EUROPEAN
COMMISSION

Brussels, 13.12.2013
SWD(2013) 514 final

PART 2/2

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}
{SWD(2013) 513 final}
{SWD(2013) 515 final}

IMPACT ASESSMENT REPORT
ANNEXES

IA Report: Annex 1-A

EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Customs Policy
General Legislation and Uniform Application of Customs Law

Brussels, 26.06.2008
D(2008) PA

Working Document TAXUD 1718/2008

Subject: Draft questionnaire on Customs Penalties

OUTLINE

1 General

2 Types of infringements

2. 1. Criminal offences

2.1.1. Specific punishable behaviour affecting customs debt

2.1.2. Specific punishable behaviour not affecting the customs debt

2.2. Non criminal offences

2.2. 1. Specific punishable behaviors affecting customs debt

2.2.2 Specific punishable behaviors not affecting customs debt

2.2.3. Application of the Convention on the protection of the European Community's financial interests

2.3 Treatment of several imports

3. Types of penalties/sanctions

4. Aggravating and mitigating factors

4.1 Aggravating and mitigating factors related to the liable person

4.2 Aggravating and mitigating factors related to objective factors

5. Legal persons

6. Retroactivity

7. Procedural issues

7. 1 Settlement

7.2 Other procedural issues

8 Investigatory powers of the customs authorities

9. Burden of proof

10. Conclusions and recommendations

1. General

The purpose of this document is to propose a series of questions to be asked to the Member States on a number of enumerated substantive issues concerning customs infringements and penalties.

This version of the questionnaire takes into accounts the comments received following the first meeting of the national contact points on customs penalties of May 26th 2008.

Some general questions are:

1 What is the relevant national legislation applicable to customs infringements[1] and penalties? Can you indicate the specific references?

2. Within the scope of Article 21 of the Modernised Customs Code, what is the nature of the penalties that are in force in your country[2] to fulfil the above mentioned criteria "effective, proportionate and dissuasive" sanctions:

a) only administrative penalties

b) only criminal penalties

c) both administrative and criminal penalties.

3. How do you identify the liable person?

(i) person who commits the infringement

(ii) person represented

(iii) both of them

(iv) any persons who participated in committing such infringements who were aware or should reasonably have been aware of such behaviour?

(v) others

4. Is the mere attempt to commit a customs infringement punishable?

5. Are customs infringements committed in another MS, being prosecuted in your country? (e.g. because they were detected there?)[3]

6. How do you concretely intend to implement the concept "compliance with customs (and tax) requirements" as a criterion for granting the status of the AEO at national level?

7. How would your administration react if they found out that a person who has been granted the AEO status in another MS and currently operates in your country, does not fulfil the "customs and tax compliance" criterion according to your national law (but does fulfil it according to the law of the MS who has granted the AEO status)?

6. Does your legislation foresee any limitations in time in issuing customs penalties? If so in which cases?[4]

---

[1] IRL replied that "fraud is a criminal offence and in this case there is generic legislation. However, fraud is not synonymous to infringement.." In this sense, IRL should reconsider the question.

[2] IRL asks for more info. It concerns customs legislation and all other legislation applying to customs infringements/penalties.

[3] Question inserted by DE.

2. Type of infringements

1. What are the most common types of customs related infringements in your country?

2. Is there a different penalty treatment between infringements which affect the customs debt and infringements which don't affect the customs debt?[5]

3. Is there a minimum/highest[6] amount of the customs debt defined below[7] which the infringement has no relevance or are punished only by civil penalties?

4. Do you have any criteria in the legislation, guidelines or instructions according to which an infringement is to be handled under civil/administrative proceedings and when under criminal proceedings?

5. Does your Criminal Code provide for such a distinction?

6. If so, what are these criteria or constituent elements of the infringement/crime? (e.g. value of the goods? amount of the jeopardized duties and taxes? other?)[8]

6a) Is there a significant difference between the theoretical provision of penalties and their concrete application?

6b) Is there an infringement or irregularity established although the behaviour has no incidence on the customs debt as such, but on provisions regarding common security, safety, health?

2. 1. Criminal offences

1) Could you indicate for which of the customs infringements criminal penalties are applicable?

2) Please precise under which circumstances these infringements are regarded as criminal offences (i.e. in any event/in serious negligence cases/in intentional cases)

2.1.1. Specific punishable behaviour affecting customs debt

1) What are the most frequent infringements affecting the customs debt?

2) In which field do the most frequent infringements affecting the customs debt occur?

Can you give the number of cases the last two years?

(i) the unlawful introduction to the customs territory or the unlawful removal from the customs territory of goods liable to import duties

(ii) the avoiding of paying customs duties by giving incorrect data

(iii) the infringements to the conditions of a customs procedure

(iv) the non respect of one of the obligations arising with regard to goods liable to customs duties,

3) How is the abovementioned behaviour punishable (what is the penalty)?

---

[4] This question has been inserted at the request by PL.
[5] Question reformulated at the request of NL
[6] Modified according to IRL and NL comments
[7] Modified according to IRL comments
[8] Questions 4, 5 and 6 have been inserted at the request of FIN

2.1.2. Specific punishable behaviour not affecting the customs debt

1) What are the most frequent infringements in your national legislation not affecting the customs debt?

2) In which field?

Can you give the number of cases referring to the last two years:

(i) the unlawful removal or introduction of goods from the customs supervision

(ii) the infringements to the conditions of a customs procedure

(iii) making the customs controls difficult or opposing refusal or obstacles to customs controls

(iv) the non fulfilment of the obligation to keep customs documents available for the customs service

3) How is the abovementioned behaviour punishable?[9]

2.2. Non criminal offences

1) If your national legislation does not provide for criminal penalties for customs related infringements, or if other types of infringements require non criminal penalties**,** please indicate:

(i) the nature of the penalties provided for at national level (i.e. fines; disqualification for a natural person from engaging in an activity requiring official authorisation or approval, or funding, managing or directing a company or a foundation; confiscation of the goods, instruments and products stemming from the infringement; ban on access to public assistance, or subsidies; publication of judicial decisions …)

(ii) where appropriate, the highest level foreseen, indicating for which infringement they are applied

2) How do you qualify the customs non criminal offences in your national law?

Civil

Administrative

Other[10]?

2.2. 1. Specific punishable behaviors affecting customs debt

1) What are the most frequent infringements affecting the customs debt?

2) In which field the most frequent infringements affecting the customs debt occur? Express the value in percentage on the basis of the last two years as reference period :

(i) Origin

(ii) Value

[9] Sections 2.1.1 and 2.1.2 have been inserted at the request of PL

[10] At the request of NL "other" should include "administrative combined to criminal penalties under article 6 of the European Convention of Human Rights (ECHR).

(iii) Tariff

(iv) Application of a customs-approved treatment or use of goods

(v) Other

3) If a customs declaration is affected by a false origin of goods certificate which penalties are applied and who is the liable person?

4) If a customs declaration is affected by an incorrect tariff classification: which penalties are applied?

5) Is there a different penalty treatment if the incorrect tariff classification is done:

(i) Intentionally

(ii) Without intention

(iii) who is the liable person?

6) If a customs declaration is affected by an incorrect customs value of imported goods which penalties are applied?

7) Is there a different penalty treatment if the incorrect customs value is declared:

(i) Intentionally

(ii) Without intention

(iii) who is the liable person?

8) How is punishable:

(i) the unlawful introduction into customs territory of the Community of goods liable to import duties?

(ii) the unlawful introduction into customs territory of the Community of goods liable to import duties located in a free zone or free warehouse?

(iii) the unlawful removal from customs supervision of goods liable to import duties?

(iv) the non-fulfilment of one of the conditions or obligations arising in respect of goods liable to import duties, from their temporary storage or from the use of a customs procedure under which they are placed

2.2.2 Specific punishable behaviors not affecting customs debt

1) What are the most frequent infringements which don't affect the customs debt?

2) In which field the most frequent infringements not affecting the customs debt occur? Can you express the frequency in percentage?

(i) Origin

(ii) Value,

(iii) Tariff

(iv) Application of a customs-approved treatment or use of goods

(v) Other

2.2.3. Application of the Convention on the protection of the European Community's financial interests[11]

Art.2 (2) of the Convention includes the following rule: if the amount of avoided or jeopardized duties is 4000 EUR or more, a MS may not only provide a civil administrative penalty, but it is obligatory (either in addition or instead of an administrative penalty) to provide a criminal penalty.

Against this background, in which way has the content of this Article of the Convention been reflected to your national legislation, rules, instructions or practices? Can you provide a concrete example?

2.3 Treatment of several imports

In this section, MS are asked to address the penalty treatment applicable to customs violations concerning several imports. It does not refer to recidivist behavior, as this is treated under aggravating/mitigating factors, but to different infringements committed by the same person and connected to several importations which take place in one or more MS.[12]

1) Where the customs related infringements concern several imports, how are these treated: as separate offences or as one offence?

2) When by the same conduct are committed several and different infringements, are these treated as separate offences or as one offence?

3) Are there infringements for which criminal sanctions are set in parallel with civil penalties?

4) If so, do they apply:

(i) both kind of sanctions

(ii) only the most serious penalty.

3. Types of penalties/sanctions

In this section, MS are asked to address the types (both administrative and criminal) of sanctions that exist in their country as well as how they are applied in practice.

1) What is the nature, criminal or administrative, of the penalties provided for at national level?: Please specify for each case.

(1) Fine, (2) pecuniary charge, (3) imprisonment, (4) disqualification for a natural person from engaging in an activity requiring official authorisation or approval, or funding, managing or directoring a company or a foundation, (5) confiscation of the goods, (6) ban on access to public assistance, or subsidies, (7) publication of judicial decisions, (8) refusal to grant authorisation, (9) annulment of granted authorisation, (10) suspension of granted authorisation, (11) temporary or permanent disqualification from the practice of industrial or commercial activities; (12) placing under judicial supervision; (13) a judicial winding-up order; (14) the obligation to adopt specific measures in order to avoid the

[11] Inserted at the request of FIN

[12] This clarification has been requested by BE.

consequences of conduct such as that on which the criminal liability was founded (15) other[13]

2) Is the payment of owed duties considered as a penalty?

3) If so, which kind of penalty is it?

(i) administrative penalty

(ii) criminal penalty

4) What are the minimum and the highest civil penalty for customs infringements foreseen by national legislation?[14] [15]

5) What are and the minimum and the maximum years of imprisonment and/ or the minimum and the maximum level of pecuniary penalties foreseen for criminal infringements by national legislation?

6) Is it allowed to impose both administrative and criminal penalties to the same person and for the same behaviour (cumulation of penalties)?[16]

7) Please indicate if there is **experience of application of these penalties** and if so please give some details about the case and the lessons learnt [17].

8) Within which timeframe from the moment of the infringement can the penalty be imposed?[18]

4. Aggravating and mitigating factors

4.1 Aggravating and mitigating factors related to the liable person

1) Are there any aggravating or mitigating factors to be taken in consideration when issuing a penalty?

2) Does recidivism affect the level of the penalty?

3) What is the influence of

(i) good faith,

(ii) negligence,

(iii) gross negligence,

(iv) fraudolent intention

to the application of penalties for customs related infringements?

4) Can you indicate the specific references in national legislation?

5) What is the influence of

[13] Inserted at the request of DE.
[14] This is a specification of question 2.1.c (reply to IRL)
[15] At the request of LT the same question has been deleted in section 2.1 because it was a repetition.
[16] This question has been reformulated at the request of FIN and BE
[17] This question has been relocated here from section 2.1 (d) at the request of LT.
[18] This question has been inserted at the request of LT.

(i) error, (error in the real perception of the facts)

(ii) error in law (id. est ignorantia legis)

(iii) error induced by customs (e.g. the infringement is produced because of erroneous information given by customs)[19],

(iv) violence,

(v) legitimate expectation,

(vi) being member of a gang

(vii) abuse of public authority (cooperation with a policeman, customs officer etc.)

(viii) falsification of documents

(ix) huge amount of evaded duties/taxes[20]

to the application of penalties for customs related infringements?

4.2 Aggravating and mitigating factors related to objective factors

1) Do the following conditions affect the existence of the customs infringements or the application of penalties?

(i) customs infringement attributable to force majeure

(ii) customs infringement attributable to fortuitous event

2) If so, how?

5. Legal persons

1) Is there a definition of legal person under you national regulation? Can you specify the reference?

2) Does your national legislation provide for responsibility of legal persons in case of customs related infringements committed by this legal person?

3) Can the responsibility of a legal person be criminal according to your legislation? What type of penalties are foreseen in this case?

4) Who is liable for the customs penalty in the case of infringement committed by a legal person?[21]

6. Retroactivity[22]

1) Under your national legislation can penalties be imposed retroactively? (For example if there is a change of the law between the time the infringement was committed and the judgment)[23]

---

[19] Clarification inserted at the request of BG

[20] (vi) to (ix) were inserted at the request of DE. However "intention to commit the customs infringement continually as a source of income" has not been inserted because it is covered under "fraudulent intention.

[21] The questions 3 and 4 have been reformulated at the request of BE.

[22] In some MS and under certain conditions penalties can be imposed retroactively (reply to IRL)

2) If so,

(i) for how long and

(ii) under what conditions?

3) Is there a difference if the penalties are:

(i) criminal

(ii) civil

4) How does this work in practice?

7. Procedural issues

In this section, we ask you to address a number of enumerated procedural issues. If you have additional issues, feel free to discuss these also, but please follow the numbering provided)in this tempate. It concerns the national legal order[24].

7. 1 Settlement

In this section, MS are asked to address the procedures for settlement of customs offences applied in their country

1) Are there procedures for settlement of customs offences in your country?

2) If so, what is the scope of it?

3) Is it applicable also to serious infringements?

4) Is settlement procedure considered to be an alternative to administrative or criminal penalty?[25]

5) What are the relevant provisions?

3) How often the procedures for settlement of customs offences are applied in your country?

4) Are there preliminary procedures (i.e. warning letters) which must be issued prior the issue of a penalty demand?

5) In that case what happens if any deadline of such procedure is not respected by the liable person?

6) Is there a discretion from customs authorities in issuing a penalty to infringements? If so under which conditions is possible to apply such discretion?

7) Are penalties reduced or waived in case a settlement between the liable person and the customs administration has been reached?

8) Has a "voluntary disclosure" from the liable person any relevance in the determination of the penalty ?

9) What is the number of cases resolved by a settlement in the last two years?[26]

---

[23] It has been inserted at the request of DE.
[24] Clarification inserted after comment by IRL
[25] Questions 2,3 and 4 have been inserted at the request of FIN
[26] Question added at the request of PL.

7.2 Other procedural issues

1) How do you determine territorial competence for deciding which authority is competent to deal with the infringement?

2) Who is the competent authority to settle the appeals against?

(i) criminal penalties

(ii) civil penalties

3) Does the payment of the customs debt during the appeal procedure affect the result of the latter?

8 Investigatory powers of the customs [27]authorities

This section deals with the powers of the (customs) authorities when a customs law infringement occurs.

1) Who is the authority entitled to investigate on customs law infringements?

2) What are the powers of the investigating authorities?

(i) Inspections

(ii) Search for documents or goods

(iii) Seizure

(iv) Arrest

(v) Other

3) How are these powers applied in practice?

4) Do the investigating authorities need any authorization from third bodies?

5) What is the relevant national legislation applicable to the powers of the investigating authorities? Can you indicate the specific references?[28]

9. Burden of proof

This section addresses the rules on burden of proof applied in your country.

1) Are there specific rules governing the allocation of:

(i) the burden of proof of the infringement

(ii) the burden of proof of the personal intention and behaviour

in case of infringements to customs law?

---

[27] At the request of PL it was clarified that this section concerns only the customs authorities.

[28] Question inserted at the request of BG.

10. Conclusions and recommendations

Member States may wish to address here their experience with the system in their country and recommend areas for improvement, if any, either at national or at community level.

IA Report: Annex 1 –B

- **CUSTOMS 2013 PROGRAMME**

- **PROJECT GROUP ON CUSTOMS PENALTIES**

FINAL REPORT

JULY 2010

TABLE OF CONTENTS

EXECUTIVE SUMMARY **17**

Index of terms used in this report **31**

1. INTRODUCTION **32**

2. METHODOLOGY **34**

The participation of Member States in the Project Group 34
The structure of the report 35

3. UNION LEGAL BACKGROUND **35**

Article 21 of the Modernised Customs Code (MCC) 35
Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests 35
Convention on the protection of the European Communities' financial Interests 35
Lisbon Treaty 35

4. GENERAL ISSUES **35**

National legislation (Table 4001) 35
The nature of national penalties for customs infringements 35
Main & Ancillary Penalties (Table 7003) 35
Other measures (tables 5001 and 7003) 35
Persons liable in cases of infringement (Table 4002 A, B, C) 35
Liability for criminal penalties *35*
Liability for non criminal penalties *35*
Intent / negligence / strict liability (Table 9001) 35
Treatment of attempted infringements (Table 4002 B) 35
Treatment under criminal law *35*
Treatment under non criminal law *35*
Infringements committed in other MS (Table 4002 C) 35
Time limits (Table 4003) 35
Time limits for initiating the infringement procedure (Table 4003) *35*
For criminal infringements 35
For non criminal infringements 35
Suspension and interruption of the time limits for initiating the procedure (Table 4003) *35*
Time limits for imposing the penalty *35*
Time limits for the execution of the penalty *35*
AEO authorisations and the impact of infringements (Table 4004) 35

5. CRIMINAL PENALTIES **35**

Types of criminal penalties (Table 5001) 35
Aggravating and mitigating factors (Table 5002) 35
Main aggravating factors *35*
Main mitigating factors *35*
Statistics regarding criminal penalties (Table 5003) 35

6. NON CRIMINAL PENALTIES **35**

Types of non criminal penalties (Table 5001) 35
Aggravating and mitigating factors (Table 5002) 35

Main aggravating factors *35*
Main mitigating factors *35*
Statistics concerning non criminal penalties (Table 6001) 35

7. BOUNDARIES BETWEEN CRIMINAL AND NON CRIMINAL INFRINGEMENTS AND PENALTIES WITHIN MEMBER STATES 35

Boundaries between types of infringements/offences (Table 7001) 35
Treatment of infringements involving customs debt 35
Criteria applied when criminal proceedings shall be initiated due to a customs infringement (Table 7002) 35
The use of financial thresholds 35
Admissibility of the joint application of criminal and non criminal penalties (Table 5001) 35

8. LEGAL PERSONS (TABLE 8001) 35

Definitions of legal person 35
Responsibility of legal persons 35
Responsibility of legal persons under criminal law 35
Liability for the customs penalty 35
Variations in treatment 35

9. BURDEN OF PROOF (TABLE 9001) 35

Obligation for traders to provide information/ documentation and enforcement of such obligations (Table 9001 and partly Annex 5 of the Report). 35
Differences in investigative approach between criminal and administrative penalties 35

10. RETROACTIVITY (TABLE 1001) 35

Retroactive imposition of penalties 35
Retroactive application of more lenient law 35

11. PROCEDURAL ISSUES (TABLE 1101) 35

Settlement 35
Territorial competence, appeals, and the impact on the appeals procedure of payment of customs debt (Table 1102) 35
Treatment of several imports (Table 1103) 35

12. GENERAL CONCLUSIONS AND RECOMMENDATIONS: 35

Conclusions 35
Treatment of infringements: *35*
Penalties *35*
Recommendations 35
Recommendations to the COM: *35*
Recommendations to the MS: *35*

ANNEXES 35

EXECUTIVE SUMMARY

The Modernised Customs Code (MCC)[29] is conceived for a multinational electronic environment where a decision taken by a MS is applied in all other MS, and customs declaration and procedures often involve more than one MS. Like the for the Authorised Economic Operator (AEO) status, all simplifications foreseen by the MCC will be granted only depending on a satisfactory record of compliance and withdrawn where this condition is no longer met.

An infringement to Community Customs law often impacts on customs debt and can trigger the application of penalties. Although customs debts are partially Community own resources and have their its legal basis in Community provisions, in case of infringement the application of penalties is based on national provisions which differ by nature and by severity according to the Member State (MS) that is competent for it.

Moreover, the global nature of trade and the existence of global economic operators in Europe, as well as fraud, terrorism and other international threats which customs are called to face, may require a uniform approach of customs related infringements and penalties.

For all the above reasons, the Customs Policy Group (Deputies) meeting of 30 January 2008 gave a mandate to the Commission (COM) to examine and assess the situation in the field of infringements and customs penalties.

COM established a Project Group (PG) under the Customs 2013 (C 2013) Program on a voluntary basis which would analyse the national regimes of customs infringements and penalties and report back to the Commission.

24 out of 27 MS divided in two sub-groups managed by two Member States (UK , **Finland** as **sub-group leaders)**, and including also Austria, Belgium, Cyprus, Bulgaria, Estonia, , France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Spain actively participated in the PG and their tasks were to:

- identify the key features of the infringements/penalties national regimes
- identify the legal sources
- spot the differences
- identify areas of convergence
- record different views as to whether it would be beneficial or not to align penalties
- provide indications on the feasibility of such an alignment

[29] Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 (OJ no L 145 of 4.06.2008, p. 1).

For some MS the situation has evolved in so far that their legislation concerning infringements and penalties related to customs has been modified. Therefore several updates of the contributions took place and there might still be changes in their legislation by the time this report is published.

The structure of the report follows to a certain extent the structure of the Questionnaire established by the Commission although it has been slightly modified in order to avoid duplications. The report has **12 Sections** and **6 Annexes**.

The Union legal background has been highlighted in the beginning of the Report (Lisbon Treaty, MCC (Regulation (EC) No 450/2008, the Convention on the protection of the European Communities' financial interests[30])

National legislation covering customs infringements

MS were asked to state the national legislation applicable to customs infringements and penalties. As expected most MS have a number of acts and codes forming the legislative framework within which they penalise customs infringements.

All MS contributing to this report consider that they operate a system of penalties for dealing with customs infringements that they consider to be effective, proportionate and dissuasive (the very criteria identified with Article 21 of the MCC). MS provided the following general details concerning their systems.

The nature of national penalties for customs infringements

16 out of 24 MS advised that their penalty systems provide for both criminal and non criminal penalties to be applied.

Main & Ancillary Penalties

For the purposes of this report we agreed that an ancillary penalty is one that cannot stand alone but is often applied with a main penalty. The legal systems of 5 MS do not provide for ancillary penalties.

The most common main penalties applied by all MS are fines /pecuniary charges (and this regardless of their criminal or non criminal nature) and imprisonment.

The most common ancillary penalties (8 MS) concern the disqualification from business/commercial activities

Other measures

MS take other action than penalties or sanctions against those failing to comply with customs laws. Typically these will include the revocation, suspension or amendment of authorisations held by the person or persons concerned, or the insistence on new conditions connected with such authorisations (for example the provision of a monetary security against future duty debts). Article 21.2 of the Modernised Customs Code provides that these types of measures may be envisaged as administrative (non criminal)

---

30 Council Act of 26 July 1995 drawing up the Convention on the protection of the financial interests of the European Communities [OJ C 316, 27.11.1995].

penalties. However many MS do not see them as penalties at all, rather as a consequence of non-compliance.

All MS but one confirm that their national system provides for measures aimed at ensuring compliance in addition to criminal and non criminal penalties. An area of convergence is to be found in the main type of measure employed as 19 MS engage in the refusal, annulment, suspension and or withdrawal of authorisations, approvals and licence (although one of those MS foresees them only in criminal procedures

Persons liable in cases of infringement

All MS identify three types of persons who can be held liable for customs infringements (the actual perpetrator, the instigator and anyone involved to assist the person who committed the infringement).

For the MS who have non criminal penalties the only point of convergence is the liability of the actual perpetrator

Almost all MS (with the exception of 3 MS for criminal penalties and 1 MS for non criminal penalties) do not foresee in their legislation the transfer of a penalty to another

Intent / negligence / strict liability

We sought to establish the requirements MS have in place aimed at establishing the presence of intent behind an infringement. Most MS require the presence of intent, negligence, or elements of careless or reckless behaviour in all infringements dealt with under criminal procedures (save of course for any strict liability offences punishable under criminal law). This is also true for many infringements dealt with under non criminal procedures.

However 11 MS foresee some strict liability infringements in their legislation, either for criminal or for non criminal infringements.

Treatment of attempted infringements

Treatment under criminal law

4.28 MS were asked if an attempt to commit a customs infringement under **criminal** and under **non criminal law** was punishable.

In 21 MS an attempt to commit a customs infringement is punishable under criminal law and in 7 MS it is punishable under non criminal law.

Moreover in 10 MS under certain conditions (different in each MS) the prosecutor has the discretionary power to pursue attempted customs infringements.

Infringements committed in other MS

MS were asked about what action they might take in respect of customs infringements committed in another MS.

11 MS indicated that they can only do so in specific circumstances. Examples include criterion that the offence must have been detected there or that the perpetrator must be a national and must not have already been punished in the MS where the infringement occurred

12 MS indicated that they cannot normally prosecute offences committed in other MS, although again caveats were identified.

Only 1 MS can take action under non criminal procedures in respect of infringements committed in other countries where the results are felt in that MS.

Time limits

MS were asked whether they had specific time limits for **initiating** a procedure (whether this be classed as starting an investigation, bringing charges or some other action), if such time limits can be **suspended or interrupted**, and if so what can trigger the suspension or interruption and what maximum time limits apply so that after their expiry any investigation or legal action is **time barred**.

We also sought information as to whether MS have time limits concerning the **imposition** (that is the decision to penalise and the notification of that decision) and the **execution** of penalties (that is the carrying out of the sentence or attempted collection of the financial penalty).

Time limits are to some degree an area of convergence, in that all but one MS employs them. However, the actual limits applicable vary considerably. All such time limits are the result of national legislation that in many cases applies not only to customs infringements but also to non-customs offences and infringements.

22 MS have time limits (either variable or fixed for initiating the infringement procedure

For infringements under criminal law the time limits vary between 1and 30 years. In most MS the time limits run from the date the offence was committed

Concerning the suspension and interruption of time limits, most MS impose a maximum deadline after which, notwithstanding any interruptions or suspensions, the investigation will be barred.

All but three MS have time limits for imposing a penalty although they vary considerably

All but five MS have time limits for the execution of the penalty.

AEO authorisations and the impact of infringements

We analysed how infringements can affect AEO status of businesses.

The 22 MS who contributed to this section of the report all pointed out that the Community provisions for granting AEO status apply equally to all and the basic criteria for implementation are standard.

MS were also asked whether as a matter of law or national policy they excluded minor customs infringements when considering the compliance records of established AEOs or new applicants for AEO status. Again there is evidence of convergence here, with 18 MS reporting that they do overlook minor infringements when considering overall compliance. The types of infringements classified as minor by these MS include

- typing mistakes in customs declarations
- incorrect tariff classification (including status) with minor effect
- minor deviation between declared and assessed value and quantities
- failure to comply with time limits
- use of an incorrect account number.

However, it should be noted that several MS indicated that the nature and the frequency of such minor infringements are factors which help determine their overall view of trader compliance.

CRIMINAL PENALTIES

Types of criminal penalties

MS were asked to consider 15 types of penalties and comment as to whether they are deemed to be considered a criminal penalty, a non criminal penalty or both within their national legislation.

The answers to the questionnaire suggest that not all of the 15 alternatives considered in this part of the questionnaire are provided for within the legislation of all MS. .

Fine. 22 MS commonly apply financial penalties of this nature in criminal infringements..

Pecuniary Charge. 11 MS do recognise the term and utilise pecuniary charges in criminal infringements. A number of other MS commented that their legislation does not distinguish between a fine and a pecuniary charge or that pecuniary charges are not provided for, although some use both terms within their legislation, and some use the term pecuniary liability rather than pecuniary charge.

Imprisonment. All 24 MS consider this a criminal penalty and for some it is the main criminal penalty. As with financial penalties the range of sentences across MS depends on the severity of the infringement and takes into account aggravating and mitigating factors). MS reported a range between 1 day and 20 years+.

Disqualification for a natural person from engaging in an activity requiring authorisation or approval, or funding, managing or directoring a company or foundation. 10 MS – advise that this may be considered as a consequence of a criminal penalty. In 3 MS it is a ancillary penalty..

Confiscation of the goods. 2 MS consider this may be either a criminal penalty or a criminal measure

Ban on access to public assistance or subsidies. Only 4 MS consider this as a criminal penalty. Most MS advised that this is not provided for in penalty legislation.

Publicising Judicial decisions. 9 MS consider this to be a criminal penalty. .

Refusal to grant authorisation. Only 2 MS considers this to be a criminal penalty, (only imposed on legal persons). 12 MS consider this type of action or measure as a consequence of the infringement rather than as a criminal penalty.

Withdrawal of granted authorisation. 4 MS consider this may be a criminal penalty. Again other MS comment that this is considered a measure or consequence and not a penalty.

Suspension of granted authorisations. 2 MS apply it as a criminal penalty–

Temporary or permanent disqualification from the practice of industrial or commercial activities. 13 MS considered that this may be a criminal penalty.

Placing under judicial supervision. 4 MS consider this may be a criminal penalty.

Judicial winding up order. 9 MS –consider this as a criminal penalty. This is only applicable in cases where the offender is a legal person.

The obligation to adopt specific measures in order to avoid the consequences of conduct such as that on which the criminal liability was founded. 3 MS consider this as a criminal penalty. Some MS comment that this is not provided for in legislation or applicable to customs infringements.

.

Aggravating and mitigating factors

MS were asked to state whether any aggravating and/or mitigating factors are taken into account when penalising in criminal cases. They were also asked to provide details of the factors taken into account.

One area of convergence is that all MS confirm that an obligation to consider aggravating and/or mitigating factors is provided for in law. Not all specific factors are identified, and the matters MS may take into account are quite wide ranging. Generally they are not specific to customs infringements, and customs authorities' practices and/or policies may be relied upon. It is usually necessary to give consideration to these factors on several occasions throughout the process starting from qualification of the infringement itself through to imposition of the penalty. In some MS within their legal framework the judge

has certain discretion to take into consideration other aggravating and/or mitigating factors.

Concerning the main aggravating factors constituting the circumstances of the offence, 19 MS consider perpetration by members of an organised crime gang to be one and 13 MS consider the amount of duties evaded to be an aggravating factor while for the aggravating factors constituting characteristics of the offender and 20 MS see recidivism and 14 MS fraudulent intent as mitigating factors.

The situation is less homogeneous with regard to mitigating factors as so many of them seem to be taken into account across MS. Partial convergence (9MS) considers co-operation with customs authorities (including confession) as a mitigating factor

NON CRIMINAL PENALTIES

Types of non criminal penalties

Those MS that have non criminal penalty regimes were asked to advise which of the 15 penalty types identified in the questionnaire are used.

However, 8 MS do **not** operate non criminal penalty regimes.

The main non criminal penalties are:

Fine. This is the principal penalty imposed in non criminal cases, with 16 MS –

Pecuniary Charge. 13 MS do recognise the term within their non criminal penalty regimes. A number of other MS commented that their legislation does not distinguish between a fine and a pecuniary charge or that pecuniary charges are not provided for. Although a fine and a pecuniary charge are in effect similar outcomes (a financial penalty) there are differences in terminology across MS. Several MS use both terms within their legislation, and some MS use the term pecuniary liability rather than pecuniary charge.

Imprisonment. One MS only considers this as a non criminal penalty.

Disqualification for a natural person from engaging in an activity requiring authorisation or approval, or funding, managing or directoring a company or foundation. 6 MS advise that this type of consequence of an infringement may be considered a non criminal penalty. This type of measure is not considered a penalty in the others .

Confiscation of the goods. 16 MS –consider confiscation of goods can be a non criminal penalty.

Ban on access to public assistance or subsidies. Most MS advised that this is not provided for in legislation therefore is not considered any type of penalty. Only 4 MS – provide for this action as a non criminal penalty .

Publication of condemnatory decisions. Several MS commented that any publication of condemnatory decisions is not done by the Customs authorities.

Temporary or permanent disqualification from the practice of industrial or commercial activities. 4 MS consider this a penalty in non criminal cases.

Aggravating and mitigating factors

MS were also asked to consider if there are any aggravating and/or mitigating factors to be taken into consideration when penalising in non criminal cases.

As with the findings for criminal penalties, it is clear that, although terminology varies across MS, they all consider the same factors when applying penalties. However, in comparison with the field of criminal penalties, there is less common ground as far as aggravating and mitigating factors are concerned

These factors can be divided into two separate groups; those which constitute the circumstances of the offence, and those that constitute characteristics of the offender.

All MS confirm that an obligation to consider aggravating and/or mitigating factors is provided for in law. Not all the specific factors are identified and are generally quite wide ranging. Generally they are not specific to customs infringements and customs authorities' practices / policies may be relied upon. Even in non criminal cases it is usually necessary to give consideration to these factors on several occasions throughout the process starting from qualification of the infringement itself through to imposition of the penalty. In some MS within their legal framework the judge has certain discretion to take into consideration other aggravating and/or mitigating factors.

In some MS certain factors act as eliminating factors that stop certain infringements from being classed as an offence at all. In some these considerations can be the deciding factor between whether the infringement is dealt with as a criminal prosecution or an administrative settlement.

Concerning the main aggravating factors constituting the circumstances of the offence, 8 MS consider perpetration by members of an organised crime gang to be one and 6 MS consider the amount of duties evaded to be an aggravating factor while for the aggravating factors constituting characteristics of the offender 11 MS see recidivism and 8MS fraudulent intent as aggravating factors.

The situation is event more divergent concerning the mitigating factors.

BOUNDARIES BETWEEN CRIMINAL AND NON CRIMINAL INFRINGEMENTS AND PENALTIES WITHIN MEMBER STATES

Boundaries between types of infringements/offences

The Project Group sought to establish the most common infringements committed in MS.

Smuggling, evasion of import or export duties, tax evasion / fraud, tax receiving, importing or exporting goods illegally, receiving stolen goods, and forgery of business

documents including false invoices are the most common types of customs related infringements.

MS are divided with regard to the treatment of infringements involving the payment of customs debt as 11 of them do not differentiate it from the treatment of other infringements but 12 MS do so.

The boundaries between criminal and non criminal treatment of customs infringements are diverse.

Financial thresholds are one of the means to establish the nature of the treatment of customs infringement and of the penalty to be imposed. Although there is a threshold of 4000 EUR in the Convention of the Protection of the Community's financial interests (see point …) the specific thresholds in the MS vary between 266 EUR and 50000 Euros.

Of those MS who have both criminal and non criminal penalties for customs offences, 10 MS consider that joint application is prohibited, while 4 consider it to be possible

LEGAL PERSONS

The term 'legal person' is generally used to describe an entity that is not a natural person but which allows natural persons or groups of natural persons to act as a single entity and to possess autonomous legal capacity for various purposes.

Participating MS were asked whether legal persons are defined in national legislation. Responses showed that most MS have either a specific legal definition or identify a number of bodies which are considered in national law (though not necessarily in specific customs legislation) as legal persons: 20 MS have a legal definition of "person" which includes both legal and natural persons.

Four MS indicated that they provide neither a definition or otherwise specifically identify what they consider a legal person to be. However, information from these MS indicates that the concept of non-natural entities is accepted.

MS were asked to clarify the rules concerning the accountability (responsibility) of legal persons in cases of infringements of customs law. In particular, we wished to establish whether a legal person can be held responsible for an infringement.

In most MS national legislation does provide that the legal person itself can be held responsible for their actions relating to any customs related infringements they commit. In those MS customs law does not provide for legal persons to be held responsible but considers the natural representative or representatives of the legal person as the liable person.

In most MS a legal person responsible for a customs infringement punishable under criminal law can be prosecuted. This is not the case however in, 8 MS.

A number of factors determine liability for customs infringements, including whether the infringement is created under criminal or non criminal laws, and whether the penalty

imposed is a criminal or non criminal one. As a result there is little uniformity in the way that MS determine the liability for a penalty.

For infringements dealt with under criminal law 9 MS, impose penalty liabilities only on natural persons All other MS participating in the survey are able to make both natural and legal persons liable, either through separate penalties being levied at the same time, or through joint and several liability provisions, or through the ability to transfer the obligation to pay penalties from one to the other in cases where behaviour can be attributed to a natural person.

BURDEN OF PROOF

The study sought information about the rules on burden of proof applicable in each MS.

The presumption of innocence is present in the legislation of MS

In all MS, both in criminal and non criminal cases the burden of proof lies with the State (customs authority or national prosecutor), while in non criminal cases the relevant authority assigned is usually the customs authority

In 8 MS and under specific circumstances the burden of proof shifts from the authority to the perpetrator

In all MS the authorities have the right to oblige the traders to provide information and documentation relevant to the customs infringement

Similarly, all MS have the right to collect seize or acquire evidence although the scope of this right can vary.

RETROACTIVITY

The COM questionnaire sought information on retroactivity.

Retroactive or retrospective law is that which takes away or impairs vested rights acquired under existing laws, creates new obligations, imposes new duties, or attaches a new and different legal effect to transactions or considerations already past.

The Report diistinguishes between:

a) retroactive law that imposes penalties where none previously existed and

b) retroactive application of new law where there is a benefit to the person or entity committing an infringement.

Retroactive imposition of penalties

MS were asked whether under their national legislation penalties can be imposed retroactively, for example if there is a change of law between the time the infringement was committed and the judgement. Responses indicated strong convergence, in that no MS retroactively applies any law where none existed before. Nor does any MS retroactively apply any new law which increases a penalty that existed before.

Retroactive application of more lenient law

Another area of strong convergence is to be found in the application of the 'principle of more lenient law'. The principle provides that where the law changes between the commission of an infringement and the imposition of a penalty, the person penalised for the infringement benefits through the application of the more lenient law. 20 MS adopt the principle of more lenient law for customs infringements. Only 4 MS do not apply the principle to customs infringements..

Regarding the time limits applied to retroactive application, together with any conditions imposed by MS, there is close alignment in national practice. All 21 MS applying the more lenient law principle appear to apply that law at the time the infringement is actually penalised regardless of the timescale between the infringement being committed and the judgement imposing any penalty.

For those MS with both criminal and non criminal regimes there is no differences in the application of retroactivity occurring.

PROCEDURAL ISSUES

Settlement

The COM sought information from MS concerning the potential and procedures for settlement of customs offences. 24 MS responded.

For the purposes of this report we have used the following definition. Settlement is the term applied to any procedure within the legal or administrative system of a MS 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 proceedings. Typically there is no power to impose a settlement and the offender is under no obligation to accept an offer. If an agreement to settle cannot be reached, the normal procedure for prosecution of the infringement would be followed.

MS were asked if there are any procedures in their country for settlement in respect of customs offences. 15 MS indicated that they have a procedure for settlement of customs offences.

In all of those MS but one, it is considered as an alternative action usually for criminal penalties.

If the deadlines for reaching settlement are not respected, in most MS who make use of this alternative, this means that the liable person loses the possibility to have his penalty reduced or the procedure terminated.

Territorial competence, appeals, and the impact on the appeals procedure of payment of customs debt

MS were first asked about territorial competence in deciding which authority is competent to deal with the infringement. The rules determining which authority is competent to deal with the infringement are in principal similar in all MS. It is determined either by the place of detection, the place of commitment of the infringement or the place of living of the person committing the infringement or the place where the person has been arrested. In most MS, it is the place where the infringement has taken place that determines the competent authority, in most cases, the competent customs office or directorate.

MS were asked to identify the competent authority for settling appeals against customs penalties. In the case of criminal penalties, the courts are the competent authorities. The names (and perhaps the relative status) of these courts varies from MS to MS, but the essential point is that they are all judicial bodies separate from the customs authority.

For those MS who employ non-criminal penalties the position is slightly different. In 4 MS, the competent authority is the customs administration .

In 8 MS, the competent authority is the court. Again, the names vary, but they can be a civil court, administrative court or a specialised court.

MS were also asked whether the payment of the customs debt during the appeals procedure has any effect on the appeal itself. 17 MS, confirmed that payment has no impact on the appeal. 5 MS, stated that payment can be a mitigating factor in an appeal case, but the decision lies in the hands of the competent court.

Treatment of several imports

MS were also asked to provide information concerning the penalty treatment of scenarios in which infringements cover several separate importation events, and where the same conduct results in several different infringements.

It seems that the majority of MS opt for a ‘one import one infringement’ system, but that there are several types of exceptions and ‘special treatments’. For instance, several countries recognise the concept of a continuing offence and, depending on the circumstances of such cases, may some treat such types of infringement as a single event for penalty purposes.

As regards conduct resulting in several infringements, a number of MS impose penalties in respect of the most severe infringement, even where they separately identify the different infringements

It can also be seen that the vast majority of MS do not allow overlapping of criminal and non criminal penalties where several infringements occur. It is clear that diversity is well implanted in the individual systems of the MS.

GENERAL CONCLUSIONS AND RECOMMENDATIONS:

Conclusions

The study gives an overview of the convergences and divergences in MS legal penalty systems, based on identification of MS legal texts (legal analysis and practices completed by the 7 cases). The partial conclusions give a detailed picture of specific convergences and divergences. The study deals with provisions relating to purely customs infringements; any other infringements are not part of the study.

Part of the MS penalty systems are based on customs provisions; part on general criminal (and where relevant non criminal) law. Possible recommendations will have to respect this distinction.

At first sight the diversity of legal systems and the diversity of the treatment of customs infringements, the difference on the nature of the penalty for the same customs offence and the procedure according to which the customs penalty is imposed and executed is obvious.

However convergence areas have been identified by the group (in particular regarding the terms of treatment of the infringement and of the imposition of the penalty and some times in terms of the procedure (e.g. time limits).

Recommendations

Recommendations to the COM:

The implementation of customs legislation by the MS and the effects of the convergences and divergences on day to day work of trade in the EU and the MS need to be further examined.

In examining these questions the guiding principles of the MCC, such as electronic declaration, AEO, systems based approach and centralised clearance, should be the starting point.

In order to get a balanced view the compliance strategy of MS should be taken into account, including elements such as general measures for improving compliance and the checks on declarations and internal management systems within companies.

Care should also be taken to include in the impact assessment all MS accounting for the highest number of dealings with customs. The distinction between small and large MS is less relevant

COM should take action to invite the MS who have not participated to the group yet, to provide the relevant information in order to have a complete view of the situation in the EU.

Recommendations to the MS:

(1) MS are invited to co-operate to the further examination of the penalties regime by the Commission.

(2) MS (in particular those reviewing their legislation) should take into consideration good practices identified during the life of the project and actively consider adopting those which are likely to provide simplification benefits for the customs authorities and the trade, like:

- strict liability infringements: not all MS have strict liability infringements, which is however a concept which may be considered a useful simplification in less serious customs infringements;

- time limits: some MS do not foresee time limits to impose the penalty, while consideration should be given to the fact that this might have an adverse economic impact to the liable companies which are waiting for the decision.

INDEX OF TERMS USED IN THIS REPORT

'measures'	See point 4.13
'strict liability infringement'	See point 4.26
'retroactive or retrospective law'	See Section 10
'non criminal penalties'	See point 6.2
'settlement'	See point 11.2

- **INTRODUCTION**

1.1 An infringement to Community Customs law often impacts on customs debt and can trigger the application of penalties. Although customs debts are partially Community own resources and have their its legal basis in Community provisions, in case of infringement the application of penalties is based on national provisions which differ by nature and by severity according to the Member State (MS) that is competent for it.

1.2 Moreover, the global nature of trade and the existence of global economic operators in Europe, as well as fraud, terrorism and other international threats which customs are called to face, may require a more uniform approach of customs related infringements and penalties. This is even more evident in the context of the implementation of the 'security amendments' of the Customs Code and of the missions of customs, as defined by the Modernized Customs Code (MCC)[31].

1.3 For example, the granting of the AEO (Authorised Economic Operator) status depends (among other criteria) on the record of compliance of the economic operator with customs requirements, which implies that no serious or repeated infringements of customs rules have been committed. If compliance with customs law has different criteria and seriousness of infringements is not qualified in the same way, customs legislation may not be applied in a uniform manner. Such a scenario could be detrimental to the economic operators due to inequality of treatment and is incompatible with the Internal Market.

1.4 Moreover, the MCC is conceived for a multinational electronic environment where a decision taken by a MS is applied in all other MS, and customs declaration and procedures often involve more than one MS. As is already the norm for AEO status, all simplifications foreseen by the MCC will be granted only depending on a satisfactory record of compliance and withdrawn where this condition is no longer met.

1.5 For all the above reasons, the Customs Policy Group (Deputies) meeting of 30 January 2008 gave a mandate to the Commission (COM) to examine and assess the situation in the field of infringements and customs penalties.

1.6 Art.10 of the Treaty on the European Community (TEC) - now Art. 4(3) of the Treaty on the European Union (TEU) - foresaw that MS should take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaty or resulting from action taken by the institutions of the Community. Regulation (EC, Euratom) N° 2985/95 of the Council of 18 December 1995 concerning the protection of financial interests of the Community, fixes the principle of administrative sanctions[32].

1.7 Although, in other Union policy areas, for example in the Agricultural and Fisheries sector, administrative penalties are part of the community legislation, this has not been possible in the Customs field under the previous Treaty, given the criminal character of some of the customs penalties. Now for the first time there is a reference to

---

[31] Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 (OJ no L 145 of 4.06.2008, p. 1).

[32] J.O. n° L 312 of 23.12.1995, p.1

customs penalties in the MCC, which reiterates the obligation for MS to provide for penalties in case of failure to comply with customs legislation, and confirms that these penalties should be effective, proportionate and dissuasive.

1.8 Although Art. 21 of the MCC foresees the notification by the MS to the COM of their penalty regimes, this report is not directly linked to this obligation, but has it as background.

1.9. It is worth mentioning that Article 14 of the MCC establishes the link between compliance with customs (and tax) requirements and AEO status. This is another reason and incentive to ensure that the different national penalties regimes do not lead to discriminatory treatment.

- **METHODOLOGY**

2.1 COM established a Project Group (PG) under the Customs 2013 (C 2013) Program on a voluntary basis which would analyse the national regimes of customs infringements and penalties and report back to the Commission.

The participation of Member States in the Project Group

2.2 **24 out of 27 MS divided in two sub-groups managed by two Member States (UK and Finland as sub-group leaders)** (see list in **Annex 1)** participated in the PG and their tasks were to:

- identify the key features of the infringements/penalties national regimes
- identify the legal sources
- spot the differences
- identify areas of convergence
- record different views as to whether it would be beneficial or not to align penalties
- provide indications on the feasibility of such an alignment

2.3 COM arranged an initial meeting on 26 May 2008 to explore the scope for a project designed to assess whether there is a need to take any action in the area of penalties for infringements of Community Customs law and the feasibility of doing so. They produced a draft questionnaire designed to elicit information about the penalty systems employed by each MS. Although in the beginning COM had the intention of establishing a Project group with 10-12 MS, the level of interest in the proposed project was very high, with 24 MS expressing an interest in actively contributing to the work. Two further plenary meetings took place (on 15 September and 15 December 2008), during which the detail of the questionnaire was finalised. Detailed project work began in January 2009.

2.4 For some MS the situation has evolved in so far that their legislation concerning infringements and penalties related to customs has been modified. Therefore several updates of the contributions took place and there might still be changes in their legislation by the time this report is published.

2.5 The size of the project and the number of MS (24) prepared to actively contribute to the work dictated the way in which the project work was organised and distributed. The core data upon which the work has been based were the replies provided to the questionnaire that the Commission sent to MS (version dated 2 July 2008).

2.6 The first task involved the collation of the data supplied by MS in their responses to the COM questionnaire. It should be stressed that MS did not provide answers to all questions which explains some gaps in the figures shown throughout the report. The PG decided that the most effective way to do this work and the subsequent analysis was to create two sub-groups and allocate responsibility for various sections within the

questionnaire between the groups. MS within each group then volunteered to work on the sections, either individually or in partnership with others.

2.7 The main role of the COM was to facilitate and monitor the Project Group. In particular COM organised and chaired over all plenary meetings, presented a project progress report to the Customs Policy Group in July 2009, and provided information on developments at EU level, as well as logistical and administrative support throughout the project. Their technical assistance has been invaluable in taking forward the issues highlighted during the work of the project group.

2.8 Those taking responsibility for collating the responses received for each section of the questionnaire were also responsible for initial analysis of the data. In many instances the initial analysis identified the need for clarification of the original responses, or suggested supplementary questions, the answers to which were sought to aid understanding of the policies and procedures in place across participating MS.

2.9 Those MS conducting the initial analysis presented their findings to other members of their particular sub-group at a series of meetings between January and October 2009. Once a sub-group had considered a particular piece of analysis it then shared its findings and conclusions with members of the other sub-group, so that the latter had the opportunity to comment and to seek amendment where appropriate. At the outset it was decided that dialogue between the sub-groups would be facilitated by the attendance of the Chair of each group at the meetings of the other. 10 sub-group meetings were held in total (22 January 2009, 23 January, 3 March, 27 March, 5 May, 8 May, 16 July, 23 July, 1 October and 8 October 2009). In addition, 4 plenary sessions attended by all MS involved in the project took place (5 June and 16 November 2009, and 19/20 January and 9/10 June 2010). At these, MS presented their findings to the wider group, discussed issues of interest and concern, agreed changes to the original delivery plans for the group, and approved the final report.

2.10 The operation of the sub-groups has involved a significant amount of work by representatives of all MS concerned. Areas covered included the types of infringements covered by each regime, the nature of the penalties available (whether criminal, administrative, or a mixture of both), the aggravating and mitigating factors taken into account by MS in deciding the level (and in some cases the type) of penalty to be applied, the persons held to be responsible for the infringement, the link between national penalties and the AEO compliance criterion and where the burden of proof lies.

2.11 Particular attention has been given to the Convention on the Protection of the European Community's financial interests. Seven case studies have been created with the aim of establishing how each MS would deal with a particular contravention. As part of the project MS were asked to contribute to a Glossary. Ireland took responsibility for compiling the document. Analysis of the responses indicates that, while many MS have broadly common understandings, very few of the key terms are specifically defined in national law. However, even in those areas where a degree of shared understanding exists, there are usually a minority of MS who do not subscribe to the majority approach and this represents a potential barrier to a common framework. This original Glossary does provide an interesting picture of accepted terminology in the different MS, and of the similarities and differences which exist. As such it has been included at Annex 2 to this report.

2.12 It was decided that this report will be in two parts; this study containing detailed information on the current picture together with relevant analysis is being produced for the project owner (COM), while an Executive Summary which will be made public for the external audience through the TAXUD website and other forums.

The structure of the report

2.13 The structure of the report follows to a certain extent the structure of the Questionnaire although it has been slightly modified in order to avoid duplications.

2.14 The report has **12 Sections** and **6 Annexes**. Each section refers to **Tables** grouping the detailed answers on a specific subject. Sometimes several sections refer to the same table. Consequently for a better understanding and more complete information, each Section should be read together with the relevant tables. An **Executive Summary** and an **Index of Terms** have also been added at the beginning. The function of the index is to indicate where the most used terms can be found in the report and should not be confused with the definitions of terms in the Glossary.

2.15 The **12 Sections** of the report are the following:

The *Introduction* (**Section 1**), followed by the *Methodology* (**Section 2**) and the *Union legal background* (**Section 3**) shall be used as a scene setter of the report.

Section 4 refers to several *general*, cross-cutting, *issues*, some of which are explored more thoroughly in the following sections.

Section 5 and 6 refer respectively to the *criminal and non criminal penalties*, including their mitigating/aggravating factors.

Section 7 examines the *boundaries between criminal and non criminal infringements/penalties* in the MS.

Section 8 studies the question of the *legal persons* with regard to their liability for customs infringements.

Section 9 is about the rules on *burden of proof* in the different MS.

Section 10 sought information on the *retroactive application* of the law and its impact on penalties.

Section 11 analyses certain *procedural issues* such as settlement, territorial competence, impact on appeal, procedure of payment of customs debt and treatment of several imports.

Section 12 presents *general conclusions and recommendations*.

2.16 The **6 Annexes** are the following:

Annex 1 lists the *participating Member States*.

Annex 2 includes the *Glossary*.

Annex 3 refers to the *Questionnaire* on the basis of which this report was done.

Annex 4 includes the *detailed answers* in the form of *Tables* referring to the Sections.

Annex 5 is about the *investigatory powers* of the customs authorities.

Annex 6 refers to *case studies* which examine the treatment by the MS on a practical level of some of the most common infringements.

- **UNION LEGAL BACKGROUND**

Article 21 of the Modernised Customs Code (MCC)

3.1 MCC (Regulation (EC) No 450/2008)[33] simplifies legislation and streamlines customs processes and procedures for the benefit of both customs authorities and traders. Article 21(1) MCC obliges MS to provide for effective, proportionate and dissuasive penalties for failure to comply with Community customs legislation.

3.2 Article 21(2) MCC specifies a number of forms that administrative (i.e. non criminal) penalties may take. The measures so specified are not exhaustive, but include the main types of penalty used by MS. By far the most common non criminal penalty is pecuniary charge (financial penalty). Financial penalties may be non criminal penalties in their own right, that is to say that the only penalty envisaged to address an infringement is a fine imposed by an administrative body. However where an infringement falls to be dealt with under the criminal law of a MS, financial penalties may also be offered in lieu of a criminal penalty as a way of settling a case. Other penalties/measures that are envisaged as non criminal in nature by the article include the revocation, suspension or amendment of any authorisation held by the person or persons concerned.

3.3 From 2013 Article 21(3) MCC will impose an obligation for MS to notify COM of the national penalty provisions in place.

Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests

3.4 Through Regulation No 2988/95[34], the Council of the European Union adopted general rules relating to Community administrative (i.e. non criminal) penalties (and so-called administrative measures) concerning irregularities with regard to Community law having an impact on the Communities' financial interests.

3.5 Against this backdrop, the regulation foresees that no such administrative penalty may be imposed unless a Community act prior to the irregularity has made provision for it. Irregular conduct under the regulation according to its preamble includes fraudulent actions as defined in the Convention on the protection of the European Communities' financial interests. Moreover, Community law, not national law, shall determine the nature and scope of the administrative penalties (and measures) necessary for the correct application of the Community rules in question. However, subject to the Community law applicable, the procedures for the application of those administrative penalties (and measures) shall be governed by the laws of the MS.

3.6 The regulation provides a number of general rules and conditions governing the way in which MS should deal with relevant irregularities. Article 5 foresees that intentional irregularities or those caused by negligence may lead to the following administrative penalties:

(a) payment of an administrative fine;

[33] OJ L 145 4.06.2008

[34] OJ L 312, 23.12.1995, p. 1

(b) payment of an amount greater than the amounts wrongly received or evaded, plus interest where appropriate; this additional sum shall be determined in accordance with a percentage to be set in the specific rules, and may not exceed the level strictly necessary to constitute a deterrent;

(c) total or partial removal of an advantage granted by Community rules, even if the operator wrongly benefited from only a part of that advantage;

(d) exclusion from, or withdrawal of, the advantage for a period subsequent to that of the irregularity;

(e) temporary withdrawal of the approval or recognition necessary for participation in a Community aid scheme;

(f) the loss of a security or deposit provided for the purpose of complying with the conditions laid down by rules or the replenishment of the amount of a security wrongly released;

(g) other penalties of a purely economic type, equivalent in nature and scope, provided for in the sectoral rules adopted by the Council in the light of the specific requirements of the sectors concerned and in compliance with the implementing powers conferred on the Commission by the Council.

Convention on the protection of the European Communities' financial Interests[35]

3.7 Like Regulation No 2988/95[36], the Convention is aimed at tackling fraud affecting the financial interests of the European Communities. Under the Convention, fraud affecting both expenditure and revenue must be punishable by effective, proportionate and dissuasive criminal penalties in every MS.

3.8 The Convention requires each MS to take the necessary measures to ensure instigating, participating in, or attempting to defraud the Community is punishable by effective, proportionate and dissuasive criminal penalties. In cases of serious fraud, these penalties must include the ability to impose custodial sentences.

3.9 Some specific provisions within Article 1 of the Convention are of particular relevance to this review:

- Article 1(1) defines the term fraud for the purposes of helping to establish criminal offences

- Article 1(2) requires each MS to ensure that their national legislation allows all the behaviours identified in article 1(1) to be treated as criminal offences in the context of the protection of European Communities' financial interests

3.10 Article 2 relates specifically to penalties and requires that:

---

35 Council Act of 26 July 1995 drawing up the Convention on the protection of the financial interests of the European Communities [OJ C 316, 27.11.1995].

36 See para.3.4

- The conduct and behaviours identified in article 1 are punishable through the imposition of national criminal penalties

- Penalties for serious frauds involving sums exceeding 50,000 euros must make provision for custodial sentences and extradition

- In cases of minor frauds involving a total amount of less than 4,000 euros and where the circumstances are not particularly serious MS do not need make provisions for criminal penalties.

3.11 Article 3 requires that each Member State shall take the necessary measures to allow heads of businesses or any persons having power to take decisions or exercise control within a business to be declared criminally liable in accordance with the principles defined by its national law in cases of fraud affecting the European Community's financial interests, as referred to in Article 1,

Lisbon Treaty[37]

3.12 Although the Project Group started its work before the entry into force of the Lisbon Treaty, it ended its mandate with the Treaty in force. For the sake of giving a more complete picture of the legal background, it is therefore important to mention the relevant provisions of the EU's new Treaties.

3.13 According to Art. 83(2) of the Treaty on the Functioning of the European Union (TFEU), if the approximation of criminal laws and regulations of MS proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned.

3.14 Customs policy is an area which has been subject to a very high degree of harmonisation and may then allow such approximation of criminal laws and regulations insofar as it is proven that it is essential to an effective implementation of that policy.

