion Policy, Pre-Accession Funds and Direct Expenditure – Year 2010"[67], which constitutes the accompanying document of the Annual

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66 The content of this proposal as described in the study is the following: "the European Commission introduces a Legal act to add the offence of 'embezzlement/misappropriation' (i.e. money channelled inappropriately) which includes the following common elements:
- Involves property belonging to another
- Entrusted to them due to position or otherwise (i.e. not just restricted to public officials)
- Converted to their own use or otherwise embezzled/misappropriated".

67 Commission Staff Working Paper Statistical Evaluation of Irregularities- Own Resources, Agriculture, Cohesion Policy Pre-Accession Funds and Direct Expenditure -Year 2010 - Accompanying document to the Report from the Commission on the protection of the European Union's financial interests and the fight against fraud – 2010:
http://ec.europa.eu/anti_fraud/documents/reports-commission/2010_ann2_en.pdf

Report from the Commission to the European Parliament and the Council on the Protection of the European Union's financial interests and the fight against fraud - 2010[68], when it warned that the categorisation of irregularity and fraud as worked in OWNRES may still not be fully reliable because the distinction between fraud and irregularity is usually made on subjective grounds that vary between national administrations.

7.2.3.2. Environmental Impacts

Improvements in the fight against illicit trade of goods forbidden by CITES and other environmental legislation are expected under policy option C. As the infringements and sanctions would be approximated in every Member State, incentives to divert those flows of trade to another Union country would be eliminated. The customs infringements and sanctions would then become an effective instrument to counteract this type of commerce. As a result, a decrease of trade flows in this area would be expected.

7.2.3.3. Policy Coherence

In the current context, this option would be totally complementary to the Commission's proposal for a Directive on the fight against fraud to the Union's financial interests by means of criminal law, which covers partially the area of customs infringements, as already explained in this report.

7.2.3.4. Fundamental Rights

In comparison to previous policy options, important improvements would be expected under policy option C. As infringements would be considered equally (regarding their criminal and non-criminal nature) in every Member State and the general structure of the sanction would also be significantly approximated, economic operators would be quite equally (and fairly) treated in this area irrespective of the Member State in which they are established, in line with Article 41 of the CFREU.

The clarification of the "proportionality" of the sanction included in this option would also be consistent with Art. 47 of the CFREU because by definition it would delimitate what should be considered as "disproportionate" if punished by a criminal sanction, although the law envisages a "non-criminal" one.

Under this option, some improvements with regard to the promotion of freedom of establishment to conduct a business (Article 16 CFREU) would be expected, since the existence of Union rules for Union customs infringements would permit an equivalent enforcement of Union customs legislation between Member States and, therefore, reduce the incentives to concentrate the business activities related to customs procedures in a few regions. A more balanced distribution of business activities throughout the Union might, therefore, be enhanced, as there would not be a need to avoid Member States with more severe customs sanctions in case of non- compliance with the customs rules.

[68] Report from the Commission to the European Parliament and the Council on the Protection of the European Union's financial interests-Fight against fraud- Annual Report 2010: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0595:FIN:EN:PDF

7.2.4. Policy Option D – Two separate legislative measures aiming at approximation of non-criminal infringements and sanctions on the one hand and criminal offences and penalties on the other

7.2.4.1. Economic Impacts

Internal Market

As this option builds, partially, on the previous one, it maintains all the benefits already outlined for Option C in terms of effectiveness, to which can be added the advantage of having a Union action in the two types of sanctions: the non-criminal and the criminal.

The concerns expressed by some associates of TCG representatives regarding an increase in bureaucracy or the existence of minimum room for national variations as regards this option would not occur as no new obligations or significant procedural rules would be established. Moreover, the existence of two legislative Union acts on the approximation of customs criminal and non-criminal infringements and sanctions would ensure that no significant variations would occur in Member States' customs sanction regimes.