[37] OJ C83 of 30.3.2010, p. 47.

- **GENERAL ISSUES**

4.1 A number of topics were grouped together within section 4 of the original questionnaire issued to MS. These were

- National legislation covering customs infringements
- The nature of national penalties for customs infringements
- Persons liable in cases of infringement
- Treatment of attempted infringements
- Infringements committed in other MS
- Time limits
- AEO authorisations and the impact of infringements
- main / ancillary penalties
- other measures
- intent / negligence / strict liability

4.2 Belgium analysed responses for the first 2 items. Slovenia looked at persons liable, attempted infringements and infringements committed in other MS. Hungary addressed AEO issues, and Portugal looked at time limits. In several instances the relevant analyst MS identified supplementary questions to which MS were asked to respond.

National legislation (Table 4001)

4.3 MS were asked to state the national legislation applicable to customs infringements and penalties. The relevant national provisions are reproduced in table 4001 of Annex 4 to this report. As expected most MS have a number of acts and codes forming the legislative framework within which they penalise customs infringements. The only direct area of convergence occurs between MS A and B who work within a common 'General Law on customs and excise matters'.

4.4 All MS contributing to this report consider that they operate a system of penalties for dealing with customs infringements that they consider to be effective, proportionate and dissuasive (the very criteria identified with Article 21 of the MCC). MS provided the following general details concerning their systems.

The nature of national penalties for customs infringements

4.5 16 out of 24 MS advised that their penalty systems provide for both criminal and non criminal penalties to be applied. 8 MS reported that their systems operate only criminal penalties for customs infringements. MS A's non criminal penalties encompass two different procedures, 'contravention' and 'administrative'. Both contravention and administrative penalties are aimed at infringements which are not serious enough to be

dealt with under the criminal penalty system, and the criteria for using one or the other non criminal procedure is set out in statute.

Main & Ancillary Penalties (Table 7003)

4.6 For the purposes of this report we agreed that an ancillary penalty is one that cannot stand alone but is often applied with a main penalty. An example given to assist with clarification was the disqualification of an individual convicted of a customs offence from engaging in industrial or commercial activities. MS were asked to identify any ancillary penalties that can be applied along with the main penalties they may be paired with. The detailed responses may be found in table 7003. Note that the legal systems of 5 MS do not provide for ancillary penalties.

4.7 In those MS whose legal systems do recognise the concept of ancillary penalties there are some differences in the terms used. In MS A they are known as supplementary punishments. In MS B they are known as complementary penalties.

4.8 As noted in later sections of the report the most common main penalties applied by all MS are fines /pecuniary charges and imprisonment. 17 MS report main penalties including these. Some MS reported additional main penalties including MS B who advise that for very grave smuggling infringements or repeated infringements there is the possibility to ban import or export operations for a fixed period of up to 2 years. By contrast such a ban on business operations (up to 5 years) is considered as an ancillary penalty by MS C when applied by the Court in criminal proceedings where the main penalty is imprisonment or a fine.

4.9. MS C and MS D both note that it is possible for a period of community service work to be given as a main penalty in criminal cases. By contrast in MS E non paid public service is considered as an ancillary penalty in a criminal case. MS E also noted that such ancillary penalties may only be requested by the pubic prosecutor at the demand of the customs administration. MS F report 3 main penalties with placing under judicial supervision also considered to be a main penalty, along with imposition of a fine and/or imprisonment. Main penalties in non criminal cases include warnings in MS G, MS H and the MS I.

4.10 MS J is the only MS who reported that confiscation of goods can be considered as a main penalty for both criminal and non criminal smuggling infringements. Their legal system also allows for confiscation of the proceeds of crime as an ancillary penalty for criminal smuggling infringements. In 9 MS (MS L – administrative procedure) confiscation of the good and / or vehicles used when committing an infringement is considered to be an ancillary penalty. In MS L (criminal procedure) and MS M confiscation is considered to be a measure rather than an ancillary (supplementary) penalty. In MS D confiscation is also considered to be a measure in both criminal and contravention procedures. There are no ancillary penalties in the case of contraventions or for non criminal infringements. 3 MS also note that although confiscation may be an ancillary penalty in certain circumstances confiscation may also be applied without a main penalty being imposed. For example where the perpetrator cannot be identified or cannot be prosecuted.

4.11 One other area of convergence occurs in the imposition of a temporary or permanent disqualification of business / commercial activities – 8 MS consider this may be imposed as an ancillary penalty.

Partial conclusions on "main & ancillary penalties"

The most common main penalties applied by all MS are fines /pecuniary charges, regardless of their criminal or non criminal nature, and imprisonment.

The most common ancillary penalties (8 MS) concern the disqualification from business/commercial activities.

Other measures (tables 5001 and 7003)

4.12 To consider these further, additional questions were posed to clarify whether national systems provide for other measures aimed at ensuring compliance to be applied in addition to criminal and non criminal penalties. It should be noted that MS take other action than penalties or sanctions against those failing to comply with customs laws. Typically these will include the revocation, suspension or amendment of authorisations held by the person or persons concerned, or the insistence on new conditions connected with such authorisations (for example the provision of a monetary security against future duty debts). Article 21.2 of the Modernised Customs Code provides that these types of measures may be envisaged as administrative (non criminal) penalties. However many MS do not see them as penalties at all, rather as a consequence of non-compliance.

4.13 Although infringements may result in similar outcomes the way those outcomes are categorised in national systems is often quite different. For that reason when considering what criminal and non criminal penalties are provided for it was necessary to also consider what other measures may be employed against non-compliant individuals and traders. 'Measures' in this context include any action that is directly linked to non compliance but is not considered to be a penalty within the legislation of each MS.

4.14 All MS other than MS A confirm that their national system provides for measures aimed at ensuring compliance in addition to criminal and non criminal penalties. An area of convergence is to be found in the main type of measure employed. 19 MS (MS B only in non criminal procedures) engage in the refusal, annulment, suspension and or withdrawal of authorisations, approvals and licence. MS C and D additionally note that they may revise the conditions of an existing approval by applying additional requirements.

4.15 Other measures adopted include:

- Surcharge in tourist traffic (pecuniary charge) – 2 MS
- Publication of condemnatory decisions – 3 MS (In MS E this may also be considered a penalty)
- Requirement to provide a financial security – 4 MS
- Written Warning / Reprimand – 2 MS
- Confiscation /Forfeiture – 3 MS (MS F – criminal procedure)
- Seizure of 50% of bank accounts of the offender – MS G (for smuggling or fraud when the evaded duties exceed 150 000 EUR)

- Refusal to issue certificates of Tax Compliance – MS G (where they are required when selling property)

- Probation

Partial conclusions on "other measures":

All MS but one confirm that their national system provides for measures aimed at ensuring compliance in addition to criminal and non criminal penalties. An area of convergence is to be found in the main type of measure employed as 19 MS engage in the refusal, annulment, suspension and or withdrawal of authorisations, approvals and licence (although one of those MS foresees them only in criminal procedures).

Persons liable in cases of infringement (Table 4002 A, B, C)

4.16 MS were asked how they identify the person when a customs infringement has occurred. Slovenia took responsibility for analysing responses, seeking further information, and summarising findings. Detailed responses from MS can be found in table 4002 in Annex 4 to this report. The original questionnaire envisaged a number of different candidates as follows:

- the person who actually commits the infringement
- the person represented
- both of them
- any persons who participated in committing such infringements who were aware or should reasonably have been aware that they were doing so
- any others

Note that **Section 8** of this report contains further detailed information on the liability of legal persons.

Liability for criminal penalties

4.17 For the purposes of **criminal** penalties, all MS identify three categories of persons who can be held liable for customs infringements – the person or persons actually committing the infringement, the planner or instigator of the infringement and anyone aiding others to commit an infringement. However there are some differences how MS treat other types of persons. In 11 MS the person represented by the person committing an infringement can also be liable, depending on the circumstances.

4.18 10 MS also hold liable anyone who might reasonably have been aware that an infringement was being, or was likely to have been committed but who failed to do anything about it. 14 MS can also hold legal persons responsible, usually depending on the nature of the offence. 5 MS can even penalize legal persons even if they have no knowledge of the infringement. This is also the case in 3 other MS, provided that the legal person's executives have at least facilitated or enabled perpetration of the infringement through their negligence. By contrast, in MS A legal persons cannot commit an infringement, because they actually can not act. In MS B even the insurers of

smuggled goods or the person having the goods insured could be made responsible for an infringement. They also have a wide definition of person, who could be punished for an infringement - "the persons involved in fraud in whichever way".

4.19 We also asked whether there are circumstances within national legislation whereby taking action against one person held to be liable precludes action against another. No MS reported this type of action.

4.20 MS were also asked whether a criminal penalty laid against the person committing an infringement, could be transferred to another person who has not been prosecuted. This action is possible only in 3 MS. It is limited to financial penalties. In MS C, when the criminal penalty is a fine, the criminal court can decide to name as liable to pay or share the fine the owner or the holder of the smuggled merchandise or the person represented, even if they have not been prosecuted. In MS D if a natural person is found guilty and a criminal penalty is imposed, the relevant legal person can also be punished without establishing corpus delicti in the actions of the legal person. In MS E the penalty is not transferred, but there can be a civil obligation on persons not prosecuted to pay the penalty.

Liability for non criminal penalties

4.21 For the purpose of **non criminal** penalties, the situation is more complicated. A point of convergence for all MS in that the only person deemed liable by all for a non-criminal infringement is the actual perpetrator. When considering who else might be held liable, the analyst found there is little uniformity in approach. Details for each MS are to be found in table, but the following text provides an indication of the differences found across the Community.

- In MS A's non criminal procedure direct representative and person represented can be in context of committing an infringement considered jointly and severally liable.

- In MS B's non criminal procedure the person represented by the person committing the infringement can be held liable.

- In MS C every person participating in the commission of an infringement is liable (as in criminal cases).

- In MS D for both criminal and non criminal penalties the liable person can be the person committing the infringement, or any person participating in the commission of the infringement. In the case of non criminal penalties MS D may also hold responsible persons using or threatening violence to persuade others to physically commit an infringement, or who mislead others into committing an infringement. Persons held liable under these provisions are known as 'indirect perpetrators'.

- In MS E liability can be laid in both criminal and non criminal procedures on a person committing an infringement, the person represented by the person committing the infringement, or both. Only in criminal cases can any others involved (for example accomplices, organisers etc.) can be liable.

- In MS F both criminal and non criminal procedures identify liability in a way that impose the responsibility on the person who committed the infringement and may also consider others liable (for example legal person, qualified person). In non criminal procedures liability can rest with the person who commits the infringement, the person represented or both, or any person who participated in committing the infringement.

- In MS G the non criminal procedure identifies the liable person as the one who commits the infringement or the person represented. As regards non criminal penalties the liability of the legal person excludes the liability of the (natural) person who in fact commits the infringement.

- In MS H, both criminal and non criminal procedures provide that liability for a customs infringement can sit with both the person committing the infringement and their accomplices. The non criminal procedure also provides that those represented by the person committing an infringement are also liable.

- In 3 MS non criminal procedures allow penalisation of anyone who might reasonably have been aware that an infringement was being, or was likely to have been, committed but who failed to do anything about it.

4.22 In non criminal regimes 3 MS actually do preclude action against one person where another has been held liable for an infringement. The MS concerned are D, G and J. The detailed circumstances in which this can occur are described in table 4002.

4.23 Transfer of a non criminal penalty laid against the person committing an infringement to another person is possible only in MS J. MS D provides a joint liability of an entity without a legal status when an employee, the representative or the administrator, acting to the advantage of this entity, and exercising his functions and duties committed an offence that influences the assessment or payment of the duty. However this joint liability has not an afflictive and penalty character, but a character of civil liability of a measure equal to the penalty imposed on the offender. In MS J they can transfer a non-criminal penalty in cases of fraud when they penalise the legal person and the directing minds.

Partial conclusions on "persons liable in cases of infringement"

There is convergence to a certain extent with regard to the following points:

All MS identify three types of persons who can be held liable for customs infringements (the actual perpetrator, the instigator and anyone involved to assist the person who committed the infringement).

For the MS who have non criminal penalties the only point of convergence is the liability of the actual perpetrator.

Almost all MS (with the exception of 3 MS for criminal penalties and 1 MS for non criminal penalties) do not foresee in their legislation the transfer of a penalty to another person, who has not been prosecuted.

Intent / negligence / strict liability (Table 9001)

4.24 We sought to establish the requirements MS have in place aimed at establishing the presence of intent behind an infringement. It is fair to say that most MS require the presence of intent, negligence, or elements of careless or reckless behaviour in all infringements dealt with under criminal procedures (save of course for any strict liability offences punishable under criminal law). This is also true for many infringements dealt with under non criminal procedures.

4.25 However there are some interesting differences in approach between MS. For instance, in MS A infringements provided in the Law on Tax Administration presume the guilt of a person. If the person proves the absence of his guilt, he is spared a penalty). In the MS B the seriousness of the infringement is usually the criterion that determines whether the authority adopts the criminal or non-criminal system of sanctions. With the exception of fraud cases dealt with under the MS B non criminal procedure, deliberate intent does not currently apply in non criminal cases. In MS C and D carelessness/negligence without any intent is sufficient for the imposition of a non criminal penalty.

4.26 We also sought to establish whether any MS treated infringements as strict liability contraventions. For the purpose of this report a strict liability infringement can be defined as one 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. Perhaps the most obvious example (in most MS) in the customs area is a passenger who enters the green channel with goods in excess of their personal allowance.

4.27 11 MS indicated that they have some strict liability infringements. From these, 3 only have it for non criminal infringements. Detailed examples can be found in table 9001 to Annex 4 of this report.

Partial conclusions on "intent / negligence / strict liability"

Most MS require the presence of intent, negligence, or elements of careless or reckless behaviour in all infringements dealt with under criminal procedures (save of course for any strict liability offences punishable under criminal law) as well as for many infringements dealt with under non criminal procedures.

11 MS foresee some strict liability infringements in their legislation either for criminal or for non criminal infringements.

Treatment of attempted infringements (Table 4002 B)

Treatment under criminal law

4.28 MS were asked if an attempt to commit a customs infringement under **criminal** law is punishable. Here we see an area of convergence, with 21 MS confirming that an attempt to commit a customs infringement is punishable in their jurisdiction. Of these, in 7 MS, it is possible to punish all attempted infringements covered by criminal law. Other MS provide some limitations. For example, in 6 MS only those attempts requiring intent are punishable, while 5 MS all specified that an attempt is only punishable where provisions of their national customs or criminal law provide for penalizing such attempt. For instance in MS A a basic criterion is that the penalty for the action being attempted is at least 3 years imprisonment. MS B and C indicated that the seriousness of the attempted act has a bearing on whether prosecution is appropriate.

Treatment under non criminal law

4.29 Only 7 MS penalise the attempt to commit customs infringements in **non-criminal** law. Among those MS, D and E extend this practice to all infringements, covered by law. Limitations are similar as in criminal law. For example, in MS F the general rule is that such an attempt is not punishable but with one exception and that is when the offence relates to customs and foreign currency offences when any attempt is punishable as provided for in the Customs Act. In MS H in the case of customs contravention (which belongs under the 'administrative infringement law – see paragraph 4.5) the attempt is also punishable, if the concrete statutory provision provides for it.

4.30 MS were asked whether under their criminal laws the customs administration and/or a prosecutor had discretion over whether to prosecute attempted customs infringements. 11 MS answered yes, although almost all added caveats. These are detailed in table 4002, but include factors such as the possibility of settlement before prosecution (MS I), the seriousness of the infringement (MS B), and the cost effectiveness of prosecution (MS B). 10 MS have no discretion.

4.31 The non-criminal regimes of MS B, C, D and F provide discretion in deciding which attempted infringements should not be penalised. The conditions for exercising these discretions are similar to those applicable in national criminal law.

Partial conclusions on "treatment of attempted infringements"

In 21 MS an attempt to commit a customs infringement is punishable under criminal law and in 7 MS it is punishable under non criminal law.

Moreover, in 10 MS, under certain conditions, the prosecutor has the discretionary power to pursue attempted customs infringements.

Infringements committed in other MS (Table 4002 C)

4.32 MS were asked about what action they might take in respect of customs infringements committed in another MS. Again, detailed responses are to be found in table 4002. 11 MS indicated that they can only do so in specific circumstances. Examples include criterion that the offence must have been detected there (MS A), that the perpetrator must be a national and must not have already been punished in the MS where the infringement occurred (MS B and C), and that the crime must be one which is punishable under its own national laws (several MS). 12 MS indicated that they cannot normally prosecute offences committed in other MS, although again caveats were identified (see the table). Only MS D can take action under non criminal procedures in respect of infringements committed in other countries where the results are felt in MS D. Interestingly, MS D can also punish several participants (aider, abetter, or instigator) under this approach.

Time limits (Table 4003)

4.33 This part of the report considers the issue of time limits for penalties. Portugal took responsibility for analysing responses and subsequently for dealing with responses to follow up questions. The original questionnaire simply asked whether time limits applied and if so in what circumstances. It became apparent that further information was required to enable any meaningful comparison to be made, so a series of further questions were put out to all MS. We sought to establish whether:

- MS had specific time limits for **initiating** a procedure (whether this be classed as starting an investigation, bringing charges or some other action) within a certain time of the alleged infringement being committed[38];

- any such time limits can be **suspended or interrupted**, and if so what can trigger the suspension or interruption and what maximum time limits apply so that after their expiry any investigation or legal action is **time barred**.

We also sought information as to whether MS have time limits concerning the **imposition** (that is the decision to penalise and the notification of that decision) and the **execution** of penalties (that is the carrying out of the sentence or attempted collection of the financial penalty).

Time limits for initiating the infringement procedure (Table 4003)

4.34 We looked first at time limits for initiating procedures. 22 MS indicated the existence of such time limits in their national systems. MS C advised that its legislation doesn't contain any time limit restrictions, either in initiating the procedure leading to the application of a customs penalty or to the imposition or execution of it. MS D has no time limit applicable to the bringing of charges.

[38] The commitment of the infringement is not the only relevant moment in 2 MS: A (where the debt's liquidation can be also relevant) and B (where concerning administrative procedure, several moments can be relevant – see table 4003 for further details.

4.35 The time limits operated by MS vary under both criminal and non criminal regimes. Complete details can be found in table 4003 of annex 4 to this report, but the following information provides an overview.

For criminal infringements

4.36 For **criminal** infringements, several MS have a variable time limit to initiate a procedure regarding customs matters which depends on the seriousness of the infringement and ranges between 1 and 30 years. These are MS E (1 or 5 years) , MS F (between 5 and 10 years), MS G (between 3 and 20 years), MS H (between 3 and 10 years), MS I (between 3 and 10 years), MS J (between 5 and 15 years), MS K (between 3 and 12 years), MS L (between 1 and 10 years), and MS M (between 10 and 30 years). MS N has an interesting method for calculating the time limit. The time limit corresponds to the maximum statutory punishment established by the particular law covering the offence. The period cannot be less than 6 years for a crime. MS O's time limits vary depending on the nature of the offence and also whether the perpetrator is a natural or legal person. The total range is between 5 and 10 years. In the MS P there is a limit of 20 years for serious cases involving evasion of duty, while all other customs infringements are capped at 3 years.

4.37 Other MS appear to operate fixed time limits initiating criminal procedures. In MS Q the period is 10 years. MS R caps its time limit at 3 years,. MS B has a limit of 10 years, MS S 3 years, and MS T 10 years. 4 MS operate a limit of 5 years under criminal procedures. Most MS advised that the time limits run from the date of commission of the offence, or in the case of ongoing infringements from the date they finally cease.

For non criminal infringements

4.38 For those MS operating **non criminal** regimes a similar picture emerges. Those MS operating variable time limits depending on the seriousness of the offence are MS G (between 6 months and 5 years: special customs rule), MS U (between 2 and 6 years) and MS P operates the same time limits for criminal and non criminal customs infringements (20 years for serious cases involving evasion of duty, and 3 years for other infringements).

4.39 Those MS operating fixed time limits for bringing cases under non criminal procedures are MS Q (2 years), MS V (7 years for smuggling, 3 years for other infringements), MS H (6 months for 'contraventions', 3 years for 'administrative infringements'), MS A, F, N and K (all 3 years), MS J (4 months under 'administrative procedure and up to 3 years on audit), MS B (6 months and 3 years) , MS M (2 or 3 years depending on the type of infringement), MS W (5 years), and MS O (6 months).

Suspension and interruption of the time limits for initiating the procedure (Table 4003)

4.40 We then looked at the issue of suspension and interruption of time limits for initiating procedures. 5 MS - F (non criminal only), V (non criminal), I, K (non criminal) and P indicated that no facility exists for 'stopping the clock' on the time limits. All other MS do allow such interruptions and suspension. MS B allows interruption and suspension in criminal cases only. In non criminal cases they can extend normal time limits without reverting to suspension. In MS A's non criminal procedure although there is no facility for delaying the start of procedures for infringements concerning non paid

debt, it is possible to suspend some penalty procedures that have already begun. In MS N interruption and/or suspension is only possible in criminal cases.

4.41 The specific factors which can trigger an interruption to, and/or a suspension of, time limited periods for beginning procedures can be found in table 4003 to annex 4.

4.42 Apart from 3 MS the existence of these interrupting and suspending factors does not allow MS to maintain the investigative/charging procedure for an indefinite period. In fact, it appears that most MS impose a maximum period after which, notwithstanding any interruptions or suspensions, the investigation will be absolutely time barred. However in MS G absolute time barring applies only to interruptions, not to suspensions. In MS B absolute time barring applies only to suspensions.

4.43 This absolute time barring appears to fall into 2 categories. In the first we see a straight number of years applied. Examples include MS E (10 years, although there is no absolute time bar in judicial criminal proceedings), MS V (8 years), MS B (15 years for suspension in criminal cases, and up to 1 year for non criminal, depending on which of the different laws covering non criminal penalties apply), and MS O (1 year, non criminal).

4.44 The second group adopt the practice of extension to the usual time limits. For example, in MS X, G and S the period of limitation can be doubled. In MS N the period of limitation can in most cases be extended by 25% (criminal cases only), while in MS W and O (criminal offences only) the normal time limits can be extended by a further 50%. In MS K although national legislation provides no maximum time limit for the investigation, ultimately the courts consider the length of the investigation in respect with the principle of undue delay.

Time limits for imposing the penalty

4.45 We also asked whether MS operated time limits in which to impose a penalty in respect of a customs infringement. We found that a number of MS do not distinguish between time limits for beginning the procedure and time limits to make the decision regarding the imposition of a penalty. This is the situation in MS E, X, G, V, J, W, O and M. It is partly true also for MS H, the difference being that in the case of 'contraventions (a legal distinction in MS H) the penalty has to be imposed within 2 years of the infringement.

4.46 In the criminal penalty regimes of MS I, T and P there are no time limits to decide whether a penalty is due or not. Time limits are in place in MS Q, D, F, B, S, K, L, A (non criminal procedure) and P (non criminal procedure). The limits in criminal cases in MS D, F and L depend on the severity of the penalty that may be imposed for the offence, and can range from 5 years (MS D) up to 30 years (MS F).

4.47 In other MS the reported time limits for imposing a penalty are as follows. MS Q (10 years for criminal penalty, 2 years for a non criminal penalty), MS B (10 years for criminal penalty, 6 months and 3 years for non criminal), MS S (5 years for a court imposed penalty, 3 years for settlement), MS F (3 years non criminal), MS P (2 years for non criminal), MS D (2 years for non criminal), and MS A (6 months for non criminal).

4.48 In almost all of the MS's legal systems, the relevant moment from which time limits period to impose a penalty starts running is the date on which the offence occurs or

ceases to occur. However the position is different in MS F, MS B and in MS P. In MS F legislation it is calculated from the beginning of the calendar year when the customs debt has been incurred or the Customs has accepted the particulars given in the customs declaration. In MS B, for certain cases specified within their non criminal procedure, the relevant moment is the date on which the offence is identified. In MS P non criminal regime a penalty demand must be issued within 2 years of the date on which sufficient facts to justify the imposition of a penalty become known to the authorities.

Time limits for the execution of the penalty

4.49 The final question asked of MS in this section related to possible time limits in the execution of a penalty. 5 MS reported no time limits in this area. All other MS have such time limits. For some (in relation to criminal cases) the limits depend on the nature of the infringement and the severity of the penalty. These MS are B, D, F, G, H, K, L, O, M, W and X. The time limits range from 1 to 30 years. Full details are in table 4003. Other MS operate under fixed term rules. Full details can be found in table 4003, but examples include 20 years in MS V (non criminal) and 10 years (criminal), 15 (criminal) and 5 years (non criminal) in MS Q, 5 years in MS E for all types of penalty, and 3 months (non criminal) in MS B.

4.50 In the majority of MS, the relevant moment from which these time limits periods start running is when the decision, either judicial or administrative, becomes definite and can no longer be appealed. However, there are different rules in 3 MS concerning non criminal procedure. In MS E (for coercive penalties) the period runs from the end of the year in which the penalty becomes due. In MS F it is from the beginning of the calendar year in which the sanction is imposed, and in MS O from the beginning of the year following the one in which the right to execute the penalty occurs.

Partial conclusions on "time limits"

It can be seen that time limits are to some degree an area of convergence, in that all but one MS employs them. However, the actual limits applicable vary considerably. All such time limits are the result of national legislation that in many cases apply not only to customs infringements but also to non-customs offences and infringements.

22 MS have time limits (either variable or fixed for initiating the infringement procedure. For infringements under criminal law the time limits vary between 1and 30 years. In most MS the time limits run from the date the offence was committed.

Concerning the suspension and interruption of time limits, most MS impose a maximum deadline after which, notwithstanding any interruptions or suspensions, the investigation will be barred.

All but three MS have time limits for imposing a penalty although they vary considerably.

All but five MS have time limits for the execution of the penalty.

AEO authorisations and the impact of infringements (Table 4004)

4.51 In this section we consider how infringements can affect AEO status of businesses. Hungary took responsibility for analysing initial responses and seeking detailed further explanations from all MS. Detailed responses can be found in table 4004 of annex 4.

4.52 The 22 MS who contributed to this section of the report all pointed out that the Community provisions for granting AEO status apply equally to all and the basic criteria for implementation are standard.

4.53 MS provided details of the ways in which they monitor the compliance record of AEOs within their jurisdiction as well as information on data exchange[39]. As anticipated, the compliance tests operated by MS indicate areas of convergence. At least 12 MS operate audit checks of some description. These vary in terms of frequency and complexity (see table 4004). Clearly the results of such audits are one of the tools available to help MS determine levels of compliance, and therefore provide evidence upon which MS can judge whether AEO status is still appropriate.

4.54 In addition (or as an alternative) to these audits, some 20 MS assess compliance through maintenance and interrogation of national customs databases. With the exception of MS A, all these MS also interrogate other national databases when considering the

[39] The issue of sharing information between MS was also considered during discussion of responses to questions concerning AEOs. Responses to the questionnaire were provided prior to the commencement date of the AEO database stipulated in Article 14x in Regulation 1875/2006 amending the implementing provisions of the Community Customs Code. The data base, known as the Economic Operator System (EOS) is expected to be a useful tool in sharing information, subject to clarification as to the legal basis for the exchange of certain information between MS. MS A also raised an interesting point about data protection laws which could in some instances mean that they may be unable to communicate information to other MS. When considering exchange of information, MS A and MS B suggested the application of Article 14 of Commission Regulation No 515/1997 on mutual assistance between the administrative authorities of the MS.

compliance records of AEOs. Examples of the types of databases examined include those relating to criminal activity and business insolvencies.

4.55 MS were also asked whether as a matter of law or national policy they excluded minor customs infringements when considering the compliance records of established AEOs or new applicants for AEO status. Again there is evidence of convergence here, with 18 MS reporting that they do overlook minor infringements when considering overall compliance. The types of infringements classified as minor by these MS include

- typing mistakes in customs declarations
- incorrect tariff classification (including status) with minor effect
- minor deviation between declared and assessed value and quantities
- failure to comply with time limits
- use of an incorrect account number.

However, it should be noted that several MS indicated that the nature and the frequency of such minor infringements are factors which help determine their overall view of trader compliance.

Partial conclusions on "AEO authorisations and the impact of infringements"

Convergence in this area is facilitated by the fact that the criteria for granting AEO status are common and their implementation is standard.

18 MS reported that they overlook minor infringements when considering the compliance record although the frequency of such minor infringements might affect the overall compliance profile of the trader.

- **CRIMINAL PENALTIES**

Types of criminal penalties (Table 5001)

5.1 In this section, MS were asked to consider 15 types of penalties and comment as to whether they are deemed to be considered a criminal penalty, a non criminal penalty or both within their national legislation. Latvia took responsibility for analysing responses and seeking further clarification from MS.

5.2 Although Article 21(2) of Modernised Community Customs Code (which aims to streamline customs processes and procedures) advises that certain consequences of an infringement may be treated as administrative (i.e. non criminal) penalties the national legislation of some MS does not allow for this. To consider these further, additional questions were posed to clarify whether national systems provide for other measures aimed at ensuring compliance to be applied in addition to criminal and non criminal penalties. All 23 MS who responded indicated that they employ other measures in addition to penalties. This issue is covered in more detail in section 4 of this report, along with more detail about ancillary penalties.

5.3 The answers to the questionnaire suggest that not all of the 15 alternatives considered in this part of the questionnaire are provided for within the legislation of all MS. The detailed responses of individual MS are to be found in table 5001 at annex 4 of this report. However, responses are summarised below.

5.4 **Fine.** Unsurprisingly, 22 MS commonly apply financial penalties of this nature in criminal infringements. The minimum and maximum fines levied for criminal infringements vary widely across the MS, ranging from 5 Euro in MS A to a maximum of 10.800 000 Euro in the same MS. Of course, the severity of the infringement will usually dictate the severity of the fine.

5.5 **Pecuniary Charge.** 11 MS do recognise the term and utilise pecuniary charges in criminal infringements. A number of other MS commented that their legislation does not distinguish between a fine and a pecuniary charge or that pecuniary charges are not provided for, although some use both terms within their legislation, and some use the term pecuniary liability rather than pecuniary charge. Details for each MS can be found in Table 5001. In some MS the different terms are clearly used in different circumstances. Examples include MS B where if a financial penalty is to be applied in a criminal case then it will be a pecuniary charge whereas in a non criminal case it will be a fine. In MS C, D and E it is the opposite, with a fine imposed in criminal cases and a pecuniary charge in non criminal. In F pecuniary charge is only for legal persons with a fine charged to natural persons.

5.6 **Imprisonment.** As expected all 24 MS consider this a criminal penalty and for some it is the main criminal penalty. As with financial penalties the range of sentences across MS depends on the severity of the infringement and takes into account aggravating and mitigating factors (see below). MS reported a range between 1 day in MS G and 20 years in MS F.

5.7 **Disqualification for a natural person from engaging in an activity requiring authorisation or approval, or funding, managing or directoring a company or foundation.** 10 MS advise that this may be considered as a consequence of a criminal penalty. In MS D, E and H it is a ancillary penalty. However MS I advises that this may

be a consequence of a criminal conviction and considers that '*disqualification in respect of funding, managing or directoring a company or a foundation'* falls outside the competence of the Customs authorities and for that same reason MS J do not consider it as any sort of penalty in respect of a Customs infringement. (see also section 4 on ancillary penalties and other measures).

5.8. **Confiscation of the goods.** 2 MS consider this may be either a criminal penalty or a criminal measure. (see section 4).

5.9 **Ban on access to public assistance or subsidies.** Only MS K, L, E (ancillary penalty) and M consider this as a criminal penalty. Most MS advised that this is not provided for in penalty legislation.

5.10 **Publicising Judicial decisions.** 9 MS consider this to be a criminal penalty. MS N comments that publication of such decisions can be either a penalty or an optional measure but generally publication of such decisions is for common infringements related to (rather than specific to) customs infringements. In MS E it may be considered to be an ancillary penalty. Similarly in MS H it is considered to be a complementary penalty, applicable only for legal persons. In MS O it is only for legal persons liable for criminal offences.

5.11 In those Member States, where judicial decisions (whether the accused is acquitted or convicted) are made public as a result of general principle of law this is not considered to be a penalty.

5.12 **Refusal to grant authorisation.** Only MS O and K consider this to be a criminal penalty, (only imposed on legal persons). 12 MS consider this type of action or measure as a consequence of the infringement rather than as a criminal penalty. In MS C and MS P this along with withdrawal or suspension of such authorisations are mostly measures imposed because original conditions are breached as a result of offences committed by the operator that jeopardizes the trust relationship between him and the tax administration.

5.13 **Withdrawal of granted authorisation.** 4 MS (MS E, as ancillary penalty) consider this may be a criminal penalty. MS O only uses it for legal persons. Again other MS comment that this is considered a measure or consequence and not a penalty.

5.14 **Suspension of granted authorisations.** 2 MS – MS E considers this may be a criminal penalty when imposed as an ancillary penalty and MS K. Once again other MS consider this a consequence or measure rather than a penalty.

5.15 **Temporary or permanent disqualification from the practice of industrial or commercial activities.** 13 MS (MS P and E as ancillary penalty and MS H as complementary penalty) considered that this may be a criminal penalty.

5.16 **Placing under judicial supervision**. 4 MS consider this may be a criminal penalty.

5.17 **Judicial winding up order.** 9 MS (MS E as ancillary penalty and MS H as complementary penalty) consider this as a criminal penalty. This is only applicable in cases where the offender is a legal person.

5.18 **The obligation to adopt specific measures in order to avoid the consequences of conduct such as that on which the criminal liability was founded.** MS A, K and M consider this as a criminal penalty. In MS Q it is no obligation as such, but criminals can earn reduction in sentence in certain circumstances. Again several other MS comment that this is not provided for in legislation or applicable to customs infringements.

5.19 **Other types.** MS were asked to advise whether other types of criminal penalty for customs infringements are provided for in their legislation. MS F and D advised that their Criminal Code provides for possible (non mandatory) confiscation (not of the goods) and sale (in favour of the state) of vehicles used in customs infringement involving transporting goods. MS A gave examples including a driving ban and confiscation of driving licence. In MS E criminal penalties can include the closure of an establishment as an ancillary penalty. MS O gave several examples, including educational measures for juveniles and hospital orders for alcoholics and drug addicts.

5.20 MS were also asked whether payment of customs duty was considered to be a penalty. All confirmed that such payment is not considered to be a penalty. Rather it is an obligation.

Partial conclusions on "types of criminal penalties"

22 MS commonly apply financial penalties of this nature in criminal infringements although sometimes it is called fine and in some MS pecuniary charge.

All 24 MS consider imprisonment as a criminal penalty and for many it is the main criminal penalty.

All MS consider the payment of customs duties not as a penalty, but rather as an obligation.

Aggravating and mitigating factors (Table 5002)

5.21 MS were asked to state whether any aggravating and/or mitigating factors are taken into account when penalising in criminal cases. They were also asked to provide details of the factors taken into account. Finland took responsibility for the initial analysis of the responses with further analysis being done by the Netherlands. The detailed responses are at table 5002 at annex 4 of this report, but the remainder of this section to the report summarises replies. This section identifies those factors relevant for customs infringements which are common to most MS while recognising the existence of other factors relevant in some MS.

5.22 One area of convergence is that all MS confirm that an obligation to consider aggravating and/or mitigating factors is provided for in law. Not all specific factors are identified, and the matters MS may take into account are quite wide ranging. Generally they are not specific to customs infringements. It is usually necessary to give consideration to these factors on several occasions throughout the process starting from qualification of the infringement itself through to imposition of the penalty. In some MS within their legal framework the judge has certain discretion to take into consideration other aggravating and/or mitigating factors.

5.23 An example of this was given by MS A. When an infringement is first detected the Customs Authorities will consider the seriousness of the offence. They will look at

the evidence and consider all the relevant circumstances (which would of course include any aggravating and/or mitigating factors). If the case is submitted for potential prosecution the Prosecutor will again look at both the evidence and all the circumstances. He has exclusive jurisdiction when deciding if a prosecution will be taken. When determining a verdict the Courts will also look again and consider both evidence and circumstances. If the accused is found guilty then the same will apply at any sentencing. During any appeal and/or formal mitigation processes further consideration will be given to all relevant factors.

5.24 Most MS provided detailed lists of factors that could be considered as aggravating factors for criminal penalties. Although the terminology varies on occasion, it is clear that all MS consider similar factors when applying penalties. These factors can be divided in two separate groups: those factors that constitute the circumstances of the offence and those factors that constitute characteristics of the offender.

5.25 In contrast to the majority of MS who advise that many of these factors are defined in law, 2 MS have common law systems where they can rely on case law when considering any aggravating and/or mitigating factors.

5.26 In some MS certain factors act as eliminating factors that stop particular infringements from being classed as an offence at all. In some these considerations can be the deciding factor between whether the infringement is dealt with as a criminal prosecution or a non criminal contravention.

Main aggravating factors

5.27 The ***main aggravating factors constituting the circumstances of the offence,*** and those MS who include such factors in their deliberations, are detailed below. Other, less significant, factors have been excluded from this summary but may be found in table 5002. In some MS some of the listed factors are not aggravating but legal requirements of a penalty

- **Perpetration by members of an organised crime gang**: 19 MS
- **Amount of duties evaded:** 13 MS. Note that in MS B the amount of duty evaded can determine whether a cases is treated as criminal or non criminal.
- **Value of the goods:** 3 MS
- **Falsification of documents:** 5 MS
- **Use of violence or the threat of violence:** 7 MS
- **Execution of offence/related aspects of offence in a manner which is dangerous to the public/causing serious consequences:** 5 MS
- **Infringement relating to specifically named goods (or categories of goods):** 4 MS
- **The level of sophistication employed in an infringement:** 3 MS
- **Involvement of an official (policeman, customs officer etc.):** 4 MS

5.28 The ***main aggravating factors constituting characteristics of the offender,*** and those MS who include such factors in their deliberations, are detailed below. Other, less significant factors have been excluded from this summary, but may be found in table 5002 of Annex 4.

- **Recidivism:** 20 MS. Note that MS C explicitly rules out recidivism (or repetition) as an aggravating factor because of the "ne bis in idem" (double jeopardy) principle.

- **Fraudulent intent:** 14 MS

- **Status of the offender (customs officer, other public official, tax professional etc.):** 7 MS

- **Background of offender:** 3 MS

- **Under influence of alcohol or other intoxication:** 3 MS

- **Adult together with juvenile:** 1 MS

- **Gross negligence or negligence :** 3 MS

- **Commission of the crime as organizer:** 1 MS

Main mitigating factors

5.29 Most MS also provided detailed lists of factors that could be considered as mitigating factors for criminal penalties. Again, although the terminology varies on occasion, it is clear that all MS consider similar factors when mitigating penalties. These factors can be divided in two separate groups: those factors that constitute the circumstances of the offence and those factors that constitute characteristics of the offender. Most mitigating factors can be grouped under the second of these categories.

5.30 The ***main mitigating factors constituting the circumstances of the offence***, and those MS who include such factors in their deliberations, are detailed below. Other, less significant, factors have been excluded from this summary, but may be found in table 5002.

- **Fortuitous event:** 4 MS

- **Payment of evaded duties/tax and repair of damages**: 10 MS

- **Seriousness of the infringement:** 4 MS

- **The fact that the offence has remained an attempt**: 5 MS

- **Prevention of harmful consequences:** 2 MS

5.31 The ***main mitigating factors constituting characteristics of the offender***, and those MS who include such factors in their deliberations, are detailed below. Other, less significant, factors have been excluded from this summary but may be found in table 5002.

- **Co-operation (including confession) with Customs and/or other investigative bodies:** 10 MS

- **Infringements involving negligence or gross negligence:** 4 MS. In other 4 MS negligence can only be punished if legislation provides for that possibility.

- **Previous conduct of offender:** 4 MS

- **Force majeure:** 4MS

- **Good faith:** 8 MS

- **Error in facts:** 5 MS

- **State of diminished responsibility**: 6 MS

- **Voluntary disclosure**: 6 MS

- **Personal and economic conditions:** 7 MS

- **Threat/duress/dependent relationship:** 6 MS

- **Error in law:** 4 MS

- **Provoked by external circumstances (e.g. unlawful behaviour):** 3 MS

- **Extent of share in the offence (when committed in unison):** 4 MS

- **Motivations/aims of offender :** 2 MS

5.32 MS D notes that mitigating circumstances are not defined in law and their existence (or not) is assessed by the customs administration with a view to determining whether a settlement can be proposed to the offender. In practice this means that all of the afore mentioned elements can be taken into account although not specifically mentioned in any regulations.

5.33 MS E notes that legitimate self-defence, state of necessity, physical constraint and moral constraint, fortuitous event, irresponsibility, complete drunkenness due to circumstances independent of the offender's will, and error in facts are <u>not</u> mitigating factors according to MS E criminal law, but are causes that remove the criminal character of the offence (the offence in not punishable).

<u>Partial conclusions on "aggravating and mitigating factors" for criminal penalties</u>

In all MS there is an obligation by the law to consider aggravating and mitigating factors when applying a penalty.

Concerning the main aggravating factors constituting the circumstances of the offence, 19 MS consider perpetration by members of an organised crime gang to be one and 13 MS consider the amount of duties evaded to be an aggravating factor. As regards aggravating factors constituting characteristics of the offender, 20 MS see recidivism and 14 MS fraudulent intent as aggravating factors.

The situation is less homogeneous with regard to mitigating factors as so many of them seem to be taken into account across MS. An interesting area of partial convergence 9MS considers co-operation with customs authorities (including confession) as a mitigating factor.

Statistics regarding criminal penalties (Table 5003)

5.34 Finally the questionnaire sought to establish if MS were able to provide statistics of the numbers of infringements committed where criminal penalties had been imposed. Some MS were able to produce detailed statistics; others gave estimates but most were unable to provide either. It quickly became apparent that even where MS could provide details the report could not make any meaningful comparisons as the way the information was recorded and presented suggests we would not be comparing like for like. The information provided is attached in table 5003 of Annex 4.

- **NON CRIMINAL PENALTIES**

Types of non criminal penalties (Table 5001)

6.1 In this section, those MS that have non criminal penalty regimes were asked to advise which of the 15 penalty types identified in the questionnaire are used. Romania also analysed an additional part of the questionnaire relating to non criminal infringements and penalties. Note that 8 MS do **not** operate non criminal penalty regimes.

6.2 "**Other measures**" applied by MS in case of an infringement but non constituting strictly speaking "penalties", are dealt with in **Section 4**.

6.3 The questionnaire used the terms criminal and administrative penalties, with the latter being the subject of much discussion due to different wording in national legislation. ***It was agreed that we would use the term non criminal penalties as standard.*** It was hoped that this would make the nature of the penalty clearer. Note that the term encompasses administrative penalties, civil penalties and other non criminal negative consequences of an infringement. All MS were asked to review their original answers to the questionnaire in light of this definition. The detailed responses of those MS employing non criminal penalties can be found in table 5001 of Annex 4 of this report. However responses are summarised below.

6.4 **Fine.** This is the principal penalty imposed in non criminal cases, with 16 MS imposing them.

6.5 The minimum and maximum fines and/or administrative pecuniary penalty/liability in non criminal cases vary widely across the MS, ranging from 2.9 Euro in MS A up to maximums of 500 000 in MS B, 10 times the avoided duties (plus confiscation) in MS C (only in the case of decriminalized smuggling) and a fine of 300% of the good's value in MS D.

6.6 **Pecuniary Charge.** 13 MS recognise this term within their non criminal penalty regimes. A number of other MS commented that their legislation does not distinguish between a fine and a pecuniary charge or that pecuniary charges are not provided for. Although a fine and a pecuniary charge are in effect similar outcomes (a financial penalty) there are differences in terminology across MS. Several MS use both terms within their legislation, and some MS use the term pecuniary liability rather than pecuniary charge. Details for each MS can be found in Table 5001 of Annex 4. In some MS the different terms are clearly used in different circumstances. Examples include MS E where if a financial penalty is to be applied in a criminal case then it will be a pecuniary charge whereas in a non criminal case it will be a fine. In MS F, C and G it is the opposite, with a fine imposed in criminal cases and a pecuniary charge in non criminal. In MS H pecuniary charge is only for legal persons with a fine charged to natural persons. MS I does not have a system of non criminal penalties as such, but does impose a 10% fine of amounts assessed in cases where customs infringements result in a customs debt. This is irrespective of any criminal penalty that may be imposed.

6.7 **Imprisonment**. All but one MS consider this a criminal rather than non criminal penalty. The one exception is MS E where the court can impose a detention of between 1-30 days for some customs related non criminal offences. 2 MS advise that if a fine imposed in a non criminal case is not paid then a term of imprisonment of a maximum of

30 days can be imposed. This is likely to be the case in other MS but seen as a separate matter and a consequence of non payment of a financial penalty and not a penalty in itself.

6.8 **Disqualification for a natural person from engaging in an activity requiring authorisation or approval, or funding, managing or directoring a company or foundation.** 6 MS advise that this type of consequence of an infringement may be considered a non criminal penalty. MS C imposes the disqualification (as a non criminal ancillary penalty) for up to a maximum 6 months This type of measure is not considered a penalty in 9 MS.

6.9 **Confiscation of the goods**. 16 MS (MS C only in cases of decriminalized smuggling) consider confiscation of goods can be a non criminal penalty.. In MS G it may be applied as an ancillary penalty where a non criminal offence has been punished by a pecuniary charge above 3750 Euro. In MS J it is also considered as a complementary penalty. In MS D it is only applied for non criminal smuggling offences.

6.10 **Ban on access to public assistance or subsidies.** Most MS advised that this is not provided for in legislation therefore is not considered any type of penalty. Only 4 MS provide for this action as a non criminal penalty although in MS G it has an ancillary nature.

6.11 **Publication of condemnatory decisions.** Several MS commented that any publication of condemnatory decisions is not done by the Customs authorities. An example of this was publication of a bankruptcy due to non payment of customs debt. Judicial decisions in criminal cases are publicised by the Courts and also not the Customs authorities, and therefore such publication is an inevitable consequence of an administrative or legal process rather than a penalty. Only MS G viewed the publication of such decisions as a non criminal penalty. MS G expanded their answer by advising that publication of decisions is considered as an ancillary penalty in non criminal cases for offences punished by a pecuniary charge above 3750 Euro.

6.12 **Refusal to grant authorisation.** 18 MS commented that they consider this a consequence or measure resulting from the infringement rather than a penalty. As MS C pointed out, the offences jeopardise the trust between the offender and the national authority.

6.13 **Annulment/Revocation of granted authorisation.** Most MS again commented that this is considered a consequence or measure and not a penalty. No MS identified this consequence as a formal main penalty but in MS G it can be an ancillary penalty. Once more, it is the trust between offender and national authority that has been breached.

6.14 **Suspension of granted authorisations.** Again, most MS consider this a consequence or measure rather than a penalty. No MS identified this consequence as a formal penalty.

6.15 **Temporary or permanent disqualification from the practice of industrial or commercial activities**. 4 MS (MS H only in respect of import/export activities) consider this a penalty in non criminal cases. In MS D this applies only when the offence is one of non criminal smuggling. In MS G it may be applied as an ancillary penalty. In MS A it is considered that such disqualification is an administrative measure rather than a penalty.

6.16 **Placing under judicial supervision.** Although MS K advised that this could be applied in non criminal cases, MS K qualified their answer to explain that this non criminal negative consequence is subject to a court decision for the criminal case of smuggling. The criminal court ultimately decides for the judicial supervision which will be final if the offender is proven guilty or will be revoked if the offender is proven innocent.

6.17 **Judicial winding up order.** 3 MS

6.18 **The obligation to adopt specific measures in order to avoid the consequences of conduct such as that on which the non criminal liability was founded.** Several MS comment that this is not provided for in non criminal legislation or applicable to customs infringements.

6.19 **Other.** MS were asked to consider if any other type of non criminal penalty for customs infringements is provided for in their legislation. For example, in 7 MS official warnings (admonitions) in non criminal cases can be considered to be penalties, although in MS L this is only for one specific customs offence.

6.20 MS were also asked whether **payment of customs duty** was considered to be a penalty. All confirmed that such payments are not considered penalties.

Partial conclusions on "types of non criminal penalties"

16 MS out of 24 have non criminal penalties for customs offences, while 8 of them do not operate non criminal penalty regimes.

The principal penalty imposed in non criminal cases, in 13 MS – is the fine (some MS call it pecuniary charge).

All but one MS consider imprisonment to be a criminal rather than non criminal penalty and all MS confirmed that payments of the customs duties are not considered as penalties.

Aggravating and mitigating factors (Table 5002)

6.21 MS were also asked to consider if there are any aggravating and/or mitigating factors to be taken into consideration when penalising in non criminal cases. They were also asked to provide the relevant details. Finland took responsibility for the initial analysis of the responses with further analysis being done by the Netherlands. The detailed responses are at table 5002 of annex 4 of this report, but the remainder of this section summarises the replies.

6.22 As with the findings for criminal penalties in section 5 of the report, it is clear that, although terminology varies across MS, they all consider the same factors when applying penalties. These factors can be divided into two separate groups; those which constitute the circumstances of the offence, and those that constitute characteristics of the offender.

6.23 One area of convergence is that all MS confirm that an obligation to consider aggravating and/or mitigating factors is provided for in law. Not all the specific factors are identified and are generally quite wide ranging. Generally they are not specific to

customs infringements. Even in non criminal cases it is usually necessary to give consideration to these factors on several occasions throughout the process starting from qualification of the infringement itself through to imposition of the penalty. In some MS within their legal framework the judge has certain discretion to take into consideration other aggravating and/or mitigating factors.

6.24 In some MS certain factors act as eliminating factors that stop certain infringements from being classed as an offence at all. In some these considerations can be the deciding factor between whether the infringement is dealt with as a criminal prosecution or an administrative settlement.

Main aggravating factors

6.25 The ***main aggravating factors constituting the circumstances of the offence,*** and those MS who include such factors in their deliberations, are detailed below. Other, less significant factors have been excluded from this summary, but may be found in table 5002.

- **Perpetration by members of an organised crime gang**: 8 MS. This may still be considered as an aggravating factor when giving consideration to the level of penalty even for a non criminal infringement.

- **Amount of duties evaded (including the economic damage to the administration):** 7 MS. Note that in MS A the amount of duty evaded can determine whether a case is treated as criminal or non criminal.

- **The severity or significance of the offence:** 6 MS.

- **Execution of offence/related aspects of offence in a manner which is dangerous to the public/causing serious consequences:** 5 MS.

- **Taking advantage of large scale accident/ disaster: 3** MS.

- **Infringement relates to specifically named goods:** 1 MS.

- **The level of sophistication employed in an infringement:** 3 MS.

- **Use of a simplified procedure to commit the infringement, and use of one's accounting system to hide the reality of a transaction:** 1 MS.

6.26 The ***main aggravating factors constituting characteristics of the offender,*** and those MS who include such factors in their deliberations, are detailed below. Other, less significant factors have been excluded from this summary, but may be found in table 5002.

- **Recidivism:** 12 MS. Note that MS B explicitly rules out recidivism (or repetition) as an aggravating factor because of the "ne bis in idem" (double jeopardy) principle.

- **Fraudulent intent:** 8 MS. Note that intent is explicitly ruled out as an aggravating factor by 4 MS.

- **Motivation of the offender (e.g. financial gain):** 6 MS.
- **Behaviour of the offender (for example if violent or obstructive**): 1 MS.
- **Background of offender including social and economic status and personal circumstances:** 3 MS.
- **Under influence of alcohol or other intoxication:** 2 MS .
- **Adult together with juvenile:** 2 MS.
- **Gross negligence / negligence :** 1 MS
- **Frequency of non compliance:** 2 MS .

Main mitigating factors

6.27 MS also provided detailed lists of factors that could be considered as mitigating factors for non criminal penalties. Again, although the terminology varies on occasion, it is clear that all MS consider similar factors when mitigating penalties. These factors can be divided in two separate groups: those factors that constitute the circumstances of the offence and those factors that constitute characteristics of the offender. Most mitigating factors can be grouped under the second of these categories.

6.28 The ***main mitigating factors constituting the circumstances of the offence,*** and those MS who include such factors in their deliberations, are detailed below. Other, less significant factors have been excluded from this summary, but may be found in table 5002.

- **Force Majeure:** 3 MS.
- **Seriousness of the infringement:** 6 MS.
- **The fact that smuggled goods are not restricted (subject to prohibition :** 1 MS
- **Other factors:** 1 MS

6.29 The ***main mitigating factors constituting characteristics of the offender***, and those MS who include such factors in their deliberations, are detailed below. Other, less significant factors have been excluded from this summary, but may be found in table 5002. Note that the factors do not need to be considered in isolation. Rather several of these (and other) factors are likely be considered when establishing the penalty.

- **Co-operation with Customs (including confession):** 6 MS.
- **Infringements involving negligence or gross negligence**: 7 MS.
- **Previous conduct of offender (including frequency of non compliant behaviour:** 7 MS.
- **Force majeure:** 3 MS.

- **Good faith:** 3 MS. Note that for the purposes of this report only, the MS A's reasonable excuse defence has been categorised as a mitigating factor. In fact, the existence of reasonable excuse extinguishes liability to penalty.

- **Error in facts or perception of facts:** 1 MS

- **Voluntary disclosure**: 5 MS. In MS C for administrative penalties the measure of the penalty is reduced, provided the infringement has not been previously checked and there still has not been any investigation activity of which the author or the jointly liable persons have had formal knowledge..

- **Personal and economic conditions:** 6 MS.

- **Motivations/aims of offender**: 2 MS.

6.30 MS D note that according to their laws the definition of aggravating and mitigating factors is very broad and although the above factors may not be explicitly stated they and others may still be taken into account. This is similar across many other MS.

6.31 MS E note that legitimate self defence, state of necessity, physical constraint and moral constraint, fortuitous event, irresponsibility, involuntary complete drunkenness and error in facts are not mitigating factors according to MS E's contraventional law, but causes (found only be the Court) that remove the contraventional character of the offence (the offence is not punishable).

Partial conclusions on "aggravating / mitigating factors" for non criminal penalties

As with the findings for criminal penalties in section 5 of the report it is clear that, although terminology varies across MS, they all consider the same factors when applying penalties.

One area of convergence is that all MS confirm that an obligation to consider aggravating and/or mitigating factors is provided for in law

However, in comparison with the field of criminal penalties, there is less common ground as far as aggravating and mitigating factors are concerned.

Concerning the main aggravating factors constituting the circumstances of the offence, 8 MS consider perpetration by members of an organised crime gang to be one and 6 MS consider the amount of duties evaded to be an aggravating factor while for the aggravating factors constituting characteristics of the offender 11 MS see recidivism and 8 MS fraudulent intent as aggravating factors.

The situation is even more divergent with regard to mitigating factors.

Statistics concerning non criminal penalties (Table 6001)

6.32 The questionnaire did seek to establish if MS were able to provide statistics of the numbers of infringements committed where non criminal penalties had been imposed. Romania was responsible for analysing the responses. Some MS were able to produce detailed statistics; others gave estimates but most were unable to provide either. It

quickly became apparent that even where MS could provide details the report could not make any meaningful comparisons as the way the information was recorded and presented suggests we would not be comparing like with like. The information provided is attached in the table at 6001 of Annex 4.

- **BOUNDARIES BETWEEN CRIMINAL AND NON CRIMINAL INFRINGEMENTS AND PENALTIES WITHIN MEMBER STATES**

Boundaries between types of infringements/offences (Table 7001)

7.1 The questionnaire sought to establish the most common infringements committed in MS. Italy took responsibility for analysing the responses. As MS do not necessarily describe infringements in the same way the analysts were able to consider common infringements and group them into how seriously they are regarded. Table 7001 in Annex 4 provides full details.

7.2 Smuggling, evasion of import or export duties, tax evasion / fraud, importing or exporting goods illegally, receiving stolen goods, and forgery of business documents including false invoices are the most common types of customs related infringements.

7.3 Numerous other customs infringements were identified, including the non-discharge of T documents, non compliance with the terms provided for in legal documents or determined by the customs authorities, the untrue declarations as regards the value or description of the goods and tariff classification, infringements related to the completion of customs declarations – misclassification, incorrect value, failure to declare goods to a customs exit office, wrong declaration of the value, of the quantity of goods, of the origin, of the end-use of goods, wrong declaration, description of goods, incorrect identification of the country of origin, exceeding the deadline for customs clearance, presentation of incorrect data in customs declaration or any other action made with a view to mislead customs; failure to arrive at a customs office within procedurally designated time for customs controls; failure to present goods for customs controls or failure to declare goods in accordance with the applicable procedure; carrying of items under green channel system beyond the permitted limit, illegitimate reduction of payable tax or customs duty, customs contravention and receiving of smuggled goods, Illicit import and export of prohibited goods or goods requiring a special permit.

Treatment of infringements involving customs debt

7.4 MS were also asked to consider if there is any different penalty treatment between those infringements which affect the customs debt and those infringements which do not.

7.5 For 11 MS, there are no real differences in the treatment of infringements which affect and do not affect the customs debt. However in 12 MS there are real differences in the treatment of infringements which affect and which do not affect the customs debt.

7.6 By way of example in MS A there is a different penalty treatment depending on whether the infringement affects customs debt. In the case of criminal illegal importation (smuggling) and in the case of customs contravention the loss of customs revenue is an obligatory constituent element of the crime; otherwise the person concerned will only be liable for lodging a untrue declaration, and will be liable to a pecuniary charge and not liable for a crime/contravention. For the crime of receiving stolen goods (smuggled goods) it is not the amount of the customs revenue but the value of the stolen goods that is taken into account.

7.7 In MS B while the financial consequences of an infringement might be a factor in determining whether the customs administration would seek to have a penalty imposed

and this might also be considered by a court in determining the severity of an offence, this is not something which is specifically provided for in law other than in some specific instances where the penalty itself can be a multiple of duty evaded.

7.8 In MS C the penalty provision to be applied is influenced by whether or not a customs debt is affected by an infringement. In addition to an administrative (non criminal) penalty a so called "tax" penalty applies, which is a monetary fine calculated as a proportion of taxes which have not been paid. Non criminal and criminal liability can also depend on whether the customs debt has been affected.

Criteria applied when criminal proceedings shall be initiated due to a customs infringement (Table 7002)

7.9 The questionnaire then sought to determine for which of these infringements criminal penalties were applicable and consider the circumstances in which these infringements are regarded as criminal offences. Estonia took responsibility for analysing the responses.

7.10 All MS replied that they have customs related offences defined in their national legislation. The offences themselves are quite wide ranging as the tables at 7002 demonstrate but there is a common theme of offences such as smuggling, import / export of prohibited goods and false / incorrect declarations which supports the previous analysis about the types of infringement considered most serious.

7.11 Other than those countries for which all customs related infringements are regarded as crimes all MS stated that some additional circumstances must be met for the infringement to constitute a crime.

7.12 17 MS stated that the subjective element of the offence (for example some level of intent / deliberate action / negligence) must also be established.

7.13 8 MS stated that some quantitative measure of the seriousness of the offence (for example amount of customs duty evaded / value of goods) must be met. MS D mentions that further offence may also be a factor.

7.14 MS E stated that for all smuggling infringements intent is a prerequisite needed to start criminal proceedings. The customs authorities cannot commence criminal proceedings unless the infringement was intentional. Even if an offence (e.g. smuggling) is normally considered to be a crime if the offender is only considered to have been negligent (e.g. no intent) then there will be no criminal prosecution and the customs authorities can only impose a non criminal penalty / fine.

7.15 8 MS have only criminal proceedings. In MS F and G settlement (applied only in other than intentional cases) belongs to the competence of the Customs Administration. In MS H an out of Court Settlement is a mutual agreement between Customs and the offender but such agreement does not extinguish the criminal liability in terms of the Import Duties Act where the jeopardized amount exceeds 1.164,69 EUR and in terms of the Criminal Code whenever applicable. The Criminal Code is administered by the executive Police independently from the Customs laws.

7.16 MS I has both judicial and administrative proceedings but both are criminal in nature within the scope of the Fiscal Penal Code.

7.17 In MS G criminal proceedings are initiated for customs contraband as provided for in the Penal Code (e.g. unlawful introduction of drugs, weapons, explosives etc. to the country and violating transit provisions). In MS E the customs code provides that certain infringements lead to both criminal and non criminal penalties. These infringements all constitute smuggling and include import or export without permit (e.g. Illegal or forbidden goods / protected species etc).

The use of financial thresholds

7.18 Once the offence is established and an infringement deemed to be criminal then other factors such as the aggravating and mitigating factors mentioned in sections 5 & 6 of the report and other matters such as financial thresholds are considered. Although financial threshold sums are only one of the factors MS consider in seeking to determine whether penalties are appropriate and what type of penalty should be applied many MS make use of financial thresholds. Indeed, Article 2 of the Convention on the protection of the European Communities financial interests categorises the relative seriousness of fraud by reference to thresholds.

7.19 The text of Article 2 is reproduced below.

Article 2

Penalties

1. Each Member State shall take the necessary measures to ensure that the conduct referred to in Article 1, and participating in, instigating, or attempting the conduct referred to in Article 1 (1), are punishable by effective, proportionate and dissuasive criminal penalties, including, at least in cases of serious fraud, penalties involving deprivation of liberty which can give rise to extradition, it being understood that serious fraud shall be considered to be fraud involving a minimum amount to be set in each Member State. This minimum amount may not be set at a sum exceeding EUR 50 000.

2. However in cases of minor fraud involving a total amount of less than EUR 4 000 and not involving particularly serious circumstances under its laws, a Member State may provide for penalties of a different type from those laid down in paragraph 1.

3. The Council of the European Union, acting unanimously, may alter the amount referred to in paragraph 2.

7.20 The threshold sums, in duty and tax terms, are as follows (unless mentioned otherwise the threshold sums are based on legislation):

- **MS D: 27.800 EUR:** Regardless of this threshold sum the infringement may constitute a crime in some cases.

- **MS K: 350 EUR:** If the amount of the avoided or jeopardized duties and taxes exceeds 350 EUR, a penal notice is issued by a customs officer and affirmed by a prosecutor in the simplified criminal proceedings. If the amount of the evaded or jeopardized duties and taxes exceeds 2.000 EUR, the case is

handled before a court. These amounts are not legislated for but are based on the prosecutor's view.

- **MS E: 50.000 EUR:** Where the amount of the avoided or jeopardized duties and taxes were less than 50.000 EUR, criminal proceedings are initiated if the offender does not pay an administrative fine equal to duties and taxes owed multiplied by two and does not resign from the right of appeal. In practice however, the threshold is used only to avoid any criminal penalty when the offender pays the sum of duties owed multiplied by two and resigns from the right to appeal. Offences that constitute smuggling lead to both criminal and non criminal penalties regardless of threshold sums.

- **MS A: 370 EUR:** This threshold sum is not a boundary between administrative and criminal proceedings but between contravention procedure and criminal proceedings. The criminal proceedings shall be initiated if the amount of the avoided customs duties exceeds 370 EUR. If it is 370 EUR or less, contravention procedure is applied. Contravention procedure is an administrative procedure. If the amount of avoided customs duty changes it can cause movement between crime and contravention.

- **MS L: 3.999,96 EUR:** Smuggling can be considered an administrative offence when several conditions are met - one of which is that the amount of border duties due must not exceed this amount. The penalty is established from 2 to ten times the border duties due. Regardless of this threshold sum, criminal proceedings are initiated if there are aggravating circumstances or if the goods in question are foreign manufactured tobacco. The threshold is important only to distinguish between criminal smuggling and decriminalized smuggling and is only one of several elements that have to be considered,

- **MS M: 15.000 EUR:** This is not the only criteria used to differentiate between criminal and non criminal infringements.

- **MS N: 5.000 EUR:** This is the amount of duties for the criminal act of tax evasion. **50.000 EUR:** This is the value of goods for the criminal act of smuggling. There is no threshold for the criminal act of fraud for damage to EU.

- **MS O: 266 EUR:**

7.21 2 MS apply threshold sums relating to the value of goods in order to differentiate between administrative and criminal proceedings. The threshold sums, based on the legislation, are as follows:

- **MS C: 12.857 EUR:** Regardless of this threshold sum, criminal proceedings are initiated if the infringement has been committed repeatedly within one year or by a group of persons or by an organised group.

- **MS P: 9.425 EUR:** Regardless of this threshold sum, criminal proceedings are initiated if the infringement regards smuggling of movable cultural items or of antiquities or of strategic goods or of dangerous items.

7.22 2 MS apply thresholds sums either relating to the amount of the avoided or jeopardized duties and taxes or to the value of goods in order to differentiate between administrative and criminal proceedings, as follows:

- **MS Q:** Criminal proceedings are initiated if the amount of the avoided duties and taxes is more than 50.000 EUR. However, in smuggling cases criminal proceedings are initiated if the value of goods is more than 18.000 EUR.

- **MS M:** Criminal proceedings are initiated if the amount of the avoided duties and taxes is more than 15.000 EUR and the perpetrator acts intentionally. However, in cases where no customs debt is incurred criminal proceedings are initiated if the value of goods is more than 50.000 EUR.

7.23 MS R applies a threshold sum in one case: With regard to eluding customs inspection in imports and exports through places established for customs control, criminal proceedings are initiated if the customs value of the eluded goods exceeds approx. 4.700 EUR in the case of products that are the object of excise duties and exceeds approx. 9.400 EUR for other goods.

7.24 3 MS do not generally apply any threshold sums in order to differentiate between non criminal (administrative) and criminal proceedings. However in principle all 3 can punish any incidence of fraud by a criminal penalty. In MS N criminal infringements are only those provided for in the Penal code which establishes various elements of such acts. Threshold can be one such element (i.e. 5.000 EUR evaded duty for the criminal act of tax evasion / 50.000 EUR value of goods for the criminal act of smuggling) but for some criminal acts i.e. fraud on damage of EU there is no threshold.

Admissibility of the joint application of criminal and non criminal penalties (Table 5001)

7.25 MS were asked if their legislation allows imposition of both criminal and non criminal penalties to the same person for the same behaviour. Latvia took responsibility for collating the questionnaire responses and the initial analysis with further analysis work being done by Finland.

7.26 Although 8 MS report that they have only criminal penalties the following comments are relevant when considering if there is any joint application / overlap between imposing criminal and non criminal penalties.

7.27 In MS H if an offence infringes the Customs Ordinance, the Import Duties Act and the Criminal Code (for example presenting false documents) criminal proceedings will be instituted by the Police. If there is an out of court settlement in lieu of proceedings under either of these customs laws the court will take such settlement into account when delivering judgement. Such a settlement is considered a mutual agreement between Customs and the offender but that agreement does not extinguish the criminal liability in respect of charges prescribed under the Criminal Code.

7.28 MS S report that in cases where a customs debt is incurred, an ‘administrative penalty’ equal to 10 % of the subsequently assessed amount of the duty or tax is imposed apart from any criminal penalty that the offender might be sentenced to. This financial penalty is an additional pecuniary charge imposed in addition to any criminal penalties imposed in criminal cases.

7.29 Of those MS who have both criminal and non criminal penalties most consider that any overlap is prohibited.

7.30 5 MS report that overlap is possible. In MS E joint application of criminal and non criminal penalties is provided for in customs legislation only for cases of smuggling. In practice the customs authorities impose the non criminal penalty (which is a fine equal to the duties evaded multiplied by between three and five times). Simultaneously customs prepare the case for the public prosecutor who decides whether to take the case to court for the criminal part of the offence (smuggling). Only the courts can impose a criminal penalty. MS K and N report very similar application of any overlap – if the non criminal proceedings have been concluded before initiating the criminal proceedings then the non criminal penalty imposed shall be taken into consideration when imposing the criminal penalty. MS K also confirm that if the criminal proceedings have been concluded before initiating any non criminal proceedings then the criminal penalty may be taken into consideration when imposing the non criminal penalty. Both MS report that they have systems to avoid any overlap creating any excessive penalty. MS M reports that overlap is allowed in some cases, when by the same behaviour an offender commits both a crime and an 'administrative' infringement. In these cases the competent authority to impose both penalties will be the Court. However in general where legal provisions provide for a criminal penalty this would exclude the possibility of applying a non criminal penalty. In MS A the customs authority imposes pecuniary charge and simultaneously a complaint is lodged to the investigating body against an unknown perpetrator.

7.31 However, if a conduct fulfils the requirements of a criminal and an administrative infringement rule at the same time then in MS T the criminal one will apply only. If the criminal proceedings are ceased, the offence can be prosecuted as an administrative one.

Partial conclusions on Section 7

Smuggling, evasion of import or export duties, tax evasion / fraud, tax receiving, importing or exporting goods illegally, receiving stolen goods, and forgery of business documents including false invoices are the most common types of customs related infringements

MS are divided with regard to the treatment of infringements involving the payment of customs debt as 11 of them do not differentiate it from the treatment of other infringements, but 12 MS do.

The boundaries between criminal and non criminal treatment of customs infringements are very diverse.

Financial thresholds are one of the means to establish the nature of the treatment of customs infringement and of the penalty to be imposed. Although there is a threshold of 4000 EUR in the Convention of the Protection of the Community's financial interests (see point …) the specific thresholds in the MS vary between 266 EUR and 50000 Euros.

Of those MS who have both criminal and non criminal penalties for customs offences, 10 MS consider that joint application is prohibited, while 4 consider it to be possible.

- **LEGAL PERSONS (TABLE 8001)**

8.1 The term 'legal person' is generally used to describe an entity that is not a natural person but which allows natural persons or groups of natural persons to act as a single entity and to possess autonomous legal capacity for various purposes. Examples of legal persons include companies, corporations, partnerships, trusts, religious organisations, trade unions, and municipal authorities. In addition, there may be other entities that, although they may not be defined as a legal person, nevertheless can be held liable for customs infringements. Such an example exists in MS A and is known as a Commercial Partnership. This section of the review examines arrangements made by MS to deal with infringements of customs law committed by legal persons, their equivalents, or their representatives. The colleagues from Austria and Germany were responsible for analysing responses.

Definitions of legal person

8.2 Participating MS were asked whether legal persons are defined in national legislation. Responses showed that most MS have either a specific legal definition or identify a number of bodies which are considered in national law (though not necessarily in specific customs legislation) as legal persons: 20 MS. MS B has a legal definition of "person" which includes both legal and natural persons.

8.3 Four MS indicated that they provide neither a definition or otherwise specifically identify what they consider a legal person to be. However, information from these MS indicates that the concept of non-natural entities is accepted. In MS C there is a prevailing understanding of what is a legal person (mainly for the purposes of rights and obligations). In MS D and E the Civil Code includes general provisions that regulate different types of private legal persons (such as Associations, Foundations, Committees, and various types of companies. The legislations of MS E and F specifically provide that legal persons can be held responsible for customs infringements, suggesting a similar approach and a generally accepted understanding of the term 'legal person'.

8.4 The national legal references are contained in table 8001 of Annex 4 to this report.

Responsibility of legal persons

8.5 MS were asked to clarify the rules concerning the accountability (responsibility) of legal persons in cases of infringements of customs law. In particular, we wished to establish whether a legal person can be held responsible for an infringement.

8.6 In most MS national legislation does provide that the legal person itself can be held responsible for their actions relating to any customs related infringements they commit. In 3 MS the legal person is not held accountable. In MS C, only natural persons can commit customs infringements, although fines can be imposed on legal entities as secondary parties. In those MS where customs law does not provide for legal persons to be held responsible, the natural representative or representatives of the legal person are held to be the liable person. In MS G the law provides for instances in which a legal person cannot be held responsible for certain non criminal infringements.

Responsibility of legal persons under criminal law

8.7 In most MS a legal person responsible for a customs infringement punishable under criminal law can be prosecuted. This is not the case however in 9 MS. In these countries natural persons who committing infringements while representing the legal person are personally held to account under criminal law.

8.8 The data supplied by MS indicates that with the exception of imprisonment the full range of penalties available under criminal law for natural persons also applies to legal persons. In addition, other measures such as the dissolution of companies are available to the courts.

Liability for the customs penalty

8.9 We sought also to establish national rules determining who can be liable for customs penalties imposed as a result of infringements by a legal person. Here the position is a little more complex. A number of factors determine liability, including whether the infringement is created under criminal or non criminal laws, and whether the penalty imposed is a criminal or non criminal one. As a result there is little uniformity in the way that MS determine the liability for a penalty, so grouping countries together is difficult.

8.10 For infringements dealt with under criminal law 9 MS impose penalty liabilities only on natural persons All other MS participating in the survey are able to make both natural and legal persons liable, either through separate penalties being levied at the same time, or through joint and several liability provisions, or through the ability to transfer the obligation to pay penalties from one to the other in cases where behaviour can be attributed to a natural person.

Variations in treatment

8.11 There are some interesting variations in treatment. In MS F for example the legal person would not be held responsible for criminal or non criminal penalties if they arise because the legal person's representatives acted against superior orders or instructions. In MS H, if the representatives or employees of the legal person (i.e. the natural persons) are criminally liable for the offence and the legal person is not convicted of the same offence, in some circumstances the legal person can nevertheless be held liable for the payment of fines imposed on their representatives. In MS I a fine (known as a 'property sanction') can also be imposed on a legal entity. In MS B in order to impose legal liability on both the legal person and the natural person a conviction must be obtained against both of them. The fine is imposed on both the natural and legal persons. In MS J non criminal penalty regime there are circumstances in which a penalty for fraud can only be imposed on the legal person, but can then be transferred to the natural person(s) within the legal entity who were responsible for committing the fraud.

Partial conclusions on Section 8

Responses showed that most MS have either a specific legal definition of legal person or identify a number of bodies which are considered as legal persons.

All but three MS provide for the liability of legal persons.

In the majority of MS a legal person responsible for a customs infringement punishable under criminal law can be prosecuted. In the 9 countries where this is not the case, natural persons who commit infringements while representing the legal person are personally held to account under criminal law.

There is little uniformity in the way that the MS determine the liability for a penalty.

- **BURDEN OF PROOF (TABLE 9001)**

9.1 This part of the questionnaire sought information about the rules on burden of proof applicable in each MS. Lithuania took responsibility for analyzing the responses, seeking further information and summarizing findings in this section. Detailed responses are included in table 9001 in Annex 4 to this report.

9.2 Following discussion of the initial responses to the questionnaire, supplementary questions were identified and communicated by Lithuania to members of the project group. This summary reflects responses received.

Responsibility for Burden of Proof

9.3 MS apply the presumption of innocence. In all MS the responsibility for burden of proof in criminal cases rests with the State. It is for the State to identify the authority or authorities responsible for investigating an infringement, establishing proof, and prosecuting offenders. In 4 MS the customs authority is responsible for discharging burden of proof. In MS A the customs authority is also responsible, save where evaded duties are in excess of € 37.500, when the decision rests with the prosecutor. In MS B the burden rests with the customs authority in cases where the public prosecutor refuses to take the case.

9.4 In several other MS the burden of proof rests with the customs authority acting in cooperation with or directly under the supervision of other authorized bodies, mainly the prosecutor. Specific details can be found in table 9001.

9.5 For all MS operating non criminal penalties the burden of proof continues to rest with the State, but the relevant authority to which the role is assigned is usually the Customs authorities.

9.7 MS C operates a principle of 'reasonable excuse' for infringements that do not involve fraud. Where a person can demonstrate reasonable excuse, they are not penalized for the infringement. In such cases the burden of proof is reversed, so that while the customs authority must prove that an infringement has occurred, the accused must prove that he has a reasonable excuse.

9.8 MS also provided information on circumstances in which the burden of proof shifts from the investigating or prosecuting authorities to the alleged perpetrator of the infringement. 9 MS (MS D only for non criminal infringements for proving in court the exculpatory cases) reported scenarios in which the burden of proof switches from the authorities to the accused. Detailed examples are to be found in table 9001, and some are highly specific instances, but in the main they relate to facts that must be demonstrated (for example evidence of payments and or declarations made, documents submitted, or that the person acted reasonably in the circumstances.

Obligation for traders to provide information/ documentation and enforcement of such obligations (Table 9001 and partly Annex 5 of the Report).

9.9 In accordance with Community provisions all MS oblige traders to supply information and documents to enable the Customs authorities to take decisions on customs matters. All MS have the right to collect, seize, or coercively acquire evidence relating to customs infringements. The scope of such rights may vary according to a

number of factors, such as the seriousness of the allegation or the potential size of the duty loss. Again, detailed responses can be found in table 9001, but it should be noted that in many instances prior permission of the courts is required (for example in seeking a search warrant).

Differences in investigative approach between criminal and administrative penalties

9.10 For those MS that impose both criminal and non criminal penalties there were no significant differences reported in the investigative approach. However, the standard of proof required differs depending on which penalty route is followed and (in non criminal cases) on the seriousness of the infringement. Typically this ranges between 'beyond reasonable doubt' for criminal cases and a 'balance of probabilities' in non criminal cases. The level of investigative effort (and in some cases the nature of the process itself) could therefore contain minor variation.

Partial conclusions on Section 9

The PG has identified the following convergence points:

The presumption of innocence is present in the legislation of MS.

In all MS, both in criminal and non criminal cases the burden of proof lies with the State (customs authority or national prosecutor), while in non criminal cases the relevant authority assigned is usually the customs authority.

In 8 MS and under specific circumstances the burden of proof shifts from the authority to the perpetrator.

In all MS the authorities have the right to oblige the traders to provide information and documentation relevant to the customs infringement.

Similarly, all MS have the right to collect seize or acquire evidence although the scope of this right can vary.

For MS that impose both criminal and non criminal penalties for customs infringements there is convergence in the investigative approach.

- **RETROACTIVITY (TABLE 1001)**

10.1 Section 6 of the questionnaire sought information on retroactivity. The UK was responsible for analysing responses, seeking further information where appropriate and reporting findings.

10.2 Retroactive or retrospective law is that which takes away or impairs vested rights acquired under existing laws, creates new obligations, imposes new duties, or attaches a new and different legal effect to transactions or considerations already past.

10.3 In order to analyse responses to arrive at meaningful conclusions it proved necessary to distinguish between:

a) retroactive law that imposes penalties where none previously existed and

b) retroactive application of new law where there is a benefit to the person or entity committing an infringement.

Retroactive imposition of penalties

10.4 MS were asked whether under their national legislation penalties can be imposed retroactively, for example if there is a change of law between the time the infringement was committed and the judgement. Responses indicated strong convergence, in that no MS retroactively applies any law where none existed before. Nor does any MS retroactively apply any new law which increases a penalty that existed before.

Retroactive application of more lenient law

10.5 Another area of strong convergence is to be found in the application of the 'principle of more lenient law'. The principle provides that where the law changes between the commission of an infringement and the imposition of a penalty, the person penalised for the infringement benefits through the application of the more lenient law. 20 MS adopt the principle of more lenient law for customs infringements. By way of example, in MS A where a prison sentence has been imposed but a change in law provides that the punishment for an offence is now a fine, the prison sentence is immediately converted to the more lenient sanction, except where the sentence has become irrevocable. In non criminal cases MS A also revisits the original financial penalty where there is a change in the law in the offender's favour. In MS B imposed criminal penalties can be revised if a more lenient law is subsequently adopted. This is also possible in certain non criminal cases where penalties have been imposed but not finally executed. Only 4 MS do not apply the principle to customs infringements. Note that the principle does generally apply in MS C, but that 'temporary valid laws' are excepted. Legislation covering duties, taxes and foreign trade are all considered 'temporary valid'.

10.6 We also sought information on the time limits applied to retroactive application, together with any conditions imposed by MS[40]. Here again we see close alignment in national practice. All 21 MS applying the more lenient law principle appear to apply that law at the time the infringement is actually penalised regardless of the timescale between

[40] A comprehensive examination of time limits applicable to penalties is to be found at section 4 of this report.

the infringement being committed and the judgement imposing any penalty. MS B advised that imposed criminal penalties may be revised if a more lenient law is subsequently adopted, and in certain cases non criminal penalties imposed but not yet executed may also be revised. MS D make the point that where an infringement is punishable at the time the offence was committed, but is subsequently repealed and the penalty is imposed but not yet executed, the authorities may enforce the penalty adjusted via a clemency measure.

10.7 MS were also asked if there are different rules governing retroactivity depending on whether the penalties are criminal or non criminal in nature. For those MS with a single regime there is of course no relevance to the question. Those MS with both criminal and non criminal regimes once again display a consistent approach, with no differences in the application of retroactivity occurring.

10.8 The questionnaire also invited MS to comment on the practical application of retroactivity. No significant details were provided, because procedural issues are dealt with elsewhere in the questionnaire. However, MS E reported an interesting procedure they adopt. If an infringement ceases to become one after it has been committed it is deemed never to have been one. This interesting approach seems to provide a sensible and practical way of resolving some cases.

Partial conclusions on Section 10

In summary it is fair to say that there is a clear and consistent pattern in the way in which those MS apply retroactivity.

No MS retroactively applies any law where none existed before. Nor does any MS retroactively apply any new law which increases a penalty that existed before.

Moreover 20 MS adopt the principle of more lenient law for customs infringements.

Regarding the time limits applied to retroactive application, there is close alignment in national practices, as 20 MS apply the more lenient law at the time the infringement is actually penalised regardless of the timescale between the infringement being committed and the judgement imposing any penalty.

For MS applying both criminal and non criminal penalties for customs infringements, there is no difference on the application of retroactivity.

- **PROCEDURAL ISSUES (TABLE 1101)**

Settlement

11.1 This part of the questionnaire sought information from MS concerning the potential and procedures for settlement of customs offences. 24 MS responded. Hungary took responsibility for collating and analysing the responses. Detailed responses can be found at table 1101 of annex 4 to this report.

11.2 For the purposes of this report we have used the following definition. Settlement is the term applied to any procedure within the legal or administrative system of a MS 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 proceedings. Typically there is no power to impose a settlement and the offender is under no obligation to accept an offer. If an agreement to settle cannot be reached, the normal procedure for prosecution of the infringement would be followed.

11.3 MS were asked if there are any procedures in their country for settlement in respect of customs offences. 15 MS indicated that they have a procedure for settlement of customs offences. In 8 MS there is not. In MS A although the present system allows for settlement, their system is about to be changed by new legislation and instead a punishment order will be imposed which, although carrying a right of appeal, is imposed and not subject to prior negotiation. In MS B customs authorities don't participate in the settlement proceedings. Instead a judge may impose a penal order on receipt of an application from the prosecutor. However, there are slight features of settlement in MS C's system in that sense that if the amount of the avoided duties or taxes is at the most 350 EUR duty increase is imposed by the customs and If the amount of the avoided duties, taxes and levies is over 350 EUR but at most 2 000 EUR, a customs officer issues a penalty demand (a penal notice) and then a prosecutor affirms it unless the offender resists it within certain deadline after its issue (if that is the case, the infringement will be dealt with in the normal court proceedings). The affirmed criminal penalty is fine and the affirmed offence petty tax fraud.

11.4 Where there are procedures for settlement MS were then asked to consider the scope for settlement. In MS D settlement can be applied in the case of both administrative and criminal infringements but are only allowed for certain types of infringements as set out in their Customs Act. Most MS apply settlement only in the case of certain infringements and sometimes with other additional limitations (for example in the case of minor offences).

11.5 In most of the cases it is a precondition that the offender has to admit their guilt and offer to pay a compounding sum instead. The procedure must take place before any judgement. In MS E there is also scope for the Commissioners to further mitigate the fine or penalty after judgement. Settlement is sometimes proposed directly by the public prosecutor as in MS B and F.

11.6 In some MS settlement is also applicable to serious infringements and a variety of customs infringements although sometimes only with limitations/exceptions. This applies to 9 MS. In other MS it cannot be applied in the case of serious infringements.

11.7 MS were also asked if the settlement procedure was considered to be an alternative to a criminal or non criminal penalty. In 12 MS settlement is considered an alternative action to the imposition of a penalty but in MS B, it is not. Most MS who do consider it as an alternative action usually only do so for criminal penalties. If settlement is fulfilled the criminal procedure is terminated.

11.8 MS were asked to state the relevant provisions within their national legislation and these are reproduced in table 1101 at Annex. 4. When asked how often the procedures for settlement of customs offences are applied it became apparent that providing data was not going to be possible. In many MS there were no statistics kept or none readily available. 6 MS have provided statistical data, which is contained in the table at annex. However on the whole it was established that MS applying settlement procedure do so as often as they can.

11.9 Although most MS do not have any specific preliminary procedures (i.e. warning letters) which must be issued prior the issue of a penalty demand, it was acknowledged by most that setting reasonable timescales for follow up action is necessary.

11.10 MS were therefore asked what would happen if any deadline set was not respected by the liable person. Of those who commented on this, 8 MS suggested that if any deadlines given for reaching settlement are not respected then settlement will not be reached and the infringement will be dealt with by reverting to the formal procedures including court proceedings if appropriate. More often than not this means that the liable person loses the possibility to have his/her penalty reduced or the procedure terminated. In MS G a timescale may be set by the public prosecutor's office and if the sanctions and directives issued as terms of a settlement have not been fulfilled then any payments that the liable person has already made cannot be reimbursed.

11.11 MS were asked whether penalties can be reduced or waived as part of the settlement process. In 3 MS no reduction or waiver of the penalty is possible. In 5 MS (MS H for non criminal) some reduction or waiver is possible, but in many cases this is only regarding non criminal infringements being sanctioned with a customs fine.

Partial conclusions on "settlement"

In 16 MS (one of them is however in the process of changing its legislation) there is a procedure for settlement of customs offences and in most of them it is foreseen only for a certain type of infringements.

In all of those MS but one, it is usually considered as an alternative action usually for criminal penalties.

If the deadlines for reaching settlement are not respected, in most MS who make use of this alternative, this means that the liable person loses the possibility to have his/her penalty reduced or the procedure terminated.

Territorial competence, appeals, and the impact on the appeals procedure of payment of customs debt (Table 1102)

11.12 Luxembourg took responsibility for collating and analysing responses to these issues. MS were first asked about territorial competence in deciding which authority is competent to deal with the infringement. The rules determining which authority is competent to deal with the infringement are in principal similar in all MS. It is determined either by the place of detection, the place of commitment of the infringement or the place of living of the person committing the infringement or the place where the person has been arrested. In most MS, it is the place where the infringement has taken place that determines the competent authority, in most cases, the competent customs office or directorate. Detailed responses from MS can be seen in table 1102 in Annex 4 to this report.

11.13 MS were asked to identify the competent authority for settling appeals against customs penalties. In the case of criminal penalties, the courts are the competent authorities. The names (and perhaps the relative status) of these courts varies from MS to MS, but the essential point is that they are all judicial bodies separate from the customs authority.

11.14 For those MS who employ non-criminal penalties the position is slightly different. In 4 MS the competent authority is the customs administration such as Regional Directorate or Director General of State Revenue Service, Customs Directorate.

11.15 In 8 MS (MS H for non criminal penalties) the competent authority is the court. Again, the names vary, but they can be a civil court, administrative court or a specialised court. In at least 8 MS the appeals process can move up through steadily higher courts. In MS I appeals are heard at different levels, some by the Customs Authority and others by various courts.

11.16 In MS B the appeals mechanism for non-criminal penalties varies, depending on which laws underpin the penalty. In the case of fines imposed according to the Law on Tax Administration, first the customs department is competent, then the Commission on tax disputes under the Government (optional instance), then the Regional Administrative Court, and finally the Supreme Administrative Court. Penalties imposed according to the Code of Administrative Offences can be appealed to the Regional Administrative Court, then to the Supreme Administrative Court. In cases of more grave offences the administrative penalty is imposed by the District Court. The appeal against the decision of the District Court can be filed with the Supreme Administrative Court.

11.17 MS were also asked whether the payment of the customs debt during the appeals procedure has any effect on the appeal itself. 17 MS confirmed that payment has no impact on the appeal. 5 MS stated that payment can be a mitigating factor in an appeal case, but the decision lies in the hands of the competent court.

Partial conclusions on "territorial competence, appeals, and the impact on the appeals procedure of payment of customs debt"

There is a certain similarity in all MS regarding the rules which determine the competent authority to deal with the infringement.

The criteria are related either to the place of detection, the place of commitment of the infringement, the place of living of the person committing the infringement or the place where the person has been arrested.

In all MS, in the case of appeals against criminal penalties, the competent authority is the court which is a judicial authority separate from the customs authority.

The situation is very variable in the case of non criminal penalties as in 4 MS it is the customs authority, while in 8 MS it is a judicial authority.

The payment of the customs debt during the appeals procedure has no impact on the appeal itself in 17 MS, while for 5 MS it may become a mitigating factor.

Treatment of several imports (Table 1103)

11.18 MS were also asked to provide information concerning the penalty treatment of scenarios in which infringements cover several separate importation events, and where the same conduct results in several different infringements. Spain took responsibility for analysing and summarising the responses from MS. Their tabulated summary is to be found at Table 1103 to Annex 4 of this report.

11.19 MS were asked to consider how their penalty regimes dealt with two scenarios. The first concerned a single conduct affecting several importations. An example of this might for some might be a single careless or reckless error in tariff classification of goods that is then replicated in a series of import entries over a period of several weeks and months. The second concerned one conduct that results in several infringements. An example might be a fraud that involves a number of infringements such as failure to fully declare goods through false documentation, false description of goods, unauthorised removal from customs control etc.

11.20 The analyst MS identified 5 distinct groups of MS in which areas of convergence can be found. These groupings cover both scenarios described above.

11.21 **Group 1** – 13 MS where a single conduct affects several importations, these MS class infringements on each import document separately, regardless of whether the errors are linked. That said, in 3 MS these separate infringements may be aggregated for financial penalty purposes.

11.22 As regards conduct resulting in several infringements, these MS consider these infringements to be separate, although the facility exists in some MS to treat separate infringements as being integrated. For example, in MS J only the most severe

infringement is actually penalised although of course the other infringements have been identified.

11.23 **Group 2** –2 MS where a single conduct affects several importations, these MS class infringements as a single infringement. Note that in MS K any penalty is usually imposed only on the most severe infringement. As regards conduct resulting in several infringements, both MS again consider each infringement as separate.

11.24 **Group 3** – 3 MS where a single conduct affects several importations, these MS have the option of considering the importations as either single events or as a single contravention. Increasingly MS are tending to view the errors as constituting a single infraction. As regards conduct resulting in several infringements, the position is different. In MS L and F infringements are aggregated, while in MS M and N each infringement can be considered separately.

11.25 **Group 4** – 5 MS where the common feature is that of flexibility and the existence of discretion in how they treat both single conduct affecting several importations and conduct resulting in several infringements.

11.26 **Group 5 –** 1 MS where a single conduct affects several importations these offences are mainly classified as separate offences but the imposed penalty is a common one. However, if several imports have taken place during a relative short period of time and the place of entry to this MS is the same, these several imports are classified as one offence. As regards conduct resulting in several offences, they are separately recorded but resolved with a common penalty.

11.27 We also asked MS whether criminal and non criminal penalties can be applied at the same time in respect of conduct that results in several infringements. Overlapping of penalties is dealt with in paragraphs 7.29 and 7.30.

11.28 The analysts made a number of observations following their work. Perhaps the most significant is that the information provided by MS was inconsistent as regards the level of detail. As such, their conclusions can only be preliminary in nature, and they recommend that more in depth research is done on these issues.

Partial conclusions on "treatment of several imports"

It seems that the majority of MS opt for a 'one import one infringement' system, but that there are several types of exceptions and 'special treatments'. For instance, several countries recognise the concept of a continuing offence and, depending on the circumstances of such cases, may some treat such types of infringement as a single event for penalty purposes.

As regards conduct resulting in several infringements, a number of MS impose penalties in respect of the most severe infringement, even where they separately identify the different infringements.

It can also be seen that the vast majority of MS do not allow overlapping of criminal and non criminal penalties where several infringements occur. It is clear that diversity is well implanted in the individual systems of MS.

- **GENERAL CONCLUSIONS AND RECOMMENDATIONS:**

Conclusions

12.1 The study gives an overview of the convergences and divergences in MS legal penalty systems, based on identification of MS legal texts and the use of case studies. The partial conclusions give a detailed picture of specific convergences and divergences. The study deals with provisions relating to purely customs infringements; any other infringements are not part of the study.

12.2 Part of the MS penalty systems are based on customs provisions; part on general criminal (and where relevant non criminal) law. Possible recommendations will have to respect this distinction.

12.3 At first sight the diversity of legal systems and the diversity of the treatment of customs infringements, the difference on the nature of the penalty for the same customs offence and the procedure according to which the customs penalty is imposed and executed is obvious.

12.4 However some convergence areas have been identified by the group (see partial conclusions) in particular regarding the treatment of the infringement and of the imposition of the penalty and sometimes in terms of the procedure (e.g. time limits).

Treatment of infringements:

12.5 Most MS take into account aggravating and mitigating factors, while some of them utilise the concept of strict liability infringements. In the majority of the MS an attempt to commit a customs infringement is punishable.

Penalties

12.6 By far the most common non criminal penalty is pecuniary charge (financial penalty). Financial penalties may be non criminal penalties in their own right, that is to say that the only penalty envisaged addressing an infringement is a fine imposed by an administrative body. However where an infringement falls to be dealt with under the criminal law of a MS, financial penalties may also be offered in lieu of a criminal penalty as a way of settling a case. Imprisonment is the most common criminal penalty, while a common ancillary penalty is the permanent disqualification of business / commercial activities.

12.7 In terms of procedure, 16 out of 24 MS apply the settlement at least for certain types of infringements irrespective of the category of the penalty (whether criminal or non criminal in nature)

12.8 The study as it is already provides useful relevant information and some interesting alternatives that MS may wish to consider when examining amendments to their legal systems and practices and therefore the members of the group considered it to be a useful exercise, especially for those who were on the process of modifying their legal system.

Recommendations

Recommendations to the COM:

The implementation of customs legislation by the MS and the effects of the convergences and divergences on day to day work of trade in the EU and the MS need to be further examined.

In examining these questions the guiding principles of the MCC, such as electronic declaration, AEO, systems based approach and centralised clearance, should be the starting point.

In order to get a balanced view the compliance strategy of MS should be taken into account, including elements such as general measures for improving compliance and the checks on declarations and internal management systems within companies.

Care should also be taken to include in the impact assessment all MS accounting for the highest number of dealings with customs. The distinction between small and large MS is less relevant

COM should take action to invite the MS who have not participated to the group yet, to provide the relevant information in order to have a complete view of the situation in the EU.

Recommendations to the MS:

(3) MS are invited to co-operate to the further examination of the penalties regime by the Commission.

(4) Where possible, MS (in particular those reviewing their legislation) should take into consideration good practices identified during the life of the project and actively consider adopting those which are likely to provide simplification benefits for the customs authorities and the trade, like:

- strict liability infringements: not all MS have strict liability infringements, which is however a concept which may be considered a useful simplification in less serious customs infringements;

- time limits: some MS do not foresee time limits to impose the penalty, while consideration should be given to the fact that this might have an adverse economic impact to the liable companies which are waiting for the decision.

ANNEXES

Only Annex 1 is attached.

Other Annexes are available on CIRCA Interest Group of the Project Group

Annex 1 - List of Member States participating in the project

Annex 2 - Glossary

Annex 3 - Questionnaire

Annex 4 – Tables (details of the answers to the Questionnaire)

Annex 5 - Investigatory powers of the customs authorities

Annex 6 - Case studies

Annex 1

List of Member States participating in the project

Austria

Belgium

Bulgaria

Cyprus

Estonia

Finland

France

Germany

Greece

Hungary

Ireland

Italy

Latvia

Lithuania

Luxembourg

Malta

Netherlands

Poland

Portugal

Romania

Slovakia

Slovenia

Spain

United Kingdom

Annex 2

GLOSSARY

The document that follows is divided into 2 sections.

Section 1 (Page 2) -

- **contains the original responses received from Member States.**

Section 2 (Page 30) -

- **contains those responses received following a request for clarification wherein respondents were asked to review their original submission and to identify:**
  - phrases or concepts which have specific legal status (i.e. defined in national legislation) should be identified as such
  - similarly, phrases or concepts which are accepted principles within national law, even if not defined in specific legislation, should be identified and any necessary clarification provided
  - other instances should get the responses "not defined", "not a recognised principle" or even "specifically forbidden/prohibited in national law", and

- **additional clarifications provided by a number of Member States**

•

•Conclusions

Analysis of the responses indicates that, while many MS have broadly common understandings, very few of the key terms are specifically defined in national law. However, even in those areas where a degree of shared understanding exists, there are usually a minority of MS who do not subscribe to the majority approach and this represents a potential barrier to a common framework. Furthermore, it must be considered that areas of apparent agreement, especially at the superficial level of this Glossary, might still prove problematic if the finer details of both national law and precedent were to be examined in greater depth.

On that basis, the main challenges facing any consideration of a completely common framework are twofold:

- to identify those fundamental points arising from differing legal systems that militate against a common approach
- to determine whether the areas of divergence are sufficiently critical as to prevent a common approach

Original responses to Glossary

National customs provisions

A	the national law relating to customs
B	
C	Act to implement Customs Law (AICL) Regulation to implement Customs Law (RICL) Fiscal Penal Code (FPC) Criminal Code (CC) Criminal Procedure Code (CPC) Federal Fiscal Code (FFC)
D	There is no legal definition.
E	these words are not subject to different interpretations under E national legal system;
F	Legislative , regular and administrative provisions of a member State application of which falls entirely or partially in the field of competence of the customs administration of this member State.
G	
H	National rules adopted by Member States to fulfil and develop the European Community's customs regulation. That includes the statute law (rules approved by National Parliament and Government) and also the regulations adopted directly by the Administration regarding the implementation of statute law. In what concerns the H legal system, this excludes the relevance of other law sources – namely customary law or judicial precedent.
I	provisions of the international agreements of the Member State and legal provisions of the Member State, which the customs authorities are responsible for enforcing, as well as legal provisions issued by the customs authorities building upon the authorizations granted to them by legal provisions regulating their activities, and agreements with the customs authorities of other states concluded by the Member State customs authorities on implementing the international agreements of the Member State.
J	National legislation (law, secondary and tertiary legislation) in customs matters. In customs matters, law contains criminal provisions too;
K	national legislation pertaining to the importation, exportation and transit of goods in connection with customs duties, fees and control on the goods crossing the national frontiers,
L	No need to be defined
M	are act No. 199/2004 Coll. Customs Act and on amendments and supplements to some Acts as amended and act No. 652/2004 Coll. on state administration authorities in the customs as amended.
N	N legislation used to enact EU Customs law * Finance Act 2003 Section 24 ->* * The Customs (Contravention of a Relevant Rule) Regulations 2003 (SI 2003/3113) * The Export Penalty Regulations (SI 2003/3102) Customs and Excise Management act 1979
O	Provisions, which arrange customs matters in accordance with EU legislation more detailed or arrange customs matters, that are not regulated in EU legislation. We have a national law: Law on implementation of customs regulation of EU.
P	National legislation applied in customs issues. Primarily the National Customs Code.

	Also applicable: Criminal Code, Criminal Procedures Code, Administrative Procedures Code, Civil Code
Q	All kind of legislation generated by National Institutions in development of Customs Community Code.
R	Customs Code Law as may be amended from time to time and the Regulations, Orders and Notices issued under this law.
S	Legislative, statutory or administrative provisions taken by a Member State with respect to the Customs matters, whose application is the concern of the national administration of Customs.
T	National laws and regulations, regulating areas which are outside European Union exclusive competency. In T these are Customs law and various government regulations.
U	National Customs Laws and Regulations
V	All of the legal norms enacted by a member state that govern the flows of goods over the borders of the customs area of the community.
W	Dispositions douanières nationales : les dispositions législatives et réglementaires contenues dans le code des douanes français.
X	Provisions adopted nationally to implement the customs rules. (Community Customs Code Article 1, Xn Customs act § 1)

•Customs administrations

A	the authorities that is competent to deal with the customs law
B	The authorities responsible for applying customs rules and regulations.
•C	Local Customs Authorities Federal Ministry of Finance
D	In accordance with art.7 of the Customs Act, the Customs administration shall be a centralized administrative structure, organized within the Customs Agency under the Minister of Finance, which shall be a legal person financed by the state budget, with a seat in Sofia.
E	these words are not subject to different interpretations under E national legal system;
F	Those authorities of a MS which are commissioned to apply the national customs provisions as well as the community customs provisions.
G	
H	Legal authorities to apply customs legislation
I	the entirety of customs offices of the Member State.
J	Customs authority – administrative authority having legal powers in customs matters
K	national system of authorities responsible for the application of – inter-alia - customs provisions and investigative powers related to customs infringements
L	No need to be defined.
M	Customs directorate of the Slovak republic, nine Custom offices with the territorial competences and Custom criminal office
N	•The national authorities responsible for the administration of customs laws and collection of customs duties. In the N the authority is X Revenue and Customs. It also has responsibility for the administration of VAT (including VAT on importations), excise duties and direct taxes such as income tax.
O	The Customs Administration is a body within Ministry of Finance, responsible for administration and collection of customs duties, excise duties and VAT on imports. The Customs Administration is managed by the Director General positioned at the General Customs Directorate. At the Directorate there are nine divisions in charge of different customs areas. They control and support the operation of the entire service. Managed by Directors they are responsible for uniform implementation of the customs policy, laws, provisions, regulations and procedures under the authority of customs offices located on borders and inland. Tasks and powers of Customs administration are defined in Customs service act
P	Local Customs Authorities and Central Divisions of the General Directorate of customs and excise duties of the P Ministry of Economy and Finance
Q	A concept which includes the different customs offices at national borders and Regional and Central Customs Departments which have competences in customs administration to take decisions referred to customs legislation.
R	The administrations responsible for (i) the implementation of the provisions of the national

	customs provisions, of the Customs Community Code and its Implementing Provisions, the corresponding relevant national and Community Legislation which relates to taxes, the assessment and collection of duties, taxes and other charges and (ii) the implementation of any legislation that has been vested in them.
S	National authorities in charge of the application of the community and national Customs provisions on the Member States' territory.
T	Administration responsible for implementation of customs regulations. In T it is State Revenue Service which acts under the supervision of the Ministry for Finance. One of the principal tasks of the State Revenue Service is to implement State customs policy and to ensure protection of the customs border.
U	Comptroller of Customs
V	The part of the performing executive which administrates the functions according to Art. 2 MZK.
W	Administration douanières : toute administration qui, dans l'organisation administrative nationale est chargée de mettre en oeuvre les dispositions douanières nationales et communautaires.
X	Same as 'Customs authorities', that is 'authorities responsible inter alia for applying customs rules' (CCC Article 4) . If a meaning is seeked to denote a national customs administration, then same applies: 'national authorities responsible inter alia for applying customs rules'

Customs infringement

A	behaviour or conduct that is against (breaking) the customs law
B	a breach or violation of customs law and rules.
C	Violation of customs duties. In some cases also minor customs offences as defined in § 51 par. 1 lit. e and f FPC
D	The customs infringement is a type of administrative infringement. The definition of "administrative infringement" is included in art.6 of the Administrative Violations and Sanctions Act - An administrative violation shall be such an act (action or omission) that violates the established order of state government, has been committed guiltily and has been ruled punishable by an administrative sanction to be annexed following an administrative procedure. In accordance with art.223 of the Customs Act, customs infringement is any violation or attempt at violation of the provisions of the customs legislation insofar as the action is not a criminal offence.
E	the infringement is less severe than the offence. In general, the infringement can be administrative transgression instead of the offences that can be mostly criminal transgression
F	The violation of a binding provision, when the person having committed it incurs a penalty.
G	
H	Illegal act qualified, by a law in force, as a censurable offence to customs regulation and punished with a penalty.
I	any illegal conduct of a person violating the requirements of Community Customs legislation and (or) national customs provisions.
J	Failure to meet (to observe) the obligations provided by the customs provisions. It can be an action or a non-action and it can have criminal or non criminal character
K	any criminal, contravention or administrative act violating the customs rules and regulations and its attempt if it is also punishable (general concept)
L	Any act or omission contradictory to the Community customs legislation. Limiting "Community" is needed since there might be something "superfluous" in the national customs legislations and the Community focus naturally is in the common scope of the customs legislation.
M	infringement of customs rules which are following - the national administrative law categorize to: customs offence which is the infringement of customs regulations by natural person and custom delict which is the infringement of customs regulations by legal person or natural person – entrepreneur
N	•A contravention of an obligation or condition imposed by or under European Community or national customs legislation. Can result in a criminal or administrative sanction.
O	Act, which is not in accordance with customs legislation and it is prohibited.
P	All the above terms are used for cases of breach of customs rules. In the P customs code there is no difference between the above three terms. For cases which incur both administrative and criminal penalties, the term "smuggling" is used. These cases are

	distinguished from the case referred as “breach of customs rules”, which incur only administrative penalties.
Q	Medium non-fulfilment of customs administration.
R	Contravention of the provisions of national and community customs legislation. This term has the same meaning as the term “customs offence”.
S	Act in contravention of the national or community Customs regulations and which is criminally penalized by national Customs provisions.
T	Minor violation of customs rules.
U	Breaches/violations of customs laws and regulations
V	Every instance of behaviour in contravention of the national or community customs regulations.
W	Infraction douanières : tout acte qui est qualifié de contravention ou de délit douanier par le code des douanes.
X	Unlawful (though not necessarily punishable) act, which violates customs rules.

Customs offence

A	customs infringements that is punishable by criminal penalties
B	an act punishable in accordance with customs law
C	Offences as defined in the FPC
D	The definition of "crime" is included in art.9 of the Criminal Code - Crime shall be an act dangerous to society (action or inaction), which has been culpably committed and which has been declared punishable by law. Customs crimes are the crimes, included in Chapter 6, Section 3 "Crimes against the Customs Regime" of the Criminal Code.
E	the offence is more severe than the infringement. In general, the offences can be mostly criminal instead of the infringement that can be administrative transgression
F	Infringements in customs and excise matters are considered as offences, which are sanctioned by criminal penalties
G	
H	Any non compliance behaviour to customs rules which may not necessarily conduct to a penalty apply (procedure for criminal or administrative infringement)
I	
J	Criminal offence in customs matters
K	any criminal act resulting in the unlawful reduction of customs revenue
L	No need to be defined (the definition of customs infringement is sufficient).
M	the infringement of customs regulations by natural person
N	This generally has the same meaning as 'customs infringement' and 'customs irregularity'. In the N we tend to use the term for infringements that are to investigated with a view to the imposition of a criminal sanction.
O	Act, which is not in accordance with customs legislation and it is sanctioned.
P	All the above terms are used for cases of breach of customs rules. In the P customs code there is no difference between the above three terms. For cases which incur both administrative and criminal penalties, the term "smuggling" is used. These cases are distinguished from the case referred as "breach of customs rules", which incur only administrative penalties.
Q	Grave non-fulfilment of customs administration.
R	Contravention of the provisions of national and community customs legislation. This term has the same meaning as the term "customs infringement".
S	Act in contravention of the national or community Customs regulations and which is criminally penalized by national Customs provisions.
T	An offence (act or failure to act) committed deliberately (intentionally) or through negligence.
U	A breach leaning towards a criminal aspect in terms of customs legislations An act or omission punishable in terms of customs legislations
V	Every customs infringement which can be prosecuted according to member state laws with

	a (criminal) penalty.
W	Violation douanières : pas de définition.
X	An act involving a customs infringement, deemed punishable by a national law.

Customs irregularity

A	behaviour or conduct which is not according to the customs rules, less important than customs infringement (e.g. not obey the terms defined in the customs provisions)
B	a breach of customs rules
C	This terminus is not used in the Austrian legislation
D	There is no legal definition.
E	the word irregularity concerns all the hypothesis of behaviour that is not conformable to the law. There is an irregularity when the validity of the document is questioned by vices usually not concerning the subject but the mere matter of the form of the document.
F	The violation of a binding provision, when the person having committed it doesn't incur any sanction
G	
H	(The same as customs offence)
I	
J	?
K	any act or failure violating the administrative customs rules (non-criminal act)
L	No need to be defined (the definition of customs infringement is sufficient).
M	behaviour which is not in line wit customs law (customs delict, customs offence and crime connected with breaking of the customs rules)
N	See 'customs infringement'.
O	We do not distinguish so many terms, it is not clear what the difference between this term is
P	All the above terms are used for cases of breach of customs rules. In the P customs code there is no difference between the above three terms. For cases which incur both administrative and criminal penalties, the term "smuggling" is used. These cases are distinguished from the case referred as "breach of customs rules", which incur only administrative penalties.
Q	Small non-fulfilment of customs administration.
R	Contravention of the provisions of national and community customs legislation. This term has the same meaning as the terms "customs infringement" and "customs offence".
S	Act in contravention of the national or community Customs regulations and which is criminally penalized by national Customs provisions.
T	Non-compliance with customs rules which is not necessarily punishable.
U	Minor violation / failure to observe rules.
V	Synonym for customs infringement
W	Irrégularité douanières : pas de définition.
X	An action that does not completely follow the customs rules, though it does not violate them.

Non compliance behaviour to customs rules

A	behaviour which is not obeying the customs rules – both customs infringement and customs irregularity
B	
C	Any missing to fulfil the obligations laid down in customs legislation.
D	There is no legal definition.
E	these words are not subject to different interpretations under E national legal system
F	All kind of acts contrary to the national customs provisions as well to the community customs provisions.
G	
H	Acting against customs provisions
I	
J	The result of such a behaviour is a customs infringement
K	any behaviour that does not comply with the EU or national customs rules and regulations
L	No need to be defined.
M	behaviour which is not in line wit customs law (customs delict, customs offence and crime connected with breaking of the customs rules)
N	Non-compliance behaviour - a situation in which a person or entity subject to EU and/or national customs provisions does something they are not supposed to or fails to do something they are required to do.
O	We do not distinguish so many terms, it is not clear what the difference between this term is
P	There is no definition
Q	Similar to customs irregularity.
R	The behavior related to the contravention of the provisions of national and community customs legislation.
S	Unknown terminology.
T	Behaviour that contradicts customs rules.
U	Non-conforming/adhering to customs legislations
V	Synonym for customs infringement
W	Comportement non conforme aux normes douanières : pas de définition.
X	It's hard to come up with a definition here which would not cover terms 'customs infringement' or 'customs irregularity'. Is there an actual need for this term, as I have not been able to locate its use in the questionnaire?

Sanction

A	a punishment for breaking a law (synonymous penalty)
B	a penalty or punishment as a means of enforcing obedience to the law.
C	Any legal consequence of non-compliance.
D	There is no legal definition.
E	the word sanction punishes the hypothesis of infringement for which the law provides sanction less severe than the penalty. In general, it concerns an administrative or civil sanction.
F	All kind of penalties which could be pronounced against a perpetrator according to the national customs law as well as the legal and regular provisions of other national customs matters: Fine, seizure, confiscation, door-fastening of premises, imprisonment subsidiary or principal.
G	
H	Any legal disadvantage consequence to a non-compliance behaviour to customs rules.
I	the synonym of *penalty*
J	Penalty – a criminal penalty or an administrative penalty
K	Any disadvantageous legal consequence resulting from customs infringements, including all kinds of criminal and administrative penalties
L	No need to be defined (furthermore, means the same as "penalty").
M	special detritment (injury), which inflict that person, who infringe the rule of behaviour specified by the law norm
N	A sanction is a response of the national customs authority or the national legal system to an infringement. The most common sanctions are financial penalties, but they can include inprisonment, denial of the opportunity to use or operate a customs procedure, or the issue of a formal warning.
O	A penalty or other means of enforcement used to provide incentives for obedience with the law. For example: fine, forfeiture, admonition.
P	An administrative penalty
Q	Punishment inflicted by Administration to any non-compliance of legislation.
R	The punishment (fine and or imprisonment) provided in the national customs legislation for the contravention of the provisions of national and community customs legislation.
S	Measure essentially repressive taken according to the law, which consists in depriving someone of a right or imposing an obligation particularly financial on that person, in order to punish a behaviour specifically determined by the law.
T	Negative consequences of non-compliance with customs rules. This can take a form of los of rights, monetary fine, confiscation or other kind of sanction.
U	The Customs Ordinance (Cap. 37) utilises the word sanction to express the Comptroller's permission / approval (That part of a law which inflicts a penalty for its violation as defined in Law Dictionary)
V	A measure threatened by a legal norm which is intended to prevent a certain form of conduct and in so doing assert compliance with the legal regulation. The term 'sanction' is

	the generic term for penalty and administrative penalty.
W	Sanction : amende ou peine d'emprisonnement sont prévues par le code des douanes français en cas d'infraction douanière.
X	1) a possible penalty (type of sanction; minimum-maximum punishment) as specified by the law which can be imposed for the given customs offence. 2) any punitive action for the given customs offence, not limited to criminal/administrative penalty.

Penalty

A	a punishment for breaking a law
B	a punishment
C	Administrative or criminal sanction.
D	There is no legal definition, but there are separate definitions of criminal and administrative penalty (see p.9 and p.11 of this section).
E	the word penalty punishes the hypothesis of offence for which the law provides a penalty more severe than the sanction. In general, it concerns a criminal sanction
F	The penalty is the sanction of social trouble caused by the infringement. Penalty has a double aim: repressive, in which penalty in tends to punish the offender; warning, in which penalty is intended to impress those who would be lead by the attempt to commit the same infringement, so as to manifest that law couldn't be transgressed with impunity.
G	
H	Legal punishment for customs infringement
I	measure of compulsion applied by the state institution for customs infringement.
J	Sanction – a criminal penalty or an administrative penalty
K	Administrative or criminal sanction being the consequence of violating the customs rules and regulations
L	No need to be defined.
M	is detritment (injury) on individual, property or another rights of person, impose by state authority, which is competent to impose such kind of sanction
N	A penalty is a financial sanction addressing non-compliance. The aim of penalty regimes is to discourage non-compliance and to encourage those who are non-complaint to improve.
O	A sort of sanction. Administrative procedure: fine, admonition Criminal procedure: imprisonment, pecuniary penalties.
P	Imprisonment or fine imposed only by the Criminal courts
Q	Similar to the one before.
R	The fine provided in the national customs legislation for the contravention of the provisions of national and community customs legislation. This term has the same meaning as the term "criminal penalty".
S	Measure essentially repressive taken according to the law, which consists in depriving someone of a right or imposing an obligation particularly financial on that person, in order to punish a behaviour specifically determined by the law.
T	
U	punishment
V	A forfeit which is imposed on a person by society through a court for their own criminal or unlawful conduct and which also includes a socio-ethical reprimand of this person. The penalty is the expression of a judgement of reproach. This is defamatory and reproaches

	the offender for their opposition to the legal regulations.
W	Pénalité : idem.
X	

Criminal penalty

A	penalty imposed under criminal proceedings
B	A penalty imposed by a court on conviction for a criminal offence. Can involve a fine or a term of imprisonment or suspended sentence or all three or other sanction
C	Penalty according to the FPC imposed in a judicial or administrative criminal procedure
D	In accordance with art.36 of the Criminal Code, the penalty shall be imposed for the purpose of: 1) correcting and re-educating the convict to comply to the laws and rules of socialist community, 2) exerting warning impact on him and depriving him of the possibility to commit other crimes, and 3) producing an educative and deterring effect on the other members of society.
E	for the meaning, please see the answer given for the question No.8
F	Penalty pronounced by courts according to the national customs law and the administration in the case of settlement out of court.
G	
H	Legal punishment for criminal offences that may consist in imprisonment or in the payment of a fine.
I	penalty provided for in the Criminal Code, which is imposed during the judgement of conviction of a person found guilty of the commission of a criminal act.
J	In criminal matters
K	penalty assessed due to violating the customs related criminal rules and imposed by a Court
L	A penalty imposed due to an infringement considered in compliance with the national legislation as a crime/an offence.
M	is detritment (injury) on individual, property or another rights
N	A penalty imposed by the courts. This definition covers not only financial penalties imposed in this way, but also prison sentences and confiscation of assets order by the courts.
O	A sort of criminal sanction - always determined by statute (imprisonment, admonitory sanctions, safety measures, educational measures for juvenile).
P	Imprisonment or fine imposed only by the Criminal courts
Q	Punishment inflicted by Judicial Administration to any non-compliance of legislation included in Criminal Code or his developments.
R	The fine provided in the national customs legislation for the contravention of the provisions of national and community customs legislation. This term has the same meaning as the term “penalty”.
S	Sanction or penalty provided for in order to punish a behaviour specifically mentioned in a criminal law and imposed by a criminal court. With respect to Customs matters, the criminal penalties are mainly the imprisonment, the fine, the confiscation and the closing down of a place of business. The nature and the significance of the applicable penalty depends on the description of the offence.
T	Penalty for crimes defined in Tn Criminal Law.