However, the legislative measure on criminal customs infringements and penalties based on Article 83(2) TFEU would imply that, unless the legal basis were Art. 325 TFEU, Denmark[69] would not be bound by this measure. At the same time, the United Kingdom and Ireland[70] could choose to stay out of it or to opt-in. This means that customs legislation enforcement would not be uniform in the criminal field because not all Member States would be bound by the legislative measure on criminal customs infringements and sanctions and that the objective of creating a level playing field between economic operators would be jeopardised at that level, thus losing some of its attractiveness. Another important aspect is that the proposal of two legislative acts would necessitate a strict delineation of what should be criminal and what should not. This could lead to a counterproductive confrontation between Member States' legal sanctioning systems and will be very intrusive as a solution to the problem.

Moreover, if Union action is required, the Union legislator needs to decide whether criminal sanctions are necessary or whether common administrative sanctions are sufficient. Indeed, the legal basis for the legislative measure in the criminal field -Article 83(2) TFEU- builds on the notion of criminal law as an *ultima ratio* tool where this is essential to ensure the effective enforcement of harmonised policies. This means that usually criminal law proposals based on this legal article will be addressing areas where non-criminal Union sanction regimes already exist, which is not yet the case in the customs union area. This will depend on a case-by-case assessment of the specific enforcement problems in a policy area and can only be assessed if non-criminal sanctions are already in place. Otherwise legislating in the criminal field could be disproportionate in the case of customs legislation.

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[69] Protocol (No 22) to TEU and TFEU on the Position of Denmark, in OJ C83, of 30/03/2010, p. 299:, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0201:0328:EN:PDF

[70] Protocol (No 21) to TEU and TFEU on the Position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, in OJ C83, of 30/03/2010, p. 295:, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0201:0328:EN:PDF

At this stage and in this particular case, we are in an area where no sanctions at all have yet been established at EU level. Therefore, there is not enough evidence for the conclusion that criminal law is necessary.

As in previous policy options, the reasoning for assessing the benefits of this option regarding the fight against **illicit trade** are quite similar to those mentioned in the last section. Having criminal measures included in the option would be effective if all Member States were bounded by them. As this is not the case, not greater benefits are expected than those of policy option C.

International obligations

As we have mentioned in the assessment of the previous policy options, the current negotiations in the WTO on the TFA only consider non-criminal sanctions in the customs field. It would mean that the approximation of criminal sanctions that this policy option foresees would not be required to comply with WTO obligations. Moreover, evidence of the necessity of this type of approximation is needed for the Union to propose any measure.

Competitiveness

In addition to the effects assessed so far and according to the answers provided by economic operators to the second questionnaire, policy option D would mean some savings for Union companies dealing with international trade. Those potential savings are presented in the following table:

	Average costs	**Potential savings[71]**
Companies	EUR 3,470	EUR 1,630
SMEs and micro	EUR 3,170	EUR 1,720

This option foresees the approximation of the infringements and the sanctions with which they will be punished, both in the criminal and non-criminal fields. In this sense, as every Member State would be bound to have non-criminal sanctions, those economic operators currently established in Member States with only criminal procedures enforced in the customs field would be exposed to the same time limits to recover the custom duties as their competitors established in other Member States.

Additional administrative and compliance costs

Regarding the non-criminal measures of this policy option, neither additional administrative costs nor additional compliance costs are expected as the very same arguments exposed when assessing those costs under policy option C apply.

Indeed, the philosophy underlying the criminal measures proposed in this policy option is in line with that also underpinning the non-criminal measures. No new obligations would be introduced as,

[71] For all answers: Median: EUR 0,00 – Range: from EUR 0,00 to EUR 15,000
For SMEs and micro-enterprises' answers: Median: EUR 0,00 – Range: from EUR 0,00 to EUR 15,000

again, those obligations stem from the Customs Code, which would not be amended. So economic operators and Member States would be familiar with the infringements included in this option, whether punished by criminal or non-criminal sanctions. They would also be familiar with the sanctions proposed, as they would be the most common sanctions employed by Member States.