U	A money fine (payable to Registrar of Courts) or forfeiture of property ordered by the judge after conviction for a crime.
V	Synonym for penalty
W	Sanction pénale : idem.
X	A punishment imposed in the course and by the rules of criminal procedure

Civil penalty

A	penalty imposed under civil proceedings
B	civil penalties generally, fines or money damages imposed by a regulatory scheme. Civil penalties however, have been distinguished from civil remedies in that civil penalties are imposed as a punishment for certain activity and have the character of a criminal sanction, while civil remedies seek to redress wrongs or compensate for injuries affected.
C	there are no civil penalties foreseen in C
D	There is no legal definition.
E	for the meaning, please see the answer given for the question No.7. In the national legal system it is better to use the word "civil sanction" instead of "civil penalty"
F	Terminology not known by national customs law.
G	
H	(It doesn't exist in H law system regarding customs infringements)
I	
J	In civil matters
K	administrative penalty assessed by the customs authority due to administrative irregularity
L	This kind of penalty is uttermost extraordinary. Those MS who do not have administrative penalties may incorrectly call them civil penalties. Remark: Even if the correct term should be "administrative penalty", the term "civil penalty" is used in the draft questionnaire at least in question no 3 in item 2, in question no 3) in item 2.3, in question no 4) in item 3 and in question no 2) (ii) in item 7.2.
M	not applicable by M national law
N	See 'administrative penalty'.
O	It is only foreseen in civil law - only where it is arranged between two parties – the party who does not fulfill his obligation or delays, has to pay the arranged amount *(Article 247 of Obligation code, OJ RS Nr 83/200).*
P	Penalty is not foreseen in the P civil code. In civil matters, only the term "compensation" is applied.
Q	Punishment inflicted by Judicial Administration to any non-compliance of legislation included in Civil Code or his developments.
R	A financial penalty imposed by Customs administration on any evaded amount of duty and or tax that is assessed according to the customs legislation. This term has the same meaning as the term "administrative penalty".
S	Sanction or penalty provided for in order to punish a behaviour specifically mentioned in a law and imposed by an administrative authority. The S legislation mentions administrative penalties but not with respect to the Customs matters.
•T	Does not exist in T.
U	A money fine or surcharge imposed by a government agency to enforce regulations such as late payment of taxes, failure to obtain a permit, etc.

V	no information provided
W	Sanction civile : pas de sanction civile dans le droit douanier français.
X	A punishment imposed in the course and by the rules of civil procedure

Administrative penalty

A	penalty imposed under administrative proceedings
B	Fines of money damages imposed in accordance with administrative law. Administrative law is law created by administrative agencies by way of rules, regulations, orders and decisions.
C	Non-criminal sanctions according to §§ 111 ff FFC or § 108 AICL.
D	In accordance with art.12 of the Administrative Violations and Sanctions Act, Administrative sanctions shall be administered with the purpose of admonishing and re-educating a delinquent to abide by the established legal order as well as to the end of producing a good educational and premonitory effect on other citizens.
E	for the meaning, please see the answer given for the question No.7. In the national legal system it is better to use the word "administrative sanction" instead of "administrative penalty"
F	Penalty pronounced by customs administration according to the national customs law and administrative provisions in the frame of settlement out of court.
G	
H	Legal punishment for non-criminal offences, which consists in a pecuniary charge
I	Non-criminal penalty, provided for in the national customs provisions, tax laws or Code of Administrative Offences.
J	In administrative matters
K	Civil penalty
L	A penalty imposed due to an infringement which is not considered as a crime/an offence.
M	is penalty impose by competent customs authority in case of customs delict and customs offence (fine, confiscation of thing or goods and admonition)
N	A financial penalty imposed by the national customs authority that does not require prior authority from the courts. In the N administrative penalties are used as an alternative to mounting criminal prosecution.
O	Penalty, used in administrative procedure, usually a fine.
P	Fine or administrative act (ex. Revocation of authorization) imposed primarily by the Customs Authorities. Administrative Courts are competent for appeals against these penalties.
Q	Punishment inflicted by Non Judicial Administration to any non-compliance of legislation included in Civil Code or his developments.
R	A financial penalty imposed by Customs administrations on any evaded amount of duty and or tax that is assessed according to the customs legislation. This term has the same meaning as the term "civil penalty".
S	Sanction or penalty provided for in order to punish a behaviour specifically mentioned in a law and imposed by an administrative authority. The E legislation mentions administrative penalties but not with respect to the Customs matters.
T	Penalty for violations defined in Tn Administrative Violations Code.

U	A money fine or surcharge imposed by a government agency to enforce regulations such as late payment of taxes, failure to obtain a permit, etc
V	A forfeit which is imposed on a person by a public body for their contravention of an administrative law and which is supposed to remind the offender to comply with the legal regulations but which does not have the consequence of an impairment of honour. A fine is the general administrative penalty.
W	Sanction administrative : pas de sanction administrative dans le droit douanier français.
X	A punishment imposed in the course and by the rules of administrative procedure

Force majeure

A	unexpected circumstances, such as natural disaster
B	an overpowering event, which could not be anticipated or controlled e.g. an act of God.
C	Uninfluenceable circumstances effecting an infringement, e. g. heavy storms, earthquake, flood, fire etc.
D	There is no legal definition.
E	In the E national legal system, Force majeure and Fortuitous are both events not unforeseeable and inevitable and they exclude the causal connection or relation between the behaviour and its consequence
F	The act committed by a person is not considered as an infringement, when the act is the result of an irresistible force. The burden of proof is to be allocated to this person. Force majeur is considered as an event occurring independently from humans will.
G	
H	An external event, independent from the agent's will that causes a non compliance of legal rules and, consequently, excludes the agent's guilt.
I	emergency circumstances that cannot be foreseen or avoided, or eliminated by any means.
J	Cause that removes the criminal or contraventional character of the infringement
K	unavoidable force effect that cannot be avoided by human force
L	No need to be defined (general legal stuff).
M	event underlining with unpredictable objective situation
N	Unforeseen unavoidable circumstances such as flood, sudden breakdown of computer system, sudden illness of key personnel etc.
O	Not exactly defined in legislation, a general term, could be a relieving circumstances. It is judged in a concrete case, what a force majeure is (for example earthquake).
P	These two terms are defined in the National Customs code as factors excluding criminal penalties
Q	External event to the will of a person unpredictible and irresistible which produces an event impossible to avoid.
R	An unforeseen and unavoidable event, which could not be anticipated or controlled, like an earthquake, flood etc.
S	According to the S law, the notion of force majeure is used in criminal and civil law.- Under criminal law : cause of justification which cancels the offence, when the perpretator of the offence has been compelled by a force against which he cannot have hold out.- Under civil law : case of exemption from civil liability, which consists of an unpredictable, compelling event, external to the person and which prevents him from respecting his obligations.
T	Exceptional circumstances which could not be foreseen and avoided (fire, flooding, riot etc.).
U	an event which can generally be neither anticipated nor controlled
V	An external, unusual and unpredictable event which could not have been prevented by the extreme care of the affected person.
W	Force majeure : la force majeur n'est pas un fait exonératoire de la sanction douanière. En revanche, la bonne foi peut exonérer la personne qui a commis l'infraction de toute poursuite. En outre, le juge peut, en droit douanier, retenir les circonstances atténuantes.

X	An event or circumstance which is beyond the control of the obligor which could not reasonably have been expected to take into account, avoid or overcome the impediment or the consequences thereof which the obligor could not reasonably have been expected to overcome. (Xn Law of Obligations Act); An unforeseen or foreseen but inevitable or irresistible event external to the obligor which makes it impossible for him to perform the obligation concerned (http://untreaty.un.org/ilc/documentation/english/a_cn4_315.pdf)

Fortuitous event

A	a thing that happened in a way that was not planned
B	An event happening by accident and/or chance.
C	Unpredictable circumstances hampering to act according lawfully or to act in time.
D	There is no legal definition.
E	In the E national legal system, Force majeure and Fortuitous event are both events unforeseeable and inevitable and they exclude the causal connection or relation between the behaviour and its consequence
F	Fortuitous event or invincible error are considered as act committed by all reasonable and prudent person as well and which is the coming-out of an extraneous case that couldn't be assigned the those having committed this act. Fortuitous event is to be assimilated to force majeur.
G	
H	An event related with the agent that he cannot control and, consequently, excludes his guilt.
I	unforeseeable circumstances.
J	Cause that removes the criminal or contraventional character of the infringement
K	An unexpected event that cannot be foreseen
L	No need to be defined.
M	accidental incident (event not underlining with behaviour of subject)
N	Happening by chance.
O	Not exactly defined in legislation, a general term, could be a relieving circumstance. It is judged in a concrete case.
P	These two terms are defined in the National Customs code as factors excluding criminal penalties
Q	Similar to the one before.
R	An accidental event.
S	According to the S law, the fortuitous event is a notion of civil law, which does not apply in the criminal law. Like the notion of « force majeure », it constitutes a case of exemption from civil liability. Those two notions confirm one another and are most often put forward together.
T	event that could not be foreseen.
U	an unexpected lucky event
V	Synonym for force majeure
W	Cas fortuit : idem.
X	coincidental or accidental event may be considered a synonym to 'Force majeure'. Do we have any practical use in differentiating the two? Same as 'Force majeure', with the difference that it is an event which, if foreseen, could have been avoided (http://untreaty.un.org/ilc/documentation/english/a_cn4_315.pdf)

Good faith

A	the intention to be in compliance with a law
B	in relation to contracts for the sale of goods, good faith means done honestly, whether negligently or not.
C	The subjective consciousness of lawful acting.
D	There is no legal definition.
E	these words are not subject to different interpretations under E national legal system, However, it is possible to suppose the existence of the good faith when there is a diligent behaviour of the agent who is fallen into the error
F	The national customs law doesn't consider the element of good faith as a behaviour which shall extinct the consequences of a committed infringement. On the other hand this element could be taken into account in the case of settlement out of court as mitigating factor.
G	
H	Abstract and comprehensive term that encompasses a sincere belief on motive without any malice or the desire to defraud others
I	
J	There is not guiltiness
K	lack of fraudulent intention in a procedure taking place on the basis of the moral and social standards in force
L	No need to be defined (general legal stuff).
M	bona fide, is the mental and moral state of honesty, conviction as to the truth or falsehood of a proposition or body of opinion, or as to the rectitude or depravity of a line of conduct, even if the conviction is objectively unfounded.
N	Errors in good faith are those involving genuine mistakes where a person has proceeded with an honesty of intention. Good faith errors can include misunderstandings, mistakes of procedure and, in some cases, acting on what is considered at the time to be reasonable advice.
O	Not exactly defined in legislation, a general term, could be a relieving circumstance. It is judged in a concrete case.
P	The three terms above are general legal terms, not defined specially for customs issues.
Q	Actuation with the principles of honesty, rectitude and good manners.
R	Contraventions of the national and community legislation with non-fraudulent intention of the person involved.
S	According to the S law, the good faith is a notion used in criminal and civil law. - Under criminal law : lack of fraudulent intention, which can be put forward by the offender in order to evade the offence of which he is accused when that offence requires a fraudulent intention of the perpetrator. It can also serve as data required for the evaluation of the mitigating circumstances (notably when the administration of Customs and Excise offers a settlement).
T	One person's false conviction about existence or non-existence of some facts.
U	having honest intention
V	Good faith is trust in the legal validity of one's own conduct (bona fides).

W	Bonne foi : il s'agit d'une notion utilisée en droit pénal douanier qui peut correspondre à l'absence d’intention frauduleuse
X	An act done in good faith is an act done with an honest, non-fraudulent intent

Negligence

A	the failure to give enough care to be in compliance with a law
B	a tort involving the breach of a legal duty of care whereby damage is caused to the party to whom the duty is owed. It is the doing by a person of some act which a reasonable and prudent man would not have done in the circumstances of the case in question, or the omission to do something which would be expected of such a man under such circumstances. For actionable negligence there must be: (a) a duty of care between the parties; (b) a failure to observe the required duty of care; and (c) reasonably foreseeable damage suffered.
C	Causing an infringement of customs obligations by missing the necessary and affordable attention,
D	There is no legal definition in the administrative and criminal law. The term "negligence" exists as one of the forms of the guilt in the administrative and the criminal law. In accordance with art.11, par.3 and par.4 of the Criminal Code, an act shall be considered committed through negligence where the perpetrator did not foresee the occurrence of consequences dangerous to society, but was obliged to and could foresee them, or where he foresaw the occurrence of such consequences but intended to avert them. Acts committed through negligence shall be punishable only in the cases provided by law.
E	In the E national legal system, there is a negligent behaviour when its consequence is happened even if the agent doesn't want it; infact the consequence of the behaviour is caused by a lack of care from the agent or by inobservance of the law of the regulations
F	The national customs law doesn't consider the element of good faith as a behaviour which shall extinct the consequences of a committed infringement. On the other hand this element could be taken into account in the case of settlement out of court as mitigating factor.
G	
H	Acting without the care to which, according to circumstances, the agent is obliged and is capable of. In this case, the agent may represent as possible the accomplishment of the infringement to the law, but acts without accepting that accomplishment; or he does not even represent the possibility of the accomplishment of that infringement.
I	failure of the person who commits the customs infringement to perceive (anticipate) that his act may result in harmful consequences, although under the circumstances of the act a reasonable person would perceive (anticipate) those results.
J	Form of guiltiness
K	The perpetrator foresees the possible consequences of his conduct, but carelessly relies on their non-occurrence or fails to foresee the possibility of the consequences with a deliberate indifference or failure to exercise reasonable care (defined in Art. 14 of our national Criminal Code)
L	No need to be defined (general legal stuff).
M	negligence is constructing only on one factor which is the knowledge (the intellectual factor) - the law breaker is not concisous that infringe the rules, but she/he should suppose to do it (slovak criminal law differentiate between the blunder negligence and the simple negligence)
N	•Negligence is the omission to do something which a reasonable person, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do. It

	can also mean doing something which a prudent and reasonable person would not do.An example wmight be a failure to fully read the guidance that a customs administration has issued about an obligation or procedure.
O	The person has not acted with needful watchfulness, which under the given circumstances and according to his personal attributes he should and is capable to do by his action or omission. (*Article 26 of Penal Code, OJ RS Nr 55/2008*). Criminal act, done out of negligence, is punishable only if it is stated in law. (*Article 27 of Penal Code, OJ RS Nr 55/2008*).
P	The three terms above are general legal terms, not defined specially for customs issues.
Q	Lack of ordinary care
R	Lack of due diligence.
S	Moral constituent elements of some offences known as 'offences of imprudence'. The negligence and the gross negligence are not as a rule constituent elements of Customs offences. Given other circumstances, the L.G.D.A (General Law of Customs and Excise) sometimes uses the term « to neglect » to emphasize that the fraudulent intention is not required for an offence to be committed.
T	Tn Administrative Violations Code provides that an administrative violation shall be considered to be committed through negligence if the person who has committed it foresaw the possibility that the harmful consequences of his or her action or inaction would result but carelessly relied on these being prevented, or did not foresee the possibility that such consequences would result, although he or she should and could have foreseen such. Same definition we have in our Criminal Law.
U	The failure to use reasonable care. (Import Duties Act (Cap. 337)
V	A person who behaves with negligence is somebody who ignores the principle of care to which they are obligated according to the conditions and their personal circumstances, and does not therefore recognise that they are realising the legal elements of an offence.
W	Absence de diligence : cette notion n'est pas utilisée ne droit pénal douanier français.
X	Under Xn Penal code negligence is a subjective element to constitute an offence. Negligence is recklessness or carelessness.

Gross negligence

A	the failure to give any care to be in compliance with a law
B	an act or omission in reckless disregard of the consequences for the safety or property of another; more than carelessness or neglect. Gross negligence by an employee may justify summary dismissal
C	Causing an infringement of customs obligations by extraordinary carelessness in customs affairs,
D	There is no legal definition in the administrative and criminal law.
E	In the E national legal system, there is gross negligence when there are no doubts in order to the negligent behaviour of the offender. Infact in this case the consequence of the behaviour is caused by a severe lack of care from the agent or by inobservance of the law of the regulations.
F	idem.
G	
H	Acting without the care specially demanded according to circumstances. In this case, the agent's carelessness is highly reproached.
I	awareness (anticipation) of the person who commits the customs infringement that his act may result in harmful consequences, and reckless assumption that they will be avoided.
J	This term is not provided by the national criminal or contraventional legislation. This legislation provides: (i) the negligence when the person who commits the infringement predicts the result of his deed and (ii) the negligence when the person who commits the infringement don't predict the result of his deed
K	when the perpetrator was seriously careless when relied on the non-occurrence of the consequence or when the perpetrator should have realised the serious consequence even with the absolutely expectable attention (defined in Art. 14 of our national Criminal Code)
L	No need to be defined (general legal stuff).
M	see negligence, slovak criminal law differentiate between the blunder negligence and the simple negligence)
N	Extreme or repeated instances of negligence.
O	New Penal Code does not provide a special construction for gross negligence.
P	The three terms above are general legal terms, not defined specially for customs issues.
Q	Evident lack of ordinary care.
R	Knowledge of the illegal nature of an act or omission and acceptance of its illegal results.
S	Moral constituent elements of some offences known as 'offences of imprudence'. The negligence and the gross negligence are not as a rule constituent elements of Customs offences. Given other circumstances, the L.G.D.A (General Law of Customs and Excise) sometimes uses the term « to neglect » to emphasize that the fraudulent intention is not required for an offence to be committed.
T	Tn Administrative Violations Code does not provide a construction for gross negligence.
U	An extremely careless action or an omission that is wilful or reckless disregarding the consequences
V	A person who behaves with gross negligence is someone who contravenes the duty of care and in which this person is to be blamed for such a contravention because they could easily have predicted or avoided it.

W	Manoeuvre : lorsques certains faits peuvent être qualifiés de maneouvres, l'infraction est qualifiée de délit et non pas de contravention.
X	Xn criminal law doesn't provide a construction for gross negligence. However X civil law (Law of obligations act, sees a difference between carelessness and gross negligence. Gross negligence is failure to exercise necessary care to a material extent.

Fraudulent Intention

A	intention to make money illegally (e.g. not paying the duties/taxes in correct amount)
B	Mental element of all attempts is intention. Fraudulent intention refers to the intention to act dishonestly of deceitfully.
C	No relevant criterion in Cn penal law.
D	There is no legal definition. In case that "fraudulent intention" means "deliberation", in accordance with Art.11, par.2 of the Criminal Code, an act shall be considered intentional where its perpetrator was conscious its nature of dangerous to society, foresaw its consequences as dangerous to society and wished or allowed the occurrence of such consequences.
E	Fraudulent intention consists on the intention of the agent to device someone and it also can contribute to constitute a specific hypothesis of crime
F	Customs and excise infringements are considered as material offences : contrary to common legal law it is not necessary that the perpetrator has the *animus deliquendi*. Fraudulent intention only operates in cases where the burden of prove is to be allocated to the customs side, especially in the case of wilful production of false documents, invoices, certificates.
G	
H	Acting with the conscience of being perpetrating a fact that is considered an infringement and with the purpose of accomplishing it.
I	one of the following circumstances: 1) awareness of the person who commits the customs infringement of the wrongful nature of this act and desire to engage in such conduct; 2) awareness of the person who commits the customs infringement of the wrongful nature of this act and perception that this act may cause the result described by a law and his conscious objective to cause such a result; 3) awareness of the person who commits the customs infringement of the wrongful nature of this act and perception that this act may cause the result described by a law and (though it is not his objective) conscious allowance the results to occur.
J	Intention – Form of guiltiness
K	intention to cause financial damage with deception
L	No need to be defined (general legal stuff).
M	intention is constructing on two factors the knowledge and the intention (the law breaker is conscious that infringe the rules)
N	The intention to act in a dishonest manner to gain (usually) financial advantage. In the context of customs infringements the intention may often be to falsify or withold information in order to pay less duty than is really due, to gain access to a procedure that is otherwise prohibited, or to circumvent import or export restrictions.
O	The person was aware of his conduct and wanted to commit it, or if he was aware that his conduct can originate a forbidden consequence, but he acceded to it. (*Article 25 of Penal Code, OJ RS Nr 55/2008*).
P	This term is also a general legal term, not defined specially for the customs code, but the fraudulent intention is mentioned in the P customs code as a prerequisite for smuggling cases.
Q	Sensation and thinking of a person to do something against a third.

R	Act or omission which is made knowingly of its dishonest and or deceitful nature in pursuing of results that contravene specific provisions of national or community legislation.
S	Moral constituent element of some offences which require that the criminal act is committed with an ill-willed intent and that the offender wants to succeed. The majority of the offences with respect to Customs matters does not require the fraudulent intention.
T	In T Criminal Law a criminal offence shall be considered to have been committed deliberately (intentionally) if the person who has committed it has foreseen the consequences of the offence and has desired such (direct intent) or, even if such consequences have not been desired, nevertheless has knowingly allowed these to result (indirect intent).
U	The intentional use of deceit, a trick or some dishonest means to deprive another of his/her/its money, property or a legal right.
V	(Direct) fraudulent intention - lat. dolus directus - is the will to carry out a criminal or administrative offence in full knowledge of the objective circumstances surrounding the case. Intention as the heightened form of direct intent then exists if the offender aims to bring about the occurrence of the success of the offence. Intent is also therefore evident if the offender knows an offence is possible and abides by the possibility that their behaviour leads to the offence, so-called conditional intent (lat. dolus eventualis).
W	Intention frauduleuse : cf. définition de la bonne foi.
X	Intent to act in bad faith/ Intention to act malevolently

Legitimate expectation

A	a belief that behaviour is allowed and acceptable according to a law
B	The doctrine by which a person may obtain a remedy where he has had a legitimate expectation regarding some representation made to him e.g. an undertaking to be consulted in relation to a change in the law: It is sometimes described as reasonable expectation.
C	Trust in legal advice, given from the competent customs authority and in governmental decrees.
D	There is no legal definition.
E	the legitimate expectation is a general legal position of the national legal system. The national set of rules protects the situation of the agent that is waiting for achieving his own rights
F	Terminology not known by national customs law.
G	
H	Certain reasonable representation of reality as a result of some external circumstances to the agent that will determinate his behaviour.
I	
J	If this term refers to the "legitimate self-defense" – Cause that removes the criminal or contraventional character of the infringement
K	an abstract requirement meaning that in the case of identical circumstances the client can always expect the same attitude from the concerned authorities
L	No need to be defined (general legal stuff).
M	the Slovak law system doesn't know this law term
N	Legitimate expectation is the premise that individuals may, on the basis of past practice and custom, have an expectation that they will be trteated in a particular way, even if this assumption has no specific basis in law. By way of example, if the national authority has examined goods in the past and accepted them as being proper to a particular class of goods, the importer might reasonably expect his next consignment of the same goods to be treated in the same way, provided of course that no change had been signalled in advance by the national authority.
O	Not exactly defined in legislation, a general term.
P	The three terms above are general legal terms, not defined specially for customs issues.
Q	Hope that something happends based on a logical point of view.
R	An expectation for a specific treatment by the Administration, having regarded the existing national or community provisions and policy.
S	In S, the 'legitimate expectations' are put forward in public or administrative law cases. The S criminal law does not strictly speaking mention those expectations and uses rather the notion of invincible error. That notion, which is a cause of justification and cancels the offence, can indeed result from erroneous information or orders of the administration.
T	Tn Administrative Violations Code provides that a private person may have confidence that the actions of an institution will be legal and consistent. An institution's error, for the occurring, of which a private person cannot be held at fault, may not cause unfavourable consequences for the private person.
U	Arises from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue.

V	Trust is the secure expectation of the occurrence of a certain circumstance.
W	Confiance légitime cette notion n'est pas utilisée en droit pénal douanier français.
X	Expectation of a person that a public body retains its current practice or keeps its promise in some matter.

Error suitable to affect the behaviour

A	an error that is acceptable (justified) as the reason for that somebody behaves in the particular way
B	
C	Wrongful consciousness either of the law or of the relevant facts.
D	There is no legal definition.
E	these words are not subject to different interpretations under E national legal system
F	sub 13
G	
H	Wrong representation of reality that motivates the agent's behaviour, which will not be censurable if it couldn't be reasonably detected.
I	
J	Cause that removes the criminal or contraventional character of the infringement
K	being unaware of the fact that the action is a violation of the law (please note that an erroneus conception shall not exclude sanctions if it is caused by negligence) (defined in Art. 27 of our national Criminal Code)
L	No need to be defined.
M	error means the difference between the law breaker knowledge and the reality
N	The term is not one that we are familiar with. Judging by the comments of other MS we think this may refer to mitigating factors we take into account in determining whether to impose a sanction or to the level of that sanction. If this is the case, then we do take such factors into account.
O	We distinguish between actual and error in law. They affect on guilt. *Error of facts* The perpetrator who, at the time of the committing of the criminal offence, was either not aware of a statutory element of such an offence or that he erroneously believed that circumstances were present which, if they were true, would justify his conduct, shall not be held to be liable under law. If the perpetrator was in error due to his negligence, he shall be held guilty for the committing of a criminal offence when he was in error if there was no needful watchfulness. (*Article 30 of Penal Code, OJ RS Nr 55/2008*). *Error of law* The perpetrator of a criminal offence shall not be held guilty under criminal law if, for reasons which can be justified, he did not know that such an offence was unlawful. There are no legitimate reasons, if the perpetrator could be acquainted with law regulations under same conditions as others in his wider environment or he had to know special law regulations according his work, role or commonly position. The court may reduce the sentence of a perpetrator who could have avoided his mistake. (*Article 31 of Penal Code, OJ RS Nr 55/2008*).
P	The three terms above are general legal terms, not defined specially for customs issues
Q	Actuation based on a mistake committed in a logical interpretation of a law.
R	There is not any definition in our legal system. Need for clarification.
S	Unknown terminology. The S law rather refers to the notion of invincible error as a cause of justification which allows to cancel the offence. It is an error that every sensible and

	careful man could have committed and which results from an external cause that cannot in any way be attributed to the person who is the victim of that cause.
T	we don’t have such definition in our legal system.
U	A line of action taken on the basis of incorrect facts information.
V	A case of deception is the fraudulent misrepresentation of facts, meaning the presentation of circumstances which do not actually exist as being real or existing to another person. A case of deception also exists if, in breach of duty, the prevention of the existence or continuation of an error is not prevented.
W	Erreur ayant des effets sur le comportement Cette notion n'est pas utilisée en droit pénal douanier français.
X	No suggestions

Violence suitable to affect the behaviour

A	a violence that is acceptable (justified) as the reason for that somebody behaves in the particular way
B	
C	Strong external and illegitimate human force.
D	There is no legal definition.
E	these words are not subject to different interpretations under E national legal system;
F	Act aggraving the penalty
G	
H	Physical or psychological coercion, such as a threat, that is capable of motivating an involuntary behaviour.
I	
J	Cause that removes the criminal or contraventional character of the infringement
K	excessive force, influenced by coercion that derpives the person concerned to act according to his own free will (defined in Art. 26 of our national Criminal Code)
L	No need to be defined.
M	physical violence against the physical integrity of the another person or on the person, who the law breaker bring into the situation of vulnerability with the artifice or the law breaker use the violence against the thing which is in ownership of another person
N	Violence is a factor that will help determine whether or not we deal with an infringement under administrative or criminal procedures. The reality is that all cases in which violence is a feature would be dealt with under criminal procedures.
O	An act committed under the influence of coercion, which the perpetrator was not able to withstand, shall not constitute a criminal offence. (*Article 22 of Penal Code, OJ RS Nr 55/2008*).
P	The three terms above are general legal terms, not defined specially for customs issues
Q	Actuation forced by circumstances impossible to avoid because there is a physical risk for the actor.
R	There is not any definition in our legal system. Need for clarification.
S	Unknown terminology. According to the S law, the violence (or threat) which goes with the carrying out of an offence can serve as aggravating circumstance of that offence. !!! When violence is used to compel a person to commit an offence, it is a case of « force majeure » (cause of justification which cancels the offence).
T	we don't have such definition in our legal system.
U	The abuse of force employed against common right and against the laws.
V	Violence is physical force which is exerted upon another person through either direct or indirect means, and which in the opinion of the offender is intended to either overcome or render impossible resistance that has been provided or is expected. A threat involves holding out the prospect of a future forfeit, the occurrence of which the instigator claims to be able to influence.
W	Violence ayant des effets sur le comportement : cette notion n'est utilisée en droit pénal douanier français.
X	No suggestions

Customs infringement settlement

A	an agreement that is made between the investigating authorities and a liable person who commit the customs infringement, stating the penalties that will be imposed on that person
B	This could possibly be a settlement of criminal or civil proceedings in relation to a breach of customs legislation. May involve imposition of financial penalty in lieu of proceedings.
C	Not applicable
D	There is no legal definition, but Art. 229б of the Customs Act indicates that the agreement shall be drawn up in writing and shall reflect the agreement of the administrative sanctioning authority and the violator on the following issues: 1. has an act been perpetrated, has it been perpetrated by the violator, has it been perpetrated guiltily, does the act constitute a customs violation; 2. what will the type and size of the sanction be; 3. will the goods that are the object of the violation be confiscated in favour of the state as well as the vehicles and carriers used for their transport or carriage or shall they be paid for in an amount at least 25 percent of their equivalent value.
E	In the national legal system there are some procedures to resolve customs infringements before instituting legal proceedings.
F	In F, we have the ”acte de transaction” as it is called in French. The administration has the possibility to finish an act without passing the court, if the administration and the person find an arrangement in good terms. Payment of a penalty, leaving the goods at the disposal of the administration.
G	
H	Agreement towards a penalty apply.
I	deference of penalty, or spread in the time limit, or exemption from penalty.
J	Agreement between authorities and the person who committed a customs infringement, related to the penalty to be applied
K	An agreement between the court/customs authority and the client whereby the latter accepts to pay a penalty as prescribed under Customs legislation. See our answers to questions in item 7.1 of the draft questionnaire.
L	This definition (perhaps more a description of the procedure and its scope) depends on the answers to questions in item 7.1 of the draft questionnaire.
M	not applicable in M law system
N	Payment of outstanding duties & any penalty which may have been imposed.
O	Settlement is possible for criminal offences for which a fine or not more than three years imprisonment is prescribed. It is done on a proposal of a public prosecutor. When deciding about settlement, he takes into account type and nature of the offence, the circumstances in which it was committed, the personality of the offender and his prior convictions for the same type or for other criminal offences, as well as his degree of criminal responsibility. Settlement shall be run by the adjuster, who is obliged to accept the case into procedure. Settlement may be implemented only with the consent of the offender and the injured party. *(Article 161 a of Criminal Procedure Act, OJ RS Nr 63/1994).*
P	Not applicable

Q	It´s a discretional customs procedure, with a settlement about the final customs debt and an automatic 50 % minoration of the fine.
R	The compounding of an offence or act committed or reasonably suspected of having been committed by any person against or in contravention of the provisions of the customs or the community legislation, on such terms and conditions as the Director, in his discretion, thinks proper, with full power to accept from the offender a payment in money not exceeding the maximum penalty provided by the customs legislation for such offence or act.
S	In S, the administration of Customs can compromise with the offender by means of a settlement. The settlement is an agreement subject to criminal law between the offender and the administration which, in return for the enforcement of the criminal penalties mentioned (fines, confiscations and closing down of places of business), has the effect of cancelling the criminal proceedings with respect to Customs matters (Article 228 of the General Law of Customs and Excise). To that effect, the settlement constitutes an option to the prosecution before the criminal court. It is as a rule applicable to every type of Customs offence, yet provided that mitigating circumstances can be put forward, for instance in case of lack of fraudulent intention (Articles 263 and 264 of the General Law of Customs and Excise). The administration of Customs estimates in a sovereign capacity the existence of mitigating circumstances.
T	we don't have such definition in our legal system.
U	A contractual agreement entered into between the Comptroller of Customs and the offender whereby the latter accepts to pay a penalty as prescribed under Customs legislation in lieu of prosecution.
V	An infringement settlement is the subsequent compensation of an action which is wrong through the elimination or the lessening of its consequences or the provision of compensation by the perpetrator. Customs infringements settlements frequently involve the payment of import duties owing from an instance of evasion.
W	Transaction douanière : Acte par lequel l'administration des douanes et l'infracteur concluent un contrat de nature civile mais ayant des effets sur les poursuites. Par la transaction, l'infracteur reconnaît avoir commis l'infraction qui lui est reprochée et accepte de payer une amende à l'administration. La conclusion de cette transaction éteint toute poursuite de la part de l'administration contre l'infracteur.
X	No definition under Xn law is provided. Customs infringements as well as other unlawful acts are proceded by the rules of criminal or misdemeanor procedure. If settelment here means not engaging punitive action on behalf of the state considering minor significance of the case, then both said rules see the possibility of not initiating the procedures. Settlement proceedings may be applied in case of some criminal procedures at the request of the accused or the Prosecutor's Office.

Updated Glossary

- **reflecting the responses of Member States to a request that:**

- phrases or concepts which have specific legal status (i.e. defined in national legislation) should be identified as such
- similarly, phrases or concepts which are accepted principles within national law, even if not defined in specific legislation, should be identified and any necessary clarification provided
- other instances should get the responses "not defined" , "not a recognised principle" or even "specifically forbidden/prohibited in national law"

- **reflecting additional clarifications provided by a number of Member States**

National customs provisions

A	the national law relating to customs - phrase which is used in doctrine of law but not defined in specific legislation
B	This specific phrase is not defined in our legislation but would be generally understood to mean all legislation and case law of relevance to customs
C	Act to implement Customs Law (AICL) Regulation to implement Customs Law (RICL) Fiscal Penal Code (FPC) Criminal Code (CC) Criminal Procedure Code (CPC) Federal Fiscal Code (FFC) Market Regulation Act Foreign Trade Act Law on Export Refunds Product Piracy Act Species Trade Act
D	There is no legal definition. The accepted common definition is: laws, regulations and administrative provisions, the application of which is under the jurisdiction of the customs administration.
E	these words are not subject to different interpretations under E national legal system, this term concerns with the national law relating to customs.
F	
G	Not defined. However, the equivalent phrase to "national customs provisions would normally be understood to refer to national legislation implementing EU Customs law in the G or in any other Member State.
H	National rules adopted to fulfil and develop the European Community's customs regulation. That includes the statute law (rules approved by National Parliament and Government) and also the regulations adopted directly by the Administration regarding the implementation of statute law. In what concerns the H legal system, this excludes the relevance of other law sources – namely customary law or judicial precedent. (this term is not defined in national legislation, so the answer follows the respondents' interpretation according to legal doctrine)
I	Provisions of the international agreements of the Republic of I and legal provisions of the Republic of I, which the customs authorities are responsible for enforcing, as well as legal provisions issued by the customs authorities building upon the authorizations granted to them by legal provisions regulating their activities, and customs agreements with the customs authorities of other states concluded on implementing the international agreements of the Republic of I. This term is defined in national legislation
J	National legislation (law, secondary and tertiary legislation) in customs matters. In customs matters, law contains criminal provisions too; The following definition there are in the J Customs Code

	Customs provisions include the present Code, the Regulation for the implementation of this Code, as well as of other norms which contain provisions referring to the field of customs.
K	is a phrase which is used as legal doctrine but not defined in specific legislation **-national legislation pertaining to the importation, exportation and transit of goods in connection with customs duties, fees and control on the goods crossing the national frontiers,**
L	There is no legal definition but it is clear that national customs provisions are the Customs Act and Customs Decree and the decisions by the National Board of Customs issued on the basis of the empowerments in the Customs Act. Naturally, national customs provisions regard areas which are outside the European Union exclusive competency.
M	
N	
O	are act No. ….. Coll. Customs Act and on amendments and supplements to some Acts as amended and act No. …. Coll. on state administration authorities in the customs as amended.
P	
Q	No legal definition. For this questionnaire, this term is comprehensible by all kind of legislation generated by National Institutions in development of Customs Community Code.
R	Customs Code Law as may be amended from time to time and the Regulations, Orders and Notices issued under this law. - A phrase not directly defined in national legislation but it falls within the definition of the phrase ¨customs legislation¨, as defined in the Customs Code Law .
S	Legislative, statutory or administrative provisions taken by a Member State with respect to the Customs matters, whose application is the concern of the national administration of Customs.
T	
U	National Customs Laws and Regulations – Accepted Principle Reference is made in the Customs legislation to the term ‘provisions’ but this is not explicitly defined
V	No legal definition. For this questionnaire, this term is understood by DE as following: All of the legal norms enacted by a member state that govern the flows of goods over the borders of the customs area of the community.
W	
X	

•Customs administrations

A	the authorities that is competent to deal with the customs law - phrase which is used in doctrine of law but not defined in specific legislation – the legal status has the phrase "Customs Service"
B	This exact phrase is not specifically defined in legislation but all relevant national legislation would routinely state that the "care and management" of the customs matters is the responsibility of the Revenue Commissioners (the agency which functions as the national customs administration).
•C	Local Customs Authorities Federal Ministry of Finance
D	In accordance with art.7 of the Customs Act, the Customs administration shall be a centralized administrative structure, organized within the Customs Agency under the Minister of Finance, which shall be a legal person financed by the state budget, with a seat in Sofia.
E	these words are not subject to different interpretations under E national legal system; this term refers to legal authorities in charge of applying customs legislation.
F	
G	The term customs administrations would correspond to "customs authorities" as meant in Article 4 of the Community Customs Code, which authorities are defined on a national level as "the inspector or the collector" by virtue of Article 1:3, paragraph 1, subparagraph d, of the General Customs Act (Algemene douanewet). Subparagraph c of that provision stipulates how those officials are to be appointed under the General Customs Act.
H	Legal authorities to apply customs legislation (this term is not defined in national legislation, so the answer follows the respondents' interpretation according to legal doctrine)
I	This term is not defined in national legislation. In I reply the term "customs administrations" is considered as the entirety of customs offices of the Member State.
J	Customs authority – administrative authority having legal powers in customs matters. The following definition there are in the Jn Customs Code (Law No 86/2006 regarding the Customs Code of J): The customs authority carries out within the state's customs policy the attributions granted by customs rules in order to perform customs clearance for goods introduced into or taken out from the country.
K	a phrase which is used as legal doctrine but not defined in specific legislation - **national system of authorities responsible for the application of – inter-alia - customs provisions and investigative powers related to customs infringements**
L	There is no legal definition but there are specific provisions on the Customs which exists for the customs activities.
M	
N	•
O	The Customs Administration is a body within Ministry of Finance, responsible for

	administration and collection of customs duties, excise duties and VAT on imports. The Customs Administration is managed by the Director General positioned at the General Customs Directorate. At the Directorate there are nine divisions in charge of different customs areas. They control and support the operation of the entire service. Managed by Directors they are responsible for uniform implementation of the customs policy, laws, provisions, regulations and procedures under the authority of customs offices located on borders and inland. Tasks and powers of Customs administration are defined in Customs service act.
P	
Q	The custom administration is a body of the Central Agency for Tax Administration of the Ministry of Economy and Finance. It is organised in Central service (customs Department) and in Regional Services. The organization is regulated in a special law.
R	The administrations responsible for (i) the implementation of the provisions of the national customs provisions, of the Customs Community Code and its Implementing Provisions, the corresponding relevant national and Community Legislation which relates to taxes, the assessment and collection of duties, taxes and other charges and (ii) the implementation of any legislation that has been vested in them. – A phrase which is used as legal doctrine but not defined in specific legislation.
S	National authorities in charge of the application of the community and national Customs provisions on the Member States' territory.
T	
U	Comptroller of Customs - – Accepted Principle Reference is made in the Customs legislation to the term 'customs administration' but this is not explicitly defined
V	Art. 4 No. 3 Community Customs Code: Customs authorities means the authorities responsible inter alia for applying customs rules.
W	
X	

Customs infringement

A	behaviour or conduct that is against (breaking) the customs law - phrase which is used in doctrine of law but not defined in specific legislation
B	Not specifically defined but generally understood to mean a breach or violation of customs laws or rules.
C	Violation of customs duties. (Common understanding)
D	Any criminal or administrative violation or attempt of violation of the provisions of the customs legislation.
E	
F	
G	The G equivalent is not defined in the General Customs Act, but its meaning in the context of national customs legislation seems clear: any conduct (including any omission) which under the General Customs Act, or under regulations based on that Act, is defined as a criminal infringement or as an administrative infringement .
H	Illegal act qualified, by a law in force, as a censurable offence to customs regulation and punished with a penalty (legal definition, foreseen in article 2º of Law ….).
I	This term is not defined in national legislation. In I reply the term "customs infringement" is considered as any illegal conduct of a person violating the requirements of Community Customs legislation and (or) national customs provisions.
J	The initial answer was: Failure to meet (to observe) the obligations provided by the customs provisions. It can be an action or a non-action and it can have criminal or non criminal character Following the studies and discussions within the Project Group, we consider that for the purposes of this Questionnaire the term "customs offence" has the same meaning as "customs infringement" and it can have criminal as well as non-criminal character. The definition given by the national legislation for "criminal offence", as a general rule, is the following: Any deed, which constitutes social threat, which is committed with guilt and which is provided in the criminal law, constitutes a criminal offence. The definition given by the national legislation for "non-criminal offence" (named "contravention"), as a general rule, is the following: The contraventional law protect the social values that are not protected by the criminal law. It constitutes contravention the deed committed with guilt, established and sanctioned by law, by ordinance, by a Government decision or by a decision of the local council of the commune, town, municipality or of the sector of the municipality of Bucharest, of the county council or of the General Council of the Municipality of Bucharest.
K	is a phrase which is used as legal doctrine but not defined in specific legislation - **any criminal, contravention or administrative act violating the customs rules and regulations and its attempt if it is also punishable (general concept)**
L	There is no legal definition for customs infringement.

M	
N	•
O	Act, which is not in accordance with customs legislation and it is prohibited.
P	
Q	There is a definition of tax infringement in the General Tax Law which is applied to the custom infringements.
R	Contravention of the provisions of national and community customs legislation. This term has the same meaning as the term "customs offence". – A phrase which is used as legal doctrine but not defined in specific legislation.
S	Act in contravention of the national or community Customs regulations and which is criminally penalized by national Customs provisions.
T	
U	Breaches/violations of customs laws and regulations - – Accepted Principle but not defined in the Customs legislation
V	No legal definition. For this questionnaire, this term is understood by V as following: Every instance of behaviour in contravention of the national or community customs regulations.
W	
X	

Customs offence

A	customs infringements that is punishable by criminal penalties - phrase which is used in doctrine of law but not defined in specific legislation – the legal status has the phrase "fiscal offence" – i.e. behaviour forbidden by law and punishable. Phrase "fiscal offence" means customs offence and tax offence and excise offence
B	This exact phrase is not defined in Irish law but would be understood to mean an act punishable in the criminal courts in accordance with customs law
C	Offences as defined in the FPC or in other relevant penal legislation, dealing with violations of customs duties. *[FCP:* *Art. 1(1) Fiscal offences are punishable deeds (actions or omissions) as defined in Art. 33 to 52 committed by natural persons. In addition, fiscal offences are all other deeds explicitly subject to punishment, if specifically characterized as fiscal offence or petty fiscal offence by some other federal law.* *(2) As stipulated in Art. 28a legal entities may also be held responsible for fiscal offences according to the* Federal Statute on the Responsibility of Entities for Criminal Offences.]
D	This term has the same meaning as the term "customs infringement" and "customs irregularity".
E	
F	
G	Synonym for customs infringement. Not defined.
H	Any non-compliance behaviour to customs rules which may not necessarily conduct to a penalty apply (procedure for criminal or administrative infringement) (definition not provided in legislation, which results from interpretation according to legal doctrine)
I	This term is not defined in national legislation.
J	The initial answer was: Criminal offence in customs matters. Following the studies and discussions within the Project Group the term "customs offence" haven't been used as "criminal customs offence", so we consider that for the purposes of this Questionnaire the term "customs offence" has the same meaning as "customs infringement" and it can have criminal as well as non-criminal character. The definition given by the national legislation for "criminal offence", as a general rule, is the following: Any deed, which constitutes social threat, which is committed with guilt and which is provided in the criminal law, constitutes a criminal offence. The definition given by the national legislation for "non-criminal offence" (named "contravention"), as a general rule, is the following: The contraventional law protect the social values that are not protected by the criminal law. It constitutes contravention the deed committed with guilt, established and sanctioned by law, by ordinance, by a Government decision or by a decision of the local council of the commune, town, municipality or of the sector of the municipality of Bucharest, of the

	county council or of the General Council of the Municipality of Bucharest.
K	a phrase which is used as legal doctrine but not defined in specific legislation - any criminal act resulting in the unlawful reduction of customs revenue
L	There is a legal definition in the Customs Act: Customs offence means an offence which constitutes violation of this or any other act that the Customs is responsible for supervising and enforcing, or violation of the provisions or regulations issued under or by virtue of such acts as well as the unlawful dealing in imported goods referred to in Chapter 46 of the Penal Code, and the offence of concealment referred to in paragraph 2 of Section 1 of Chapter 32 of the Penal Code or any other infringement involving the importation and exportation of property.
M	
N	
O	Act, which is not in accordance with customs legislation and it is sanctioned.
P	
Q	There is a definition of tax offence in the General Tax Law which is applied to the custom offence
R	Contravention of the provisions of national and community customs legislation. This term has the same meaning as the term "customs infringement". – A phrase which is not defined in specific legislation but as all customs offences are considered as criminal offences, the phrase ¨criminal offence¨ is defined in the national Penal Code.
S	Act in contravention of the national or community Customs regulations and which is criminally penalized by national Customs provisions.
T	
U	A breach = leaning towards a criminal aspect in terms of customs legislations An act or omission punishable in terms of customs legislations – Accepted Principle Reference is made in the Customs legislation to the term 'offence' but this is not explicitly defined
V	No legal definition. For this questionnaire, this term is understood by V as following: Every customs infringement which can be prosecuted according to member state laws with a (criminal) penalty.
W	
X	

Customs irregularity

A	behaviour or conduct which is not according to the customs rules, less important than customs infringement (e.g. not obey the terms defined in the customs provisions) - phrase which is used in doctrine of law but not defined in specific legislation
B	This term is not defined but would be understood to describe a breach of customs rules
C	Minor customs offence as defined in Art. 51 par. 1 lit. e and f FPC
D	There is no legal definition. See "customs infringement"
E	
F	
G	Synonym for customs infringement. Not defined.
H	(The same as customs offence)
I	This term is not defined in national legislation
J	Any answer wasn't given initially for this term. Following the studies and discussions within the Project Group the term "customs irregularity" haven't been used as a special term, so we consider that for the purposes of this Questionnaire the term "customs irregularity" has the same meaning as "customs infringement".
K	is a phrase which is used as legal doctrine but not defined in specific legislation - any act or failure violating the administrative customs rules (non-criminal act)
L	There is no legal definition.
M	
N	
O	We do not distinguish so many terms, it is not clear what the difference between this term is
P	
Q	There is a definition of tax irregularity in the General Tax Law which is applied to the custom irregularity.
R	Contravention of the provisions of national and community customs legislation. This term has the same meaning as the terms "customs infringement" and "customs offence". – A phrase which is used as legal doctrine but not defined in specific legislation.
S	Act in contravention of the national or community Customs regulations and which is criminally penalized by national Customs provisions.
T	
U	Minor violation / failure to observe rules. – Accepted Principle Reference is made in the Customs legislation to the term 'irregularity' but this is not explicitly defined
V	Synonym for customs infringement
W	

X	

Non-compliance behaviour to customs rules

A	behaviour which is not obeying the customs rules – both customs infringement and customs irregularity - phrase which is used in doctrine of law but not defined in specific legislation
B	Not defined
C	Any missing to fulfil the obligations laid down in customs legislation. (Common understanding)
D	There is no legal definition.
E	these words are not subject to different interpretations under E national legal system; this term concerns a behaviour not conforming/adhering to customs provisions. It is not a specific but a general term that is not usually a legal definition.
F	
G	Not defined.
H	Acting against customs provisions (definition not provided in legislation, which results from interpretation according to legal doctrine)
I	This term is not defined in national legislation.
J	There is no legal definition for "Non compliance behaviour to customs rules". The interpretation given for this Questionnaire is the following: The result of such behaviour is a customs infringement.
K	is a phrase which is used as legal doctrine but not defined in specific legislation - any behaviour that does not comply with the EU or national customs rules and regulations
L	There is no legal definition.
M	
N	
O	We do not distinguish so many terms, it is not clear what the difference between this term is
P	
Q	It is the same that custom irregularity.
R	The behavior related to the contravention of the provisions of national and community customs legislation. – A phrase which is used as legal doctrine but not defined in specific legislation.
S	Unknown terminology.
T	
U	Non-conforming/adhering to customs legislations Not defined Accepted principle but no reference is made in the Customs legislation
V	Synonym for customs infringement
W	

X	

Sanction

A	a punishment for breaking a law (synonymous penalty) - phrase which is used in doctrine of law but not defined in specific legislation
B	Not specifically defined but understood to mean a penalty or punishment as a means of enforcing obedience to the law.
C	Any legal consequence of non-compliance. (Common understanding)
D	There is no legal definition. An administrative or a criminal penalty.
E	For E language there is not, in principle, a real concrete difference in meaning between the english term sanction and the term penalty. So we can assume that the words are a slightly different for the meaning. A sanction, generally speaking, can refer to the consequences of a behaviour not conforming to law. In this regard, the term can refer to the hypothesis of infringement for which the law provides sanction less severe than the penalty. In general, it may concern an administrative or civil sanction.
F	
G	Not defined.
H	Any legal disadvantage consequence to a non-compliance behaviour to customs rules. (definition not provided in legislation, which results from interpretation according to legal doctrine)
I	This term is not defined in national legislation. In I reply the term “sanction“ is considered as any measure of compulsion applied by the state institution for infringement, which causes negative consequences to the offender
J	The initial answer was: Penalty – a criminal penalty or an administrative penalty The definition given by the national legislation for “criminal penalty”, as a general rule, is the following: Criminal Penalty is a measure of constraint and a means of re-educating the convict. The purpose of the penalty consists in prevention of other crimes' perpetration. The law provides some types of criminal penalties. There is no legal definition for “non - criminal penalty”. The law provides some types of non-criminal penalties.
K	is a phrase which is used as legal doctrine but not defined in specific legislation - Any disadvantageous legal consequence resulting from customs infringements, including all kinds of criminal and non-criminal penalties
L	There is no legal definition.
M	
N	
O	A penalty or other means of enforcement used to provide incentives for obedience with the law. For example: fine, forfeiture, admonition.

P	
Q	There is a definition of tax sanction in the General Tax Law which is applied to the custom sanction.
R	The punishment (fine and or imprisonment) provided in the national customs legislation for the contravention of the provisions of national and community customs legislation. - A phrase which is defined in the penal code.
S	Measure essentially repressive taken according to the law, which consists in depriving someone of a right or imposing an obligation particularly financial on that person, in order to punish a behaviour specifically determined by the law.
T	
U	The Customs Ordinance (Cap. 37) utilises the word sanction to express the Comptroller's permission / approval Accepted Principle Reference is made in the Customs legislation to the term 'sanction' but this is not explicitly defined
V	No legal definition. For this questionnaire, this term is understood by V as following: A measure threatened by a legal norm which is intended to prevent a certain form of conduct and in so doing assert compliance with the legal regulation. The term 'sanction' is the generic term for penalty and administrative penalty.
W	
X	

Penalty

A	a punishment for breaking a law - phrase which is used in doctrine of law but not defined in specific legislation
B	Not specifically defined but generally understood to mean a punishment
C	Fine, compensation, custodial sentence or forfeiture as foreseen by Art. 15 to 19 FPC
D	There is no legal definition. A punishment for a crime or an administrative offence.
E	
F	
G	Not defined.
H	Legal punishment for customs infringement (definition not provided in legislation, which results from interpretation according to legal doctrine)
I	This term is not defined in national legislation. National legislation provides definitions of specific penalties (criminal and administrative). In I reply the term "penalty" is considered as a measure of compulsion provided for in a law and applied by the state institution for infringement, which causes negative consequences to the offender.
J	The initial answer was: Sanction – a criminal penalty or an administrative penalty The definition given by the national legislation for "criminal penalty", as a general rule, is the following: Criminal Penalty is a measure of constraint and a means of re-educating the convict. The purpose of the penalty consists in prevention of other crimes' perpetration. The law provides some types of criminal penalties. There is no legal definition for "non - criminal penalty". The law provides some types of non-criminal penalties.
K	is a phrase which is used as legal doctrine but not defined in specific legislation - Criminal or non-criminal sanction being the consequence of violating the customs rules and regulations
L	There is no legal definition.
M	
N	
O	A sort of sanction.
P	
Q	It is the same that sanction.
R	The fine provided in the national customs legislation for the contravention of the provisions of national and community customs legislation. This term has the same meaning as the term "criminal penalty". – A phrase which is used as legal doctrine but not defined in specific legislation.
S	Measure essentially repressive taken according to the law, which consists in depriving

	someone of a right or imposing an obligation particularly financial on that person, in order to punish a behaviour specifically determined by the law.
T	
U	punishment– Accepted Principle Reference is made in the Customs legislation to the term ‘penalty’ but this is not explicitly defined
V	No legal definition. Common understanding in V: A forfeit which is imposed on a person by society through a court for their own criminal or unlawful conduct and which also includes a socio-ethical reprimand of this person. The penalty is the expression of a judgement of reproach. This is defamatory and reproaches the offender for their opposition to the legal regulations.
W	
X	

Criminal penalty

A	penalty imposed in criminal procedure - phrase which is used in doctrine of law but not defined in specific legislation
B	Not specifically defined but accepted as being a penalty imposed by a court on conviction for a criminal offence. Can involve a fine or a term of imprisonment or suspended sentence or all three or other sanction
C	Penalty according to the FPC imposed in a judicial or administrative criminal procedure
D	A penalty for crime is defined in Dn Criminal Code.
E	
F	
G	Criminal penalties (and so-called criminal measures) in customs matters are those which are listed in Article 9 of the Criminal Code; they may only be imposed by a criminal court. However, under Article 10:15 of the General Customs Act, as amended but not yet applicable, Customs will be entitled in many cases to impose certain criminal penalties themselves by issuing a punishment order ("strafbeschikking"), after Customs has determined that the infringement concerned qualifies as a criminal customs offence. (The suspect will have the right to appeal the punishment order in criminal court.)
H	Legal punishment for criminal offences that may consist in imprisonment or in the payment of a fine and is imposed by courts.(definition not provided in legislation, which results from interpretation according to legal doctrine)
I	A measure of compulsion applied by the state, which is imposed during the judgement of conviction of a person found guilty of the commission of a criminal act. This term is defined in national legislation.
J	The initial answer was: penalty in criminal matters The definition given by the national legislation for "criminal penalty", as a general rule, is the following: Criminal Penalty is a measure of constraint and a means of re-educating the convict. The purpose of the penalty consists in prevention of other crimes' perpetration. The law provides some types of criminal penalties.
K	is a phrase which is used as legal doctrine but not defined in specific legislation - penalty assessed due to violating the customs related criminal rules and imposed by a Court
L	There is no legal definition but only such penalty can be a criminal penalty which is to be imposed due to an infringement considered in compliance with the L legislation as a crime. (Crimes are mainly included in the Penal Code but some lenient crimes (the penal scale only consists of fine) are defined in other legislation. Criminal penalties are mostly imposed by a Court but with regard to lenient crimes (the penal scale consists of fine or imprisonment for at most 6 months), a criminal penalty is imposed by a prosecutor if the offender does not resist the penalty demand (penal notice) issued by a customs officer.)
M	

N	
O	Penalty provided in Penal Code are: imprisonment, fine and ban on driving the motor vehicle; (*Article 43 of Penal Code*).
P	
Q	A definition it is included in the Criminal Code and in the case of criminal Smuggling Penalty is included in a special law about smuggling.
R	The fine provided in the national customs legislation for the contravention of the provisions of national and community customs legislation. This term has the same meaning as the term "penalty". – A phrase which is used as legal doctrine but not defined in specific legislation.
S	Sanction or penalty provided for in order to punish a behaviour specifically mentioned in a criminal law and imposed by a criminal court. With respect to Customs matters, the criminal penalties are mainly the imprisonment, the fine, the confiscation and the closing down of a place of business. The nature and the significance of the applicable penalty depends on the description of the offence.
T	
U	A money fine (payable to Registrar of Courts) or forfeiture of property ordered by the judge after conviction for a crime. Penalty may also include imprisonment – Accepted Principle Reference is made in the Customs legislation to the term 'penalty' but this is not explicitly defined
V	Synonym for penalty
W	
X	

Civil penalty

A	Not defined
B	Not specifically defined yet it is accepted, as a matter of case law and precedent, that civil penalties are generally fines or money damages imposed by a regulatory scheme. Civil penalties however, have been distinguished from civil remedies in that civil penalties are imposed for failure to comply with some statutory requirement; it does not amount to a criminal penalty requiring a criminal trial, while civil remedies seek to redress wrongs or compensate for injuries inflicted. In B, if a person disputes the imposition of a civil penalty, constitutional law requires that the liability for civil penalty can only be determined by an independent Court..
C	There are no civil penalties foreseen in C
D	There is no legal definition and not applicable for the D national law.
E	. The Civil penalty is a term which refers mainly to the obligation of compensation for damages arising from unlawful behaviour of a person.
F	
G	Not defined.
H	(It doesn't exist in H law system regarding customs infringements)
I	Civil penalty is not provided in national customs provisions.
J	The initial answer was: penalty in civil matters. The penalties provided by the Jn law in customs matters are criminal penalties or administrative penalties.
K	is a phrase which is used as legal doctrine but not defined in specific legislation - administrative penalty assessed by the customs authority due to administrative irregularity
L	There is no legal definition. Does not exist in L.
M	
N	
O	It is only foreseen in civil law - only where it is arranged between two parties – the party who does not fulfill his obligation or delays, has to pay the arranged amount *(Article 247 of Obligation code).*
P	
Q	A definition it is included in the Criminal Code, but is not applied to custom irregularities.
R	A financial penalty imposed by Customs administration on any evaded amount of duty and or tax that is assessed according to the customs legislation. This term has the same meaning as the term "administrative penalty". - A phrase which is used as legal doctrine but not defined in specific legislation.
S	Sanction or penalty provided for in order to punish a behaviour specifically mentioned in a law and imposed by an administrative authority. The S legislation mentions administrative penalties but not with respect to the Customs matters.

•T	
U	A money fine or surcharge imposed by a government agency to enforce regulations in cases involving late payment of taxes, failure to obtain a permit, etc. – Accepted Principle Reference is made in the Customs legislation to the term 'penalty' but this is not explicitly defined
V	no information provided
W	
X	

Administrative penalty

A	penalty imposed in administrative procedure - phrase which is used in doctrine of law but not defined in specific legislation
B	Not specifically defined but understood to mean fines of money damages imposed in accordance with administrative law. Administrative law is law created by administrative agencies by way of rules, regulations, orders and decisions. In B, our Constitution does not permit the imposition of penalties by a body other than a Court.
C	Not applicable (within the scope of the Cn Fiscal Penal Code only criminal penalties are applied to customs infringements). Administrative measures without penal character are foreseen in Art. 111 FFC, Art. 26 AICL and Art. 108 AICL.
D	No legal definition. A penalty for violations defined in the Dn Administrative and Sanctions Act
E	Administrative penalty is term which refers to a penalty imposed for an administrative infringement.
F	
G	A draft amendment to the General Administrative Law Act, introduced in Parliament by the Minister of Justice, systematically defines the terms "administrative sanction", "reparative sanction", "punitive sanction" and "administrative fine" as follows: "Administrative sanction: an obligation imposed or an entitlement withheld by an administrative authority due to an infringement" "Reparative sanction": an administrative sanction which is intended to wholly or partially rectify or discontinue an infringement, or to prevent repetition of an infringement, or to take away or limit the consequences of an infringement." "Punitive sanction": an administrative sanction which is intended to cause harm to the person who committed an infringement. "Administrative fine": the punitive sanction implying an unconditional obligation to pay a sum of money.
H	Legal punishment for non-criminal offences, which consists in a pecuniary charge imposed by customs authorities (definition not provided in legislation, which results from interpretation according to legal doctrine).
I	Only the Code of Administrative Offences provides for definition of administrative penalty – a measure of responsibility imposed with a view to punish an offender as well as to convince him and other persons to refrain from committing violations of law. Definitions of other administrative penalties are not provided in national legislation. In I reply the term "administrative penalty" is considered as any non-criminal penalty, provided in the tax laws or the Code of Administrative Offences.
J	The initial answer was: penalty in administrative matters. There is no legal definition for "non - criminal penalty" (that are administrative penalties). The law provides some types of non-criminal penalties (administrative penalties).
K	is a phrase which is used as legal doctrine but not defined in specific legislation - Civil penalty

L	There is no legal definition but only such penalty can be an administrative penalty which is to be imposed due to an infringement which is not considered as a crime in compliance with the L legislation.
M	
N	
O	Penalty, used in administrative procedure, usually a fine.
P	
Q	There is a general definition in a law which regulates the general procedure of the administration.
R	A financial penalty imposed by Customs administrations on any evaded amount of duty and or tax that is assessed according to the customs legislation. This term has the same meaning as the term "civil penalty". - A phrase which is used as legal doctrine but not defined in specific legislation.
S	Sanction or penalty provided for in order to punish a behaviour specifically mentioned in a law and imposed by an administrative authority. The S legislation mentions administrative penalties but not with respect to the Customs matters.
T	
U	A money fine or surcharge imposed by a government agency to enforce regulations in cases involving late payment of taxes, failure to obtain a permit, etc – Accepted Principle but not defined in the Customs Legislation, although the term 'administrative penalty' is explicitly defined in Chapter 406 – Value Added Tax
V	No legal definition. Common understanding in V: A forfeit which is imposed on a person by a public body for their contravention of an administrative law and which is supposed to remind the offender to comply with the legal regulations but which does not have the consequence of an impairment of honour. A fine is the general administrative penalty.
W	
X	

Force majeure

A	unexpected circumstances, such as natural disaster - phrase which is used in doctrine of law but not defined in specific legislation
B	Not specifically defined but acknowledged in case law and precedent as an overpowering event, which could not be anticipated or controlled e.g. an act of God.
C	Uninfluenceable circumstances effecting an infringement, e. g. heavy storms, earthquake, flood, fire etc. (Jurisdiction – no legal definition)
D	There is no legal definition. Unforeseen event external to the obligor which make it impossible for him to perform the obligation concern – like an earthquake, fire etc.
E	In the E national legal system, Force majeure and Fortuitous are both events unforeseeable and inevitable and they exclude the causal connection or relation between the behaviour and its consequence
F	
G	Based on Article 40 of the Criminal Code ("Not punishable is any person who commits an act under force majeur."), the boundaries of force majeur evolve from case law. According to legal literature, the core of force majeur as interpreted by G criminal courts is that compliance with the legal norm in question under the circumstances could not reasonably have been demanded from the suspect. As for administrative customs infringements, there is no legal definition in respect of force majeur.
H	An external event, independent from the agent's will that causes a non-compliance of legal rules and, consequently, excludes the agent's guilt. (definition not provided in legislation, but accepted in jurisprudence (courts decisions), which results from interpretation according to the principles accepted in H legal system and the legal doctrine)
I	Emergency circumstances that cannot be foreseen or avoided, or eliminated by any means. This term is defined in national legislation
J	The initial answer was: Cause that removes the criminal or contraventional character of the infringement. The Jn Criminal Code provides the following definition for "necessity state": The deed provided by the criminal law which was committed under necessity state does not constitute a criminal offence. A person under necessity state is any person who commits the action in order to save from an imminent danger which could not be prevented in other ways, the life, physical integrity or health of his own, some other person or a valuable asset belonging to him or to another person as well as the public interest. A person is not under necessity state if at the moment when the deed was committed, the person realized that by his action there might occur much more serious consequences than those resulting from a situation in which the danger was not prevented. According to the contraventional (non-criminal) law: "The contraventional character of the deed is removed in the case of the legitimate self defence, necessity state, physical or moral constraint, fortuitous event, irresponsibility, complete involuntary drunkenness, error of facts, as well as infirmity, if it has connection with the committed deed. The under age of 14 years is not contraventionally responsible."

K	is a phrase which is used as legal doctrine but not defined in specific legislation - unavoidable force effect that cannot be avoided by human force
L	There is no legal definition (general legal stuff).
M	
N	
O	Not exactly defined in legislation, a general term, could be a relieving circumstances. It is judged in a concrete case, what a force majeure is (for example earthquake).
P	
Q	Without a legal definition. It is applied a traditional definition of Q right.
R	An unforeseen and unavoidable event, which could not be anticipated or controlled, like an earthquake, flood etc. . – A phrase which is used as legal doctrine but not defined in specific legislation.
S	According to the S law, the notion of force majeure is used in criminal and civil law.- Under criminal law : cause of justification which cancels the offence, when the perpetrator of the offence has been compelled by a force against which he cannot have hold out.- Under civil law : case of exemption from civil liability, which consists of an unpredictable, compelling event, external to the person and which prevents him from respecting his obligations.
T	
U	an event which can generally be neither anticipated nor controlled – Accepted Principle but not explicitly defined
V	No legal definition. Common understanding in DE: An external, unusual and unpredictable event which could not have been prevented by the extreme care of the affected person.
W	
X	

Fortuitous event

A	a thing that happened in a way that was not planned - phrase which is used in doctrine of law but not defined in specific legislation
B	Not specifically defined but acknowledged in case law and precedent as an event happening by accident and/or chance.
C	Unpredictable circumstances hampering to act according lawfully or to act in time. (Common understanding)
D	There is no legal definition. Similar to force majeure.
E	
F	
G	Not defined.
H	An event related with the agent that he cannot control and, consequently, excludes his guilt. (definition not provided in legislation, but accepted in jurisprudence (courts decisions), which results from interpretation according to the principles accepted in H legal system and the legal doctrine)
I	This term is not defined in national legislation. In courts' practice it means accidental circumstances.
J	The initial answer was: Cause that removes the criminal or contraventional character of the infringement. The Jn Criminal Code provides the following definition for "Fortuitous event": The deed provided by the criminal law whose result is the consequence of a situation that could not be predicted, does not constitute a criminal offence. According to the contraventional (non-criminal) law: "The contraventional character of the deed is removed in the case of the legitimate self defence, necessity state, physical or moral constraint, fortuitous event, irresponsibility, complete involuntary drunkenness, error of facts, as well as infirmity, if it has connection with the committed deed. The under age of 14 years is not contraventionally responsible."
K	is a phrase which is used as legal doctrine but not defined in specific legislation - An unexpected event that cannot be foreseen
L	There is no legal definition.
M	
N	
O	Not exactly defined in legislation, a general term, could be a relieving circumstance. It is judged in a concrete case.
P	
Q	It is the same that force majure.
R	An accidental event. . – A phrase which is used as legal doctrine but not defined in specific legislation.
S	According to the S law, the fortuitous event is a notion of civil law, which does not apply

	in the criminal law. Like the notion of « force majeure », it constitutes a case of exemption from civil liability. Those two notions confirm one another and are most often put forward together.
T	
U	an unexpected fortunate event – Not defined
V	Synonym for force majeure
W	
X	

Good faith

A	the intention to be in compliance with a law - phrase which is used in doctrine of law but not defined in specific legislation
B	Not specifically defined but in relation to contracts for the sale of goods, good faith means done honestly, whether negligently or not.
C	The subjective consciousness of lawful acting. (Common understanding)
D	There is no legal definition.
E	Good faith therefore corresponds to action of a person which assumes the will to act properly, that is not detrimental in any way against another person and he has not any suspicion that his behaviour can be detrimental. However, it is possible to suppose the existence of the good faith when there is a diligent behaviour of the agent who is fallen into the error.
F	
G	Good faith is included in the description of a limited number of criminal infringements and if applicable is a factor which makes the infringement in question unpunishable . The boundaries of good faith in those instances evolve from case law. Good faith is not included in the description of any (criminal or administrative) customs infringements.
H	Abstract and comprehensive term that encompasses a sincere belief on motive without any malice or the desire to defraud others (definition not provided in legislation, but accepted in jurisprudence (courts decisions), which results from interpretation according to the principles accepted in H legal system and the legal doctrine)
I	This term is not defined in national legislation.
J	The initial answer was: There is not guiltiness. There is no legal definition for “Good faith”.
K	is a phrase which is used as legal doctrine but not defined in specific legislation - lack of fraudulent intention in a procedure taking place on the basis of the moral and social standards in force
L	There is no legal definition (general legal stuff).
M	
N	
O	Not exactly defined in legislation, a general term, could be a relieving circumstance. It is judged in a concrete case.
P	
Q	Without a legal definition. It is applied a traditional definition of Q right.
R	Contraventions of the national and community legislation with non-fraudulent intention of the person involved. . – A phrase which is used as legal doctrine but not defined in specific legislation.
S	According to the S law, the good faith is a notion used in criminal and civil law. - Under criminal law : lack of fraudulent intention, which can be put forward by the offender in order to evade the offence of which he is accused when that offence requires a fraudulent intention of the perpetrator. It can also serve as data required for the evaluation of the mitigating circumstances (notably when the administration of Customs and Excise offers a settlement).

T	
U	having honest intention – Accepted Principle but not explicitly defined
V	No legal definition. Common understanding in V: Good faith is trust in the legal validity of one's own conduct (bona fides).
W	
X	

Negligence

A	the failure to give enough care to be in compliance with a law - phrase which is used in doctrine of law but not defined in specific legislation
B	a tort involving the breach of a legal duty of care whereby damage is caused to the party to whom the duty is owed. It is the doing by a person of some act which a reasonable and prudent man would not have done in the circumstances of the case in question, or the omission to do something which would be expected of such a man under such circumstances. For actionable negligence there must be: (a) a duty of care between the parties; (b) a failure to observe the required duty of care; and (c) reasonably foreseeable damage suffered.
C	Causing an infringement of customs obligations by missing the necessary and reasonable attention. Art. 8 par. 2 FPC: "A person acts negligent, in case the person doesn`t act with adequate care, for which the person is obliged, taking into account his mental and physical abilities and for this reason the person doesn`t recognize that a fact pattern is fulfilled and that a punishment is foreseen for it.. A person also acts negligent, in case the person knows that a fact pattern could be fulfilled, but doesn`t want to fulfill it."
D	There is no legal definition in the administrative and criminal law. The term "negligence" exists as one of the forms of the guilt in the administrative and the criminal law. In accordance with art.11, par.3 and par.4 of the Criminal Code, an act shall be considered committed through negligence where the perpetrator did not foresee the occurrence of consequences dangerous to society, but was obliged to and could foresee them, or where he foresaw the occurrence of such consequences but intended to avert them. Acts committed through negligence shall be punishable only in the cases provided by law.
E	
F	
G	Not defined. If the description of a criminal infringement explicitly includes the element of "guilt" (which therefore must be proven by the prosecutor), this term always refers to gross negligence (culpa lata) rather than just negligence (culpa levis).
H	Acting without the care to which, according to circumstances, the agent is obliged and is capable of. In this case, the agent may represent as possible the accomplishment of the infringement to the law, but acts without accepting that accomplishment; or he does not even represent the possibility of the accomplishment of that infringement. (legal definition, foreseen in article 15º of the Penal Code)
I	One of the following circumstances: 1) awareness of the person who commits the infringement that his act may cause harmful consequences, and reckless assumption that they will be avoided; 2) failure of the person who commits the infringement to anticipate that his act may cause harmful consequences, although under the circumstances of the act he can anticipate those consequences and owes to anticipate them. This term is defined in national legislation.
J	The initial answer was: Form of guiltiness. The Jn Criminal Code provides the following definition for "Negligence": A deed is committed by negligence when the criminal:

	a) predicts the result of his deed, but doesn't accept it, because of groundless consideration that the result will not occur; b) does not predict the result of the action, although the person should have or could have predicted it. A deed constituting an action committed by negligence constitutes a criminal offence only if the law specifically provides it. A deed constituting non-action represents a criminal offence, no matter if deliberately committed or committed by negligence, except for the case in which the law sanctions only deliberate perpetration.
K	The perpetrator foresees the possible consequences of his conduct, but carelessly relies on their non-occurrence or fails to foresee the possibility of the consequences with a deliberate indifference or failure to exercise reasonable care (legal definition in Art. 14 of our national Criminal Code)
L	There is no legal definition (general legal stuff).
M	
N	•
O	The person has not acted with needful watchfulness, which under the given circumstances and according to his personal attributes he should and is capable to do by his action or omission. (*Article 26 of Penal Code*). Criminal act, done out of negligence, is punishable only if it is stated in law. (*Article 27 of Penal Code*).
P	
Q	It is applied a traditional definition of Q right and a definition of the Civil Code.
R	Lack of due diligence. . – A phrase which is used as legal doctrine but not defined in specific legislation.
S	Moral constituent elements of some offences known as 'offences of imprudence'. The negligence and the gross negligence are not as a rule constituent elements of Customs offences. Given other circumstances, the L.G.D.A (General Law of Customs and Excise) sometimes uses the term « to neglect » to emphasize that the fraudulent intention is not required for an offence to be committed.
T	
U	The failure to use reasonable care. (Import Duties Act (Cap. 337)– Accepted Principle the term 'neglect' is explicitly defined.
V	Art. 276 para. 2 Civil Code: A person who behaves with negligence is somebody who ignores the principle of care to which they are obligated according to the conditions and their personal circumstances, and does not therefore recognise that they are realising the legal elements of an offence.
W	
X	

Gross negligence

A	the failure to give any care to be in compliance with a law - phrase which is used in doctrine of law but not defined in specific legislation
B	Not specifically defined but understood generally as an act or omission in reckless disregard of the consequences for the safety or property of another; more than carelessness or neglect. Gross negligence by an employee may justify summary dismissal
C	Causing an infringement of customs obligations by extraordinary carelessness in customs affairs (jurisdiction).
D	There is no legal definition in the administrative and criminal law.
E	
F	
G	Not defined. If the description of a criminal infringement explicitly includes the element of "guilt" (which therefore must be proven by the prosecutor), this term always refers to gross negligence (culpa lata) rather than just negligence (culpa levis). According to legal literature it appears from case law that gross negligence is "blameworthy, substantial carelessness" .
H	Acting without the care specially demanded according to circumstances. In this case, the agent's carelessness is highly reproached. (definition not provided in legislation, but accepted in jurisprudence (courts decisions), which results from interpretation according to the principles accepted in H legal system and the legal doctrine)
I	This term is not defined in national legislation.
J	The initial answer was: This term is not provided by the national criminal or contraventional legislation. This legislation provides: (i) the negligence when the person who commits the infringement predicts the result of his deed and (ii) the negligence when the person who commits the infringement don't predict the result of his deed. The Jn Criminal Code provides the following definition for "Negligence": A deed is committed by negligence when the criminal: a) predicts the result of his deed, but doesn't accept it, because of groundless consideration that the result will not occur; b) does not predict the result of the action, although the person should have or could have predicted it. A deed constituting an action committed by negligence constitutes a criminal offence only if the law specifically provides it. A deed constituting non-action represents a criminal offence, no matter if committed with intention or committed by negligence, except for the case in which the law sanctions only deliberate perpetration.
K	when the perpetrator was seriously careless when relied on the non-occurrence of the consequence or when the perpetrator should have realised the serious consequence even with the absolutely expectable attention (legal definition in Art. 14 of our national Criminal Code)
L	There is no legal definition (general legal stuff).
M	

N	
O	New Penal Code does not provide a special construction for gross negligence.
P	
Q	It is applied a traditional definition of Q right and a definition of the Penal Code.
R	Knowledge of the illegal nature of an act or omission and acceptance of its illegal results. . – A phrase which is used as legal doctrine but not defined in specific legislation.
S	Moral constituent elements of some offences known as 'offences of imprudence'. The negligence and the gross negligence are not as a rule constituent elements of Customs offences. Given other circumstances, the L.G.D.A (General Law of Customs and Excise) sometimes uses the term « to neglect » to emphasize that the fraudulent intention is not required for an offence to be committed.
T	
U	An extremely careless action or an omission that shows wilful or reckless disregard for the consequences – Accepted Principle but not defined although the term 'neglect' is explicitly defined
V	No legal definition. Common understanding in V A person who behaves with gross negligence is someone who contravenes the duty of care and in which this person is to be blamed for such a contravention because they could easily have predicted or avoided it.
W	
X	

Fraudulent Intention

A	An offence is committed intentionally if committer wants commit an offence – legal definition which is defined in Penal Fiscal Code
B	Not specifically defined but it is an accepted principle in Irish law that a key mental element of all attempts is intention. Fraudulent intention refers to the intention to act dishonestly of deceitfully.
C	No relevant criterion in Cn penal law. In Cn penal law we distinguish betweeen the following types of intent: intent: A person acts deliberately, who wants to fulfil a fact pattern for which a punishment is foreseen (dolus directus); it is sufficient if the perpetrator considers this fact severly and accepts this fact (dolus eventualis).- Art. 8 par. 1 FPC; Art. 5 par. 1 Cn Criminal Code purpose: A person acts purposely, when he wants to achieve a result, for which the law presumes acting on purpose. – Art. 38 par. 1 FPC, Art. 5 par. 2 Cn Criminal Code knowing: A person acts knowingly, when the result, for which the law presumes purpose, wasn`t cosidered but was taken for granted. – Art. 33 par 2 FPC; Art 5 par. 3 Cn Criminal Code
D	There is no legal definition. In case that "fraudulent intention" means "deliberation", in accordance with Art.11, par.2 of the Criminal Code, an act shall be considered intentional where its perpetrator was conscious its nature of dangerous to society, foresaw its consequences as dangerous to society and wished or allowed the occurrence of such consequences.
E	Fraudulent intention consists on the intention of the agent to device someone in this regard this term may refer to malice and it also can contribute to constitute a specific hypothesis of crime
F	
G	Not defined. Fraudulent intention is a term used in the Criminal Code as well as in the General Customs Act chapter 9 (administrative customs infringements) and chapter 10 (criminal customs infringements). It is one of the elements which may be included in the legal description of an infringement and in that case has to be proven by the prosecutor. Mainly from (criminal) case law it evolves that if this element is included, the infringement in question only occurs if the suspect committed the other elements of the legal description of that infringement knowingly and deliberately (dolus directus or indirectus), or if the suspect knowingly and deliberately accepted a substantial risk that his behaviour could lead, as it actually did under the circumstances, to fulfilling those other elements of the infringement (dolus eventualis).
H	Acting with the conscience of being perpetrating a fact that is considered an infringement and with the purpose of accomplishing it. (synthesis of the legal definition foreseen in article 14º of the Penal Code)
I	The term "intent" is defined in national legislation (it is also used in respect of fraudulent intention). According to national legislation, intent is one of the following circumstances: 1) awareness of the person who commits the infringement of the wrongful nature of this act and desire to engage in such conduct (direct intent); 2) awareness of the person who commits the infringement of the wrongful nature of this act and perception that this act may cause harmful consequences and his conscious objective to cause such consequences (direct intent); 3) awareness of the person who commits the infringement of the wrongful nature of this act and perception that this act may cause harmful consequences and (though it is not his objective) conscious allowance the consequences to occur (indirect intent).

J	The initial answer was: Intention – Form of guiltiness The Jn Criminal Code provides the following definition for "Intention": A deed is committed with intention when the criminal: a) predicts and intends the result of his deed through the perpetration of this deed; b) predicts the result of his deed and, even if does not intend it, accepts the possibility of its occurrence.
K	is a phrase which is used as legal doctrine but not defined in specific legislation - intention to cause financial damage with deception
L	There is no legal definition (general legal stuff).
M	
N	
O	The person was aware of his conduct and wanted to commit it, or if he was aware that his conduct can originate a forbidden consequence, but he acceded to it. (*Article 25 of Penal Code, OJ RS Nr 55/2008*).
P	
Q	Without a legal definition. It is applied a traditional definition of Q right.
R	Act or omission which is made knowingly of its dishonest and or deceitful nature in pursuing of results that contravene specific provisions of national or community legislation. . – A phrase which is used as legal doctrine but not defined in specific legislation.
S	Moral constituent element of some offences which require that the criminal act is committed with an ill-willed intent and that the offender wants to succeed. The majority of the offences with respect to Customs matters does not require the fraudulent intention.
T	
U	The intentional use of deceit, a trick or some dishonest means to deprive another party of its money, property or a legal right. – Accepted Principle but not defined although reference is made to the term 'fraudulently'
V	No legal definition. Common understanding in V: (Direct) fraudulent intention - lat. dolus directus - is the will to carry out a criminal or administrative offence in full knowledge of the objective circumstances surrounding the case. Intention as the heightened form of direct intent then exists if the offender aims to bring about the occurrence of the success of the offence. Intent is also therefore evident if the offender knows an offence is possible and abides by the possibility that their behavior leads to the offence, so-called conditional intent (lat. dolus eventualis).
W	
X	

Legitimate expectation

A	a belief that behaviour is allowed and acceptable according to a law - phrase which is used in doctrine of law but not defined in specific legislation
B	Not specifically defined but acknowledged by case law and precedent as a general doctrine by which a person may obtain a remedy where he has had a legitimate expectation regarding some representation made to him e.g. an undertaking to be consulted in relation to a change in the law: It is sometimes described as reasonable expectation.
C	Trust in legal advice, given from the competent customs authority and in governmental decrees (common understanding).
D	There is no legal definition.
E	
F	
G	Not defined in the General Customs Act.
H	Certain reasonable representation of reality as a result of some external circumstances to the agent that will determinate his behaviour. (definition not provided in legislation, but accepted in jurisprudence (courts decisions), which results from interpretation according to the principles accepted in H legal system and the legal doctrine)
I	This term is not defined in national customs provisions.
J	The initial answer was: If this term refers to the "legitimate self-defence" – Cause that removes the criminal or contraventional character of the infringement No legal definition. According to the legislation regarding the organisation and operating of the National Customs Authority: "The National Customs Authority ensures the application of the legislation in customs and excise matters in an uniform, impartial, transparent and non – discriminatory way, to all natural and legal persons, irrespective of their legal status and organisation and operating form."
K	is a phrase which is used as legal doctrine but not defined in specific legislation - an abstract requirement meaning that in the case of identical circumstances the client can always expect the same attitude from the concerned authorities
L	There is no legal definition but legitimate expectation is known, even specifically provided for (in different wording with the same meaning) in the Tax Procedure Law.
M	
N	
O	Not exactly defined in legislation, a general term.
P	
Q	Without a legal definition. It is applied a traditional definition of Q right.
R	An expectation for a specific treatment by the Administration, having regarded the existing national or community provisions and policy.. – A phrase which is used as legal doctrine but not defined in specific legislation.
S	In S, the 'legitimate expectations' are put forward in public or administrative law cases. The S criminal law does not strictly speaking mention those expectations and uses rather the notion of invincible error. That notion, which is a cause of justification and cancels the

	offence, can indeed result from erroneous information or orders of the administration.
T	
U	Arises from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue. – Accepted Principle but not defined although the word ‘legitimate’ is mentioned
V	No legal definition. Common understanding in DE: Trust is the secure expectation of the occurrence of a certain circumstance.
W	
X	

Error suitable to affect the behaviour

A	an error that is acceptable (justified) as the reason for that somebody behaves in the particular way - phrase which is used in doctrine of law but not defined in specific legislation
B	Not defined
C	Wrongful consciousness either of the law or of the relevant facts (ref. Art. 9 FPC)
D	There is no legal definition.
E	these words are not subject to different interpretations under E national legal system. For an appropriate definition it is better to know the provisions of the E Criminal Code on the matter. The E Criminal Code contains two articles referred in particular to error, article 5 of the Penal Code and article 47 of the penal code . On one side, article 5 establishes that "No one can rely as an excuse his ignorance of the criminal law," on the other article 47 establishes "The error on the fact that constitutes the offence excludes criminal liability of the agent. However, if the error is caused by negligence, criminal liability is not excluded, when the fact is considered by the law as a crime due to a negligent behaviour. The error on a law other than criminal excludes criminal liability, when it caused an error on the fact that constitutes the offence. "
F	
G	Not defined. From case law it evolves that this may be an error about a fact (“error facti”) or about the law (“error iuris”). In certain cases the courts considered such errors to be excusable, meaning that the person who committed the infringement in question was not punishable due to the “absence of any negligence/guilt”.
H	Wrong representation of reality that motivates the agent’s behaviour, which will not be censurable if it couldn’t be reasonably detected.(definition not provided in legislation, but accepted in jurisprudence (courts decisions), which results from interpretation according to the principles accepted in H legal system and the legal doctrine)
I	This term is not defined in national legislation.
J	The initial answer was: Cause that removes the criminal or contraventional character of the infringement. The Jn Criminal Code provides the following definition for “error of facts”: A deed provided by the criminal law does not constitute a criminal offence when the perpetrator, at the moment when the deed took place, was not aware of the existence of a state, situation or circumstance on which the criminal character of the deed depended. The circumstance which the perpetrator was not aware of at the moment of the crime perpetration does not constitute an aggravating circumstance. The provisions of paragraphs 1 and 2 apply also to the actions committed by negligence which are subject to criminal law, only if the ignorance on the respective state, situation or circumstance is not by itself consequence of the guilt. Misinterpretation or lack of knowledge of the criminal law does not remove the criminal character of the deed. According to the contraventional (non-criminal) law: “The contraventional character of the deed is removed in the case of the legitimate self

	defence, necessity state, physical or moral constraint, fortuitous event, irresponsibility, complete involuntary drunkenness, error of facts, as well as infirmity, if it has connection with the committed deed. The under age of 14 years is not contraventionally responsible.”
K	is a phrase which is used as legal doctrine but not defined in specific legislation - being unaware of the fact that the action is a violation of the law (please note that an erroneus conception shall not exclude sanctions if it is caused by negligence) (defined in Art. 27 of our national Criminal Code)
L	There is no legal definition.
M	
N	
O	We distinguish between actual and error in law. They affect on guilt. *Error of facts* The perpetrator who, at the time of the committing of the criminal offence, was either not aware of a statutory element of such an offence or that he erroneously believed that circumstances were present which, if they were true, would justify his conduct, shall not be held to be liable under law. If the perpetrator was in error due to his negligence, he shall be held guilty for the committing of a criminal offence when he was in error if there was no needful watchfulness. (*Article 30 of Penal Code).* *Error of law* The perpetrator of a criminal offence shall not be held guilty under criminal law if, for reasons which can be justified, he did not know that such an offence was unlawful. There are no legitimate reasons, if the perpetrator could be acquainted with law regulations under same conditions as others in his wider environment or he had to know special law regulations according his work, role or commonly position. The court may reduce the sentence of a perpetrator who could have avoided his mistake. (*Article 31 of Penal Code*,).
P	
Q	Without a legal definition. It is applied a traditional definition of Q right.
R	There is not any definition in our legal system. Need for clarification.
S	Unknown terminology. The S law rather refers to the notion of invincible error as a cause of justification which allows to cancel the offence. It is an error that every sensible and careful man could have committed and which results from an external cause that cannot in any way be attributed to the person who is the victim of that cause.
T	
U	A line of action taken on the basis of incorrect information about the facts. No reference is made in the legislation
V	No legal definition. Common understanding in V: A case of deception is the fraudulent misrepresentation of facts, meaning the presentation of circumstances which do not actually exist as being real or existing to another person. A case of deception also exists if, in breach of duty, the prevention of the existence or continuation of an error is not prevented.
W	
X	

Violence suitable to affect the behaviour

A	Not defined
B	Not defined
C	Strong external and illegitimate human force (jurisdiction).
D	There is no legal definition.
E	these words are not subject to different interpretations under E national legal system; This is a case that maybe need for further clarification.
F	
G	Not defined in respect of perpetrators under the General Customs Act . (In the context of customs investigation powers, the use of violence can be legitimate pursuant to Article 1:30 of the General Customs Act. In that case, according to the explanatory note, violence is "any coercive force of more than minor importance, applied against persons or goods including animals. Under Article 1:30 of the General Custom Act, threatening to use violence by Customs is equivalent to the actual use of violence by Customs.)
H	Physical or psychological coercion, such as a threat, that is capable of motivating an involuntary behaviour. (definition not provided in legislation, but accepted in jurisprudence (courts decisions), which results from interpretation according to the principles accepted in H legal system and the legal doctrine)
I	This term is not defined in national legislation.
J	The initial answer was: Cause that removes the criminal or contraventional character of the infringement. The Jn Criminal Code provides the following definition for "physical or moral constraint": A deed provided by the criminal law does not constitute a criminal offence if committed because of a physical constraint which the person could not resist. Also, a deed provided by the criminal law is not a criminal offence if committed because a moral constraint imposed through threat with a serious danger for the perpetrator or for another person and which could not be removed in other ways. According to the contraventional (non-criminal) law: "The contraventional character of the deed is removed in the case of the legitimate self defence, necessity state, physical or moral constraint, fortuitous event, irresponsibility, complete involuntary drunkenness, error of facts, as well as infirmity, if it has connection with the committed deed. The under age of 14 years is not contraventionally responsible."
K	is a phrase which is used as legal doctrine but not defined in specific legislation - excessive force, influenced by coercion that deprives the person concerned to act according to his own free will (defined in Art. 26 of our national Criminal Code)
L	There is no definition but according to the Penal Code, significant pressure, threat or a similar influence that has affected the commission of the offence is a ground specifically provided for in the L Penal Code for mitigation of the punishment.

M	
N	
O	An act committed under the influence of coercion, which the perpetrator was not able to withstand, shall not constitute a criminal offence. (*Article 22 of Penal Code*).
P	
Q	Without a legal definition. It is applied a traditional definition of Q right.
R	There is not any definition in our legal system. Need for clarification.
S	Unknown terminology. According to the S law, the violence (or threat) which goes with the carrying out of an offence can serve as aggravating circumstance of that offence. !!! When violence is used to compel a person to commit an offence, it is a case of « force majeure » (cause of justification which cancels the offence).
T	
U	The abuse of force employed against common right and against the laws. No reference is made in the legislation
V	No legal definition. Common understanding in V: Violence is physical force which is exerted upon another person through either direct or indirect means, and which in the opinion of the offender is intended to either overcome or render impossible resistance that has been provided or is expected. A threat involves holding out the prospect of a future forfeit, the occurrence of which the instigator claims to be able to influence.
W	
X	

Customs infringement settlement

A	Not defined exactly as customs infringements settlement. But in A criminal procedure exist an agreement that is made between the investigating authorities and a liable person who commit the offence (customs infringement), stating the penalties that will be imposed on that person
B	Not specifically defined but understood in this context as referring to the settlement of criminal or civil proceedings in relation to a breach of customs legislation without recourse to the courts. Could involve imposition of financial penalty in lieu of proceedings.
C	Not applicable. Only the procedure according to Art. 108 (2) AICL to avoid administrative penal procedures in minor cases up to 400 € of customs duties by applying a surcharge possibly could be qualified as settlement.
D	There is no legal definition, A settlement is possible in a criminal or an administrative proceedings (Art.229 b of the customs Act and Art.381 of the Criminal Procedure Code. The agreement to dispose of criminal proceedings as approved by the court has the effects of a sentence entered into force.
E	
F	-
G	Under new (general as well as customs) legislation the concept of settlement ("transaction") will be abolished in the G and will not be defined anymore.
H	(It is not foreseen in H legal penalties system) Agreement towards a penalty apply.
I	This term is not defined in national legislation. However, there is a procedure which can be considered as settlement proceedings: in case of criminal acts which are punishable only by a fine or where a fine is treated as alternative penalty, the trial proceedings may be dispensed with and the penalty may be imposed by a penal order. The judge is entitled to draw up the penal order upon receipt of the prosecutor's application. Customs authorities don't participate in this procedure.
J	The initial answer was: Agreement between authorities and the person who committed a customs infringement, related to the penalty to be applied. It is not provided by the J legislation.
K	is a phrase which is used as legal doctrine but not defined in specific legislation - An agreement between the court/customs authority and the client whereby the latter accepts to pay a penalty as prescribed under Customs legislation. See our answers to questions in item 7.1 of the draft questionnaire.
L	There is no legal definition. Does not exist in L.
M	
N	
O	Settlement is possible for criminal offences for which a fine or not more than three years imprisonment is prescribed. It is done on a proposal of a public prosecutor. When deciding about settlement, he takes into account type and nature of the offence, the circumstances in which it was committed, the personality of the offender and his prior convictions for the

	same type or for other criminal offences, as well as his degree of criminal responsibility. Settlement shall be run by the adjuster, who is obliged to accept the case into procedure. Settlement may be implemented only with the consent of the offender and the injured party. *(Article 161 a of Criminal Procedure Act,).*
P	
Q	There is a definition of tax debt settlements in the General Tax Law which is applied to the custom debt settlements.
R	The compounding of an offence or act committed or reasonably suspected of having been committed by any person against or in contravention of the provisions of the customs or the community legislation, on such terms and conditions as the Director, in his discretion, thinks proper, with full power to accept from the offender a payment in money not exceeding the maximum penalty provided by the customs legislation for such offence or act. – A phrase defined in national legislation (Customs Code Law).
S	In S, the administration of Customs can compromise with the offender by means of a settlement. The settlement is an agreement subject to criminal law between the offender and the administration which, in return for the enforcement of the criminal penalties mentioned (fines, confiscations and closing down of places of business), has the effect of cancelling the criminal proceedings with respect to Customs matters (Article 228 of the General Law of Customs and Excise). To that effect, the settlement constitutes an option to the prosecution before the criminal court. It is as a rule applicable to every type of Customs offence, yet provided that mitigating circumstances can be put forward, for instance in case of lack of fraudulent intention (Articles 263 and 264 of the General Law of Customs and Excise). The administration of Customs estimates in a sovereign capacity the existence of mitigating circumstances.
T	
U	A contractual agreement entered into between the Comptroller of Customs and the offender whereby the latter accepts to pay a penalty as prescribed under Customs legislation in lieu of prosecution. – Accepted Principle but not defined although reference is made to the term 'settlement'
V	No legal definition. For this questionnaire, this term is understood by V as following: An infringement settlement is the subsequent compensation of an action which is wrong through the elimination or the lessening of its consequences or the provision of compensation by the perpetrator. Customs infringements settlements frequently involve the payment of import duties owing from an instance of evasion.
W	
X	

Annex 4

Tables (details of the answers to the Questionnaire)

– **TABLE 4002: PERSONS LIABLE IN CASES OF INFRINGEMENT**

–

– **PART A: INFRINGEMENTS FALLING TO BE DEALT WITH UNDER CRIMINAL PROCEDURES**

–

– **Q1. Which of the following persons can be held liable for customs infringements dealt with under your criminal law?** Please complete the table below. Answer yes or no for each category. There is no need to provide a detailed explanation of why a particular person can be held liable, unless you consider that your system is so unusual that you need to highlight a particular facet of your regime. For example, if you say that persons other than those identified in the table below can be liable, please identify who they are, and why they can be liable. Finally, if you consider that detailed explanation is necessary, please include it in the comment section at the end of the table, but please remember we are striving for consistency of response. We cannot reproduce large explanations of your system without destroying the consistency within the tables. We recognise of course that MS may hold several categories of person responsible at the same time, but the table will make this clear.

–

–

–

–	– **Category of person**	– **Yes/No**
– 1	– The person or persons actually committing the infringement	– Yes (23 MS)
– 2	– The planner or instigator of the infringement	– Yes (23 MS)
– 3	– Anyone aiding others to commit an infringement (for example accomplices in the commission of the infringement or someone who provides the means (e.g. equipment or access) for someone else to commit the crime)	– Yes (22 MS)
– 4	– The person represented by the person committing an infringement	– It depends (4 MS) – No (9 MS) – Yes (
– 5	– Anyone who might reasonably have been aware that an infringement was being, or was likely to have been committed but who	– Yes (10 MS –) – No (13 MS)

	failed to do anything about it.	
– 6	– The legal person where they have knowledge of the infringement	– Yes (15 MS) – No (8 MS)
– 7	– The legal person where they have no knowledge of the infringement	– Yes (8 MS) – No (15 MS)
– 8	– Any other person (please specify in the comments section below). An example might be an official within a company who does not perform checks designed to ensure compliance with customs laws. They have no knowledge of the infringement, but because they have been negligent the infringement could be perpetrated.	– Yes (6 MS -) – No (17 MS –)

–

–

– Comments

– **L**

– To point 4 – only if the person represented is an accomplice or instigator.

– To point 6 and 7 - in AT the legal person is held liable if the infringement has been committed in its favour or if duties of the legal person have been violated due to the infringement: if committed by a decision-maker in an unlawful and culpable manner or if committed by an employee in case of unlawful and intentional or negligent (dependent on the requirements of the punishable act) behaviour under the condition that decision-makers violated their obligation for executive care and thereby made the infringement possible or considerably facilitated it.

– To point 8 - not only the person actually committing the infringement can be held liable, but anyone who causes someone else to carry out the infringement or anyone who contributes to its fulfilment.

–

– **B**

– To point 8 - the insurers of smuggled goods or the person having them insured (Art. 227, General Customs and Excise Act);

- the persons involved in fraud in whichever way (Art. 227, General Customs and Excise Act).

–

– **J**

– To point 3: intent is needed.

– To point 4: in Bulgaria the person represented by the one who does the infringement is not responsible automatically. He will be responsible if customs proove that he ordered the infringement or he knew that it will be made but he did not do anything to prevent it.

–

- **K**
- To point 3 – intent is needed.
- To point 4 – e.g. a legal person.
- To point 5 - only in case of a first degree crime, (that is aggravated contraband or illicit traffic of prohibited goods in customs context), also intent must be present.
-
- **I**
- To point 3- intent is needed so that for instance a land owner is guilty for complicity for a tax fraud if he deliberately allows his land to be used for discharge of a truck loaded with cigarettes unlawfully imported to the Finnish customs territory.
-
- To point 4 -the Finnish legal system provides that criminal liability is a personal issue so that then the person represented by the person committing an offence could be considered liable only in cases of complicity. Thus in these situations the reason for criminal liability is complicity in an offence.
- To point 5 – only in cases of complicity in an offence a person meant at point 5 could be considered liable.
- To point 7 - principally no but if the legal person has neglected the supervision to prevent crimes in the course of its business (vicarious liability) the answer is yes.
- To point 8 -principally no, but e.g. in situations where a person is committing an offence through an agent when the direct offender is irresponsible or has not acted deliberately, the answer is yes.
-
- **H**
- To point 6 and 7: but the legal person shall be civilly liable to pay the fine.
- To point 8: Those persons who, without directly taking part in committing fraudulent acts, have either encouraged their commission or profited from them (article 399 of the French customs code).
- Article 399 of the French Customs Code stipulates that those who have been involved in any way whatsoever in an offence of smuggling or an offence of importing or exporting without a declaration (note that this does not cover customs infractions) are liable to the same penalties as those who committed the offence and to penalties depriving them of rights as laid down by Article 432 of the Code.
- The criteria for establishing connection to a fraud are different depending on whether the criminal liability is due to actions prior to or concurrent with the fraudulent operation, or whether it is the result of actions subsequent to said operation.
-
- **A**
- To point 4, 6 and 7: in Germany legal persons cannot commit an infringement, because in the German legal criminal philosophy - they actually cannot act. Their representatives (natural persons) act for them. If a representative of a legal person commits an

infringement in this capacity, the representative is the liable person. A corporate fine as an administrative penalty can be imposed on the legal person in the criminal procedure against the perpetrator (§ 444 Criminal Procedure Code, § 30 Law Concerning Administrative Offences). The legal person is a secondary party besides the perpetrator.

–

– **C**

– To point 6 and 7: concerning legal persons, the legal representative (i.e. the natural person) is held liable for the customs infringement.

–

– **G**

– To point 4: if the represented person had knowledge on the commitment – yes, if no – no.

– To point 5: related to customs infringements.

– General comments: Comments:

– Natural Persons – categories set up by the Hungarian Criminal Code (Act IV of 1978; Articles 19-21)

– Parties to a crime include the perpetrator and the co-actor (parties to a crime), the abettor and the accomplices (conspirators).

– Perpetrator is a person who actually commits a criminal act.

– Co-actors are persons engaged in a criminal act jointly, having knowledge of each other's activities.

– Abettor is a person who intentionally persuades another person to commit a crime.

– Accomplice is a person who knowingly and voluntarily helps another person to commit a crime.

– Legal Persons – The regulations concerning legal persons involved in criminal activities or offenses are laid down by Act CIV of 2001 on measures applicable to legal persons under criminal law.

–

– According to this Act, the measures determined in the Act shall be applied against legal persons if a crime defined by the Hungarian Criminal Code is committed with intention (an act of crime is committed with intention if the perpetrator desires the consequences of his conduct /deliberate intention/ or acquiesces to these consequences /recklessness/) if the aim or the result of the committal of the crime is to gain advantage to the benefit of the legal person and the crime is committed by the following person(s)

– a) the CEO, the person entitled to represent the legal person, employee, official, manager, member of the supervisory board, or agents of these persons – employed by the legal person and within the scope of the legal person's activities;

– b) owner(s)/co-owner(s) or employee(s) of the legal person within the scope of the legal person's activities, and the CEO, the manager and/or the supervisory board could have prevented the commitment of the crime by performing their obligations.

– Apart from the afore-referred conditions, the measures laid down by the Act shall be applied against the legal person if the committal of the crime resulted in benefits for the legal person and the CEO, the person entitled to represent the legal person, employee,

official, manager, member of the supervisory board had knowledge of the crime's committal.

–

– **F**

– To point 5: In Ireland, a person who was aware or should reasonably have been aware of a criminal offence could be liable to criminal sanction where they deliberately concealed something of relevance. There has to be deliberate concealment rather than just a failure to act.

–

– **E(**

– To point 2: under the article 110 of the Criminal Code

– When several persons combine to commit the same offence, each of them is subject to the punishment established for this offence, except for the provisions of the following articles of the Criminal Code.

– To point 3: under the article 110 of the Criminal Code

– When several persons combine to commit the same offence, each of them is subject to the punishment established for this offence, except for the provisions of the following articles of the Criminal Code.

– To point 4: NO, except in cases where it can apply the article 110 of the Criminal Code, pursuant to this article of the Criminal Code when several persons combine to commit the same offence, each of them is subject to the punishment established for this offence, except for the provisions of the following articles of the Criminal Code.

– To point 5: NO, except in cases where it can apply the article 110 of the Criminal Code, pursuant to this article of Criminal Code when several persons compete for the same offence, each of them is subject to the punishment established for this offence, except for the provisions of the following articles of the Criminal Code.

– To point 6: NO, However the liability of legal persons for crimes was provided by Legislative Decree n. 231/2001, this is an hypothesis of opening of our legal system to the liability of legal persons for crimes characterized by an high degree of offensiveness to law as crimes against the Public Administration, crimes of forgery or organized crime etc.. The Article 5 of that Legislative decree, it states that "the entity is responsible for crimes committed in its interest or to its advantage:

– a) by persons who have functions of representation, administration or management of that entity or of an organizational unit with its functional and financial autonomy as well as persons who exercise, even in fact, the management and control thereof;

– b) persons subject to the direction or supervision of a person under letter. a).

– To point 7: NO, However the liability of legal persons for crimes was provided by Legislative Decree n. 231/2001, this is an hypothesis of opening of our legal system to the liability of legal persons for crimes characterized by a high degree of offensiveness to law as crimes against the Public Administration, forgery or for organized crime etc.. The Article 5 of that Legislative decree, it states that "the entity is responsible for crimes committed in its interest or to its advantage”:

– a) by persons who have functions of representation, administration or management of that entity or of an organizational unit with its functional and financial autonomy as well as

persons who exercise, even in fact, the management and control thereof;

- b) persons subject to the direction or supervision of a person under letter. a).
-
- **D**
- To point 4: only the legal person.
- To point 6: not in all cases.
- To point 7: only in isolated cases.
- To point 8: except the person who without a prior promise conceals, destroys or tampers the traces of the crime (committed by another person) or any things related to the crime, which have evidential value, or who harbours the offender, can also be held liable (except close relatives and members of the family of the offender).
-
- **N**
- To point 4: not applicable in case of Indirect Representation MCC Ch.2 Sec1 Art5.
- Only if the person represented is an accomplice.
- A legal person (company) is never held liable, but the directors are all liable and it is the onus of each one of them to prove or therwise.
-
- **M**
- General: the category of person usually refers to both natural and legal person.
-
- **O**
- To point 4: only if the person represented is a legal person.
- To point 7: legal person's liability is only excluded in cases where the agent acts against express orders or instructions (art. 7º nº2 of Law 15/2001).
-
- **S**
- To point 5: in specific cases.
-
- **P**
- To point 8: person, who committed the crime by using and leading the acts of other person (middleman perpetrator).
-
- **Q**
- To point 4: depend on the type of the representation.
-
- **R**

– General: in all cases mens rea must be proved for all categories of persons to be included. The only exception is for the rare criminal offences where mens rea is not required. In such cases only the person committing the infringement is liable.

–

–

–

– **Q2. Are there any circumstances in which taking action against one person held to be liable precludes action against another?** If you answer yes, please specify the circumstances in which this can happen. For example, your law may allow you to prosecute both natural persons and (where different) legal persons, but if you elect to prosecute the natural person you may (either by law or as a matter of policy) not take action against the legal person.

–

– No (23 MS).

–

– J and K stressed that the only limitation is you can't punish the same person twice for the same deed. In J no measures can be taken against legal persons.

–

– With reference to the example, in G if a natural person is prosecuted and the proceeding court decides that measures shall be applied against a legal person, the criminal procedure against the natural person shall be extended to the legal person, too.

–

– N said that furthermore their legislation does not prescribe criminal procedures against legal persons.

–

– **Q3. Can a criminal penalty laid against the person committing an infringement be transferred to another person who has not been prosecuted?** For example, if a natural person is found guilty and fined, can the penalty be transferred to the legal person (e.g. a company)? If you answer yes, please provide a brief description of the circumstances in which this transfer is allowed to occur.

–

– No (19 MS).

–

– Yes (4 MS –).

–

– **J** and **K** explained that two persons can settle this between themselves, say the employer pays or compensates for its employee's pecuniary punishment but this is out of scope of the criminal law and customs matters.

–

– **G** stated that in the course of sentencing, the court proceedings are based upon an

accusation. The proceeding court shall bring decision on the criminal liability of a person against whom an accusation has been filed by a prosecutor. Legal persons shall not face charges in a criminal procedure, but if the criminal procedure has been extended to the legal person, the court can bring a verdict in which the legal person can be sentenced to a fine.

–

– In **H** it is only possible when al legal person is civilly liable to pay the fine. In this case legal person should be prosecuted as civilly liable for the fine.

–

– In **C**, when the criminal penalty is fine, the criminal courts can decide to name as liable to pay or share the fine the owner or the holder of the smuggled merchandise or the person represented, even if they have not been prosecuted.

–

– **E:** the criminal legislation provides for a civil obligation for the payment of a sum equal to the amount of fine when conditions provided for in articles 196 and 197 of the Criminal Code and in articles 329 and 330 of Presidential Decree n. 43/1973 Consolidated text of customs legislation occur (for example according to article 196 of criminal Code in the crimes committed by those who are subject to other's authority, direction or supervision, the person with the authority , or responsible for the direction or supervision is obliged, in case of insolvency of the offender, for the payment of a sum equal to the amount of the fine inflicted on the guilty, if provisions which he was required to enforce and for which he is not criminally liable are violated).

–

– **D:** the only case in which this transfer is allowed to occur – if a natural person is found guilty and punished, the relevant legal person can also be punished without establishing corpus delicti in legal person's act.

–

– **T:** only financial penalties i.e. fine and pecuniary charge. The perpetrator have to work for the legal person (as representative person, president, director, manager, worker and in every other way) and that legal person have had or could have had any benefit as result if the infringement.

–

– **PART B: INFRINGEMENTS FALLING TO BE DEALT WITH UNDER NON-CRIMINAL PROCEDURES**

–

– (Note that MS which deal with customs infringements only under criminal procedures should ignore this section.)

–

– **Q4. Which of the following persons can be held liable for customs infringements dealt with under your non- criminal law?** Please complete the table below. Answer yes or no for each category. There is no need to provide a detailed explanation of why a particular person can be held liable, unless you consider that your system is so unusual that you need to highlight a particular facet of your regime. For example, if

you say that persons other than those identified in the table below can be liable, please identify who they are, and why they can be liable. Finally, if you consider that detailed explanation is necessary, please include it in the comment section at the end of the table, but please remember we are striving for consistency of response. We cannot reproduce large explanations of your system without destroying the consistency within the tables. We recognise of course that MS may hold several categories of person responsible at the same time, but the table will make this clear.

–

–	– Category of person	– Yes/No
– 1	– The person or persons actually committing the infringement	– Not applicable (8 MS) – Yes (15 MS
– 2	– The planner or instigator of the infringement	– Not applicable (8 MS – Yes (11 MS – No (4 MS)
– 3	– Anyone aiding others to commit an infringement (for example accomplices in the commission of the infringement or someone who someone who provides the means (e.g. equipment or access) for someone else to commit the crime)	– Not applicable (8 MS) – Yes (10 MS) – No (5 MS)
– 4	– The person represented by the person committing an infringement	– Not applicable (8 MS) – Yes (11 MS) – No (4 MS),
– 5	– Anyone who might reasonably have been aware that an infringement was being, or was likely to have been committed but who failed to do anything about it.	– Not applicable (8 MS) – No (11 MS) – Yes (4 MS)
– 6	– The legal person where they have knowledge of the infringement	– Not applicable (8 MS) – Yes (11 MS) – No (4 MS)
– 7	– The legal person where they have no knowledge of the infringement	– Not applicable (8 MS) – No (6 MS) – Yes (9 MS)
– 8	– Any other person (please specify in the comments section below). An example might be an official within a company who does not perform checks designed to ensure compliance with customs laws. They have no knowledge of the infringement, but	– Not applicable (8 MS) – No (14 MS) – Yes (1 MS)

	because they have been negligent the infringement could be perpetrated. –	
–	– Comments – – – – – –	–

–

– **C**

– To point 4, 6 and 7: in Germany legal persons cannot commit an infringement, because in the German legal criminal philosophy - they actually cannot act. Their representatives (natural persons) act for them. If a representative of a legal person commits an infringement in this capacity, the representative is the liable person. A corporate fine as an administrative penalty can be imposed on the legal person in the administrative procedure against the perpetrator (§ 30 Law Concerning Administrative Offences). The legal person is a secondary party besides the perpetrator.

– To point 8: the owner of a company, if he infringes his duty of supervision resulting in committing a criminal or administrative offence (§ 130 Law Concerning Administrative Offences).

–

– **EE**

–

– To point 4: e.g. a legal person represented.

–

–

– **A**

– To point 4: a direct representative and a person represented are in this context considered equal.

– To point 5: principally the answer is no, but e.g. in the following situations where actual circumstances are close to the situation that the person concerned could be considered participant for the infringement the answer is yes:

– -any persons who participated in the unlawful introduction of the goods and who were aware or should reasonably have been aware that such introduction was unlawful, and any persons who acquired or held the goods in question and who were aware or should reasonably have been aware at the time of acquiring or receiving the goods that they had been introduced unlawfully.

- -any persons who participated in removal of goods from customs supervision and who were aware or should reasonably have been aware that the goods were being removed from customs supervision,
- -any persons who acquired or held the goods in question and who were aware or should reasonably have been aware at the time of acquiring or receiving the goods that they had been removed from customs supervision
- To point 7: principally no but if the legal person has neglected the supervision to prevent an infringement in the course of its business the answer is yes.
-
- **D**
- To point 2: under the article 9 of Legislative Decree n. 472/1997 when several persons combine to commit an infringement, each of them is subject to the penalty established for this infringement.
- To point 3: under the article 9 of the Legislative Decree n. 472/1997 When several persons combine to commit an infringement, each of them is subject to the penalty established for this infringement.
- To point 4: The legal provisions on administrative penalties are based on the principle of the character of the offence. Article 11, paragraph 2, of the Legislative Decree n. 472/1997, provides that, “unless otherwise provided” the offender is supposed to be he who has undersigned or committed the illegal acts. In the customs area the issue of the liability to the administrative penalties is particularly critical for the figure of the customs agent that acts on behalf of the trader. The customs agent can act with a direct or indirect representation. In both cases he is the person that materially signs and performs the acts, in particular the customs declaration. Therefore, pursuant to Article 11, paragraph 2, of the Legislative Decree N. 472/1997 he is supposed to be, until proved otherwise, the offender, unless he acts as a direct representative of an entity having legal status; in fact in this latter case, under the Law Decree No. 269/2003, transformed into Law N.326/2003 with amendments, the penalties would only be imposed on the entity.
- Indeed Article 7 of the Law Decree N. 269/2003, transformed with amendments into the Law N. 326/2003, has provided that the administrative penalties on tax relations of companies and entities having legal status are exclusively imposed on the legal person.
- However, customs agents can not be held responsible for the offence, neither as the material author of the offence, neither he is the person who commits the same infringement with the operator, when his behaviour is inspired by a full and proper professional diligence" as it happens if he it has merely stated in the declaration elements supplied by the operator.
- As regards the entities without legal status, under Article 11, paragraph 1, of the Legislative Decree No. 472/1997, when an offence has influence on the assessment or payment of the tax and has been committed by an employee, the representative or the administrator, also the actual one, of the entity, in the execution of his duty and charges, the said entity, to the advantage of which the offender has acted, is jointly liable. However the joint liability has not an afflictive and penalty character (since it cannot contradict the principle of status) but has a character of civil liability of a measure equal to the penalty imposed on the offender.