The biggest changes may be expected to happen in those Member States having only criminal sanctions. Nevertheless, those changes would mean only a different categorisation of the infringements already enforced and, consequently, a change in the sanctioning procedure applied, which would not be really different to that applied to other infringements in the tax field, as we have explained when assessing the additional compliance costs in policy option C.

In conclusion, as policy option D (in line with other policy options presented in this report in this particular field) is not dramatically moving away from the measures already enforced in Member States, either in the customs field or in other fields closely related (e.g. tax), no significant additional administrative and additional compliance costs are expected under policy option D.

A reference to the Study on the legal framework for the protection of EU financial interests by criminal law RS 2011/07 has been made in the assessment of the impacts of previous policy options. The case of policy option D is quite similar to that of policy option C. Indeed, the costs in policy option D would double those of policy option C as the former has impact in both fields, criminal and non-criminal. The proposals used in this case to assess the costs for Member States of drafting and implementing the content of policy option D are those already selected when assessing the compliance costs of policy option C. Therefore, those costs would amount to EUR 7,167,144 in this policy option.

Other considerations

Since this option encompasses a Union action in the criminal field, it should be borne in mind that political reluctance from Member States would be expected. This political resistance would be based on the fact that this option would be the first attempt to approximate Member States' criminal laws in the customs union policy area. Indeed, Union actions in the criminal field tend to be considered by certain Member States as a significant political move on their systems, as, traditionally, and before the Lisbon Treaty, this field was in their exclusive national competence.

It is expected, therefore, that this option would be considered intrusive and not very well accepted by Member States.

7.2.4.2. Environmental Impacts

The improvements expected as regards illegal trade of goods forbidden by CITES Convention and other environmental legislation are in line with those also foreseen with policy option C. Although in policy option D we add criminal measures to the proposal, the possibility for some Members States to opt out and not to apply those criminal measures diminishes their effectiveness. That is the reason why the expected impact of this measure in this field is not significantly greater than the one under policy option C.

7.2.4.3. Policy coherence

Although having a different legal basis and a broader scope, this option, as far as the legislative act on criminal customs offences and penalties is concerned, might raise a risk of duplication with the proposal by the Commission on a Directive on the fight against fraud to the Union's financial interests by means of criminal law, mentioned above, as it would partially have the same scope.

7.2.4.4. Fundamental Rights

The approximation of infringements and sanctions, both criminal and non-criminal, would be in line of the requirements of the CFREU, improving the current respect for the right to good administration. As under policy option C, the economic operators' affairs would be treated in a fairer way irrespective the Member State where they were established.

Also in line with the expected benefits derived from option C, option D would also bring some improvements by clarifying the concept of "proportionality" of the sanction, thus respecting Article49 of the CFREU.

In addition, some improvements within the promotion of freedom of establishment to conduct a business would be expected as the enforcement of customs legislation in each Member State would be approximated and, consequently, the incentives to divert the activity to Member States with more lenient sanctions would disappear.

8. COMPARATIVE ASSESSMENT OF OPTIONS

The table below has been drawn up in order to show the effectiveness of each option, thus contributing to the analysis of the most preferred one.

Options	Economic impacts	Environmental impacts	Additional administrative costs for Member States	Policy Coherence	Fundamental Rights	Overall Assessment
A	0	0	0	0	0	0
B	+	+	++	0	0	+
C	+++	++	++	+++	++	+++
D	++	++	+	+	++	++

8.1. The preferred option

Option B would provide a limited solution and imply a long term action, since it would only be possible after the conclusion of the legislative procedure regarding the recast of the Modernised Customs Code that is taking place at the moment. This means that it would only be possible to launch this initiative once the Union Customs Code and related Commission acts are in force. And this would not be the only factor delaying the proposal. The process itself of reaching an agreement through the ordinary legislative procedure on a legal text the size of the future UCC may take years of discussions. Moreover, it presents the risk of opening the discussion on other parts of the UCC instead of focusing the efforts on infringements and sanctions.