- This rule is very similar for a natural person. In fact, when an offence has influence on the assessment or payment of the tax and has been committed by an employee or by legal representative or by representative by virtue of an agreement of a natural person, in the execution of his duty and charges, the natural person , to the advantage of which the offender has acted, is jointly liable. However the joint liability has not an afflictive and penalty character (since it cannot contradict the principle of status) In fact the natural person is obliged to pay a sum equal to the penalty imposed on the offender.
- To point 5: no, unless it is conceivable a case where you can apply the article 9 of the Legislative Decree n. 472/1997, according to it when several persons combine to commit an infringement, each of them is subject to the penalty established for this infringement.
- To point 6: the lawmaker, with Article 7 of the Law Decree N. 269/2003, enacted with amendments into the Law N. 326/2003, has provided that the administrative penalties on tax relations of companies and entities having legal status are exclusively imposed on the legal person. In these cases the provisions set forth in the Legislative Decree no. 472/1997 are applied since they are compatible.
- To point 7: the lawmaker, with Article 7 of the Law Decree N. 269/2003, enacted with amendments into the Law N. 326/2003, has provided that the administrative penalties on tax relations of companies and entities having legal status are exclusively imposed on the legal person.
- In these cases the provisions set forth in the Legislative Decree no. 472/1997 are applied since they are compatible.
- To point 8: no, unless it is conceivable a case where you can apply the article 9 of the Legislative Decree n. 472/1997, according to it when several persons combine to commit an infringement, each of them is subject to the penalty established for this infringement.
-
- **G**
- To point 4: only if the person represented is a legal person.
- To point 7: legal person's liability is only excluded in cases where the agent acts against express orders or instructions (art. 7º nº2 of Law 15/2001).
-
- **K**
- Depend on the type of the representation.
-
- **J**
- To point 3: under our non-criminal penalty procedures we would not penalise those aiding others to commit infringements. If the situation occurs, we view this as conspiracy, and would normally action the case under criminal law.
-
- **Q5. Are there any circumstances in which taking non-criminal action against one person held to be liable precludes action against another?** If you answer yes,

please specify the circumstances in which this can happen. For example, your law may allow you to take penalty action against both natural persons and (where different) legal persons, but if you elect to prosecute the natural person you may (either by law or as a matter of policy) not take action against the legal person.

–

– Not applicable (8 MS)

–

– No (12 MS)

–

– Yes (3 MS)

–

– **L**

– No, there are not. In an administrative procedure the penalty is imposed due to the fact of the infringement, irrespective of the nature of the person (natural person or legal person). In national legislation there is no provision concerning the question

– **D**

– Yes, when it is conceivable a case where you can apply the Article 7 of Law Decree N. 269/2003, enacted with amendments into Law N. 326/2003, the above mentioned article has provided that the administrative penalties on tax relations of companies and entities having legal status are exclusively imposed on the legal person.

– In these cases the provisions set forth in Legislative Decree no. 472/1997 are applied since they are compatible.

–

– **G**

– In cases where a legal person is considered liable for an administrative customs infringement, its representative's liability is excluded.

–

– **J**

– We would normally penalise the legal person and (if different) the directing minds. If we did this we would normally be unable to penalise anyone else.

–

– **Q6. Can a non- criminal penalty laid against the person committing an infringement be transferred to another person who has not been prosecuted?** For example, if a natural person is found guilty and fined, can the penalty be transferred to the legal person (e.g. a company)? If you answer yes, please provide a brief description of the circumstances in which this transfer is allowed to occur. By way of example, in the UK we have a non-criminal penalty for fraud. We must first legally impose the penalty on the legal person but, where we can establish the natural person responsible and that person is of sufficient status to bind the legal person by their actions, we can then transfer the penalty to the natural person.

–

– Not applicable (8 MS)

–

– No (14 MS)

–

– Yes (1 MS)

–

– **I**

– Same as in criminal matters, two persons can settle this between themselves, say the employer pays or compensates for its employee's fine but this is out of scope of the criminal law and customs matters.

–

– **D**

– When it is conceivable a case where you can apply the Article 11, paragraph 1, of Legislative Decree No. 472/1997, the above mentioned article as regards the entities without legal status, provides for when an offence has influence on the assessment or payment of the tax and has been committed by an employee, the representative or the administrator, also the actual one, of the entity, in the execution of his duty and charges, the said entity, to the advantage of which the offender has acted, is jointly liable.

– However the joint liability has not an afflictive and penalty character (since it cannot contradict the principle of status) but has a character of civil liability of a measure equal to the penalty imposed on the offender.

– This rule is very similar for a natural person. In fact, when an offence has influence on the assessment or payment of the tax and has been committed by an employee or by legal representative or by representative by virtue of an agreement of a natural person, in the execution of his duty and charges, the natural person, to the advantage of which the offender has acted, is jointly liable. However the joint liability has not an afflictive and penalty character (since it cannot contradict the principle of status) In fact the natural person is obliged to pay a sum equal to the penalty imposed on the offender.

–

– **J**

– We would normally penalise the legal person and (if different) the directing minds. If we did this we would normally be unable to penalise anyone else.

–

–

–

–

– **PART C: TREATMENT OF INTENDED INFRINGEMENTS**

–

– **Q7. Is the mere attempt to commit a customs infringement punishable under**

criminal law? Please answer yes or no.

–

– Yes (21 MS)

–

– No (3 MS)

–

– **A**

– According to Chapter 29, Section 1, Paragraph 4 of the Finnish Penal Code a person who causes or attempts to cause a tax not to be assessed, a tax to be assessed too low or a tax to be unduly refunded, shall be sentenced for tax fraud.

– **B**

– The sentence applicable to a consummated offense shall also be applied for attempts. (Sub-Article (1) of Article 17 of the Hungarian Criminal Code).

–

– **Q8. If you have answered yes to the previous question, does this extend to all infringements covered by your criminal law?** If not, please provide a brief description of the types of infringement not covered. For example you may legally class some infringements as minor.

–

– Not applicable (2 MS)

–

– Yes (12 MS)

– No (9 MS)

–

– **C**

– No, the mere attempt to commit a customs infringement is only punishable if it is an intentional offense.

–

– **D**

– An attempt is only punishable where national criminal provisions provide for penalysing such attempt :

– Article 220 of the General Customs and Excise Act penalises attempted fraudulent importation or exportation.

– Article 157 of the General Customs and Excise Act also penalises attempted infringements in case of non compliance with the formalities laid down for the detailed declaration of goods exempted from customs and excise duties which are imported or shipped in transit and the detailed declaration of goods intended for exportation.

– Article 10, 1st paragraph of the Act of 11 September 1962 relating to the import, export and transit of goods stipulates that infringements and attempted infringements

to these provisions are penalised in accordance with the provisions of the General Customs and Excise Act. Article 10, 2nd paragraph of the same Act also stipulates that the sending, the transport or another form of holding a good with the clear purpose of importation, exportation or transit, shall be treated as an attempted infringement to be carried out in circumstances contrary to the provisions established pursuant to the present Act.

– Article 10 of the Act of 5 August 1991 relating to the import, export and transit of arms, munitions and equipment specifically intended for military use and related technology contains the same provisions.

– Article 5 of the Law of 15 May 2007 related to the punishment of counterfeiting and piracy of intellectual property (Belgian Law Gazette of 18 July 2007) which penalises the entering, the release for free circulation, the removal from the customs territory, the export, the re-export, the placement under a suspensive procedure, the placement in a free zone or free warehouse of goods recognized as infringing intellectual property rights (Article 16 of Council Regulation (EC) No. 1383/2003 of 22 July 2003), also penalises any attempt.

–

– **E**

– The mere attempt to commit an infringement is punishable only, if expressly stated as such by law, §§ 22, 23 para. 1 Criminal Code. Attempted criminal customs offences which intend to evade import duties are punishable, §§ 370 para. 2, 374 para. 3 Fiscal Code. An attempted breach of customs seals (§ 136 Criminal Law) is not punishable.

–

– **A**

– According to Chapter 5, Section 1 of the Finnish Penal Code an attempt of an offence is punishable only if the attempt has been denoted as punishable in a provision on an intentional offence.

–

– **B**

– Any person who commences the perpetration of a premeditated crime, but does not finish it, shall be punishable for attempt (Article 16 of the Hungarian Criminal Code) The sentence applicable to a consummated offense shall also be applied for attempts. (Sub-Article (1) of Article 17 of the Hungarian Criminal Code).

–

– **F**

– There are specific legal provisions that serve to criminalise any person attempting or involved with the illegal import or export of goods or who commits in whole or in part any fraud affecting the European Communities' financial interests. We would consider that these provisions are sufficient for customs purposes.

–

– **G**

– It applies only to crimes and not to contraventions (according to the article 56 of Criminal Code and 293 of Presidential Decree n. 43/1973 Consolidated text of

customs legislation).

–

– **H**

– It does not extend to all (customs) infringements covered by criminal law: in general, the mere attempt (so-called “poging”) to commit a minor criminal (customs) infringement (so-called “overtreding”) is not punishable.

–

– **I**

– No, in general it only covers situations where the respective consummated crime corresponds to a penalty over three years of imprisonment.

– In what regards criminal customs infringements, in particular, it is not extend to the following crimes:

– - To buy, to detain or to maintain, goods related with criminal customs offences;

– - To help the criminal offender in taking profits from goods related with criminal customs offences.

–

– **J**

– According to the Romanian Criminal law, attempt is subject to criminal penalty only when the law specifically provides it.

– According to the Customs Code of Romania, the attempt to carry out the criminal infringements mentioned in this code is punished.

–

– **K**

– Only if the threatened penalty is at least three years of imprisonment or if it is explicitly stated in Penal code, that also mere attempt is punishable.

–

– **L**

– Our criminal sanctions are reserved for only the more serious offences, and we view the attempt to commit them as equally serious.

–

– **Q9. Does your customs administration or prosecutor have discretion to decide which attempted infringements should not be penalised?**

–

– Not applicable (1 MS)

–

– Yes (12 MS)

–

– No (10 MS)

–

–

– **C**

– Insofar as an attempted infringement may only be penalised if the determination by the perpetrator takes effect through immediately preceding actions possibly leading to its fulfilment.

–

– The next 3 questions refer to non-criminal procedures. Please ignore if you do not operate non-criminal penalties.

–

– **E**

– The prosecutor has discretion for cessation of the criminal proceedings for opportunity reasons or an agreement, cf. the E reply to Section 7.1 of the questionnaire. The matter of fact, that the prosecuted offence is merely attempted, is not a requirement for the decision of cessation. The customs authorities administrate the rights of the prosecutor in cases of §§ 386, 399 para. 1 Fiscal Code, cf. the E reply to Section 8 question 1 of the questionnaire.

– **A**

– According to Chapter 5, Section 3 of the A Penal Code an attempt is not punishable if the perpetrator, on his or her own free will, has withdrawn from the completion of the offence, or otherwise prevented the consequence referred to in the statutory definition of the offence.

–

– Furthermore, If the offence involves several accomplices, the perpetrator, the instigator or the abettor is exempted from liability on the basis of withdrawal from an offence and elimination of the effects of an offence by the perpetrator only if he or she has succeeded in getting also the other participants to desist withdraw from completion of the offence or otherwise been able to prevent the consequence referred to in the statutory definition of the offence or in another manner has eliminated the effects of his or her own actions on the completion of the offence.

–

– In addition to what is provided in before, an attempt is not punishable if the offence is not completed or the consequence referred to in the statutory definition of the offence is not caused for a reason that is independent of the perpetrator, instigator or abettor, but he or she has voluntarily and seriously attempted to prevent the completion of the offence or the causing of the consequence.

– Finally if an attempt, pursuant to descriptions before, remains unpunishable but at the same time comprises another, completed, offence, such offence is punishable.

–

– According to the provisions on Criminal Procedure Act:

–

– The public prosecutor is to bring a charge if there is a prima facie case against the

– suspect.

–

– The public prosecutor may decide not to prosecute:

–

– (1) where a penalty more severe than a fine is not anticipated for the offence and the offence is deemed of little significance in view of its detrimental effects and the degree of culpability of the offender manifest in it; and

–

– (2) where a person under 18 years of age has committed the offence and a penalty more severe than a fine or imprisonment for at most six months is not anticipated for it and the offence is deemed to be the result of lack of judgment or incaution rather than heedlessness of the prohibitions and commands of the law.

–

– Unless an important public or private interest otherwise requires, the public prosecutor may, in addition to the events referred to in section 7, not prosecute:

– (1) where the trial and punishment are deemed unreasonable or pointless in view of the settlement reached by the offender and the injured party, the other action of the offender to prevent or remove the effects of the offence, the personal circumstances of the offender, the other consequences of the offence to the offender, the welfare or health care measures undertaken and the other circumstances; or

– (2) under the provisions on joint punishment and the consideration of previous punishments in sentencing, the offence would not have an essential effect on the total punishment.

–

– Unless a public interest otherwise requires, the prosecutor may waive a demand for

– forfeiture, if:

– (1) the benefit or the value of the object or property is insignificant;

– (2) the examination of the grounds for the demand or its hearing in court would cause expenses that are manifestly unreasonable in view of the nature of the case; or

– (3) no charge is brought for the offence by virtue of section 7 or 8 or of a comparable statutory provision.

–

– Furthermore the said issue also relates to the boundaries between administrative and criminal proceedings. In Finlad if the amount of the avoided duties, taxes and levies is at most 350 EUR, duty increase (administrative penalty) is imposed by the Customs. If the amount of the avoided duties, taxes and levies is over 350 EUR but at most 2 000 EUR, a customs officer issues a penalty demand (a penal notice) and then a prosecutor affirms it unless the offender resists it within certain deadline after its issue (if that is the case, the infringement will be dealt with in the normal court proceedings). The affirmed criminal penalty is fine and the affirmed offence slight tax fraud.

–

– The case is handled before a court as tax fraud if the amount of the avoided duties, taxes and levies exceeds 2 000 EUR. If certain criteria prescribed by the Penal Code are fulfilled, the offender shall be sentenced for aggravated tax fraud.

–

– The threshold sum of 350 EUR is based on the prosecutors' views that it is not appropriate to apply an administrative penalty in such cases where the financial interest exceeds this sum. The threshold sum of 2 000 EUR is based on the prosecutors' views that it is not appropriate to deem such cases where the financial interest exceeds this sum as slight tax frauds.

–

– **B**

– According to Sub-Articles (2) and (3) of Article 17 of the Hungarian Criminal Code, the punishment may be reduced without limitation or dismissed altogether if the attempt has been perpetrated on an unsuitable subject or with an unsuitable instrument. Any person who voluntarily withdraws from the criminal activity before it is committed, furthermore, the person who deliberately attempts to prevent the crime, shall not be liable for prosecution for attempt.

–

– **F**

– Yes, to the extent that, as an investigatory authority, we would consider that it is our duty to refer cases to the prosecutor only where we consider that sufficient proof of an offence exists. Furthermore, we have the power to reach a settlement with an offender as an alternative to embarking on a formal prosecution.

–

– **I**

– In abstract terms, the penalisation of attempted infringements can only be decided by legislator.

–

– **J**

– Law specifically provides which attempts are punished and which aren't.

–

– **L**

– Some infringements can be relatively minor, and we have discretion as to whether we should take penalty action or not. We take into account the individual circumstances of each case, but factors we generally take into account include cost effectiveness, previous compliance record and the nature of the offence.

–

– **Q10. Is the mere attempt to commit a customs infringement punishable under non-criminal law?** Please answer yes or no.

–

– Not applicable (8 MS)

–

– Yes (7 MS)

–

– No (8 MS)

–

– **A**

– According to Section 33, Paragraph 3 of the A Customs Law, duty increase or surcharge of fault remain in force irrespective of the extinction of customs debt or of repayment of duty if the reasons for which the duty increase or surcharge of fault was imposed, still exist. The mentioned provision reflects the general principle that mere attempt to commit a customs infringement is punishable under non-criminal law in Finland.

–

– **B**

– General comment to q. 10, 11 and 12: customs infringements can be judged in a criminal, in a contravention or in an administrative procedure. The contravention and administrative procedures are considered to be non-criminal.

–

– **M**

– No, because also for administrative infringements it is applied the lawfulness principle and so the penalisation of attempted administrative infringements can be disposed only by law.

– The provisions generally governing the tax administrative penalties do not expressly punish the attempt.

–

–

– **Q11. If you have answered yes to the previous question, does this extend to all infringements covered by your non criminal law?** If not, please provide a brief description of the types of infringement not covered. For example you may legally class some infringements as minor.

–

– Not applicable (15 MS)

–

– Yes (3 MS)

–

– No (5 MS)

–

– **E**

– The mere attempt to commit an infringement is punishable only if expressly stated as such by law, § 13 para. 2, Law Concerning Administrative Offences.

–

– **A**

– As said before, the mere attempt to commit an infringement is punishable only if this is explicitly stated as such by law.

–

– **M**

– No, please see the answer above reported.

–

– **I**

– In minor administrative customs infringements (the ones punished with a pecuniary charge up to € 3750), as well as in administrative customs infringements related with the refusal to hand in, exhibit or present documents or goods and with the break of duty to cooperate with customs authorities, the attempt is not punishable.

–

– **L**

– The only attempted infringements we punish are cases of attempted evasion of duty and other taxes.

–

–

– **Q12. Does your customs administration or some other authority have discretion to decide which attempted infringements should not be penalised?**

–

– Not applicable (12 MS)

–

– No (7 MS)

–

– Yes (4 MS)

–

– **E**

– The German customs administration has discretion for cessation of administrative proceedings for opportunity reasons, cf. the German reply to Section 7.1 of the questionnaire. The matter of fact, that the prosecuted offence is merely attempted, is not a requirement for the decision of cessation (of course only, if the mere attempt is punishable by law).

–

– **A**

– In Finland if the amount of the avoided duties, taxes and levies is at most 350 EUR, duty increase (administrative penalty) is imposed by the Customs. If the amount of the avoided duties, taxes and levies is over 350 EUR but at most 2 000 EUR, a

customs officer issues a penalty demand (a penal notice) and then a prosecutor affirms it unless the offender resists it within certain deadline after its issue (if that is the case, the infringement will be dealt with in the normal court proceedings). The affirmed criminal penalty is fine and the affirmed offence slight tax fraud.

–

– **I**

– In abstract terms, the penalisation of attempted infringements can only be decided by legislator.

–

– **L**

– Some infringements can be relatively minor, and we have discretion as to whether we should take penalty action or not. We take into account the individual circumstances of each case, but factors we generally take into account include cost effectiveness, previous compliance record and the nature of the offence.

–

– **PART D: INFRINGEMENTS COMMITTED IN OTHER MEMBER STATES**

–

– **Q13. Do you take action under criminal procedures in respect of customs infringements committed in other MS?** If you answer yes, please provide very brief details of any limitations. For example 'In Austria we may do so provided that the infringement is detected here'.

–

– Yes (11 MS)

–

– No (12 MS)

–

– **A**

– Provided that the infringement is detected in AT.

–

– **N**

– However, pursuant to the instruments for customs cooperation which exist on European level, the N administration must inform the customs administrations of other Member States of all the details in its possession with respect to committed or planned offences which seem to infringe the customs legislation of the other Member State (particularly the agreement concluded on the basis of Article K.3 of the Treaty on European Union with respect to the mutual assistance and the cooperation between customs administrations – Council act of 18 December 1997, generally referred to as the Naples II Convention, which is applied in most of the European States at present).

–

– **I**

– Generally not. Territorial applicability of penal law precludes this. At least some part of the infringement must take place in I.

–

– **E**

– - Offence directed at a

– E law applies to an offence committed outside of E that has been directed at a E citizen, a E corporation, foundation or other legal entity, or a foreigner permanently resident in E if, under E law, the act may be punishable by imprisonment for more than six months.

–

– - Offence committed by a

– (1) Finnish law applies to an offence committed outside of E by a E citizen. If the offence was committed in territory not belonging to any State, a precondition for the imposition of punishment is that, under E law, the act is punishable by imprisonment for more than six months.

– (2) A person who was a E citizen at the time of the offence or is a E citizen at the beginning of the court proceedings is deemed to be a E citizen.

– (3) The following are deemed equivalent to a E citizen:

– (1) a person who was permanently resident in E at the time of the offence or is permanently resident in E at the beginning of the court proceedings,

– and

– (2) a person who was apprehended in E and who at the beginning of the court proceedings is a citizen of Denmark, Iceland, Norway or Sweden or at that time is permanently resident in one of those countries.

–

–

– - International offence

– punishability of the act, regardless of the law of the place of commission, is based on an international agreement binding on E or on another statute or regulation internationally binding on Finland (international offence). Further provisions on the application of this section shall be issued by Decree.

– (2) Regardless of the law of the place of commission, Finnish law applies also to a nuclear explosive offence or the preparation of an endangerment offence t(1) E law applies to an offence committed outside of Finland where the hat is to be deemed an offence referred to in the Comprehensive Nuclear Test Ban Treaty

– (Treaties of E 15/2001) (841/2003)

– (3) Regardless of the law of the place of commission, E law applies also to trafficking in persons, aggravated trafficking in persons and an offence referred to in chapter 34a committed outside of E. (650/2004)

–

– - Other offence committed outside of Finland

– E law applies to an offence committed outside of E which, under E law, may be punishable by imprisonment for more than six months, if the State in whose territory the offence was committed has requested that charges be brought in a E court or that the offender be extradited because of the offence, but the extradition request has not been granted.

–

– - Corporate criminal liability

– If, under this chapter, Finnish law applies to the offence, law applies also to the determination of corporate criminal liability.

–

– - Place of commission

– (1) An offence is deemed to have been committed both where the criminal act was

– committed and where the consequence contained in the statutory definition of the offence became apparent. An offence of omission is deemed to have been committed both where the perpetrator should have acted and where the consequence contained in the statutory definition of the offence became apparent.

– (2) If the offence remains an attempt, it is deemed to have been committed also where, had the offence been completed, the consequence contained in the statutory definition of the offence either would probably have become apparent or would in the opinion of the perpetrator have become apparent.

– (3) An offence by an inciter and abettor is deemed to have been committed both where the act of complicity was committed and where the offence by the offender is deemed to have been committed.

– (4) If there is no certainty as to the place of commission, but there is justified reason to believe that the offence was committed in the territory of E, said offence is deemed to have been committed in Finland.

–

– - Requirement of dual criminality

– (1) If the offence has been committed in the territory of a foreign State, the application of E law may be based on sections 5, 6 and 8 only if the offence is punishable also under the law of the place of commission and a sentence could have been passed for it also by a court of that foreign State. In this event, no sanction that is more severe than what is provided by the law of the place of commission shall be imposed in E

–)

–

– - Prosecution order by the Prosecutor-General (205/1997)

– (1) A criminal case may not be investigated in E without a prosecution order by the Prosecutor-General, where

– (1) the offence was committed abroad, or

– (2) a foreigner has committed an offence on board a foreign vessel when the vessel was in E territorial waters or on board a foreign aircraft when the aircraft was in E air

space and the offence was not directed at E, a E citizen, a foreigner permanently resident in E or a E corporation, foundation or other legal entity.

– (2) However, the order by the Prosecutor-General is not be required, if

– (1) the offence was committed by a E citizen or a person who, under section 6, Is equivalent to a E citizen and it was directed at E, a E citizen, a foreigner permanently resident in E, or a E corporation, foundation or other legal entity,

– (2) the offence was committed in Denmark, Iceland, Norway or Sweden and the competent public prosecutor of the place of commission has requested that the offence be tried in a Finnish court,

– (3) the offence was committed aboard a E vessel while on the high seas or in territory not belonging to any State or aboard a E aircraft while it was in or over such territory,

– (4) the offence was committed aboard a vessel or aircraft while it was in scheduled traffic between points in E or between a point in E and a point in Denmark, Iceland, Norway or Sweden,

– (5) the offence is to be tried as a criminal case in accordance with the Military Court Procedure Act (326/1983), or

– (6) there is a statutory provision to the effect that the President of the Republic or Parliament is to order any charges to be brought

–

– **D**

– A criminal offence committed in a foreign country (includes MS) is punishable in D, if

– - the legal criminal result sets in Germany (§§ 3, 9 para. 1 Criminal Code)

– - a participant (aider/abetter or instigator) acts in Germany (§§ 3, 9 para. 2 last sentence Criminal Code)

– - the offence is punishable in the foreign country and the perpetrator is a D or becomes a D (§ 7 para. 2 No. 1 Criminal Code)

– - the offence is punishable in the foreign country and the perpetrator is an alien, who is not extradited because a petition of extradite was not filed, although a convention of extradite exists (§ 7 para. 2 No. 2 Criminal Code).

– Apart from that, a participant (aider/abetter or instigator) of an offence committed in D who acted abroad is punishable, too (§§ 3, 9 para. 2 first sentence Criminal Code).

–

– An intended tax fraud or intended tax receiving concerning import duties committed in another MS is punishable (§§ 370 para. 7, 374 para. 4 Fiscal Code).

–

– Criminal infringements against the Foreign Trade and Payments Law or the War Weapons Control Act are punishable, if the perpetrator is a German, irrespective of the foreign criminal law (§ 35 Foreign Trade and Payments Law, § 21 War Weapons Control Act).

–

– Of course, D investigative authorities and courts take action under criminal procedure in respect of customs infringements committed in other MS on the basis of judicial or legal assistance.

–

– **B**

– This is possible if :

– – the custom infringement is a misdemeanor ;

– – the custom infringement committed in other MS is also punishable in France and in this MS ;

– – the person who committed the offence is from B ;

– – this person has not already been finally judged in this other MS for the same facts.

– In this case, the prosecution of the custom infringement is only exercised by the prosecutor.

–

– **G**

– The G Criminal Code provides possibilities for taking actions in respect of offenses committed in other MSs.

–

– Articles 3 and 4 of the G Criminal Code:

–

– Article 3

– (1) G law shall be applied to crimes committed in Hungary, as well as to any conduct of Hungarian citizens abroad, which are deemed criminal in accordance with Hungarian law.

– (2) G law shall also be applied to criminal acts committed on board of Hungarian ships or Hungarian aircraft situated outside the borders of the Republic of Hungary.

–

– Article 4

– (1) G law shall be applied to any act committed by non-Hungarian citizens in a foreign country, if:

– a) it is deemed a felony in accordance with G law and is also punishable in accordance with the laws of the country where committed;

– (...)

– (3) In the cases described in Sub-Articles (1)-(2) the indictment shall be ordered by the General Public Prosecutor.

–

– Until now, there has been no case in respect of customs infringement (committed in the territory of another MS) in which the G General Public Prosecutor instituted a G criminal procedure.

–

– **M**

– In general, no. However, it is an offence under Irish law for a person to commit fraud affecting the Communities' financial interests or to commit the offence of money laundering, or to participate in, instigate or attempt any such fraud or offence, outside the State if the benefit of the fraud or offence is obtained, or a pecuniary advantage is derived from it, by a person within the State, or a person within the State knowingly assists or induces the commission of the fraud or offence, or the offender is an Irish citizen, a national official or a Community official working for a European Community institution or a body set up in accordance with the Treaties establishing the European Communities which has its headquarters in the State.

–

– **H**

– Generally not. Territorial applicability of penal law precludes this.

– So under Article 6 of Criminal Code, anyone who commits a crime in the

– Italian territory is punished under the Italian national criminal law. A crime

– is considered committed in the Italian territory, when the act or omission

– which constitutes the crime has been performed, even if partially, in the

– Italian territory, or when the event that is the consequence of that act or

– omission has occurred in that territory.

– It is important to clarify, also, that the territoriality principle allows exceptions

– In particular:

– The article 7 of Criminal Code disposes that is punishable under Italian criminal law a citizen or foreigner who commits in a foreign territory the following offences:

– 1. crimes against the legal personality of the Italian State,

– 2. crimes of counterfeiting the State seal and use of this

– counterfeit seal;

– 3. crimes of false coins legal tender in the territory of

– State or revenue stamps or card of Italian public credit;

– 4. crimes committed by public officials serving the State, abusing

– the powers or violating the duties inherent in their duties;

– 5. any other offences for which special legal provisions or

– international conventions establishing the applicability of criminal Italian law

–

– The article 9 of the Criminal Code sets the common crime committed abroad by Italian citizens is punishable in Italy and under Italian law provided that:

– 1) it is a crime e not a contravention;

– 2) it is punishable by imprisonment and not by a fine (it is established the penalty of life imprisonment or imprisonment not smaller than three years, according to the

Italian criminal law)

– 3) the offender is present in the State

–

– The article 10 of the Criminal Code establishes that a common crime committed abroad by foreigners is punishable, as a general rule, under Italian law provided that the crime has been committed abroad against an Italian citizen or against Italian State and:

– 1) it is a crime and not a contravention;

– 2) it is punishable by imprisonment (the Italian criminal law establishes for it the penalty of life imprisonment or imprisonment not smaller than one year);

– 3) the offender is present in the State

–

– **L**

– A citizen of Lithuania or permanent resident of Lithuania, who commits a crime abroad may be prosecuted in Lithuania provided that the committed act is recognised as a crime and is punishable under the laws of the place of commission of the crime and of Lithuania.

–

– **K**

– Persons who do not have permanent residence permits for the Republic of Latvia and who have committed serious or especially serious crimes in the territory of another state which have been directed against the Republic of Latvia or against the interests of its inhabitants, shall be held criminally liable, if they have not been held criminally liable or committed to stand trial in accordance with the laws of the state where the crime was committed.

–

– **J**

– In the Netherlands we may do so provided that the infringement is listed as a major criminal infringement (“misdrijf”) in our national Customs Act.

–

– **C**

– When a customs infringement was committed by the Polish citizen.

–

– **F**

– With the following limitations provided by the F Criminal Code:

–

– - Article 4: Criminal law applies to criminal infringements committed outside Romania, if the perpetrator is a Romanian citizen or if, possessing no citizenship, the perpetrator has residence in Romania.

–

– - Article 5: Criminal law applies to criminal infringements committed outside Romania, which act against the F state security or against a Romanian citizen's life, or which seriously damaged physical integrity or health of a Romanian citizen and which are committed by a foreign citizen or by a person without citizenship and who is not residing in Romania.

– The initiation of a criminal suit for the crimes described in the previous paragraph must be preliminarily authorized by the general prosecutor.

–

– Article 6: Criminal law also applies to other criminal infringements than mentioned in art. 5, paragraph 1, namely to criminal infringements committed outside Romania by a foreign citizen or by a person without citizenship and who is not residing in F, if:

– a) the respective deed is considered a criminal infringements as well by the criminal law of the country where the deed was committed;

– b) the perpetrator is in the country.

– For criminal infringements against the Romanian state interests or against a F citizen, the criminal can be sued also in case his extradition has been obtained.

– The provisions in the preceding paragraphs do not apply if, in accordance with the law of the country where the criminal committed the criminal infringements, there is any cause preventing initiation of penal suit or continuation of the penal process or penalty enforcement, or when the penalty was executed or considered as having been executed. When the penalty was not executed at all or only part of it was executed, the next procedure will be in accordance with legal provisions on compliance with foreign sentences.

–

– Article 7: The provisions of art. 5 and 6 will be applied only if there is no different disposition imposed by an international convention.

–

– **G**

– Penal code of G shall be applicable to any citizen of G who commits any criminal offence abroad and who has been apprehended in or extradited to G. It shall also apply to any foreign citizen who has, in a foreign country, committed a criminal offence against the G or any of its citizens and who has been apprehended in the territory of the Republic of Slovenia or has been extradited to it. The Penal code of the G shall also be applicable to any foreign citizen who has, in a foreign country, committed a criminal offence against it or any of its citizens and has been apprehended in the G and is not extradited to a foreign country. In such cases, the court shall not impose a harsher sentence on the perpetrator then the sentence prescribed by the sentence prescribed by the statute of the country in which the offence was committed. But of course also special conditions for prosecution (article 124 of Penal Code) must be taken into consideration.

–

– **Q14. Do you take action under non-criminal procedures in respect of customs infringements committed in other MS?** If you answer yes, please provide very brief details of any limitations.

–

– Not applicable (5 MS)

– Yes (1 MS)

– No (17 MS)

–

–

– **I**

– Generally not. Territorial applicability of penal law precludes this. At least some part of the infringement must take place in Estonia.

–

– **E**

– Generally not, but the answer in yes in situations relating to the place of incurrence of customs debt according to Article 215 of the Community Customs Code:

–

– 1. A customs debt shall be incurred:

– — at the place where the events from which it arises occur,

– — if it is not possible to determine that place, at the place where the customs authorities conclude that the goods are in a situation in which a customs debt is incurred,

– — if the goods have been entered for a customs procedure which has not been discharged, and the place cannot be determined pursuant to the first or second indent within a period of time determined, if appropriate, in accordance with the committee procedure, at the place where the goods were either placed under the procedure concerned or were introduced into the Community customs territory under that procedure.

– 2. Where the information available to the customs authorities enables them to establish that the customs debt was already incurred when the goods were in another place at an earlier date, the customs debt shall be deemed to have been incurred at the place which may be established as the location of the goods at the earliest time when existence of the customs debt may be established.

– 3. The customs authorities referred to in Article 217(1) are those of the Member State where the customs debt is incurred or is deemed to have been incurred in accordance with this Article.

– 4. If a customs authority finds that a customs debt has been incurred under Article 202 in another Member State and the amount of that debt is lower than EUR 5 000, the debt shall be deemed to have been incurred in the Member State where the finding was made.

–

– **D**

– A non-criminal offence committed in a foreign country (includes MS) is punishable in D, if the legal non-criminal result sets in D (§§ 5, 7 para. 1 Law Concerning

Administrative Offences).

- Apart from that, a participant (aider/abetter or instigator) of an offence committed in D, who acted abroad is punishable, too (§§ 5, 7 para. 2 Law Concerning Administrative Offences).
-
- Also grossly negligent tax fraud and the issue (intended or grossly negligent) of incorrect documents for fiscal purposes concerning import duties committed in another MS is punishable (§§ 378 para. 1 last sentence, 379 para. 1 second sentence Fiscal Code).
-
- Of course, D investigative authorities and courts take action under non-criminal procedure in respect of customs infringements committed in other MS on the basis of judicial or legal assistance.
-
- **G**
- As a general principle no, but international agreements can provide for limitations.
-
- **H**
- As a general rule No.

TABLE 4003: Time limits

Member States	1.Time limits for bringing charges/ to initiate the procedure in respect of a customs penalty	2. Interruption or/and suspension period for bringing charges/ to initiate the procedure	3. Maximum Limit for investigation, notwithstanding any interruptions or suspensions	4. Time limits to impose the penalty	5. Interruption or/and suspension period for imposition of a penalty	6. Time limits to execute the penalty
A	**Criminal procedure:** 5 years **Non-criminal procedure:** 1.- **When the infringement consists on non paid debt**: 3 years. 2.- **In the other cases**: 4 years	**Criminal procedure:** - **Non-criminal procedure:** **Interruption:** **1 - When the infringement consists on non paid debt:** the interruption it is only possible on the deadlines of the	No	**Criminal procedure:** No limit **Non-criminal procedure:** 6 months, within the 3 or 4 years to initiate the procedure	Yes **Interruption reason:** - When it is necessary to ask for a report from other Administration to continue the investigation (example: ask for a report to Industry Ministry). The interruption lasts	No

	In all situations, beginning from the commitment of the offence/infringement or the debts liquidation	penalty procedure (it is not possible on the deadlines to initiate the procedure). **2 - In the other cases:** The interruption it is possible on the deadlines to initiate the procedure or on the deadlines of the penalty procedure. **Interruption reason:** - When it is necessary to ask for a report from other Administration to continue the investigation (example: ask for a report to Industry Ministry). The interruption lasts until the reception of the report. This period of time can not be longer than 6 month or one year if it is involved an			until the reception of the report. This period of time can not be longer than 6 month or one year if it is involved an Administration from other country. - When the tax payer does not collaborate in the investigation and does not provide with all documents demanded by the civil servant. The interruption lasts until the tax payer provides with all the documents. - When a criminal procedure about the liable person has begun and there is a	

		Administration from other country. - When the tax payer does not collaborate in the investigation and does not provide with all documents demanded by the civil servant. The interruption lasts until the tax payer provides with all the documents. - When a criminal procedure about the liable person has begun and there is a connection between the issues of both procedures.			connection between the issues of both procedures.	
B	**Criminal procedure:** 10 years (starting from the commitment of the offence/infringement) **Non-criminal**	**Criminal procedure:** **<u>Suspension:</u>** If a person, after committing a criminal act, goes into hiding from the investigation or trial. The calculation of the	**Criminal procedure:** 15 years (providing no new criminal act has been committed during this period)	**Criminal procedure:** 10 years (starting from the commitment of the offence	-	**Criminal penalties:** From 3 to 10 years **Non criminal penalties:** 3

	procedure: - 6 months starting from the identifying of the offence (provided no more than one year has expired from the date of commitment of the offence till the date of its identification), for administrative penalties provided in the Code of Administrative Offences; - 3 years starting from the commitment of the offence/infringement, for administrative penalties provided in the Law on Tax Administration	time limit is resumed from the day the offender is detained or arrives of his own free will. **<u>Interruption</u>**: If the offender commits another criminal act before the lapse of the time limit, calculation of the time limit ceases. In such a case, calculation of the time limit for the first criminal act commences from the day of the commission of new criminal act. **Non-criminal procedure:** No	**Non-criminal procedure:** The Code of Administrative Offences provides prolongation of the time limit up to 1 year	/infringement) **Non criminal procedure:** - 6 months starting from the identifying of the offence (provided no more than one year has expired from the date of commitment of the offence till the date of its identification), for administrative penalties provided in the Code of Administrative		months Starting from the moment the judgment or decision can no longer be appealed, in both situations

				Offences; - 3 years starting from the commitment of the offence/infringement, for administrative penalties provided in the Law on Tax Administration		
C	No limitations are in place					
D	**Criminal procedure:** No **Non-criminal procedure:** No Although there are no	N/A	-	**Criminal procedure:** From 5 to 10 years, depending on the degree of the offence	**Criminal procedure: Interruption:** with the performance of the following procedural act: - application of a preventive measure with	**Criminal penalties:** From 5 to 3 years **Non-criminal penalties:** 18

	time limits to bring the charges *per se*, the procedure cannot be initiated if time to impose the punishment has expired			**Non-criminal : procedure** 2 years In both situations starting from the commitment of the offence	regard to the suspect or accused, or seizure of his or her property, or property which is the object if money laundering; - the prosecution of the accused; - adjournment of the hearing of a matter in the case the accused fails to appear; - interrogation of the accused in the court hearing; - ordering of expert assessment or additional evidence in the court hearing. **In both criminal and misdemeanour matters: Suspension :** - in the case a	months Starting from the entry into force of the judgment or decision, in both situations

					suspect, accused or person subject to proceedings absconds from pre-trial proceedings, extra-judicial proceedings or court, until the person is detained or appears before the body conducting the proceedings; - upon commencement of criminal proceedings in a matter of an act with elements of a misdemeanour, until the termination of the criminal proceedings;	
E	**Criminal procedure:** 5 years or 1 year (customs irregularities)	**Criminal procedure** **<u>Suspension:</u>** - The period during which according to a	**Criminal procedure:** 10 years (only in administrative	The same as to initiate the	-	**Criminal procedure:** 5 years (in general)

	Non criminal procedure: 1 year (coercive penalty) Both starting from as soon as the punishable behavior has stopped or the infringement has been fulfilled	legal rule the prosecution cannot be initiated or continued (e.g. diplomatic immunity). - The period during which due to the infringement a criminal procedure is being conducted. - The period during which legal proceedings in connection with the fiscal (criminal) procedure are pending with the Constitutional Court or the Higher Administrative Court. - The period during which a probation time is granted and the period for the payment of an amount of money including damage repair and services rendered for the public good.	criminal proceedings, in judicial criminal proceedings there is no maximum limit) **Non criminal procedure:** 1 year	procedure		**Non criminal procedure:** 5 years (in general) The time limit starts with the legal force of the respective ruling (criminal) or after the end of the year in which it has become due (non criminal)

		Non criminal procedure: -				
F	**Criminal procedure:** -10 years (aggravated tax fraud), -5 years (tax fraud, illegal handling of imported goods and smuggling), -2 years (petty tax fraud, petty illegal handling of imported goods and petty smuggling). (calculated from the day of the commission of the offence) **Non-criminal**	**Criminal procedure: Interruption:** Charges are deemed to have been brought in a manner interrupting the period of limitation when the person to be prosecuted as been given lawful notice of the summons or a request for his or her punishment has been made when he or she is personally present at a trial. The bringing of charges in a case which is subsequently dismissed without prejudice or the	No The ultimate time limit is principally the same time limit as for bringing charges. However, the upper time limits regarding duration of the pre-trial investigation come from the principle that pre-trial investigation has to be concluded without undue delay. Of course the Convention of Human Rights sets the ultimate limits for the duration of pre-trial investigation.	**Criminal procedure:** From 10 to 30 years (calculated from the day of the commission of the offence) **Non-criminal procedure:** 3 years (calculated from the date on which the customs debt has been incurred or	No	**Criminal penalties:** From 5 to 20 years depending on the seriousness of the offence (counted from the date when the sentence became final) **Non-criminal penalties:** 5 years (calculated from the beginning of the calendar year

	procedure: The basic time limit is a period of three years calculated from the date on which the customs debt was incurred. Duty increase and surcharge for the fault can also be imposed after notification of the customs debt within three years from the date when the customs debt has incurred or, if the goods are duty-free, from the date when the Customs has approved the customs declaration. If the delay or any other fault relates to the compiling of the statistics on the internal trade of the Community, surcharge for fault can be imposed within three years from the date when the declaration for statistics has or should have been given.	charges are withdrawn, does not interrupt the period of limitation. **Non-criminal procedure:** No		the Customs has accepted the particulars given in the customs declaration)		following the year when the sanction has been imposed or debited)

G	**Criminal procedure:** From 3 to 20 years **Non-criminal procedure:** 6 months to 3 years Exception: special legal rule, in case of customs infringements: 5 years In both situations starting from the finalization of the infringement	**Criminal procedure:** **<u>Suspension:</u>** while the perpetrator has the possibility to fulfil the agreement for cessation of criminal proceedings; while the criminal procedure because of tax fraud is suspended in order to verify a fiscal claim* from the pronouncement of the judgement until its validity, e.g. appeal procedure while a foreign country is requested to extradite the suspected person, who stays there. **<u>Interruption</u>**: the first questioning of the suspected person or the notice of starting a criminal	**In both criminal and non-criminal procedures:** The double of the period of limitation (only in what regards interruptions)	There is a combined time limit for investigating the infringement and imposing the penalty including the appeal procedure	Yes	**Criminal penalties:** From 3 to 20 years **Non-criminal penalties:** - fine more than 1000 €: 5 years - fine up to 1000 €: 3 years. In both situations starting from the validity of the decision

		preliminary investigation to the suspected person or the order to do so the notice of starting an administrative preliminary investigation to the suspected person or the order to do so every judicial questioning of the suspected person or the order to do so every judicial order to seizure of goods or home search the judicial warrant of arrest arraignment i.e. charging the suspected person opening the main proceeding by court a penalty order temporary cessation of criminal proceedings by court because of absence of the accused - every judicial order				

		to take action abroad **Non-criminal procedure:** **<u>Suspension:</u>** while the criminal procedure because of gross negligent tax evasion is suspended in order to verify a fiscal claim* - from the pronouncement of the judgement until its validity, e.g. appeal procedure **Interruption:** the first questioning of the suspected person or the notice of starting a preliminary investigation to the suspected person or the order to do so every judicial questioning of the suspected person or hearing of witness or				

		the order to do so every judicial or administrative order to seizure goods or search homes temporary cessation of criminal proceedings by court or customs authority because of absence of the accused service of a fine order service of the files to court for the appeal procedure arraignment i.e. charging the suspected person opening the main proceeding by court - a penalty order				
H	**Criminal procedure:** From 3 to 10 years **Non-criminal procedure:**	**Criminal procedure: Suspension**, when**:** - the suspect is absconding or is abroad, and the procedure cannot be continued in his	No	**Criminal and administrative procedure:** Time limit period runs simultaneously for both initiating the procedure and imposing the	-	**Criminal penalties:** - From 5 to 15 years, in case of imprisonment,

	- 3 years (**administrative procedure**) - 6 months (**contravention procedure**) In each situation starting from the commitment of the offence/infringement	absence; - the suspect cannot participate in the procedure due to a permanent and grave illness, or a mental disease acquired after the commission of the criminal offence; - the identity of the offender cannot be established during the investigation; - a decision needs to be obtained on preliminary issues for conducting the procedure; - the action of the foreign authority in response to the request of legal aid is required and no further investigatory action needs to be conducted in H; - the decision on instituting criminal proceedings needs to be obtained because the criminal offence		penalty. **Contravention procedure:** 2 years		- 5 years, in case of fine, - 3 years, in case of community service work. (It is possible to suspend the execution of a criminal penalty) **Non-criminal penalties:** - 3 years (**Administrative penalties**) - 2 years (C**ontravention)** Starting from the entry into force of

		was committed by a foreign citizen abroad; or - in respect of a case falling under its jurisdiction, the international criminal court requests the H authority to transfer the criminal proceeding; - the suspect who is addicted to drugs voluntarily undertakes treatments against this addiction.				the judgment or decision, in both situations
I	**Criminal procedure:** From 3 to 10 years (starting from the commitment of the offence/infringement) **Non-criminal procedure:** N/A	No (once started, an investigation is never time barred)	-	No	-	No

J	**Criminal procedure:** From 5 to 15 years **Non-criminal procedure:** - 4 months, under administrative procedure - 3 years, on audit In all situations starting from the commitment of the infringement	No	N/A	There is no distinction between the limit to initiate procedures and the time limit to impose the penalty.	N/A	No
K	**Criminal procedure:** 3 to 12 years **Non-criminal procedure:** 3 years In both situations,	**Criminal procedure:** **<u>Suspension</u>:** If the judgment in the criminal procedure would depend on a pre-judicial (or preliminary) ruling, for instance in a civil procedure	No, although ultimately the courts consider the length of the investigation in respect with the principle of undue delay	No	No	**Criminal penalties:** the prescription time under point 1 + 1/3 of that time, thus 4 to 16 years.

	starting from the commitment of the offence/infringement	**<u>Interruption</u>:** An interruption of a criminal procedure can be caused by certain formal decisions, taken by the Public Prosecutor or the Court, which under the circumstances are necessary to enable the Court to eventually pass judgment on the case. A typical example of such an interrupting event is where the Public Prosecutor serves a writ on the suspect. **Non-criminal procedure:** No				**Non-criminal penalties:** 5 years In both situations, starting from the date when the administrative fine / judgement in a criminal case is definite (and thus cannot be appealed anymore).
L	**Criminal procedure:** From 1 to 10 years (starting from the	**<u>Suspension</u>:** (very rarely) When the	No	**Criminal procedure:** From 3 to 20 years, starting from the commitment of	**<u>Suspension</u>:** (very rarely) When the infringement is	**Criminal penalties:** From 3 to 30 years

	commitment of the offence/infringement) , for beginning an official legal proceeding against the person who committed the infringement **Non-criminal procedure:** N/A	infringement is committed by a person who have immunity (Member of Parliament, judge and public prosecutor).		the offence /infringement **Non-criminal procedure:** N/A	committed by a person who have immunity (Member of Parliament, judge and public prosecutor).	(starting from the moment the decision of imposing a penalty can no longer be appealed) **Non-criminal penalties:** N/A
M	**Criminal procedure:** From 10 to 30 years **Non-criminal procedure:** 3 years In both situations, starting from the commitment of the	**Criminal procedure:** **<u>Suspension:</u>** For the time when the prosecution may not be initiated or continued under the statute or when the	**Criminal procedure: -** **Non-criminal procedure:** From 4 to 6 years	Time limits period runs simultaneously for both initiating the procedure and imposing the penalty.	Yes	**Criminal penalties:** From 2 to 15 years **Non-criminal penalties:** 2 years In both situations,

	offence/infringement	perpetrator is beyond reach for state agencies. **Interruption:** When the perpetrator commits a further criminal offence of the same or greater gravity when such a period still runs. **Non-criminal procedure:** **Suspension:** For the time when the prosecution may not be initiated or continued under the statute; **Interruption:** - When the perpetrator commits a further offence of the same or greater gravity when such a period still runs;				starting from the day the judgment/decision becomes final

		- By any procedural act performed for prosecution of the perpetrator for committing a offence.				
N	**Criminal procedure:** a period, corresponding to the maximum statutory punishment established by law, has elapsed; however, this period shall be not less than 6 years in case of a crime. **Non-criminal procedure:** 3 years In both situations starting from the commitment of the offence/infringement. For attempted criminal	**Criminal Procedure:** YES, There are Interruption or suspension reasons only for criminal offences and so the running of the statute of limitations can be either suspended or tolled. **Non-criminal procedure:** No	**Criminal procedure:** in most cases, no more than one fourth of the time, set forth in Article 157 of the Criminal Code, required for the statute of limitations to become effective. **Non-criminal procedure:** the legal time limitation is 3 years this period of time cannot be	**Criminal procedure:** The same as to initiate the procedure **Non-criminal procedure:** 3 years (counting from the moment the offence was perpetrated) *However, when the offender has submitted comments to contest the*	**Criminal Procedure:** The running of the statute of limitations can be either suspended or tolled. In the first case, the suspension occurs when the running of the statute of limitations is suspended whenever the suspension of the criminal proceeding or procedure or of the remand in custody time limits is established by a	**Criminal penalties:** The double to the penalty ordered and, in any case, not exceeding 30 years and not less than 10 (imprisonment); 10 years (fine) or 5 years (contravention). The penalties (imprisonment and fine) are not statute-barred if they concern recidivists, in the cases provided for by the paragraphs of art 99 of Criminal Code, professional

	offences the time limit shall begin to run from the day it is interrupted the criminal activity.		interrupted or suspended	*application of penalties against him, the office, after a period for the assessment of the comments, imposes, if necessary, a penalty by an act in which must also take account of comments made by the offender.*	special provision of law, as well as in case of: 1) a mandate; 2) submission of the matter to other jurisdiction; 3) suspension of the proceeding or criminal procedure due to unforeseen difficulties by the parties and the defending counsels or at the request of the defendant or his defending counsel. The running of the statute of limitations starts again from the day when the reason for the suspension ceases to exist. After the suspension the statute of limitations begins	criminals or offenders having criminal tendencies; similarly, the penalties are not statute-barred if, during the period necessary for the punishment to become statute barred, the convicted is sentenced to imprisonment again for a crime of the same nature. In what regards contraventions, the time limit period is doubled if it concerns recidivists, professional criminals or offenders having criminal tendencies.

					running again and the two periods are combined. The running of the statute of limitations, instead, is tolled by the verdict of conviction or by the ruling of conviction and in all the cases provided for by law and in particular in Article 160 of the Criminal Code. The tolled statute of limitations starts running again from the day when it was tolled. When there are many tolling acts, the statute of limitations starts running from the last of them; however, in no way the time	Regarding both crimes and contraventions, the time limit period starts running from the moment the sentence has become irrevocable **Non-criminal penalties:** 5 years (counting from the imposition of the sanction. If an appeal is lodged against the sanction, such period is interrupted and it remains suspended until the proceedings starting from the appeal has been settled)

					period laid down in Article 157 can be extended beyond the time period set forth in Article 161, second paragraph. This legal provision expressly establishes in principle that in no way the toll of the statute of limitations may result in most cases in an increase of more than one fourth of the time, set forth in Article 157 of the Criminal Code, required for the statute of limitations to become effective, subject to the cases referred to in the said Article 161 of the Criminal Code.	

					Non-criminal procedure: No reasons for tolling or suspending the expiration period are provided for, in principle, in the legislation.	
O	**Criminal procedure:** - 8 or 10 years, depending on the maximum of the penalty provided by law , for natural persons; - 5 or 10 years, depending on the maximum of the penalty provided by law, for legal persons. Starting from the commitment of the	**Criminal procedure:** **<u>Suspension</u>:** While a legal provision or an unexpected or unavoidable circumstance impedes the criminal investigation or the continuation of criminal trial. **<u>Interruption</u>:** By the achievement of any action which, in accordance with the law, must be communicated to the defendant during the criminal trial.	**Criminal procedure:** Time limits period plus one half of these terms. **Non-criminal procedure:** 1 year	There is no distinction between the time limit to initiate procedures and the time limit to impose the penalty	Yes	**Criminal penalties:** For natural persons: - 20 years or - 5 years plus the penalty to be executed, depending on the range of the penalty to be executed (imprisonment);

	offence/infringement or from the finalization of the infringement **Non-criminal procedure:** 6 months Starting from the commitment of the offence/infringement or from the discovery of the infringement by the competent authority (for continuous deeds).	**Non-criminal procedure**: **<u>Suspension</u>:** When the deed was investigated as criminal infringement and subsequently it was established that it is a non-criminal infringement (a contravention)				- 3 years (fine). For legal persons: – 5 years (starting from the moment the conviction decision remained final) **Non-criminal penalties:** 5 years (starting from 1st January of the year following the year when the right to request the forced execution of the penalty arose)
P	**Criminal procedure:** 20	-	No	**Criminal**	No	No

	or 3 years, depending on the seriousness of the infringement **Non-criminal procedure:** The same as for criminal procedure In both situations, starting from the commission of the offences			**procedure:** No **Non-criminal procedure:** 2 years (starting from the date on which sufficient facts to justify the imposition of a penalty)		
Q	**Criminal procedure:** 10 years **Non-criminal procedure:** 2 years In both situations starting	Yes, if a criminal charge is initiated no non-criminal charge can be proceeded	**Criminal procedure:** 15 years **Non-criminal procedure:** 3 years	**Criminal procedure:** 10 years **Non-criminal procedure:** 5 years	**Criminal procedure:** yes **Non-criminal procedure:** No	**Criminal penalties:** 15 years **Non-criminal penalties:** 5 years

	from the commitment of the offence or the last deed					In both situations starting from the entry into force of the decision
R	**Criminal procedure:** 3 years **Non-criminal procedure:** N/A Starting from the commitment of the offence/infringement	Yes	-	-	-	**Criminal penalties:** 5 years **Non-criminal penalties:** N/A Starting from the date when the judgement is definite and cannot more be appealed
S	**Criminal procedure:** 3 years for the customs administration to bring a	**<u>Interruption:</u>** - by procès-verbal (official report);	The double of the foreseen period of limitation	**Criminal procedure:** 3 (settlement) or 5	No	**Criminal procedure:** 5 years, starting

	customs infringement to an end by a settlement (starting from commitment of the offence/infringement) **Non-criminal procedure:** N/A	- legal investigation; - subpoena; - assignment into the court		years (in those cases where the court is the one who imposes the penalty)		from the moment the decision becomes definite
T	**Criminal procedure:** 10 years (starting from the day the infringement was committed) **Non-criminal procedure:** N/A	**Criminal procedure:** **<u>Suspension:</u>** From the moment a charge is served on the person accused until such time as a final judgment is delivered. **<u>Interruption:</u>** - If the offender may have absconded from T and the writ of summons or warrant could not be served on the party accused	No	No	N/A	No limits

		prior to the ten (10) year prescription period; - Whenever a judicial act such as a warrant of arrest or a writ of summons is served on the accused and it must be served either on the individual himself or at his place of abode				
U	**Criminal procedure:** 10 years (starting from the moment the infringement has been found by customs officers) **Non-criminal procedure:** From 2 to 6	**Criminal procedure:** Yes **Non-criminal procedure:** No	-	**There is no distinction** between time limits to initiate the procedure that leads to the application of a penalty and time limits to impose it	-	-

	years (starting from the moment the infringement has been found by customs officers or the commitment of the offence/infringement or neglect of duty)			to the condemned perpetrator		
V	**Criminal procedure:** 5 years **Non-criminal procedure:** 7 (for smuggling cases incurring non-criminal penalties) or 3 years In both situations starting from the commitment of the infringement	**Criminal procedure:** Yes **Non-criminal procedure:** No	**Criminal procedure:** 8 years **Non-criminal procedure:** N/A	There is no distinction between the limit to initiate procedures and the time limit to impose the penalty.	-	**Criminal penalties:** 10 years **Non-criminal penalties:** 20 years In both situations starting after the period of appeal

W	**Criminal procedure:** 5 years **Non-criminal procedure:** 5 years In both situations, starting from the commitment of the offence/infringement	**Criminal procedure:** **<u>Suspension</u>:** When: a) The criminal proceedings cannot legally begin or continue for lack of legal authorization, or the verdict to be pronounced by a non-penal court, or else because of the devolution of a question prejudicial to a non-penal judgment; b) the criminal proceedings are pending from the moment of notification of the instruction judge decision that pronounces the offender, or from the petition to apply the sanction in brief summary	The normal prescription term plus half of its time, exempting suspension factors (for criminal and non-criminal penalties)	V legal system only foresees time limits in what regards the procedure itself and not any particular act of it (as the decision), therefore, the time limit period of 5 years mentioned in question's 1 answer, runs simultaneously for both initiating the procedure and imposing the penalty.	-	**Criminal penalties:** From 10 to 15 years. **Non-criminal penalties:** 5 years. In both situations, starting from the moment the decision becomes definite

		proceedings; c) The declaration of contumacy is in force; d) The offender being tried during his absence, the sentence cannot be applied; or e) The delinquent is suffering penance abroad, or measure of security deprival of freedom **<u>Interruption</u>:** a) With the establishment of the offender; b) With the notification of the accusation or, if that has not been deduced, with the notification of the instructional decision pronouncing the offender, or with the notification of the petition to apply the sanction in summary process;				

		c) With the declaration of contumacy; d) With the notification of the dispatch indicating the day for the audience in the absence of the offender; **Non criminal procedure:** **Suspension:** a) While the proceedings cannot legally begin or continue for lack of legal authorization, (for instance, in cases where a fiscal procedure (either administrative or judicial), related with the dept that arises from the infringement or with tariff classification, origin or value of goods, is running); b) In cases where the				

		administrative authority considers the infringement as a crime, from the moment the proceeding is sent to the Public Prosecution Service, for the competent analysis, until when this Service hands it back due to lack of criminal liability; c) While the proceeding is pending due to an appeal of the condemning decision. **Interruption:** a) With any notification or with the communication to the offender of any order, decision or measure taken against him; b) When any proof measure is taken, such as searches and expert examinations,				

		or with any call for help to other administrative authorities or the police; c) With the offender's notification to exercise the right to be heard or with the offender's statements in the use of that right; d) With the condemning decision				
X	**Criminal procedure:** 5 years Starting from the day the infringement occurs or stops (in case of continuing infringement) **Non criminal procedure:** Not applicable	**<u>Interruption:</u>** - by **an act of "instruction"** (in French) **:** act of criminal investigation led by a legally qualified authority (most of the time, must be authorised by a judge) e.g. performing a visitation of domicile ("perquisitio	**Criminal procedure:** limitation period may never be more than doubled (exempting the time of suspension). **Non criminal procedure:**	In X the **same time limits** govern the process for bringing charges in respect of a customs infringement **and** deciding whether a penalty is due or	-	**Criminal penalties:** From 1 (minor offences) to 5 years (misdemeanour), since the day of the judgement in last resort. **Non criminal**

		n" in French), requesting a copy of someone's criminal record or requesting any judicial inquiry to the public prosecutor - by **an act of prosecution :** e.g. drawing up a report of findings (also called statement of offences, "procès-verbal" in French), or a summons to appear ("citation" in French) The limitation period can be suspended during cert ain judicial procedures brought before the highest courts (constitutional court, supreme judicial court).	Not applicable	not.		**penalties:** Not applicable

TABLE 4004: AEO status

REVISED QUESTIONS ON AEO PROCEDURES

1. MSs answering to the mini questionnaire all grant AEO status to traders. The questions intend to focus on the possible minor implementation differences.

2. How do you monitor the compliance of AEOs authorized by your administration?

Criteria	
Regular business audits	12 MS
If regular audit, how often on average do audits take place?	12 MS
Interrogation of customs databases	20 MS
Interrogation of other national databases (for instance records of business insolvencies, criminal activity etc.	19 MS

Other (please specify) N □□ - Audit plan for each AEO; □□ physical and document based controls (but less than for non-AEOs); □□ post clearance audits (but less than for non-AEOs) □□ collect and assess results of all controls □□ collect and assess early warning signals □□ monitoring of risks F/G (Legal requirement to notify changes that may affect their AEO status) S Cases involving AEOs are brought to the attention of the administration's AEO Committee. Members of the Committee may also ask for meetings with the management of certified operators, make surprise visits to premises and ask for any information and explanations they deem necessary. Compliance with the conditions set down in the authorisation is also checked on a regular basis (at least twice a year). O Post clearance checks on SAD E Post clearance checks Obligation for AEOs to provide information regarding changes of their address, telephone numbers etc. P Post clearance checks on SADs Visit operator and carry out assurance checks Maintain contact with Import/Export Stations Liaise with case manager and control officer where appropriate Q Audits at the company site Permanent contact with the responsible customs officers L internet investigation - feedback from other customs authorities or other	11 MS

organisations C - monitoring plan for each AEO - immediate business audits beside regular business audits, if it is needed Post clearance checks I -regarding solvency AEOs are put in an electronic monitoring data system of a credit information institution (information on financial difficulties and also on company transactions (mergers etc.) and changes in company legal status) -obligation for AEOs to provide information regarding changes in business, contact information etc. -physical and document based controls -post clearance audits	

The audit takes place every year (B, E), At least in every 2 years (C), at least every 3 years (H), 1 or 3 years (M), depending on the AEO (D), depending on risk and changes regarding AEO (G), every 1-4 year depending on the possibly results of pre-audit and monitoring visits (I), Depending on the condition of the company, 1 to 2 years, up to now no ad-hoc monitoring was carried out of a holder of AEO certificate (U), Never before the 1st year and depending on the risk established at the pre authorization audit. Randomly, if not monitored on regular business audits in 3 years after the authorization (J), the controls are decided by the audit office taking into account the risk profile of the individual operator AEO. The risk profile identified as a result of audit activity is allocated to the agent on the basis of verification of all the criteria established by legislation (Customs reliability, solvency, proper accounting and / or safety) and that profile is identified by applying the AEO Community Compact Model (K), depends on the assessment of risk (L),

Other:

3. Do you maintain a national customs database that provides details of contraventions?

YES	NO
20 MS	3 MS

V- only the national Punishment Register, where the customs-related punishments are stored too

4. Do you, either as a matter of law or of national customs policy, exclude minor customs infringements when considering the compliance records of AEO applicants or established AEOs? If so, please provide up to 3 examples of the infringements

you would exclude.

YES	NO
18 MS	4 MS

B - typing mistakes in customs declaration;
- lack of accompanying documents referring to representatives, etc;
- modification of owners, capital, etc.

N:

Yes, according to Article 14h para 1 last subparagraph Reg. 1875/2006 we consider infringements, which are not classified as serious infringments to be of neglible importance as long as the number of such infringements is in a tolerable proportion in relation to the number and size of the customs related operations. Examples:

1 time limits expired (e.g. transit, inward processing)

2 wrong tarif classification with minor impact

3 minor deviations between declared and assessed value and quantities

U-
As a matter of law, the paragraph 98 of the customs act states that Violations of the customs rules provided by this Act which, if committed by a natural person, are punishable by a fine above 100 fine units and, if committed by a legal person, are punishable by a fine above 30 000 kroons, and the offences provided for in §§ 391–393 of the Penal Code are deemed to be material or serious violations within the meaning of Community legislation, and the customs authorities have the right, upon establishing such violation, to refuse to make a decision favourable to the person or to revoke an initial decision favourable to the person. To sum it up, we do have some exclusions set by law. E.g. they would be (in no particular order):

3 incorrect tariff classification of goods which didn't have impact on the customs debt (§ 92 of the customs act)

4 failure to perform obligation to declare cash according to the Regulation (EC) No 1889/2005 (§ 91^1 of the customs act)

5 Failure to comply with time limits for preserving documents (§ 86 of the customs act)

6 And many more

C:

1. A contravention in connection with origin was discovered, but it covered only a very short period (1 month import activity).

2. The completion of the SAD was incorrect in a few cases, the account number was indicated incorrectly.

3. The operator failed to fulfil the requirements of the time limit for payment of the amount of duty in a few cases.

In these cases the following checklist of the AEO Guidelines is always taken into account:

□□It is recommended that infringements are looked at on a cumulative basis;
□□The frequency of the infringement should be examined in relation to the number and size of the customs related operations;
□□There must be no deliberate fraud intended;
□□Context should always be considered;
□□If the operator's agent is responsible for the infringements, then the operator must show evidence of intended measures to be undertaken by him to reduce the number of infringements by his agent.

In D are applied two different criteria at the same time.

1. With serious penalties.
   In this case, the Spanish legislation distinguishes between very serious and serious penalties.

a) When penalty is qualified very serious.
   In this case, it is impossible to obtain the status of the AEO or the Operator lost the status.

b) When the penalty is qualified serious.
   In this case it is necessary to study the infringement and if it is applied a specifics aggravations (account infringement and fraudulent intention) it is impossible to obtain the status of the AEO, or the Operator lost the status.

2. With repeated penalties.
   There is a general criterion which take into consideration the percentage between number of declarations and penalties committed (all types of penalties, serious and not serious). If the percentage is higher than a average (between 1% and 2%, depend of the kind of operator) it is impossible to obtain the status of the AEO, or the Operator lost the status.

<u>Examples.</u>

The Classification of the Penalty in a lot of cases, depend on aggravations and mitigations factors, for that it is difficult provide up 3 examples, but the typical examples are:

1 Lodging of a customs declaration after the date due.
2 Decline the customs officials request for extra information.
3 Lodging of a customs declaration incorrect without debt increase.

F
Our policy reflects the legal requirement in Art 14h paragraph 1. Examples of such infringements include those listed in Art 859 of the Implementing Provisions eg late submission of bills of discharge for IPR, exceeding time limits for temporary removal, failure to seek prior approval for usual forms of handling in a customs warehouse.

S

Yes, but each individual case is treated on its own merits. As a rule infringements that are considered to be minor are not taken into account, especially if they are not repeated. However, in all cases the final decision rests with the administration's senior management. Infringements considered to be minor would include:

1 Cases of misclassification (tariff code) where the error did not have any bearing on revenue;

2 Infringements where the values/volumes involved were insignificant compared to the volumes/values normally traded by the operator in question;

3 Cases of incorrect Community status where the values involved are considered low.

G

Yes, we would exclude minor customs infringements, but so far we haven't such experience, we can't provide examples.

O

Any administrative infringement on which the penalty not exceeding 5000 LTL (1449 EUR) has been imposed (provided it was not committed repeatedly) would be excluded. It can be, for example:

- presentation of incorrect data in customs declaration, if the value of goods doesn't exceed 100 living standards (3768 EUR);
- violation of procedure concerning establishment of customs warehouses;
- smuggling, if value of goods doesn't exceed 5 minimal living standards (188 EUR).

H

Yes. Examples:

1. when there is no fraudulent intent (material errors for example)
2. when the amount in question is not high and not repeated

A

In order to grant AEO status we examine all customs infringements ad hoc. Minor customs infringements are not excluded. In fact, when minor infringements are repeatedly committed in a period of three years or involve dual use goods, goods subject to excise duties or c.a.p. products, they are considered as serious infringements for AEO.

U

Isolated cases of not meeting a deadline to present a transit declaration.

R

It is difficult to give examples, because every cases are regarded individually. It must be not important infringements and any penalties couldn't be imposed for that behaviour.

J
Yes, both as a matter of law (according to article 14ş - H, nş1, 2nd paragraph of the Regulation n 2454/93) and as national customs policy.
As examples of minor customs infringements that are not relevant when considering the compliance records of AEO applicants or established AEO, it can be pointed out the following:

1 The delay in exhibit or present documents related with customs declarations;

2 The practise of any imprecision in customs declarations or other tax relevant documents

3 The omission of some data in customs declarations or other tax relevant documents

Q (NO)
No, due to settlement, minor customs infringements are no more considered as infringements.

K
The minor irregularities are not excluded but are examined in the audit for the overall assessment of the operator and for the allocation of risk profile.

M
- Typo in customs declaration;
- Error in archiving due documents
- Isolated infringement in a declaration when the firm deals in a legit way with a big amount of declarations, without suspected fraud.

I

Infringements are not classified as serious infringements as long as the number of such infringements is in a tolerable proportion in relation to the number and size of the applicant's /AEO's customs related operations.
Examples: - minor faults in declarations
- few delays in payments (which are covered by a guarantee)

Table 5001 - Types of penalties/sanctions

In this section, MS are asked to address the types of penalties (both administrative and criminal) and such negative consequences of an infringement which are not deemed as penalties that exist in their country as well as how they are applied in practice.

1) What is the nature, criminal penalty or administrative penalty or a non-criminal negative consequence, of the negative consequences of an infringement provided for at national level? Please specify for each case.
(1) Fine, (2) pecuniary charge, (3) imprisonment, (4) disqualification for a natural person from engaging in an activity requiring official authorisation or approval, or funding, managing or directoring a company or a foundation, (5) confiscation of the goods, (6) ban on access to public assistance, or subsidies, (7) publication of judicial decisions, (8) refusal to grant authorisation, (9) annulment of granted authorisation, (10) suspension of granted authorisation, (11) temporary or permanent disqualification from the practice of industrial or commercial activities, (12) placing under judicial supervision, (13) a judicial winding-up order; (14) the obligation to adopt specific measures in order to avoid the consequences of conduct such as that on which the criminal liability was founded (15) other

(1) fine

MS	Criminal penalty	Non-criminal negative consequence	Remarks
A	X	X	Non-criminal = *administrative fine.*
B	X	X	
C	X		
D	X	X	Non-criminal fine is called pecuniary charge.
E	X		
F	X	X	Applied only for natural persons
G	X	X	Non-criminal (administrative) – *compulsory fines.*
H	X	X	
I	X	X	Criminal – *financial penalty* Negative Consequences – Customs may impose "*a sum equivalent to a fine"*.
J	X	X	
K	X	X	
L	X		
M		X	
N	X		
O		X	
P	X		
Q	X	X	*Fines* can be levied as penalties in criminal actions, and are the principle

			administrative penalty used. Note that they are described in UK civil law as *penalties* rather than *fines.*
R	X	X	
S	X	X	
T	X		
U	X	X	
V	X		
W	X		
X	X	X	Non-criminal - *administrative fine*, Criminal – *financial penalty.*
Total:			
	22		
non-criminal negative consequence	**16**		
both	**14**		
none	**0**		

(2) pecuniary charge

MS	Criminal penalty	Non-criminal negative consequence	Remarks
A	-	-	
B	X		
C		X	
D		X	This is considered to be a non-criminal penalty.
E		X	
F	X	X	Applied only for legal persons
G		X	
H	-	-	
I	X		
J	X	X	The legislation does not distinguish between *fine* and *pecuniary charge.*
K	X	X	
L	X		
M	X		
N	X		
O	X		
P		X	Administrative penalty
Q		X	The legislation does not distinguish between *fine* and *pecuniary charge.*
R	X	X	The legislation does not distinguish between *fine* and *pecuniary charge.*
S	X	X	The legislation does not distinguish between *fine* and *pecuniary charge.*
T	X	X	
U	X	X	The legislation does not distinguish

			between *fine* and *pecuniary charge.*
V			No information
W	-	-	
X	-	-	
Total:			
criminal	**13**		
non-criminal negative consequence	**13**		
both	**6**		
none	**4**		

(3) imprisonment

MS	Criminal penalty	Non-criminal negative consequence	Remarks
A	X		
B	X		
C	X		
D	X		
E	X		
F	X		
G	X		
H	X		
I	X		
J	X		
K	X		
L	X		
M	X		
N	X		
O	X	X	In administrative procedure there is a submitted imprisonment – until the fine is paid or maximum 30 days.
P	X		
Q	X		
R	X		
S	X		
T	X		
U	X		
V	X		
W	X		
X	X		
Total:			
criminal	**24**		
non-criminal negative consequence	**1**		
both	**1**		
none	**0**		

(4) disqualification for a natural person from engaging in an activity requiring official authorisation or approval, or funding, managing or directoring a company or a foundation

MS	Criminal penalty	Non-criminal negative consequence	Remarks
A	-	-	
B		X	
C		X	
D	X	X	
E	X		Ancillary Penalty
F	-	-	
G	-	-	
H	X		Complementary penalty
I		X	BUT ***funding, managing or directoring a company or a foundation*** falls outside customs competence
J	-	-	It is not applicable in customs matters
K	X		
L	X		
M	X		
N	X		
O	X		
P		X	Administrative measure
Q	X	X	
R	X		
S	X		
T		X	
U	-	-	
V	-	-	
W	-	-	
X	-	-	
Total:			
criminal	**11**		
non-criminal negative consequence	**7**		
both	**2**		
none	**8**		

(5) confiscation of the goods

MS	Criminal penalty	Non-criminal negative consequence	Remarks
A	X	X	If it is stated by law only
B	X	X	Criminal and misdemeanour or administrative as seizure
C	X	X	For administrative infringements only

			in case of decriminalized smuggling
D	X	X	
E	X	X	Both an ancillary criminal penalty and an ancillary administrative penalty for administrative offences punished by a pecuniary charge above 3,750 EUR
F	X	X	
G	X	X	
H	X	X	
I	X	X	Court imposes confiscation of goods AND Customs imposes forfeiture as contemplated in Chapter 37, Article 63 A
J	X	X	
K	X		
L	X		
M	X	X	
N	X		
O	X	X	
P	X	X	In P confiscation of goods as a criminal penalty practically only relates to unlawful introduction of pure alcohol (smuggling). As regards to tobacco and alcoholic beverages (tax fraud) these products are instead of confiscation taking under customs supervision and at most cases afterwards to be destroyed by the customs
Q	X	X	
R	X	X	
S	X	X	Administrative cases – only with smuggling
T	X	X	Confiscation of the goods is a criminal penalty and a civil process for the security of the duty or tax due at the same time
U	X	X	
V	X		
W	X		
X	X		
Total:			
criminal	**23**		
non-criminal negative consequence	**18**		
both	**18**		
none	**0**		

(6) ban on access to public assistance, or subsidies

MS	Criminal penalty	Non-criminal negative consequence	Remarks
G	-	-	
N	-	-	
F	-	-	
T	-	-	
B		X	
P	-	-	Not applicable
V	-	-	
A	-	-	
U	-	-	
D	-	-	It is not applicable in customs matters
W	-	-	
C	-	-	
J	-	-	
R	-	-	It is not provided
K	X		
I	-	-	Not provided for
X	-	-	
L	X		
E	X	X	Both an ancillary criminal penalty and an ancillary administrative penalty for administrative offences punished by a pecuniary charge above 3,750 EUR
H	-	-	
M	X		
O	-	-	
S		X	
Q	-	-	
Total:			
criminal	**4**		
non-criminal negative consequence	**3**		
both	**1**		
none	**18**		

(7) publication of judicial decisions

MS	Criminal penalty	Non-criminal negative consequence	Remarks
G	-	-	
J	--	-	Publication of judicial decisions is not a penalty, according to national legislation. The court adjudications

			shall be published on the Internet homepage, if it is provided for in the regulatory enactment, as well as upon the initiative of the institution. In publishing court adjudication via Internet, the part of information, which discloses the identity of a natural person, shall be hidden
N	X		
F	-	-	
T	-	-	Publication of judicial decisions is not a penalty, according to national legislation. However, all criminal decisions of the competent court are publicised. In cases of compounding, in lieu of criminal proceedings, the agreement is not publicised. The administrative penalties are also not publicised
B	X	X	Criminal /misdemeanour /administrative
P	-	-	Not applicable. Judicial decisions usually are public but they are not published by the initiative of the body who took the decision
V			No information
O	X		Only for legal persons – in cases, defined in Article 19 in Act on liability of legal persons for criminal offences: the safety measure of publication of the judgement shall be applied by the court in the cases, where it would be beneficial for the public to be informed of the judgement, and especially if publication of the judgement would contribute to removing danger to life or limb or the securing of safety of traffic or some economic good
A	X		If it is stated in law only
U	-	-	Publication of judicial decisions is not a penalty. All judicial decisions are published to ensure fairness and impartiality of justice, according to a general principle of law in U
D	--	--	
W	-	-	
C	-	-	
R	-	-	Having made a decision to impose a criminal penalty on the legal person,

			the court may also decide to announce the decision through the mass media. But this measure is not a penalty. Otherwise, effective decisions of superior courts are available in special databases
K	X		
I			"Publication of judicial decisions" cannot be classified under either of the 2 headings
X	X		
L	X		
E	X	X	Both an ancillary criminal penalty and an ancillary administrative penalty for administrative offences punished by a pecuniary charge above 3,750 EUR
Q	-	-	Where we reach a settlement in lieu of criminal proceedings (called 'Compounding') the agreement is not publicised, nor are administrative penalties (except where they are upheld following an appeal by the person concerned to the independent VAT and Duties Tribunal
H	X		
M	X		
S	-	-	
Total:			
criminal	**10**		
non-criminal negative consequence	**2**		
both	**2**		
none	**12**		

(8) refusal to grant authorisation

MS	Criminal penalty	Non-criminal negative consequence	Remarks
Q	-	-	Q can refuse to grant authorisations in both criminal and non-criminal cases, but these are viewed as inevitable consequences of non-compliance (i.e. measures) rather than penalties
G	-	X	
N	-	-	Refusal of grant authorisation is not considered as a sanction, but as decision following directly from the law, and the fact that conditions for such authorisation are no longer fulfilled
F	-	-	Although it is not considered type of administrative penalty, it is provided in art.267

			of the Rules for the implementation of the Customs Act, that permission for certain simplified clearance shall not be issued for each separate case to a person, who has committed grave and repeated infringements of the customs and tax legislation
T		X	
B		X	
P		X	Administrative measure
V			No information
A	-	-	It is not a penalty itself, but an administrative measure, which can be applied in case of non-compliance behaviours
U		X	
D	-	-	It is not a penalty but a measure or a consequence of the infringements in both cases
W	-	-	
C	-	-	As a measure
J	-	-	Refusal of grant authorisation is not considered as a sanction, but as decision following directly from the law, and the fact that conditions for such authorisation are no longer fulfilled
R	-	-	It is considered as a prohibitory sanction (not a penalty)
K	X	X	
I	-	-	It is not a penalty itself, but an administrative measure, which can be applied in case of non-compliance behaviours
X	-	-	It is not a penalty; however, a criminal sentence can be an obstacle to the issue of a licence by the customs authorities. A criminal conviction, for example, may lead to authorisation as a customs forwarding agent being refused or a licence as an AEO being refused
L		X	
E	-	-	It is not a penalty itself, but an administrative measure, which can be applied in case of non-compliance behaviours
H	-	-	Refusal to grant authorisation is not a penalty according to the Romanian legislation, but an administrative measure (an administrative decision) taken by the customs authority according to the customs legislation
M		X	
N	X		Only for legal persons: prohibition of activity on the basis of licenses, authorisations or concessions granted by state bodies and prohibition of acquisition of licenses, authorisations or concessions, which are granted by state bodies

O		X	
Total:			
criminal	**2**		
non-criminal negative consequence	**9**		
both	**1**		
none	**13**		

(9) annulment of granted authorisation

MS	Criminal penalty	Non-criminal negative consequence	Remarks
B		X	
N	-	-	Annulment of granted authorisation is not considered as a sanction, but as decision following directly from the law, and the fact that conditions for such authorisation are no longer fulfilled
F	-	-	Annulment of granted authorisation is not considered as a sanction, but as decision following directly from the law, and the fact that conditions for such authorisation are no longer fulfilled. (Art.271(2) of the Rules for the implementation of the Customs Act)
T		X	
P		X	Administrative measure
V			No information
A		X	
U		X	
D	-	-	It is not a penalty but a measure or a consequence of the infringements in both cases
G	-	-	
W	-	-	
C	-	-	As a measure
J	-	-	Annulment of grant authorisation is not considered as a sanction, but as decision following directly from the law, and the fact that conditions for such authorisation are no longer fulfilled
R	-	-	It is considered as a prohibitory sanction (not a penalty)
K	X	X	
I	-	-	
Q	-	-	Q can annul authorisations in both criminal and non-criminal cases, but these are viewed as inevitable consequences of non-compliance (i.e. measures) rather than penalties

X	-	-	
L		X	
E	X	X	Both an ancillary criminal penalty and an ancillary administrative penalty for administrative offences punished by a pecuniary charge above 3750 EUR
H	-	-	Annulment of granted authorisation is not a penalty according to the H legislation, but an administrative measure (an administrative decision) taken by the customs authority according to the customs legislation
M		X	
O	X		Only for legal persons: prohibition of activity on the basis of licenses, authorisations or concessions granted by state bodies and prohibition of acquisition of licenses, authorisations or concessions, which are granted by state bodies
S	X	X	
Total:			
criminal	**4**		
non-criminal negative consequence	**10**		
both	**3**		
none	**12**		

(10) suspension of granted authorisation

MS	Criminal penalty	Non-criminal negative consequence	Remarks
A		X	
B		X	
C	-	-	As a measure
D	-	-	It is not a penalty but a measure or a consequence of the infringements in both cases
E	X	X	Both an ancillary criminal penalty and an ancillary administrative penalty for administrative offences punished by a pecuniary charge above 3,750 EUR
F	-	-	
G	-	-	
H	-	-	Suspension of granted authorisation is not a penalty according to the H legislation, but an administrative measure (an administrative decision) taken by the customs authority according to the customs legislation
I	-	-	
J	-	-	Suspension of grant authorisation is not

			considered as a sanction, but as decision following directly from the law, and the fact that conditions for such authorisation are no longer fulfilled
K	X	X	
L		X	
M		X	
N	-	-	Suspension of granted authorisation is not considered as a penalty, but as decision following directly from the law, and the fact that conditions for such authorisation are no longer fulfilled
O	-	-	
P		X	Administrative measure
Q	-	-	Q can suspend authorisations in both criminal and non-criminal cases, but these are viewed as inevitable consequences of non-compliance (i.e. measures) rather than penalties
R	-	-	It is considered as a prohibitory sanction (not a penalty)
S	-	-	
T		X	
U		X	
V			No information
W	-	-	
X	-	-	
Total:			
criminal	**2**		
non-criminal negative consequence	**9**		
both	**2**		
none	**14**		

(11) temporary or permanent disqualification from the practice of industrial or commercial activities

MS	Criminal penalty	Non-criminal negative consequence	Remarks
A	X		Art. 70 Criminal Code temporary disqualification up to 5 years
B	X	X	
C	-	-	
D	X	X	Act CIV of 2001 on measures applicable to legal persons under criminal law provides for restriction in activity; and in criminal procedure restraint from profession may be

			applied as an ancillary punishment if the crime committed is in relation with the perpetrator's profession It is not a penalty but a measure or a consequence of the infringements in both cases
E	X	X	Ancillary penalty
F		X	
G	-	-	
H	X		
I	-	-	Not provided for
J	-	-	
K	X	X	
L	X		
M	X		
N	X		
O	X		It is considered as safety measure and it means prohibiting a legal person from producing certain products or doing business in certain plants or prohibiting a legal person from involving itself in certain transactions in the traffic of goods and services or in other commercial transactions
P	X		Ancillary penalty
Q	X		
R	X	X	When imposed as non-criminal negative consequence, it is considered as a prohibitory sanction (not a penalty), e.g. prohibition from carrying out activities in free zones or free warehouses
S		X	Only in administrative smuggling
T	-	-	
U	-	-	
V			No information
W	-	-	
X	-	-	
Total:			
criminal	**13**		
non-criminal negative consequence	**7**		
both	**5**		
none	**8**		

(12) placing under judicial supervision

MS	Criminal	Non-criminal	Remarks

	penalty	negative consequence	
A	-	-	
B	X		
C	-	-	
D	-	-	
E	-	-	
F	-	-	
G	-	-	
H	-	-	
I	-	-	Falls outside the competence of customs law
J	-	-	It is not applicable in customs matters
K	X		
L	X		
M	X		
N	-	-	
O	-	-	
P	-	-	It is not within competence of customs legislation because these provisions relate mainly to bankruptcy proceedings
Q	-	-	
R	-	-	
S	-	-	
T	-	-	
U		X	This non-criminal negative consequence is subject to court decision for the criminal case of smuggling. The criminal court will ultimately decide for the judicial supervision which will be final if the offender is proven guilty or will be revoked if the offender is proven innocent
V			No information
W	-	-	
X	-	-	
Total:			
criminal	**4**		
non-criminal negative consequence	**1**		
both	**0**		
none	**18**		

(13) a judicial winding-up order

MS	Criminal penalty	Non-criminal negative	Remarks

		consequence	
A	-	-	
B	X		
C	-	-	
D	X	X	In the case of crimes Act CIV of 2001 on measures applicable to legal persons provides for it
E	X		Ancillary penalty
F	-	-	
G	-	-	
H	X		Complementary penalty
I	-	-	Falls outside the competence of customs law
J	-	-	It is not applicable in customs matters.
K	X		
L	-	-	
M	X		
N	X		
O	X		The winding up of legal person may be ordered if the activity of the legal person was entirely or predominantly used for carrying out of criminal offences.
P	-	-	It is not within competence of customs legislation because these provisions relate mainly to bankruptcy proceedings
Q		X	
R	X		
S	-	-	
T		X	
U	-	-	
V			No information
W	-	-	
X	-	-	
Total:			
criminal	**9**		
non-criminal negative consequence	**3**		
both	**1**		
none	**12**		

(14) the obligation to adopt specific measures in order to avoid the consequences of conduct such as that on which the criminal liability was founded

MS	Criminal penalty	Non-criminal negative	Remarks

		consequence	
A	X	X	There are only voluntary specific measures in order to avoid a criminal or non-criminal penalty
B		X	
C	-	-	
D	-	-	
E	-	-	
F	-	-	
G	-	-	
H			
I	-	-	It is not provided
J	-	-	It is not applicable in customs matters.
K	X		
L	-	-	
M	X		
N	-	-	
O	-	-	
P	-	-	No other obligations than those ones referred to in points 11 to 13
Q	X		No obligation as such, but criminals can earn reduction in sentence in certain circumstances, for example by revealing the whereabouts of criminal assets. In civil cases operators can avoid penalties by adopting our suggestions for improving their systems and working practice
R	-	-	It is not provided
S	-	-	
T	-	-	
U	-	-	
V			No information
W	-	-	
X	-	-	
Total:			
criminal	**4**		
non-criminal negative consequence	**2**		
none	**15**		
both	**1**		

(15) other

MS	Criminal penalty	Non-criminal negative consequence	Remarks
A	X	X	Criminal Driving ban for up to 3 months

			Confiscation of driving licence Non-Criminal Official warning Corporate fine imposed on a legal person
B	-	-	
C	-	-	
D	-	-	Community service work
E	X	X	Closure of business establishment (both an ancillary criminal penalty and an ancillary administrative penalty for administrative offences punished by a pecuniary charge above 3,750 EUR)
F	X	X	For some administrative infringements and customs criminal offences the Customs Act and the Criminal code provide confiscation and sale in favour of the state of the vehicles and vehicles and movable used for transportation of goods that are the object to customs
G		X	Disqualification from specific customs procedures
H	X	X	Criminal Penalties: - Banning of certain rights from 1 year to 10 years (Complementary criminal penalty applicable only for natural persons): - the right of elect and being elected in public authority or public elective positions ; - the right of filling a position involving the exercise of the state authority; - the right of filling a position or of practising a profession which holds the nature of the one by means of which the convict committed the crime. - Closing of some working points of a legal person, from 3 month to 3 years (Complementary criminal penalty applicable only for legal persons). - Ban on access to public acquisition procedures from 1 to 3 years (Complementary criminal penalty applicable only for legal persons).

			Non-Criminal Penalties: Warning (Non-criminal penalty) Payment of the goods value, in case of confiscation of goods, if the goods are missing (Complementary non-criminal penalty) Confiscation of the vehicles and means of carrying that are changed in such a way as to allow concealment of goods, which were used in the transportation or the carriage of the goods subject to the customs offence (Complementary non criminal penalty) Seizure of the means of transport used for committing the contravention until the fine is paid (Complementary non criminal penalty)
I	-	-	
J		X	Warning (admonition)
K	-	-	
L	-	-	
M		X	Admonition (only for one specific customs offence)
N	-	-	
O	X	X	Criminal sanctions: judicial admonition, conditional sentence, educational measures for juvenile delinquents, hospital order for alcoholics and drug addicted; for legal person also confiscation of property; Administrative sanctions: admonition
P	-	-	None
Q	-	-	
R		X	Warning (admonition)
S	-	-	
T	-	-	
U	-	-	
V	-	-	
W	-	-	
X		X	Section 1:31 of the ADW describes a number of cases of administrative enforcement or coercion
Total:			
criminal	**5**		

non-criminal negative consequence	**10**
both	**5**
none	**14**

2) Is the payment of owed duties considered as a penalty?

(16) All MS the payment of owed duties do not consider as a penalty.

MS	Answer	Remarks
A	No	
B	No	
C	No	
D	No	The payment of owed duties is not considered to be a criminal penalty
E	No	
F	No	In accordance with the F legislation the payment of owed duties does not represent type of a penalty. For collecting the owed duties there is a single proceeding provided, different from the proceedings for establishing and punishing the customs infringements
G	No	
H	No	
I	No	
J	No	It is a legal obligation completely unconnected with sanctions. It is not a penalty
K	No	
L	No	
M	No	
N	No	The payment of owed duties is not considered as a criminal penalty. The owed duties remain a civil debt. However, the amount of certain criminal fines can be calculated on the basis of the amount of the evaded duties
O	No	
P	No	If the payment of owed duties were considered as a penalty, also the payment of the customs duties in compliance with the Customs Code would be a penalty. Offenders often consider the payment of regular duties as a penalty but their view has nothing to do with the concept of penalty
Q	No	It is a legal obligation completely unconnected with sanctions. It is not a penalty
R	No	
S	No	The liable person must pay the owed duties but it isn´t considered as a penalty
T	No	
U	No	
V	No	

W	No	
X	No	

3) If so, which kind of penalty is it?

(i) Administrative penalty

(ii) Criminal penalty

N/A

4) What are the minimum and the highest administrative/civil penalty foreseen by national legislation?

MS	Type	MIN	MAX	Remarks
A	Administrative			In general an administrative fine can be imposed in an amount from 5 to 1.000 EUR, unless the legislation defines other limits (Art. 17 Law Concerning Administrative Offences). In cases of customs infringements there are the on the left hand side mentioned limits defined
	Reckless tax evasion	5 EUR	50,000 EUR	
	Endangerment of import and export duties	5 EUR	5,000 EUR	
	Contraventions of foreign trade law	5 EUR	500,000 EUR	
	Contraventions of federal environmental protection law	5 EUR	50,000 EUR	
	Contravention of medicinal law	5 EUR	25,000 EUR	
	Contravention of animal disease law	5 EUR	25,000 EUR	
B	Administrative	11 EUR (natural persons) or 1 day of detention 32 EUR (legal	1,149 EUR (natural persons) or 30 days of detention 3,193 EUR (legal	

		persons)	persons)	
C		2 times border duties due plus confiscation	10 times border duties due plus confiscation	In case of administrative contraband
D	Administrative: Depending on the fact if there is not an outstanding customs duties or not, namely if the customs duties are affected or not.	If exchange rate is 270 HUF. 9,6 EUR if there is an outstanding customs duty. In such cases the pecuniary charge is 50 % of the customs duty, there is not a maximum amount. If there is not an outstanding customs duty, there is not a minimum amount, only a maximum amount.	If there is not an outstanding customs duty, the maximum amount is: - in the case of natural persons: 370 EUR. - in the case of legal persons: 3,704 EUR.	If a failure or an activity results in outstanding customs duties, pecuniary charge is 50 percent of the outstanding amount. In the course of the decision making the customs office has the right to take the circumstances of the case, the significance and the frequency of the non-compliant behaviour and the diligence of the person concerned into account. If the debtor fulfils his failed obligation causing outstanding customs duty subsequently, but before the customs authority detects the failure, the amount of the pecuniary charge is 12,5% of the outstanding customs duty (namely 1/4 of the pecuniary charge to be levied without subsequent fulfilments). The pecuniary charge cannot be levied if a non-criminal contravention or a criminal procedure has started because of an infringement.
	Contraventions	11 EUR	370 EUR	Act LXIX. of 1999 on Contraventions: Art. 158 Customs contravention in the case of Intentional: max 370 EUR. Negligent: max 185 EUR. Art. 160 Assistance to commit a customs contravention max 185 EUR. Art. 161 Receiving of smuggled goods max 370 EUR.

E	Administrative	50 EUR (natural persons) 100 EUR (legal persons)	150,000 EUR (natural persons) 300,000 (legal persons)	
F	Administrative	Penalty is 50% of the customs good's value	Penalty is 200% of the customs good's value	
G	Administrative	-	5,000 EUR	Coercive measure
H	Administrative	approx. 118.37 EUR	approx. 2,367 EUR + confiscation of the goods and transport mean which is changed in such a way as to allow concealment of goods	
I		-	-	There are no civil penalties provided for customs infringements
J	• For cases of evasion dealt with under civil procedures • Administrative penalty	30% of the tax evaded warning	100% of the tax evaded 14,000 EUR	
K		125 EUR	10 times value of goods	
L		-	-	There are no civil penalties provided for customs infringements
M		-	-	Civil penalty is foreseen only in civil procedure
N		-	-	There are no civil penalties provided for customs infringements
O	Administrative	Admonition or a fine in amount of 200 EUR	125,000 EUR for legal	Min. penalty – the court is allowed to impose a sentence under that limit if there are special mitigating circumstances, but not

		for excise related infringements and 300 EUR for customs related infringements		under general limit (40 EUR for natural and 200 EUR for legal person)
P	Administrative	penalty is 1% duty increase or 10 EUR surcharge for fault	penalty 100 % duty increase or 2,500 EUR surcharge of fault	
Q	• Evasion dealt with under civil procedures • For lesser infringements the financial penalty	- 310 EUR	100% of the duty or tax evaded 3,100 EUR	
R	• Fine imposed according to the Code of Administrative Offences • Fine imposed according to the Law on Tax Administration	2.9 EUR 10% of tax or duty amount additionally calculated for the person	14,480 EUR 50% of tax or duty amount additionally calculated for the person	This information concerns administrative penalties
S	Administrative. Administrative Smuggling	A fine of 100 EUR A fine by the good´s value	A fine of 150% of the debt and ban to access to public assistance, or subsidies A fine of 300% of the good´s value, the confiscation	

			of the goods and the ban of the commercial activity temporally	
T	Administrative	-	-	If due to the infringement a customs debt is occurred, an administrative penalty equal to 10% of the assessed amount of duty and or tax is imposed. There isn't any minimum or highest civil penalty
U	Administrative: Fine for cases of simple customs procedure violation Fine especially for IPR violation Fine for smuggling cases	100 EUR 2.000 EUR Duties owed multiplied by 3	1,500 EUR 20,000 EUR Duties owed multiplied by 5	
V		-	-	There are no civil penalties provided for customs infringements
W		-	-	There are no civil penalties provided for customs infringements
X	Administrative	-	300 EUR or 100% of customs duties owing	100% in the case of deliberate intent

5) What are and the minimum and the maximum years of imprisonment and/ or the minimum and the maximum level of pecuniary penalties foreseen for criminal infringements by national legislation?

MS	Type	MIN	MAX	Remarks
A	• Imprisonment: • Pecuniary penalties: **Tax evasion**	0 years 5 EUR	5 years 10,8 mil.	Pecuniary penalties - the monetary penalty is imposed in daily units. It totals a minimum of 5, and, if the law does not specify anything else, a

	- in particularly serious cases - commercial / organised criminal **Contraventions of foreign trade law** **Contraventions of an EU or UN resolution** **Contraventions of federal environmental protection law** - during commercial or customary dealing - contraventions of medicinal law **Contraventions of the right to intellectual property** - during commercial dealings	6 months - 6 months - 0 years 5 EUR 6 months - 0 years 5 EUR 0 years 5 EUR 0 years 5 EUR 0 years 5 EUR 0 years 5 EUR	EUR 10 years - 10 years - 5 years 10,8 mil. EUR 5 years - 3 years 10,8 mil. EUR 5 years 10,8 mil. EUR 1 years 10,8 mil. EUR 3 years 10,8 mil. EUR 5 years 10,8 mil. EUR	maximum of 360 full daily units. The court determines the extent of the daily units under consideration of the personal and economic situation of the offender. This generally pertains to the net income that the offender earns in an average day, or is able to earn. A daily unit is specified at a minimum of 1 and a maximum of 30,000 EUR*. The number and extent of the daily units are stated in the judgement. * since 4th July 2009
B	• Pecuniary penalties Private person Legal person	94 EUR (30 daily rates) 3,427 EUR	1,560 EUR (500 daily rates) 15,800,000 EUR	On pecuniary penalties: The court shall calculate the daily rate of a pecuniary punishment on the basis of the average daily income of the convicted offender. The court may reduce the daily rate due to special circumstances, or increase the rate on the basis of

				the standard of living of the convicted offender. The daily rate applied shall not be less than the minimum daily rate
C	• Imprisonment: – articles 22 and 23 of the Criminal Code – article 25 of the Penal Code (For arrest. This is a criminal penalty in case of contraventions that are criminal offences less serious in terms of penalty than crimes) – when the aggravating circumstances provided for in article 291 b of Presidential Decree n. 43/1973 occur in case of contraband of foreign manufactured tobacco in addition to a fine is applied the penalty of imprisonment – false or misleading declaration of the origin – counterfeiting, under article 473 and successive of the Penal Code	15 days 5 days 3 years	life 3 years 7 years by imprisonment up to two years and a fine up to twenty thousand EUR. six months to three years and a fine ranging from EUR 2.500 to EUR 25.000 for forging marks and brands; imprisonment from one to four years and a fine	For one of the most frequent offences concerning customs debt (contraband), in base of article 295 of the Presidential Decree No 43/1973 when there are aggravating factors set in the article itself the person who commits contraband shall be punished with a fine from 5 to 10 times avoided duties and it can be applied also imprisonment from 3 till 5 years

			ranging from EUR 3.500 to EUR 35.000 for counterfeiting patents, designs or industrial models	
	- According to the recent article 16 of Law Decree n. 135/2009, converted, with amendments into law, n. 166/2009: Anyone who uses an indication of sale showing the product as entirely made in Italy as "100% made in Italy", "100% Italy", "all Italian" in any given language, or it is likely to make the consumer believe that the product has been entirely made in Italy, or he uses signs, or logos that lead to the same false belief, outside the provisions in paragraphs 1 and 2, is punished, subject to the relevant penalties applicable under the current legislation, with criminal penalties provided for in article 517 of the Criminal Code	... 50 EUR 20 EUR	imprisonment up to two years and a fine up to twenty thousand EUR) <u>increased by one third.</u> 50.000 EUR	For what concerns the maximum level of pecuniary penalties foreseen for criminal infringements by national legislation, according to art. 27 of Criminal Code, the law determines the cases in which

	• Pecuniary penalties for Crimes (FINE) article 24 of the Penal Code (Min -50 EUR Max 50.000 EUR) – article 26 of the Penal Code Pecuniary penalties for Contraventions (Min -20 EUR – Max 10.000 EUR)		10.000 EUR	penalties are fixed and those which are proportional. Pecuniary penalties proportional do not have maximum limit. This is the hypothesis of crime of smuggling; indeed in this case the fine may be no more than ten times of border duties due and as a fine not fixed it does not have the limit of 50.000 EUR provided, in general, by Article 24 of the Criminal Code
D	• Imprisonment • Pecuniary penalties	2 years 103 EUR (30 min daily rates)	8 years 37,022 EUR (540 max daily rates)	When imposing a pecuniary charge because of a crime, the amount shall be determined in view of the financial gain achieved or contemplated by the act and divided evenly among a specific number of days, each day representing the same amount of money, determined in accordance with the financial situation and income, and the everyday needs of the perpetrator. The minimum and the maximum number of days representing a fine shall be between and. The amount of fine for one day shall be minimum 3.43 EUR and maximum 68.56 EUR. In case of a customs contravention the pecuniary charge cannot exceed 342.81 EUR. If the contravention is done in a negligent way, the charge cannot exceed 171.40 EUR.
E	• Imprisonment • Pecuniary penalties	1 month 1 EUR + 10 days (natural persons) 5 EUR + 20 days (legal persons)	8 years 500 EUR + 600 days (natural persons) 5,000 EUR + 1,920 days (legal	

			persons)	
F	• Imprisonment & • Pecuniary penalties -Art.242, par.1 of the Criminal Code - contraband of drugs - precursors for the production of drugs -the object of contraband comprises particularly great quantities and the case is particularly grave -deviation from the customs regime	from 10,000 EUR 3 years + from 5,000 EUR 2 years + from 25,000 EUR 5 years + from 25,000 EUR from 25,000 EUR	10 years + up to 50,000 EUR 15 years + up to 100,000 EUR 10 years + up to50,000 EUR 20 years + up to 150,000 EUR 6 years + up to 25,000 EUR	
G	• Imprisonment • Pecuniary penalties	1 day 20 EUR	11,5 years up to the threefold amount of jeopardized duties	11,5 years (in case of intentionally, recidivously and commercially evaded duties with an amount of more than 1 mil. EUR). Threefold in cases of: Commercial perpetration Organised crime gang Armed smuggling
H	Imprisonment	2 years	15 years	
I	• Imprisonment • Pecuniary penalties	N/A 58.23 EUR	3 years depends on the duty endangered	The standard penalty entails two years, but a relapser can get between 6 months up to 3 years, provided that the 2nd conviction is delivered within 1 year from the previous conviction
J	• Imprisonment • Pecuniary penalties	3 months 25,600 EUR (100 times the minimum monthly wage)	15 years 38,400 EUR (150 times the minimum monthly wage)	The minimum monthly wage in 2009 is 180 LVL = 256 EUR
K	Imprisonment	8 days	5 years	
L	• Imprisonment	5 days	15 years	

	• Pecuniary penalties	32 EUR	4,700,000 EUR	
M	• Imprisonment • Pecuniary penalties	- 166 EUR	15 years 331.939,18 EUR	
N	• Imprisonment: - in general case – in case of recidivism – all cases of recidivism thereafter – recidivism by a person submitting improper documents or certificates, invoices or documents – encouraging the transparency of trade in goods originating in a non-EU MS – piracy of intellectual property	4 months 8 months 2 years 8 days 8 days 3 months	1 year 2 years 5 years 30 days 3 months 3 years	
O	• Imprisonment • Pecuniary penalties	15 days 30 daily rates	15 years 1,500 daily rates	Min. imprisonment: if the lowest sentence for certain criminal act is not defined, the court is allowed to impose pecuniary penalty instead of the imprisonment. Daily rate is defined due to person's daily income and his family obligations. If it is not possible to gain this information, the daily rate is 1/30 of the latest average monthly net salary, that means approximately 30 EUR at the moment
P	• Imprisonment - Aggravated tax fraud - Aggravated regulation offence	14 days 4 months 4 months	4 years 4 years 4 years	In Finland there is a system where a certain number of day fines are imposed. The number of day fines depends on the discretion in accordance with the severity of the offence. The minimum number of them is 1

	- Aggravated customs clearance offence - Regulation offence - Tax fraud - Customs clearance offence - Smuggling - Unlawful dealing in imported goods - Petty tax fraud - Petty regulation offence - Petty customs clearance offence - Petty tax fraud - Petty smuggling - Petty unlawful dealing in imported goods - Customs violation • Pecuniary penalties	4 months fine fine fine fine fine fine fine fine fine fine fine fine fine 1 daily rate	3 years 2 years 2 years 1,5 years 2 years 1,5 years fine fine fine fine fine fine fine 120 daily rates	and the maximum number 120. The amount of a day fine shall be set so that it is reasonable in view to the solvency of the person fined. According to the Penal Code, one sixtieth of the average monthly income of the person fined, less certain taxes and fees and a fixed deduction for basic consumption, is deemed to be a reasonable amount of a day fine. The maintenance liability of the person fined may decrease the day fine and his/her assets may increase it.
Q	• Imprisonment • Pecuniary penalties		7 years a penalty of 3 times the value of the goods	
R	• Imprisonment • Pecuniary penalties	3 months 37.65 EUR (1 minimal living standard)	10 years For natural person - 11,295 EUR (300 minimal living standards) For legal person – 1,882,500 EUR (50,000 minimal living standards)	The minimal living standard in 2009 is 130 LTL = 37.65 EUR
S	• Criminal law - Imprisonment - Pecuniary penalties	1 year. A fine of 1 times the debt not paid.	4 year a fine of 6 times the debt not paid	

	• Smuggling law - Imprisonment - Pecuniary penalties	6 month a fine of 2 times the value of smuggling goods	3 years a fine of 4 times the value of smuggling goods + confiscation of the goods, money earned with the operation, and all elements used for committing the infringements	
T	• Imprisonment • Pecuniary penalties	6 months 17 EUR	3 years 85,430 EUR	It is noted that in certain cases the offender is liable to a penalty not exceeding three times the value of the goods
U	• Imprisonment • Pecuniary penalties	6 months CIF value of the goods	2 years Confiscation of goods	The pecuniary charge imposed by criminal courts is equal to the CIF value of the merchandise imposed only if the merchandises have not been confiscated
V	• Imprisonment • Pecuniary penalties	1 month 90 EUR	10 years ...	
W	• Imprisonment • Pecuniary penalties		5 years 12,695 EUR	
X	• Imprisonment • Pecuniary penalties		6 years 74 000 EUR or, if higher, 100% of customs duties owing	

6) Is it allowed to impose both criminal penalties and non-criminal negative consequences to the same person and for the same behaviour (cumulation of negative consequences)?

MS	YES	NO	Remarks

A		X	*It is not allowed to impose a criminal and a non-criminal (administrative) penalty on the same person for the same behaviour.* Refusal, annulment or suspension of an authorisation beside a criminal or non-criminal penalty is possible. These other consequences are not an issue of a procedure concerning a criminal or non-criminal penalty
B		X	Cumulation of punishments (which are imprisonment, pecuniary punishment, detention and fine) is not allowed. Cumulation of other negative consequences is allowed
C		X	
D		X	In case of committing a crime, only criminal penalties can be imposed. Moreover a customs fine cannot be imposed if a contravention or criminal procedure has already started
E	X		Allowed in some cases. However, in general the application of a legal provision providing for a criminal penalty excludes the possibility of applying an administrative penalty. The concurrence of both criminal and administrative penalties can only occur when, by the same behaviour, the person practises two different infringements: one as a crime and the other as an administrative infringement. In these cases, the competent authority to impose the penalties, both criminal and administrative, will be the court
F		X	
G		X	
H		X	
I		X	"Criminal proceedings can be instituted both under the Customs Ordinance (Cap 37) and under the Import Duties Act (Cap 337). If there is an out of court settlement in lieu of prosecution under either of these laws, the court shall take such settlement into account when delivering judgement. Furthermore criminal proceedings on the basis of the general criminal law (in particular the Criminal Code Cap 9) may still be instituted notwithstanding these 'Out of Court settlements'." (In some instances, apart from infringing the Customs Ordinance (Chapter 37), same offence (e.g. presentation of false documents) infringes the Criminal Code as well. Typically such infringement is dealt with ex lege by the Police Authorities. In a nutshell once a settlement agreement has been reached (with respect to Customs related infringements) such agreement does not extinguish the criminal liability in terms of the criminal code
J		X	Except non-criminal negative consequences which are not considered as penalties (e.g. in certain circumstances serious violation of customs or tax legislation is the reason to annul granted authorisation)
K		X	Only criminal penalties (+ settlement) are applicable
L		X	Only criminal penalties (+ settlement) are applicable
M		X	
N	X		Cumulation of suspension/annulment/revocation of a granted authorisation and criminal penalties (+ settlement) is possible. Apart from that, there are no civil nor administrative penalties provided for customs infringements

O	X		In this case administrative penalty shall be counted as a part of criminal sentence
P	X		If a customs infringement is dealt with in the criminal proceedings, it is not prohibited to apply an administrative penalty in addition to the criminal penalty (excluding the case referred to in subparagraph 4 of paragraph 1 of Section 31 of the Customs Act). However, *unreasonable* or *disproportionate* cumulation (overlap) of the criminal penalty and administrative penalty must be prevented. That is why there must be provisions in the legislation for enabling this prevention (as there are in Finland: the percentage of duty increase and the amount of surcharge for fault depend on the discretion of the Customs, and according to Section 7 of Chapter 6 of the Penal Code, another consequence to the offender than the criminal penalty to be imposed on him/her is to be taken into account as a mitigating factor *provided that the penalty that accords with established practice would due to the other consequence in question lead to an unreasonable or exceptionally detrimental result*). Unreasonable or disproportionate cumulation means that the total effect of the criminal penalty and administrative penalty is unreasonable or disproportionate.
Q	X		Both sanctions are deemed part of a single punishment. Non-criminal penalties are not applied as a separate action in criminal cases, nor do we impose more than one non-criminal penalty in respect of the same infringement
R		X	Except non-criminal negative consequences which are not considered as penalties (e.g. in certain circumstances serious violation of customs or tax legislation is the reason to annul granted authorisation)
S		X	
T	X		Only when a customs debt is occurred (In cases where the customs debt is incurred, an administrative penalty equal to 10 % of the assessed amount of the duty or tax is imposed apart from any criminal penalty that the offender might be sentenced to. Otherwise only criminal penalties (+ settlement) are applicable)
U	X		
V		X	Only criminal penalties (+ settlement) are applicable
W		X	Only criminal penalties (+ settlement) are applicable
X		X	Except non-criminal negative consequences which are not considered as penalties (e.g. annulment of an authorisation)
Total:			
YES	**7**		
NO	**17**		

[7] Please indicate if there is experience of application of these negative consequences and if so please give some details about the case and the lessons learnt.

MS	N/A	Examples
A	N/A	

B	N/A	
C	N/A	
D	N/A	
E		Yes, there is experience of application of these penalties. We have been detecting some difficulties to fulfil the criteria related with fraud intention which is one of the conditions for electing a criminal penalty, because in the majority of the situations is difficult to prove. Regarding that many times that conducts authorities to elect the criminal procedure as more adjusted. On many of those cases, authorities responsible for the criminal investigation do not manage to coupe successfully with the burden of proof and the case will follow within an administrative procedure. This puts a big pressure on authorities to respect the timeframe regarding which a penalty can be imposed
F	N/A	
G	N/A	
H		According to the national criminal provisions, H customs authority doesn't have powers in the field of the criminal investigation or prosecution. These powers belong to the Police, Border Police and to the Prosecutors. Therefore, customs authority doesn't have experience in application of the criminal penalties and the cases when there are criminal infringements are delivered to the Police, Border Police or to the Prosecutors. Customs authority applies the non-criminal sanctions – administrative sanctions – for the non-criminal offences (contraventions)
I		An importer of fish who repeatedly produced fraudulent documents to Customs was accorded an Out of Court settlement whereby all dues were recouped together with the arising fines but the offender was still prosecuted in court. Out of Court settlements are mainly applied to ensure that all dues are collected immediately as opposed to court proceedings which may take years to conclude and absorb lots of resources. Furthermore experience has shown that this procedure has served as an effective deterrent in curbing future infringements.
J		In case of customs audit, if the infringement affects the customs debt (or debt of value added tax, or excise duty) in addition to the administrative or criminal penalty so called *tax penalty* apply, which is a monetary fine, calculated as a proportion of taxes which have not been paid. As well as - an authorization can be suspended or revoked.
K	N/A	
L		Penalties for customs infringements are imposed by court in a verdict. Customs office only investigates the cases and prosecutes a liable person. The most common types of penalties applied for customs infringements are fine and confiscation of the goods
M		General rule is that criminal procedures have always precedence over administrative procedures. This means if criminal procedure starts before administrative procedure, then we can not begin the administrative procedure or we have to interrupt proceeding until criminal procedure is finished. If the person is convicted or discharged in criminal procedure then we cannot impose administrative penalties in administrative procedures. However if criminal procedure finished for other reasons (for example if public prosecutor dismiss the case), then we can start administrative procedure if the period of the statute of limitation haven't already expired. Because of

		the problem with limitation we tray to start and finish administrative procedure before criminal procedure is started. In these cases administrative penalties can be taken into consideration when imposing criminal penalties
N	N/A	
O	N/A	
P		When the imprisonment is being imposed on the person(s) concerned by the court, duty increase, which the same person(s) is/are liable to pay, has already usually been imposed by the Customs. The imposed duty increase does not prevent the court from imposition of the imprisonment
Q		In a case of attempted evasion dealt with under criminal procedures there may be a prison sentence (a criminal sanction), plus forfeiture of smuggled goods. Although forfeiture is a non criminal sanction, it forms part of the overall sanction. If we deal with a case of evasion under non criminal procedures, we would not also issue a lesser penalty for an incidental contravention of a relevant rule. For instance, if someone evades duty by deliberately falsifying an invoice in order to declare a false value for duty purposes, we would impose a penalty for evasion, but would not issue a separate penalty for submission of an incorrect document
R		In 2006 and 2007 as many as 11024 fines were imposed according to the Law on Tax Administration and 3050 administrative penalties according to the Code of Administrative Offences. Courts have passed 29 convictions in criminal cases (including 11 imprisonment convictions)
S	N/A	
T		For example, in a case of fraudulent evasion of duty or tax dealt with under criminal procedures, there may be a prison sentence or/and a fine. The smuggled goods are forfeited according to Customs Code Law No. 94(I) of 2004. Although forfeiture is a civil process, it forms part of the overall sanction. Additionally, if due to the infringement a customs debt is occurred, an administrative penalty equal to 10% of the assessed amount of duty and or tax is imposed
U		In cases of smuggling, the competent customs authorities impose administrative fine equal to the duties owed multiplied from 3 to 5 times, depending on the case facts and the aggravating- mitigating factors. On the same time, customs authorities prepare the case file and present it to the public prosecutor in order to bring the case to the criminal court. Criminal courts then decide on the criminal aspect of the case and if the offender is found guilty the courts impose imprisonment from minimum period of 6 months to maximum period of 2 years. The criminal courts also decide regarding merchandise seized and placed under judicial supervision. If the offender is found guilty, the merchandise is confiscated. If no merchandise has been confiscated, criminal courts may also impose pecuniary charge equal to the merchandise CIF value. All these are only valid for smuggling cases that incur both criminal and administrative penalties.
V	N/A	
W	N/A	
X	N/A	
N/A	**13**	

8) Within which timeframe from the moment of the infringement can the negative consequence be imposed?