Although policy option B is the preferred option of the respondents to the second consultation, the number of companies which selected policy options C or D, and thus reflecting their desire for a broader approximation of customs infringements and sanctions, is higher. This desire is reinforced by the fact that 80% of individual respondents to the second questionnaire who are not affected in their ordinary customs activities by the situation outlined in the baseline scenario, expressed their preference for action in the field of customs infringements and sanctions, as it has already pointed out in section 6.2.

Options C and D are the more relevant to achieving the objectives, Option D being the ideal option in terms of effectiveness, since it would permit an approximation in both the criminal and non-criminal infringements and sanctions and, thus, tackle the overall universe of infringements and sanctions. In fact the seriousness and character of the breach of law must be taken into account. For certain unlawful acts which are considered particularly serious, an administrative sanction may not be a sufficiently strong response. On the same line, criminal law sanctions may be chosen when it is considered important to stress strong disapproval in order to ensure deterrence. The entering of convictions in criminal records can have a particular deterrent character.

Even though Option D could be considered at first sight the most effective because it would be more complete, it would be advisable to have an assessment to show if the obligations stemming from customs legislation could be efficiently enforced through non-criminal sanctions. This assessment should be done after the implementation of non-criminal customs sanctions at Union level. Also, through option C the Member States who do not provide for any non-criminal sanctions in their legal order would be obliged to do so, thus introducing a level playing field for economic operators and more flexibility for the competent authorities (customs administration or judicial authorities) to impose the appropriate sanctions. Option C would then offer a positive first approach to an effective implementation and law enforcement of customs union legislation.

Moreover, Option D would imply an "opting-out" for the United Kingdom, Ireland and Denmark, which would not lead to an approximation throughout the entire Union. There is also a risk of duplication with the proposal by the Commission on a Directive on the fight against fraud to the Union's financial interests by means of criminal law, mentioned above. On top of that, the resistance of the Member States would be considerable under option D as it means a shift in the philosophy of their legal systems, which would mean that the chances to effectively implement this option in the medium term would be minimal.

As regards to the WTO obligations, option C would be more in line with the content of the current negotiations on the TFA as it will only provide for non-criminal sanctions.

As far as potential savings are concerned, option C is not the one which brings the maximum savings. Nevertheless, generally speaking the difference between it and option D is negligible (327.27 EUR per year per company), although differences are somewhat higher when comparing potential savings for SMEs and micro-enterprises (724.35 EUR per year per company). Anyway, those differences in potential savings among options are not as relevant as the counterbalance of other advantages of option C.

Option C implies less compliance costs for Member States than policy option D.

Option C is, therefore, the **preferred option** because it will allow an effective implementation of customs union legislation, by identifying customs obligations to which special protection should be given through the establishment of non-criminal sanctions for any breaches of them, which will have a chance to gain the consensus of the Member States.

The legislative measure proposed will introduce a common framework in the field of customs infringements and non-criminal sanctions for Member States to deal with and, in this way, promote transparency and legal certainty for compliant economic operators.

Therefore a common and transparent framework for the customs infringements and sanctions would contribute to ensuring that illegal trade will not remain a lucrative business which damages the lawful economy, entrepreneurs, and honest citizens. By not being as intrusive as a total harmonisation, it will allow Member States to adapt themselves to Union legislative measures concerning their legislation's enforcement and to recognise the advantages of having a Union approach on how to implement Union customs legislation, when the latest developments in this field call, more than ever, for a uniform attitude from national administrations to enforcing Union customs legislation.

On the other hand, this option will permit Member States to start dealing, for the first time, with a common framework in the field of customs penalties. This common framework will be initiated at administrative level, in order to help Member States' adaptation to this first Union approach in the area of customs sanctions and help to prepare and assess the step forward to approximation of customs criminal offences and penalties, if necessary.

At the international level, option C will respect the latest trends on the negotiation of the TFA on the WTO. For the time being, the text agreed on includes only non-criminal sanctions imposed by customs authorities. That means policy option C will be totally in line with the WTO obligations and thus in advance of other Members.

8.2. Choice of legislative instrument

The choice of the legislative instrument to implement the preferred option C will depend on the level of approximation required at Union level to meet the objectives versus the room for manoeuvre that should be left to Member States regarding implementation.

Article 288 TFUE states that "*a regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States*". That means that if a regulation would be chosen as a legislative instrument, its provisions would be directly applicable and thus leading to a very high level of uniformity in the legislation.

On the other hand, "*a directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods*". This legislative instrument implies leaving some room for Member States to reach the final aim pursued by the initiative with the most suitable instruments within its national legislation. Regarding that customs infringements and sanctions is to a certain extent a new area of EU

regulation, a directive could be an appropriate instrument as for its flexibility. That flexibility, although being an advantage of this instrument, requires an exercise of monitoring the proper and timely implementation of the initiative in the national legal frameworks.

While a regulation would fit for the definition of types and categories of infringements, a directive could be considered more appropriate regarding an approximation – e.g. through a common range – of non-criminal sanctions.

The Commission will then have to properly balance the pros and cons of the choice of instrument with regard to the objectives to be achieved as described in that report.

9. MONITORING AND EVALUATION

In order to ensure that the legal measure's implementation is carried out appropriately and that it achieves the proposed objectives, the monitoring and evaluation of the application of the new legal measure can only be carried out through indirectly measuring its impact on the enforcement of customs legislation. For this purpose, the indicators pointed out in the problem definition section will be used. None of those indicators by itself is going to provide a complete picture of the achievements of this proposal. Nevertheless, their analysis as a group will show how this legislative measure is helping to tackle the problem of divergent enforcement of customs legislation.

The indicators used to monitor and evaluate this proposal:

- are measurable;

- are available today and used in this impact assessment[72], so comparisons are possible

- are easy to collect

The collection of the information needed to monitor the results of this initiative will be made in three different ways:

- By addressing Member States.
- By means of a questionnaire sent to stakeholders.

9.1. Information collected from Member States

Member States will be addressed to provide information regarding two questions:

- The same cases presented to the Member States in the context of the Project Group will be presented again in five years. The aim of that activity will be to compare the differences in the answers of Member States to those cases once the new legislative proposal is in force, and compare those differences with the ones already collected in

[72] Member States' answers to the cases presented in the Project Group, percentage of AEO status over the number of applications or over the number of EORIs, number of companies identifying obstacles to be engaged in customs formalities in other member States than the ones they are established in and potential savings.

the framework of the Project Group. Improvements in this indicator will reflect an enhanced level playing field for economic operators.

- The Member States will be addressed in order to get some data about how they are dealing with the compliance record of economic operators when granting access to AEO status and customs simplifications. The aim of collecting this piece of information is to check whether the criterion followed by each Member State is homogeneous. This activity will be put in practice simultaneously with the monitoring of the number of companies applying for and being granted AEO status. The statistics of comparable countries such as France and Germany are expected to be more similar than those presented in this report.

9.2. Information collected from stakeholders

A new questionnaire will be addressed to stakeholders. This questionnaire will include the same questions of the second questionnaire used in the making of this report. As some companies identified obstacles that prevent them from engaging in customs formalities in other Member States than the one they are established in, once the initiative proposed in this measure is in force, a reduction in the number of companies affected by those constraints will be expected.

By means of the same questionnaire, some additional questions will be added in order to evaluate whether the expectations on saving and increasing the competitiveness of economic operators have become a reality.

Again, it should be stressed that none of the mentioned indicators will reflect the effects of this initiative by itself alone, as each may be affected at the same time by other factors not related with this initiative. Nevertheless, all of them together will show whether this initiative is improving the balanced treatment of economic operators throughout the Member States of the Union and the consistency in the management of the customs union, thus contributing to a better and more homogeneous enforcement of the customs legislation.

10. ANNEXES

Annex 1: Project Group on Customs penalties

A - Working Document TAXUD 1718/2008 - Draft Questionnaire on Customs Penalties

B - Report from the Project group on Customs Penalties

C - Executive Summary of the Report from the Project group on Customs Penalties

Annex 2: Customs 2013 High-Level Seminar on Compliance and Compliance Risk Management in Customs: "Copenhagen Declaration"

Annex 3: Stakeholder's first consultation:

A - Summary record of TCG meeting held on 26.03.2012

B - TCG questionnaire

C - Summary of TCG questionnaire's answers

D - Overview of Trade Contact Group membership

Annex 4: Stakeholder's second consultation:

A – Questionnaire to companies

B – Summary of questionnaire to companies' answers

C - Answers to the questionnaire

Annex 5: Diversity of sanctions

A – Results from the Project Group

B – External studies

Annex 6: Studies taken into account

11. GLOSSARY (TERMS AND ACRONYMS)

***Disclaimer**: This Glossary is solely and exclusively intended to facilitate the readability of this Report*

AEO (Authorised Economic Operator): An economic operator who is deemed reliable in the context of his customs related operations, and, therefore, is entitled to enjoy benefits throughout the Union.

Customs debt: The obligation on a person to pay the amount of import or export duty which applies to specific goods under the customs legislation in force.

Customs infringement: A breach/violation of customs law which is associated to a sanction procedure which may lead to the imposition of a sanction. In this context, synonym of customs offence

Customs sanction: A penalty resulting from the customs infringement.

CFR: Charter of Fundamental Rights

Economic operator: A person (either natural or legal) who, in the course of his business, is involved in activities covered by customs legislation.

EORI number: Economic Operators Registration and Identification number is a number, unique in the European Union, assigned by a Member State customs authority or designated authority or authorities to economic operators and to other persons in their relations with the customs authorities.

TFA: Trade Facilitation Agreement

Illicit trade: trade that involves money, goods or value gained from illegal and generally unethical activity. (Definition by the World Economic Forum Global Agenda Council on Illicit Trade)

Intent: Acting in the knowledge of perpetrating a fact that is considered an infringement and with the purpose of accomplishing it.

Negligence: Acting without the care which, according to circumstances, the person concerned is obliged to take and is capable of.

Strict liability: Cases of infringement in which the perpetrator need not have intended to breach a customs provision, or even considered at all the consequences of their actions, but has nevertheless breached customs law. (Definition agreed by the 24 Member States of the Project Group on Customs Penalties).

Settlement: Any procedure within the legal system of a Member State that allows the authorities (whether they are the Customs administration or an institution of the national legal system) to enter into an agreement with an offender to settle the matter of a customs infringement as an alternative to initiating or completing legal sanctioning proceedings. (Definition agreed by the 24 Member States of the Project Group on Customs Penalties)

TOR (Traditional Own Resources) : Customs duties and other impositions enumerated in Council Decision of 7 June 2007 on the system of the European Communities' own resources (2007/436/EC, Euratom), Article 2(1)(a)

LIST OF RELEVANT DOCUMENTS MENTIONED IN THE REPORT

- Commission Work Programme for 2012

(http://ec.europa.eu/atwork/key-documents/index_en.htm);

- Report on implementing trade policy through efficient import and export rules and procedures, from European Parliament's Committee on International Trade

(http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A6-2008-0184&language=EN);

- Report on the modernisation of customs, from the European Parliament's Committee of Internal Market and Consumer Protection

(http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2011-0406+0+DOC+PDF+V0//EN);

- General Agreement on Tariffs and Trade

(http://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm);

- Council Regulation (EC, EURATOM) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests, in OJ L312, of 23.12.1995

(http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1995:312:0001:0004:EN:PDF);

- Council Regulation (EC, EURATOM) No 1150/2000 of 22 May 2000 implementing the Decision 2007/436/EC, Euratom on the system of the European Communities own resources, in OJ L 130, 31.5.2000

(http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2000R1150:20070101:EN:PDF);

- Proposal for a Directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law COM(2012)363/3

(http://ec.europa.eu/anti_fraud/documents/pif-report/pif_proposal_en.pdf);

- Convention for the protection of the European Communities' Financial Interests of 26 July 1995

(http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1995:316:0048:0057:EN:PDF);

- Community Customs Code, established by Council Regulation (EEC) 2913/92 of 12 October 1992

(http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1992R2913:20070101:EN:PDF);

- Customs Code Implementing Provisions, established by Commission Regulation (EEC) No 2454/93 of 2 July 1993

(http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1993R2454:20120101:EN:PDF);

- Modernised Customs Code, established by Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008

(http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:145:0001:0064:EN:PDF);

- Proposal for a Regulation of the European Parliament and of the Council laying down the Union Customs Code (Recast) - COM(2012) 64 final

(http://ec.europa.eu/taxation_customs/resources/documents/common/legislation/proposals/customs/com(2012)64_en.pdf);

- World Economic Forum, New Models for Addressing Supply Chain and Transport Risk, An initiative of the Risk Response Network, 2012

(http://www3.weforum.org/docs/WEF_SCT_RRN_NewModelsAddressingSupplyChainTransportRisk_IndustryAgenda_2012.pdf);

- TAXUD's Measurement of Results – Annual Report for the year 2011;
- Council Decision 2007/436/EC, Euratom of 7 June 2007 on the system of the European Communities' own resources

(http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:163:0017:0021:EN:PDF);

- Report of the Expert Group on "Models to reduce disproportionate regulatory burden on SMEs"

(http://ec.europa.eu/enterprise/policies/sme/files/support_measures/regmod/regmod_en.pdf);

- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – "Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law"

(http://ec.europa.eu/justice/criminal/files/act_en.pdf);

- Council of Europe Annual Penal Statistics – Space I - 2010 Survey on Prison Populations

(http://www.coe.int/t/DGHL/STANDARDSETTING/CDPC/CDPC%20documents/SPACE-1_2010_English.pdf);

- Report from the Commission to the European Parliament and the Council on the Protection of the European Union's financial interests-Fight against fraud- Annual Report 2010

(http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0595:FIN:EN:PDF);

- Commission Staff Working Paper Statistical Evaluation of Irregularities- Own Resources, Agriculture, Cohesion Policy, Pre-Accession Funds and Direct Expenditure -Year 2010 - Accompanying document to the Report from the Commission on the protection of the European Union's financial interests and the fight against fraud – 2010

(http://ec.europa.eu/anti_fraud/documents/reports-commission/2010_ann2_en.pdf);

- Protocol (No 21) to TEU and TFEU on the Position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice

(http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0201:0328:EN:PDF);

- Protocol (No 22) to TEU and TFEU on the Position of Denmark

(http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0201:0328:EN:PDF);

- Study on the Enforcement of the EU Wildlife Trade Regulations in the EU-25 Study Contract n° 07-07010406/2005/411826/MAR/E.2

(http://ec.europa.eu/environment/cites/pdf/studies/enforcement_trade.pdf)

- Study on the Administrative performance differences between Member States recovering Traditional Own Resources of the European Union.

(http://www.europarl.europa.eu/committees/en/studiesdownload.html?languageDocument=EN&file=91816)

The "Study on the legal framework for the protection of EU financial interests by criminal law" (RS 2011/07), conducted, on behalf of DGJUST and OLAF, by GHK, published as an annex of the impact assessment's report on the proposal for a directive of the European Parliament and of the Council on the protection of the financial interests of the European Union by criminal law http://ec.europa.eu/justice/criminal/files/study-protection-of-eu-financial-interests_en.pdf