MS	Type	Timeframe	Remarks
A	• Criminal offences which are punishable with a maximum penalty of more than ten years' imprisonment	20 years	A criminal offence can only be punished as long as the offence is not statute-barred. The statutory period depends on the corresponding maximum legal penalty. The most customs offences are punishable with a maximum of 5 or 10 years, see above question 5. A few offences are punishable with a maximum of more than 10 years, e.g. importation of drugs in a no marginal amount (§ 30 Narcotics Law)
	• Criminal offences which are punishable with a maximum penalty of more than five years' and up to ten years imprisonment	10 years	
	• Criminal offences which are punishable with a maximum penalty of more than one year and up to five years imprisonment	5 years	
	• *other criminal offences*	3 years	
B	• A misdemeanour expires after 2 years have passed between the commission thereof and the entry into force of the corresponding judgment or decision.		In the case of an intermittent offence, the limitation period shall be calculated as of the commission of the last act. In the case of a continuous offence, the limitation period shall be calculated as of the termination of the continuous act. Limitation period may be interrupted (thus prolonged), additional restrictions apply
	• Commission of a criminal offence in the first degree	10 years	

	• Commission of a criminal offence in the second degree	5 years	
C	• Administrative penalties • Criminal offences	3years	As regards the criminal offences, the first paragraph of the Article 157 of the Criminal Code, expressly states that the crime is statute-barred after a period, corresponding to the maximum statutory punishment established by law, has elapsed; however, this period shall be no less than 6 years, in case of a crime and 4 years in case of a contravention, even if punished only with a pecuniary penalty. The time period for the crime to become statute-barred starts from the day when it was committed, when the crime has already been committed, from the day when the offender has stopped his activity, for the attempted crime and from the day when the behaviour of the doer ceases to occur for the permanent crime. The running of the statute of limitations can be either suspended or tolled. In the first case, the suspension occurs when the running of the statute of limitations is suspended whenever the suspension of the criminal proceeding or procedure or of the remand in custody time limits is established by a special provision of law, as well as in case of: 1) a mandate; 2) submission of the matter to other jurisdiction; 3) suspension of the proceeding or criminal procedure due to unforeseen difficulties by the parties and the defending counsels or at the request of the defendant or his defending counsel. The running of the statute of limitations starts again from the day when the reason for the suspension ceases to exist. After the suspension the statute of limitations begins running again and the two periods are combined. The running of the statute of limitations, instead, is tolled by the verdict of conviction or by the ruling of conviction and in all the cases provided for by law and in particular in Article 160 of the Criminal Code. The tolled statute of limitations starts running again from the day when it was tolled. When there are many tolling acts, the statute of limitations starts running from the last of them; however, in no way the time period laid down in Article 157 can be extended beyond the time period set forth in Article 161, second paragraph. This legal provision expressly establishes in principle that in no way the

			toll of the statute of limitations may result in an increase of more than one fourth of the time, set forth in Article 157 of the Criminal Code, required for the statute of limitations to become effective, subject to the cases referred to in the said Article 161 of the Criminal Code
D	• Life imprisonment • Crimes in question • Contravention procedure	20 years lapse of time equal to the highest sentence prescribed, or not less than 3 years 6 months	
E	• Criminal offences • Administrative penalties	5 -15 years 5 years	<u>In Criminal offences:</u> 5 years: to start and develop the procedure towards the application of a penalty; 15 years: to impose the penalty applied in the procedure. <u>In Administrative offences:</u> 5 years: to start and develop the procedure towards the application of a penalty; 5 years: to impose the penalty applied in the procedure
F	• Criminal penalties: – imprisonment for more than 10 years – imprisonment for more than 3 years	15 years 10 years	If no statement for ascertaining customs violation has been drawn up within 3 months term after the establishment of the violation or within 2 years term after the commitment of the violation, no penalty could be imposed for this violation. Furthermore, if no penal decree has been issued within 6 months term after the statement had been drawn up, the administrative proceedings shall be discontinued and no penalty could be imposed for this violation. The following provisions of the Criminal code are applicable for the imposition of penalties for customs criminal offences: art.79, par.1 - Penal prosecution and the serving of penalty shall be excluded: • where the perpetrator has died; • where the term of statutory prescription has expired; • where an amnesty has followed.

G	coercive measure (fine)	1 year	
H	• Criminal offences: a) for natural persons: – imprisonment penalty longer than 10 years, but no more than 15 years for the perpetrated crime – imprisonment penalty longer than 5 years, but no more than 10 years for the perpetrated crime b) for legal persons: – when the law provides for natural person, for the same offence, imprisonment penalty longer than 10 years – natural person imprisonment penalty no longer than 10 years • Non criminal offences	10 years 8 years 10 years 5 years 6 months	
I	• Criminal offences • Civil proceedings	10 years 6 years	
J	• Criminal offences • Administrative penalties • Tax infringements	15 years 4 months 3 years	
K			From the moment of stating the infringement
L	• Serious offence;	10 years 5 years	

	• Offence; • Minor offence	1 year	
M	• The penalty	from 2 to 6 years	Passing of the time limit is terminated from the day of filing a suit at court till the decision of the court in the matter comes into force. A transgressor, toward whom the Customs Office through a valid decision pronounces a decision on violation of customs regulations, is obliged to pay to the state the cost connected with the hearing of violation of customs law in a lump sum of EUR 33.19. It may not be decided on the seizure of goods or an article if six years has passed from the committing of the violation of customs law. The state becomes the owner of seized goods or an article. The penalty is payable within 30 days from the day when the decision by which it was imposed comes to force
N	• Misdemeanour (imprisonment of 8 days to 1 year for customs issues or fine above 25 EUR) • Misdemeanours which have been converted into minor offences • Minor offences(imprisonment of 1 to 8 days or fine below 25 EUR) • Civil proceedings arising from the infringement	5 years 1 year 6 months 10 years	
O	• Criminal offences • Administrative penalties	depends on length of prison sentence 3 years	
P	• Administrative penalties:	3 years	Duty increase or surcharge for fault can also be imposed after notification of the customs debt within 3 years from the date when the customs debt has been incurred or, if the goods are duty-free, from the date when the Customs has accepted the particulars given in the customs declaration

	• Criminal penalties: – The most severe penalty is imprisonment for more than 2 years and at most 8 years – The most severe penalty is imprisonment for at most 2 years or fine	20 years 10 years	Aggravated tax fraud (only imprisonment, at least 4 months or at most 4 years), aggravated regulation offence (only imprisonment, at least 4 months or at most 4 years) and aggravated customs clearance offence (only imprisonment at least 4 months or at most 3 years) belong to this category. Tax fraud (imprisonment, at most 2 years, or fine), petty tax fraud (only fine), smuggling (imprisonment, at most 2 years, or fine), petty smuggling (only fine), customs clearance offence (imprisonment, at most 1,5 years or fine), petty customs clearance offence (only fine), unlawful dealing in imported goods (imprisonment, at most 2 years, or fine), petty unlawful dealing in imported goods (only fine) and customs violation (only fine) belong to this category.
Q	• Criminal and evasion cases dealt with under civil procedures • Other	20 years 3 years	
R	• Criminal penalties • Administrative penalties, provided in the Code of Administrative Offences • Fines provided in the Law on Tax Administration	10 years from the day of the criminal act 6 months from the day of identifying the infringement 3 or 5 years	The fines provided for in the Law on Tax Administration are imposed by the same decision, by which the outstanding amount of tax or customs duty is calculated for the person, i.e. in case of customs duty calculation – within the terms established in article 221 of the Community Customs Code (3 years). In case of tax calculation, this term is the current year and 5 preceding years counting back from January 1st of the year when the tax was started to be calculated or re-calculated

S	• Criminal offences • Administrative penalties	5 years for the beginning of the procedure. 3 (with debt) or 4 (without debt) years for discover the irregularity. The administration have 6 month for end the procedure	There is a period of 3 month to begin the sanction procedure. If the debt has not been paid, the beginning of the time is from the debt customs liquidation. If there isn´t debt, the beginning of the time is from the infringements discover
T			There is not any time limit.
V		-	N/A
	• Non-criminal offences, which are punishable with a maximum administrative fine of more than 15'000 EUR • Non-criminal offences, which are punishable with a maximum administrative fine of more than 2'500 EUR up to 15'000 EUR • Non-criminal offences, which are punishable with a maximum administrative fine of more than 1'000 EUR and up to 2'500 EUR • Non-criminal offences, which	3 years 2 years 1 year 6 months	There are special legal time limit periods of 5 years for the following non-criminal offences (Art. 384 Fiscal Code): - frivolously avoiding taxes, Art. 378 Fiscal Code - deliberately or negligently endangering taxes, Art. 379 Fiscal Code

	are punishable with a maximum administrative fine up to 1'000 EUR		
W			Depending upon the specific legislative provision being deployed, the Statute of Limitations could be a long as 10 years
X	• Administrative penalties • Criminal offences: – all offences; – crimes to which a financial penalty, imprisonment of no more than 3 years is attached; – crimes to which a temporary imprisonment of more than 3 years is attached.	3 years 3 years 6 years 12 years	Every act of prosecution interrupts the period of limitation, with respect to others than the person prosecuted as well (section 72 of the Criminal Code)

Table 5002					
MS	**Aggravating factors**		**Mitigating factors**		**Influence of intention/gross carelessness and repetition** **(Note: According to the Instructions, this box should only relate to administrative penalties. Regardless of this, many replies regarded also criminal penalties. That is why the influence on criminal penalties is included if the reply in question contained it. Anyhow, with regard to criminal penalties, in most MS, intention is a prerequisite and an action or a non-action committed by gross negligence or negligence constitutes a crime only if the law specifically provides it.)**
	Criminal penalties	**Administrative penalties**	**Criminal penalties**	**Administrative penalties**	
A	Within the A criminal justice system the Director of Public Prosecution (DPP) has exclusive jurisdiction when deciding if a prosecution will be taken and will always take into account the circumstances of the	Only criminal penalties are applicable.	Within theA criminal justice system the Director of Public Prosecution (DPP) has exclusive jurisdiction when deciding if a prosecution will be taken and will	Only criminal penalties are applicable.	

	case when arriving at his decision. And there are no specific legal provisions about aggravating and mitigating factors related to objective factors, like customs infringement attributable to force majeure or to fortuitous event.		always take into account the circumstances of the case when arriving at his decision. And there are no specific legal provisions about aggravating and mitigating factors related to objective factors, like customs infringement attributable to force majeure or to fortuitous event.		
B	-Aggravating factors are taken into account when deciding whether to treat cases of evasion under criminal or civil proceedings so that normal practise is to adopt the civil route unless the aggravating factors apply. These factors	For all civil infringements other than those of evasion the B law provides that no penalty is to be imposed for contraventions of customs provisions where the person concerned can provide reasonable excuse. In all civil	-Except in cases of evasion or those punishable under the criminal route, a penalty would not be issued if traders voluntarily. Good faith might be a factor in		For customs infringements the level of negligence is not considered in determining penalty, other than in cases where it might be a mitigating factor. The existence of fraudulent intention determines the type of penalty which is sought to be applied

	can include: -the extent of the evasion -the sophistication of the criminal conduct -the status of those who involved -recidivism	cases involving financial penalties are taken into account factors which, while they do not constitute a reasonable excuse, might nevertheless persuade the level of penalty applied to be reduced. The customs authority´s decisions on reasonable excuse and the level of mitigation can be brought before an independent tribunal for adjudication.	mitigating penalties		
C	General aggravating factors are: - self interest or other base motives - commission of the offence with peculiar cruelty, or degradation of the victim - commission of the offence knowingly	General aggravating factors are same as criminal, harmonized throughout all of C penal law, not only customs offences. Special aggravating factors for customs-related misdemeanours are not present.	General mitigating factors are: - prevention of harmful consequences of the offence and provision of assistance to the victim immediately after	General mitigating factors are same as criminal, harmonized throughout all of c penal law, not only customs offences. Special mitigating factors for customs-related misdemeanours are not present.	Intention is a necessary element to constitute a crime. Without it, most of punishable behaviours, no matter how large the damage is, will be treated as an administrative infringement. Intent's impact on the penalty is not codified, however in practice would be considered an aggravating factor compared to a case where the act was not intended (e.g. on assessing the level of guilt of the offender, which is mandatory to be taken into account when imposing a punishment).

	against a person who is less than 18 years of age, pregnant, in an advanced age, in a helpless situation or has a severe mental disorder - commission of the offence against a person who is in a service, financial or family-related dependent relationship with the offender - commission of the offence during a state of emergency or state of war - commission of the offence by taking advantage of a public accident or natural disaster - commission of the offence in a manner which is dangerous to the public causing of serious consequences - commission of the offence in order to		the commission of the offence - voluntary compensation for damage - appearance for voluntary confession, sincere remorse, or active assistance in detection of the offence - commission of the offence due to a difficult personal situation - commission of the offence under threat or duress, or due to service, financial or family-related dependent relationship - commission of the offence in a highly provoked state caused by unlawful behaviour		Gross carelessness is not defined in C penal law (although it is in civil law). Hence no influence. Repetition is explicitly not an aggravating factor under C law (derived from the *ne bis in idem* principle). However, recidivism still may play its role on some levels, first being a constituent element of some criminal offences (e.g. regarding illicit traffic, recidivism may be used instead of major damage to be treated as a crime) or may be taken into account and secondly counted as a factor for not dismissing a case for non-relevance.

	facilitate or conceal another offence - commission of the offence by a group - taking advantage of an official uniform or badge in order to facilitate commission of the offence The mitigating or aggravating circumstances shall not be considered in imposition of a punishment if they are described by law as the necessary elements of an offence. Special aggravating factors for customs related crimes are: 1) an act committed by an official taking advantage of his or her official position, or 2) an act committed by a group (2+		- commission of the offence by a pregnant woman or a person in an advanced age - commission of the offence in excess of the limits of self-defence - conciliation with the victim Circumstances not specified above may be taken into consideration in imposition of a punishment.		

	persons)				
D	The General Customs and Excise Act provides for aggravating circumstances in case of certain infringements: Article 229 of the General Customs and Excise Act stipulates that the imprisonment provided for in Article 220, shall always be imposed if the fraud occurred clandestinely or in gangs of at least three persons. Article 234 of the General Customs and Excise Act stipulates that in case of the infringement mentioned in Article 233 (in case of import by sea when there is no concordance	Only criminal penalties are applicable.	The mitigating circumstances have not been defined in law and their existence is assessed by the customs and excise administration with a view to determining whether a settlement can be proposed to the offender, for example in case of the absence of a fraudulent attempt (Art. 263 and 264, General Customs and Excise Act). The General Customs and Excise Act provides for grounds for	Only criminal penalties are applicable.	Intent is not in principle required in order to establish the existence of customs infringements. Good faith, negligence and gross negligence are elements which can be used to assess mitigating circumstances, particularly with a view to the customs and excise administration proposing a settlement. The General Customs and Excise Act provides for an aggravation of the penalty in case of recidivism in certain infringements: - in case of fraudulent importation or exportation or attempted fraudulent importation or exportation, prohibited storage and irregular movement, when the goods were given another use than specified in a customs document: extension of the possible imprisonment (Art. 220), doubling of the fine (Art. 221, General Customs and Excise Act) - in case of submission of false, misleading or incorrect documents or delivery of false, misleading or incorrect certificates, invoices or documents with a view to deceiving the customs: on top of the fine, an imprisonment of eight to thirty days is provided for (Art. 259). Article 5 of the Act of 15 May 2007 relating to

	between the number of parcels found on board and the number mentioned on the general declaration), the captain shall be penalised by a fine amounting to six times the customs and excise duties owed for the quantity of goods which is found to be less than the declared quantity or to be exceeding it if the shortage or the surplus is larger than a tenth of the declared goods compared to the bulk goods which are imported by sea. Article 329 of the General Customs and Excise Act penalising the refusal of official acts by persons who conspicuously carry firearms, truncheons, clubs or whichever other prohibited		mitigation which are applicable to certain infringements and which reduce the penalty. Article 228 of the General Customs and Excise Act stipulates that the imprisonment provided for in Article 220 (1), shall not be imposed if: - the seizure took place on highways and public roads between five a.m. and nine p.m. - the seizure took place at the first office, in case of import by land - the case is ended by a settlement as far as the fine and the confiscation		the punishment of counterfeiting and piracy of intellectual property (D Law Gazette, 18 July 2007) which penalises the entering, the release for free circulation, the removal from the customs territory, the export, the re-export, the placement under a suspensive procedure, the placement in a free zone or free warehouse of goods found to infringe an intellectual property right (Article 16 of Council Regulation (EC) No. 1383/2003 of 22 July 2003), also provides for an aggravation of the penalty in case of recidivism: the fine and the imprisonment are doubled.

	weapon, who use mechanically propelled means of transport or who travel in gangs of at least three persons or when the realization of the civil servants' official acts is obstructed with rebellion or mistreatment: a fine amounting to € 125 at least and € 625 at most.		are concerned, generally as a result of mitigating circumstances. Article 230 of the General Customs and Excise Act also stipulates that the imprisonment shall never be imposed if the seizure only took place on account of the non-compliance with formalities concerning the documents which are to justify the transport or if domestic goods were concerned.		
E	- perpetration of the crime by three or more persons together - perpetration of the crime through cruel actions or through	The penalty is applied between the limits foreseen in the legislation and it must be proportional with the degree of	- exceeding the limits of legitimate self-defence or the limits of state of necessity	The penalty is applied between the limits foreseen in the legislation and it must be proportional with the degree of social threat of the infringement and taking into	*Intention and negligence* <u>Criminal penalties:</u> Main rule is that intention is a prerequisite. An action committed by negligence constitutes a crime only if the law specifically provides it.

	means and methods which present public threat - perpetration of the crime by an adult if this crime was committed together with a juvenile - perpetration of the crime under deliberate state of drunkenness in order to commit the crime - perpetration of the crime by a person who took advantage by the situation resulted after a calamity The court can retain as aggravating circumstances other situations, too, which give to the action a serious character.	social threat of the infringement and taking into account the circumstances of the deed, the manner and the means of the perpetration of the infringement, the purpose, the result of the infringement and the personal circumstances of the liable person.	- perpetration of the crime under a strong emotion or anxiety determined by a threat of the injured person and produced by violence, damage of the person's dignity or by other serious illicit action - good attitude of the criminal before the perpetration of the crime - insistence of the criminal to remove the result or to repair the damage of the crime - the criminal's attitude after the perpetration of the crime, resulting into surrender to the authority, into	account the circumstances of the deed, the manner and the means of the perpetration of the infringement, the purpose, the result of the infringement and the personal circumstances of the liable person.	However, a deed constituting non-action represents a crime, no matter if deliberately committed or committed by negligence, except for the case in which the law sanctions only deliberate perpetration. <u>Administrative penalties:</u> Intention is not a prerequisite. The infringement is equally punished both in case of intention or negligence. *Recidivism* <u>Criminal penalties:</u> An increase of penalty can be added to the maximum of the penalties provided in the law. <u>Administrative penalties:</u> A higher fine can be applied, between the limits foreseen in the legislation.

			sincere behaviour during the trial and into facilitating the discover or the arrest of the participants. The court can retain as mitigating circumstances other situations, too. Factors that remove the criminal character of the deed (they are more than mitigating factors because the criminal penalty is not applied): - legitimate self-defence - state of necessity - physical constraint and moral constraint		

			- fortuitous event - irresponsibility - complete drunkenness due to circumstances independent of the offender's will - the criminal is minor - error in facts		
F	- recidivism	Specifically provided for in the F Customs Code: - abuse of public authority - falsification of documents - huge amount of evaded taxes/duties	Factors that remove the criminal character of the deed (they are more than mitigating factors because the criminal penalty is not applied): - self-defence - force majeure If error and mental incapacity apply, there is a criminal infringement but no imputation of	- force majeure	Criminal penalties: Intention is a prerequisite. If negligence or gross negligence applies, there is a criminal infringement but no imputation of the offender. Administrative penalties: No intention is required.

			the offender.		
G	- the crime was committed repeatedly or constitutes recidivism of criminal offences - the crime was committed while in a group of persons; - the crime was committed, taking advantage in bad faith of an official position or the trust of another person - the crime has caused serious consequences - the crime was committed against a woman, knowing her to be pregnant - the crime was committed against a person who has not	- if the unlawful action is continued, regardless of an authorised persons' request to cease it - if a similar infringement, regarding which a person had been already punished, has been committed repeatedly within a year if the administrative infringement has been committed by a person who has previously committed an offence - if a minor has been involved in the committing of an infringement	- the perpetrator of the crime has admitted his or her guilt, has freely confessed and has regretted that which he or she has committed - the offender has voluntarily compensated for the loss occasioned or has allayed the harm caused - the offender has actively furthered the disclosure and investigation of the crime - the offender has facilitated the	- if the person at fault has frankly regretted what he or she has done - if the person at fault has eliminated the harmful consequences of the infringement, voluntarily compensated the loss or eliminated the damage committed - if the infringement was committed under the influence of strong mental agitation or due to serious personal or family circumstances - if the infringement was committed by a minor - if the violation was committed by a woman who is pregnant or a woman who has a child aged up to 1 year - if a person at fault has	Influence of intention and gross carelessness does not have any influence on administrative liability but repetition is an aggravating factor.

	attained fifteen years of age or against a person taking advantage of his or her helpless condition or of infirmity due to old-age - the crime was committed against a person taking advantage of his or her official, financial or other dependence on the offender - the crime was committed especially cruelly or with humiliation of the victim - the crime was committed taking advantage of the circumstances of a public disaster - the crime was committed employing weapons or	- if the infringement has been committed by a group of persons - if the infringement has been committed during a natural disaster or other emergency circumstances - if the infringement has been committed under the influence of alcoholic beverages, narcotic or other intoxicating substances Depending on the nature of the infringement, the institution (official), which imposes an administrative penalty, may decide not to consider circumstance as being liability aggravating.	disclosure of the crime of another person - the crime was committed due to serious personal or family circumstances - the crime was committed under the influence of violence, or on account of financial or other dependence - the crime was committed as a result of the unlawful or immoral behaviour of the victim - the crime was committed exceeding the conditions regarding	voluntarily applied prior to disclosing of the committed infringement	

	explosives, or in some other generally dangerous way - the crime was committed out of a desire to acquire property - the crime was committed under the influence of alcohol, narcotic, psychotropic, toxic or other intoxicating substances - the person committing the crime, for purposes of having his or her sentence reduced, has knowingly provided false information regarding a crime committed by another person - the crime was committed due to racist motives		necessary self-defence, extreme necessity, arrest of the person committing the crime, justifiable professional risk or the legality of the execution of commands and orders - the crime was committed by a pregnant woman - the crime was committed by a person in a state of diminished mental capacity		

H	-the commission of more than one crime -the commission of a crime as an organizer -the commission of a crime with abusing of the employee, function etc. -recidivism -the level of the infliction -violence	-the fact that the subject re-infringes the customs rules -the level of the infliction -in the administrative penalties the level of the penalty is in dependence of the correct account of customs authorities, which affects the recidivism	-the commission of a crime in influence of threat or pressure -the person lived a regular life before he/she committed a crime -the person itself advised the crime to the competent authorities		Criminal penalties: Intention is a prerequisite. Administrative penalties: No intention is required
I	General aggravating factors are: -recidivism -gross negligence -relation between the amount paid to customs and the amount non paid due to the infringements so that if the non paid amount is bigger than the paid one, the aggravation is bigger too -the account infringement -fraudulent intention	General aggravating factors are: -gross negligence -recidivism -non cooperation in the investigation -the account infringement -fraudulent intention -the use of simplified customs procedures to commit the infraction -huge amounts of evaded duties -economic damage to the administration	General mitigating factors are: -when the liable person agrees with the penalty -when the liable person does an early payment of the penalty -when the liable person does not appeal the penalty and the payment of the debt -good faith	General mitigating factor: -when smuggling deals with goods which are subject to non forbidden trade -agreement with the sanction	Criminal penalties: In the I system intention is a necessary prerequisite to qualify the infringement as a criminal one. Administrative penalties: No intention is required In the area of administrative penalties three different levels are separated: 1. Light 2. Grave 3. Very grave Recidivism is considered as an aggravated factor in cases there the same type of infringement in the last 4 years.

	-abuse of public authority -falsification of documents		-error in the real perception of the facts -error in law		
J	For the criminal penalties the sanction is established according to the seriousness of the offence under articles 133 and 133 (a) of the Penal Code, however it is the judge who applies aggravating and mitigating factors those are set in general under Articles 61 and 62 of the Penal Code -recidivism affects the level of the penalty under Article 99 of the Penal Code and article 296 of Presidential Decree n. 43/1973 for crimes of smuggling	For administrative penalties according to Article 7 (1-2) of the Legislative Decree No 472/1997, the penalty is established according to the seriousness of the offence, the behaviour of the offender, what he has done to cancel or mitigate the consequences as well as his personality and social and economical means. The personality of the offender is also inferred from his previous fiscal behaviour. According to Article 7 (3) of the Legislative Decree	- force majeure is a reason for exemption from a penalty (article 45 of the Criminal Code) - fortuity is a reason for exemption from a penalty (article 45 of the Criminal Code) -the offender is not liable if the offence is the result of an error or mistake on the real perception of the facts (according to article 47 of the Criminal Code). However, if the	- force majeure is a reason for exemption from a penalty - fortuity is not legally a reason for exemption from a penalty because it is not expressly established by law. - According to article 6, par. 2 of Legislative Decree n. 472/1997 it is not punished the offender when the infringement it is determined by objective conditions of uncertainty about the scope of the provisions to which they relate, as well as by vagueness of the requests for information or of models for the declaration and the payment. This provision refers first to the objective uncertainty about the meaning of the	<u>Criminal penalties:</u> Main rule is that intention is a prerequisite. Negligence and serious negligence are not separated. <u>Administrative penalties:</u> Negligence and serious negligence are separated.

	-in hypothesis of contraband, provides that being member of a gang is an aggravating factor according to Article 295 (**2**) of the Presidential Decree No 43/1973 -in hypothesis of contraband, provides that abuse of public authority is an aggravating factor according to Article 295 (**2**) of the Presidential Decree No 43/1973 -in hypothesis of contraband, provides that falsification of documents is an aggravating factor according to Article 295 (**2**) of the Presidential Decree No 43/1973 -in hypothesis of contraband, provides that huge amounts of evaded duties/taxes	No 472/1997 the sanction can be increased until half for those who in the past three years have committed another offence of the same type which is not defined according to Articles 13, 16 and 17. For offences of the same type shall mean the offences to the same provision and those to different provisions which can be considered as similar, in consideration of the nature of the facts constituting them and the reasons causing them or to how the action has been carried out and show profiles of substantial identity.	error is caused by negligence, the liability is not excluded, when the fact is considered by law as crime punishable for a negligent behaviour. In this regard we have to point out that this is a general rule of the criminal code. For what concerns smuggling it is usually a criminal offence committed intentionally. The Criminal Code establishes also that the error on the fact that constitutes a particular crime does not exclude the punishment for a	law. You must consider that there is objective uncertainty in the face of ambiguous statutory provisions, such as to permit different interpretations and not to allow, at any given time, the identification of some specific meaning. Such a situation, not uncommon in relation to tax rules often very complex and unique, can occur, for example, in the presence of recent enactment of laws for which a definite interpretative guidance has not formed or contradictory orientations coexist. A second assumption, made explicit in the test, concerns the possibility 'that the offender has been misleaded by vague requests for information or models for the declaration and payment. The ratio of the provision does not differ from that above mentioned. It is still important to give relevance to an error	

	is an aggravating factor according to Article 295 (**3**) of the Presidential Decree No 43/1973		different offence. The error on a law other than criminal excludes criminality, when it has caused an error on the fact that constitutes the crime. According to article 5 of Criminal Code nobody can use to excuse his behaviour his ignorance of criminal law. However the rigidity of Article 5 of Criminal Code was made less severe by a decision of the Constitutional Court (Judgement No. 364 Cost C. of 1988), which establishes the	not determined by fault, but the provision here puts the emphasis on the need for the government to behave in a clear and fair condition by letting the citizen understand without difficulty which is the question. Requests for information, so, should be as detailed as possible, timely and legible so as not to cause justified doubts of interpretation. However, even if the provision of law refers expressly only to requests for information and models for the declaration and payment, the principle can apply in all cases where, even by acts or conduct of a different nature, offices can put into error or mislead taxpayers. -if the infringement is the result of an error on the real perception of the facts, the offender is not liable when the error is not due to negligence in the made mistake regarding facts	

			excusable ignorance of the criminal law when that ignorance is inevitable or at least not negligent.		
K	-the degree of the perpetrator´s culpability -the intensity of the danger or injury caused to the property protected by law -recidivism -being member of a gang -huge amounts of evaded duties or taxis	-the degree of the perpetrator´s culpability -the intensity of the danger or injury caused to the property protected by law -recidivism -being member of a gang -huge amounts of evaded duties or taxes -fraudulent intention	-the degree of the perpetrator´s culpability -the motives for which the offence was committed -the intensity of the danger or injury caused to the property protected by law -the perpetrator´s past behaviour -his personal and pecuniary circumstances -the perpetrator´s conduct after committing of the criminal offence and especially	-the degree of the perpetrator´s culpability -the motives for which the offence was committed -the intensity of the danger or injury caused to the property protected by law -the perpetrator´s past behaviour -his personal and pecuniary circumstances -negligence	<u>Criminal penalties:</u> Some criminal offences can only be committed with fraudulent intention and some with negligence or gross negligence <u>Administrative penalties:</u> negligence, gross negligence and fraudulent intention can be considered as aggravating or mitigating factors. There is no different kind of penal scales regarding administrative penalties or different impact on the concrete penalty depending on whether the infringement has been committed intentionally or by gross carelessness or negligence. However, repetition of a similar/corresponding infringement is concerned as an aggravating factor.

			whether he recovered the damages caused by the committing of the criminal offence; and other circumstances referring to the personality of the perpetrator		
L	The L legislation stipulates a number of aggravating factors as a guideline for penal decisions. Therefore, in fact all modalities and circumstances of the deed may be considered as aggravating depending on their overall effect. For example: -commercially evaded duties -recidivism -fraudulent intention -use/threat of violence	Within the scope of the Fiscal Penal Code, only criminal penalties are applied to customs infringements.	The L legislation stipulates a number of mitigating factors as a guideline for penal decisions. Therefore, in fact all modalities and circumstances of the deed may be considered as mitigating depending on their overall effect. For example: -cooperation (incl. confession)	Within the scope of the Fiscal Penal Code, only criminal penalties are applied to customs infringements.	<u>Criminal penalties:</u> Main rule is that intention is a prerequisite, in some specific cases complemented with negligence. Pecuniary penalties are foreseen up to the amount of jeopardized duties in case of negligence and in case of intent up to the twofold (threefold in case of additional qualified recidivism) of the jeopardized duties. Austria has both criminal and administrative proceedings but within the scope of the Fiscal Penal Code, only criminal penalties are applied to customs infringements. Administrative measures (coercive penalty, surcharge in tourist traffic, seizure of goods referred to in the Customs Law Implementation Act) do not fall within the scope of the Fiscal Penal Code.

	-being member of a gang or organized criminal group -falsification of documents -huge amount of evaded duties/taxes -gross negligence		-good faith -error in the real perception of the facts -error in law -personal and economic conditions -fortuitous event -payment of evaded duties/ repair of damages		
M	The provisions of Articles 54 and 55 of the M Criminal Code state that the court shall mete out penalties within the limits provided by law for the crime committed, guided by the provisions of the general part of the Criminal Code and taking into consideration the degree of social danger of the act and the perpetrator, the motives for crime perpetration and other	The provisions of Article 27 of the Administrative Violations and Sanctions Act are applicable for the administrative infringements. In accordance with this article, the administrative sanctions shall be meted out within the bounds of the penalty provided for the respective violation committed, taking into account the gravity of the	General mitigating factors are: -the degree of social danger of the act and the perpetrator -the motives for crime perpetration -other attenuating circumstances -	The provisions of Article 27 of the Administrative Violations and Sanctions Act are applicable for the administrative infringements. In accordance with this article, the extenuating circumstances determine the infliction of a milder penalty.	With regard to customs infringements M has only administrative proceedings excluding customs contraband provided for in the Penal Code (e.g. unlawful introduction of drugs, weapons, explosives etc. to the country and violating transit provisions. The M legislation applies two types of guilt – negligence and deliberation. The customs administrative infringements committed deliberately and negligently are punishable in any cases. The provisions for administrative infringements are included in Art. 7 of the Administrative Violations and Sanctions Act. In accordance with this article, an act adjudged an administrative violation shall be deemed guilty when committed deliberately or negligently.

	aggravating or mitigating circumstances. General aggravating factors are: -great quantities or amounts of duties/taxes evaded -being member of a gang or an organized criminal group -too close cooperation with a policeman, customs officer etc. -object of the infringement – drugs and analogues, precursors or installations and substances for the production of drugs	violation, the motives or inducements for the commission thereof and other extenuating and aggravating circumstances, as well as the property status of the offender. General aggravating factors are: - evasion of the payment of excise duties -recidivism			Negligent violations shall not be punishable in explicitly prescribed cases. However, there are no such cases provided for customs infringements.
N	General aggravating factors are: -fraudulent behaviour of the offender -gross negligence -the extent of the	Only criminal penalties are applicable.	General mitigating factor are: -good faith -negligence -the cooperation	Only criminal penalties are applicable.	According to the Customs Code Law, all infringements are considered as criminal offences and a penalty is imposed. However, in cases where customs debt is incurred, an administrative penalty equal to 10% of the assessed amount of the duty or tax is imposed apart from any criminal penalty that the

	evasion -the status of the offender (i.e. customs officers) -being member of the gang -recidivism		of the offender with the customs officers -the voluntary disclosure of the infringement -the commitment of minor infringements -the payment of any evaded duty or tax -force majeure -fortuitous event		offender might be sentenced to.
O	Relating to the offence: *-perpetration by members of a criminal gang* *-amount of evaded duties* *-falsification of documents* *-use of violence* *-involvement of an official* *-level of*	a) Relating to the offence: - importance of the administrative offence - *perpetration by members of a criminal gang* - *amount of evaded duties* - *severity of the offence* - *level of*	a) Relating to the offence *- payment of evaded duties* *- seriousness of the infringement* *- remaining an attempt* b) Relating to the offender: - *co-operation with investigative bodies/voluntar*	a) Relating to the offence: - *seriousness* of the offence b) Relating to the offender: *- co-operation with customs/voluntary disclosure* - *gross negligence or negligence if negligence is punishable by law as well as intention* - *previous correct conduct* - *the motivations and aims of the offender*	For punishing an action as administrative offence intention is a prerequisite, unless legislation specifically provides punishment for (gross) negligent action, Art. 10 Law Concerning Administrative Offences. Negligent action can be punished (as administrative offence) at the most with half of the maximum fine provided by law (in case there is no distinction between the maximum fine for intended and negligent action), Art. 17 Sec. 2 Law Concerning Administrative Offences. This rule is not valid in case legislation already constitutes a maximum fine for negligence, e.g. reckless tax evasion, Art. 378 Fiscal Code.

	sophistication employed in an infringement Relating to the offender: -*recidivism* -*fraudulent intend* -the motivations and aims of the offender (base motives, profit motive) -the attitude expressed by the offence and the volition applied during the offence -the personal and economic conditions of the offender (e.g. the offender is a public office holder) -the conduct of the offender after the offence, especially his efforts to atone for their actions (if there are no visible	*sophistication employed in an infringement* b) Relating to the offender: - the accusation hitting the offender - economic conditions, not in minor cases (well-off offenders) - *recidivism* - *fraudulent intend* - *motivation* - *obstructive behaviour while prosecution*	*y disclosure* - *previous correct conduct* - *gross negligence or negligence if negligence is punishable by law as well as intention* - *diminish responsibility* - *error in law (if it was avoidable, otherwise the behaviour is not punishable)* - *extent of share in the offence* - the motivations and aims of the offender (e.g. hopelessness) - the attitude expressed by the offence and	- accusation hitting the offender - economic conditions, not in minor cases (bad economic conditions)	

	efforts and no repentance) *-gross negligence, if negligence conduct is punishable*		the volition applied during the offence the personal and economic conditions of the offender (e.g bad economic conditions or maintenance obligations)		
P	Specifically provided for in the P Penal Code: - the criminal activity has been methodical - the offence has been committed as a member of a group organised for serious offences - the offence has been committed for remuneration - the offence has been directed at a person belonging to a national, racial, ethnic or other population	No specific factors.	<u>Mitigation of the punishment</u> These grounds specifically provided for in the P Penal Code are: - significant pressure, threat or a similar influence that has affected the commission of the offence - strong empathy or an exceptional and sudden temptation that	No specific factors.	<u>Criminal penalties:</u> Main rule is that intention is a prerequisite. An action or a non-action committed by gross negligence or negligence constitutes a crime only if the law specifically provides it. <u>Administrative penalties:</u> - If an incomplete or incorrect customs declaration or other document or particular has been lodged knowingly or by gross carelessness or one has failed in any other way to fulfil his obligation to declare and this conduct has caused a situation where a duty could have been avoided, by not more than 50 percent. - If a person arriving in P has knowingly or by gross carelessness neglected his obligation to declare goods by importing or attempting to import without declaring goods in quantities

	group due to his/her membership in such a group - the relation between the criminal history of the offender and the new offence, due to the similarity between the offences or otherwise, shows that the offender is apparently heedless of the prohibitions and commands of the law		has led to the offence, the exceptionally great contribution of the injured party or a corresponding circumstance that has been conducive to decreasing the capability of the offender to conform to the law - reconciliation between the offender and the injured person, other attempts of the offender to prevent or remove the effects of the offence or his/her attempt to further the clearing up of the offence The following factors if the		exceeding those allowed to be imported and the matter is not to be dealt with as a Customs criminal offence, by 100 percent.

			punishment that accords with established practice would lead to an unreasonable or exceptionally detrimental result: - another consequence to the offender of the offence or of the sentence - the advanced age, poor health or other personal circumstances of the offender - a considerably long period that has passed since the commission of the offence <u>Mitigation of the penal latitude</u> The sentence is determined in accordance with a mitigated penal		

			latitude provided for in the P Penal Code if: - the offender has committed the offence under the age of 18 years - the offence has remained an attempt - the offender is convicted as an abettor in an offence or his/her complicity in the offence is otherwise clearly less than that of other accomplices - the offence has been committed in circumstances that closely resemble those that lead to the application of grounds for exemption from liability - there are special reasons for this		

			on the above or other exceptional grounds, mentioned in the sentence In determining the punishment on the above grounds, at most three fourths of the maximum sentence of imprisonment or fine and at least the minimum sentence provided for the offence may be imposed on the offender. If the offence is punishable by life imprisonment, the maximum punishment is instead 12 years of imprisonment and the minimum punishment is two years of imprisonment.		

			What is provided for above also applies in determining the sentence for a person who committed an offence in a state of diminished responsibility. However, diminished responsibility does not affect the applicable maximum punishment. If the maximum punishment for the offence is imprisonment for a fixed period, the court may in cases referred to above impose a fine as the punishment instead of imprisonment if		

			there are especially weighty reasons for this.		
Q	- infringement concerning prohibited or heavily taxed goods - infringement concerning goods harmful to health, morality or public safety - act of organised gang - recidivism	Only criminal penalties are applied.	- good faith if the offender can prove the good faith (reverse burden of proof)	Only criminal penalties are applied.	Since intention is not a prerequisite for customs infringements, the law does not distinguish between negligence, gross negligence, violence and fraudulent intention.
R	- habitual and repeat recidivism -crimes committed as an activity of organized crime -deliberate realisation of a crime - premeditation - fraudulent intention -being member of a gang -huge amounts of evaded duties/taxes	-The significance and the frequency of the non-compliant behaviour and the diligence of the person concerned.	- defective condition of the perpetrator´s mind -being elderly, uneducated or partner to a crime -attempted or not realized perpetration -negligent perpetration	-The significance and the frequency of the non-compliant behaviour and the diligence of the person concerned. -Error induced by the customs	Criminal penalties: Main rule is that intention is a prerequisite. If the crime is committed by negligence a specific contravention procedure has to be started. Contravention procedure is neither a criminal nor an administrative procedure. In case of administrative procedure objective responsibility is applied so that the facts are examined and they do not determine whether the infringement was committed intentionally or by gross carelessness/negligence. In case of repeated commitment the principle of graduation is followed so that the more of the same infringement is committed the higher the

					penalty to be imposed is. In case of repeated non-compliance of the same failure, this penalty can be applied repeatedly within one procedure. If there is no outstanding customs debt, the circumstances of the case, the significance and the frequency of the non-compliant behaviour of the person concerned are considered as aggravating and mitigating factors.
S	- the criminal act was committed by a group of accomplices; - the criminal act caused grave consequences; - the criminal act was committed in a manner which endangers all other people; - the criminal act was committed taking advantage of a community or other person's disaster; -the criminal act was committed for personal gain; - the criminal act was	- repetition of a similar infringement; - the offender is a person who committed a criminal act before the infringement; - the infringement was committed by a group of accomplices; - the infringement caused grave consequences or heavy damage; - the infringement was committed taking advantage of a natural disaster or accident;	- the offender confesses to having committed a criminal act, expresses sincere regret or assists in solving the crime or finding the persons who participated in the crime; - the offender voluntarily compensates or removes the damage caused; - the criminal act was committed due to very difficult	- sincere regret and assistance in solving the infringement and finding the persons who participated in the infringement; - the offender voluntarily compensates or removes the damage caused; - the infringement was committed in violation of the conditions of immediate necessity; - the infringement was committed due to very difficult economic circumstances of the offender; - the offender has committed the infringement under mental or physical coercion;	Repetition of a similar infringement is an aggravating circumstance. When determining the penalty, no regard must be had to the repetition which is viewed in the Code of Administrative Offences as an element of the infringement and referred to when defining the infringement. The form of guilt is not specified in legislation as an aggravating or mitigating circumstance. Nevertheless, depending on the circumstances of the infringement, in certain cases the form of guilt may affect the penalty. The form of negligence does not affect the penalty.

	committed by a person in a state of alcoholic intoxication or under the influence of narcotic, psychotropic or toxic substances, and this circumstance influenced the commitment of the criminal act.	- the infringement was committed by an adult together with a juvenile; - the infringement was committed by a person in a state of alcoholic intoxication or under the influence of narcotic, psychotropic or toxic substances (taking into account the character of the infringement, the penalising authority may refuse to recognise this circumstance as aggravating).	economic circumstances of the offender; - the offender has committed the criminal act under mental or physical coercion, where such coercion does not completely relieve him of criminal liability; - the criminal act was committed in violation of the conditions of detention of a person who committed a criminal act, of the conditions of immediate necessity, of performance of a professional duty or of an assignment of the law enforcement body, of the	- the infringement was committed by juvenile, pregnant woman, disabled person or old person (above 65 years); - another circumstance which the penalising authority considers as mitigating.	

			conditions of production or economic risk or legality of a scientific experiment; - the criminal act was committed by a person who had been recognised as being of diminished liability; - the criminal act was committed by a person who was in a state of involuntary intoxication; - another circumstance which the court considers as mitigating.		
T	- obstruction - use of force and weapons -being member of a gang -abuse of public	-Only criminal proceedings complemented with settlement are applicable.	- lower penalties in cases of good faith and negligence	-Only criminal proceedings complemented with settlement are applicable.	Full penalties in cases of fraudulent intention. Lower penalties in cases of good faith and negligence. Settlement is applied only in other than intentional cases.

	authority -falsification of documents -huge amounts of evaded duties and taxes				
U	- persons found in possession of arms, ammunition, wine, spirits and tobacco -recidivism	Only criminal penalties are applicable.	Admission and cooperation with authorities. These factors may induce Customs to accept a request for an out of Court settlement agreement) However such factors are not taken into account by a Court, since the applicable fines are calculated on the basis of three times the actual duty due, and this, irrespective of	Only criminal penalties are applicable.	Customs legislation does not distinguish between intentions/negligence since the onus to prove innocence falls on the person concerned. Similarly, customs legislation entitles all cases to be settled administratively in lieu of criminal proceedings except in cases concerned arms, ammunition, wine, spirits, tobacco and in certain repetitive cases.

			any previously paid duty. The comptroller may impose a penalty equivalent to the duty endangered when there are sufficient grounds to indicate that no criminal intent was involved. The comptroller may impose a penalty of a sum equivalent to the value forfeited together with the duty or levy endangered if settlement is reached prior		

			to commencement of court proceedings contemplates a reduction of 10%. In cases of good faith, negligence and gross negligence, an administrative settlement may be considered. -		
V	The criminal court judge before imposing a sentence takes into account the person of the offender and the circumstances of the case. The criminal court judge can take into account an aggravating factor like recidivism only	Customs authorities can take into account any aggravating factor only with due observance of the statutory maximum for the administrative penalty that applies to the infringement in question.	The criminal court judge before imposing a sentence takes into account the person of the offender and the circumstances of the case. Mitigating factors (or factors	Mitigating factors listed in Rules issued by the State Secretary for Finance are: - disproportion between the standard administrative penalty which is foreseen for a certain infringement and the relative severity of that infringement under the circumstances - circumstances under which	<u>Administrative penalties:</u> There are different penal scales involved depending on whether the underlying infringement has been committed intentionally (or by gross carelessness/ negligence) or not. That distinction is made by the customs law itself. (Although V customs law also distinguishes between gross carelessness/negligence on one hand and intent on the other, the maximum administrative penalties in respect of both concepts are the

	with due observance of the statutory maximum for the criminal penalty that applies to the infringement in question.	Aggravating factors listed in Rules issued by the State Secretary for Finance are: - disproportion between the standard penalty which is foreseen for a certain infringement and the (relative) severity of that infringement under the circumstances - circumstances under which infringement has occurred may present an aggravating factor, e.g. if deceit, forgery or conspiracy on the part of the perpetrator is involved - recidivism; the concept of recidivism under V customs law does not require (repetition in the sense) that the reasons for imposing	making an infringement not punishable) are: - absence of all guilt - force majeure	infringement has occurred may present a mitigating factor, e.g. force majeure	same.) Repetition is one of the factors which the customs authorities will take into account before imposing an administrative penalty, but they will do so in the context of the broader concept of recidivism. The concept of recidivism under V customs law does not require repetition in the sense that the reasons for imposing the present administrative penalty have to be identical to those for the imposition of one or more earlier administrative or criminal penalties.

		the present administrative penalty are identical to those for the imposition of one or more earlier administrative or criminal penalties			
W	- recidivism - gross negligence/negligence (depends on judicial decision) - fraudulent intention - violence - gang membership - huge amount of evaded duties Abuse of public authority and falsification of documents are regarded as a crime and penalised separately, i.e. not as a part of a customs offence but in addition to the criminal penalty imposed due to the	Excluding annulment of an authorisation, only criminal penalties are applicable.	- good faith - error (depending on the type of error) Factors that remove the criminal character of the deed (they are more than mitigating factors because the criminal penalty is not applied): - error (depending on the type of error) - legitimate expectation - force majeure - fortuitous event	Excluding annulment of an authorisation, only criminal penalties are applicable.	<u>Criminal penalties:</u> Intention is a prerequisite.

	customs infringement committed at the same time.				
X	- recidivism - violence - gang membership (for aggravation it is sufficient that the infringement has been committed by two or more persons) - abuse of public authority - infringement relates to goods referred to in the Washington Convention	Infringement relates to: - goods that are prohibited to be imported or exported - cigars - meat - livestock - alcohol and alcoholic beverages	- good faith, gross negligence, negligence, error in the real perception of the facts: all of these factors prevent the imposition of a criminal penalty for a customs infringement; that infringement could only lead to the application of an administrative penalty - force majeure - fortuitous event	- force majeure - fortuitous event (these factors, in principle, exclude the apply of an administrative or criminal penalty, because the concept of infringement demands a guilty behaviour of the agent, either intentional or negligent) - good faith	<u>Administrative and criminal penalties:</u> -Gross negligence influences the concrete penalty decision in a favourable way to the liable person, but never leads to a criminal penalty as negligence always excludes the apply of a criminal penalty. -If the infringement has been committed by negligence, the foreseen maximum amount of the pecuniary charge should be reduced to half. -fraudulent intention influences the concrete level of the penalty and besides that, it can be determinant for the behaviour´s qualification as a criminal offence, punished by a criminal penalty

TABLE 5003

	2.1.1. Specific punishable behaviour affecting customs debt				2.1.2. Specific punishable behaviour not affecting customs debt			
	the unlawful introduction to the customs territory or the unlawful removal from the customs territory of goods liable to import duties	**the avoiding of paying customs duties by giving incorrect data**	**the infringements to the conditions of a customs procedure**	**the non respect of one of the obligations arising with regard to goods liable to customs duties**	**the unlawful removal or introduction of goods from the customs supervision**	**The infringements to the conditions of a customs procedure**	**Making the customs control difficult or opposing refusal or obstacles to customs controls**	**The non fulfilment of the obligation to keep customs documents available for the customs service**
A	about 3400	about 930	about 720	about 160	about 70	about 120	about 60	about 5

B	Generally, around 40,000 infringements relating to import, export and transit are found in B per year, the majority of which is extinguished by settlement. B does not classify the infringements in accordance with the fields in which they have been committed or depending on whether or not they have influenced the customs debt. For example, with respect to the years 2001 and 2002, the following details have been collected: 2001 2002 1. Import: a) without a declaration - goods liable to duties and VAT 4,701 4,158 - goods liable to VAT 10,151 10,132 b) with a declaration - goods liable to duties and VAT 4,940 4,883 - goods liable to VAT 802 675 2. Export: a) without a declaration - goods liable to duties and VAT 4,703 4,910 - goods liable to VAT 59 82 b) with a declaration - goods liable to duties and VAT 601 513 - goods liable to VAT 249 255 3. Licences 1,420 2,010 4. Other infringements 11,172 10,892	
C		N/A
D		N/A
E		No answers given
F		No answers given
G		N/A

H	The number of suspected crimes classified as tax frauds (mainly consisting of imports of tobacco products and alcoholic beverages) was 735 in the year 2006 (of which aggravated tax frauds were 66, “normal” 117 and petty tax frauds 552 cases) and 708 in the year 2007 (of which aggravated tax frauds were 98, “normal” 131 and petty tax frauds 479 cases). In about 10 percent of the above cases the punishable behaviour have not affected customs debt but only tax debt regarding excise duties assessed in the Community internal traffic or on the domestic basis.						
I					N/A		
J					N/A		
K					N/A		
L	Unfortunately a register or a database showing the details of the crimes detected by the customs authority as the questionnaire requires does not exist. Our database shows only the total number of the detected crimes: Year Number of cases 2006. 1312 2007. 642 I. half of 2008. 284						N/A
M		18	1806	124	23		N/A

N	For Customs procedure: mostly importation procedure For goods product areas: clothing, cigarettes in particular. For the number of cases of the last two years, it is important to point out that for the contraband the information and data are available from 2007 to August 2008 = n. 2063	False indication on the made in N, false or misleading declaration of the origin, counterfeiting. For goods product areas: bags, shoes, clothing, cigarettes For the number of cases of the last two years, it is important to point out that for the most frequent customs criminal offences, not concerning customs debt, the information and data available at moment are from 2007 to August 2008 = n. 8.000;

O	Smuggling-73 cases	(ii) The avoiding of paying customs duties by giving incorrect data - 74 cases	(iii) Movement of goods the circulation of which is prohibited or specially regulated across the state border of Latvia – 97 cases; Unauthorised activities with goods subject to customs clearance – 7 cases; Avoidance of declaring of cash – 1 case; Unauthorised use of trademarks – 1 case.	merged with (ii)	Unauthorised activities with goods subject to customs clearance – 2 cases		merged with 2.1.1.	
P	16	not criminal	0	0	0	5 (2006-2007)	not criminal	not criminal
Q	3	13	0	19	3	0	0	0
R					N/A			
S	Number of cases for 1-year-period from August 2007 until August 2008: 1744							
T	5115 (2006); 5774 (2007)	104 (2006);	2 (2006); 10 (2007)	22 (2006); 10 (2007)	260 in 2006; 282 in 2007	(2006); 6 (2007)	428 (2006); 430 (2007)	5 (2006); 7 (2007)

	161 (2007)	
U		N/A
V	For the year 2007: approximately 4400 cases, as follows: - the infringements related to the cases when the holder of the suspensive customs regimes failed to meet the terms, conditions and obligations provided for carrying out and concluding the regimes – 63% from the amount of the established customs debts; - the infringements related to the preferential tariff treatment – 15% from the amount of the established customs debts; - the infringements related to the value – 7% from the amount of the established customs debts; - For the year 2008 (01.01.2008 – 31.07.2008): 3266 cases, as follows: - the infringements related to the cases when the holder of the suspensive customs regimes failed to meet the terms, conditions and obligations provided for carrying out and concluding the regimes – 44,4% from the amount of the established customs debts; - the false or wrong declaration of the value: 21,4% from the amount of the established customs debts; - the wrong declaration of the tariff classification: 12,2% from the amount of the established customs debts;	Some of these types of infringements are mentioned to the paragraph 2.1.1. and some are not criminal offences, according to the national customs provisions
W		N/A
X		N/A

Y	Our Law doesn´t make any difference between behaviors and our computer system too, so we don´t have statistics about the question. We can only distinguis between criminal and smuggling offences. Number of criminal penalties under Criminal Code: 1 (2006); 2 (2007) Number of penalties under Smuggling law: 1720 (2006); 1962 (2007)	N/A (see 2.1.1.)
Z	No answers given	
AA	We do not analyse criminal cases along the lines set out in the question. What we can say is that in the 2 years between 1/04/06 and 31/03/08 over 2500 infringements concerning import/export documentation resulted in criminal penalties ranging from fines through to terms of imprisonment. Most of the fines will have been levied on individuals guilty of smuggling offences rather than businesses or organised criminals.	

Table 6001 Statistics for the most frequent non-criminal offences affecting / not affecting the customs debt

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
A	Irrelevant: there is no customs infringement in Austria outside the scope of the Fiscal Penal Code (all penalties are classified as	-	-	-	-	-	-	-	-	-	-	-

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	criminal).											
B	Irrelevant: the Belgian law only provides for criminal penalties excluding all civil or administrative sanctions.	-	-	-	-	-	-	-	-	-	-	-
C	No stat. av.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
D	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
E	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.
F	Illegal conveyance of goods to	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	Hindrance of customs official; Illegal acts with	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	Estonia or out of Estonia; Illegal acts with goods subject to prohibitions and restrictions upon movement thereof between Estonia and third countries.						goods located in F; Illegal acts with goods subject to prohibitions and restrictions upon movement thereof between Member States					
G	The system											

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	doesn't distinguish between sanction related to debt infringements or not. However, the majority of the light infringements are not normally referred to debt but to formalities. On the other hand											

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	grave and very grave infringements are generally referred to debt. Computer system only distinguishes between smuggling or non smuggling,											

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	administrative or criminal, and finally between very grave, grave and light infringements. The complete statistics of the kind and the number of infringements are											

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	the following: **ADMINISTRATIVE SANCTIONS** **GENERAL LAW**											

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	Sanction type / *Year 2006* / *Year 2007* / *Total* VERY GRAVE: 167 / 67 / 234 GRAVE: 10.612 / 5.182 / 15.795 LIGHT: 20.886 / 17.637 / 38.523 Total: 31.665 / 22.887 / 54.552											

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	ADMINISTRATIVE SMUGGLING *Sanction type* / *Year 2006* / *Year 2007* / *Total* VERY GRAV: 40 / 33 / 73											

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	GRAVE 164 121 285 **LIGHT** 2.346 1.961 4.307 **Total** 2.551 2.115 4.666											
H	Incorrect tariff classification	10 %	20 %	60 %	-	10 %	1): exceeding the deadline for customs clearance					

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
							2):Exceeding the deadline for customs clearance: 70 % Exceeding the deadline for the lodgement of the supplementary customs declaration: 15 %					

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
							The goods have been transferred from customs control without being released for free circulation: 10 % Other: 5 %					
I	Not applicable	-	-	-	-	-	-	-	-	-	-	-

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
J	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.
K	The most frequent non-criminal offences affecting the customs debt are customs contraventions. Only the following statistics are	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	(i) Those customs infringements which do not affect customs debt shall be judged in a non-criminal administrative	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	The most frequent non-criminal offences affecting the customs debt are customs contraventions. Only the following

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	available: 2006: 51 889 cases Value of crime (HUF) 1,300,973,000 Value of seizure (HUF) 348,580,000 2007 20 709 cases						procedure shall start. (ii) Art. 61/A(1) of Act CXXVI of 2003 on the implementation of Community customs legislation stipulates the infringements					statistics are available: 2006: 51 889 cases Value of crime (HUF) 1,300,973,000 Value of seizure (HUF) 348,580,000 2007

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	Value of crime (HUF) 310,252,030 Value of seizure (HUF) 9,896,339						when it is possible to impose a pecuniary charge: any violation of obligations pertaining to the reporting, declaration and presentation of goods, lodging of customs					20 709 cases Value of crime (HUF) 310,252,030 Value of seizure (HUF) 9,896,339

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
							declarations, temporary storage, customs supervision, customs procedures, or for the violation of obligations related to the fulfilment of conditions of					

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
							inspection to be carried out by the customs authority under legal authorization, or for the violation of obligations related to free zones, customs warehouses or transit areas					

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
							and/or controls, and non, late or incomplete fulfilment of obligation for data supply are hindered. 2006: 7,568 cases Value of crime (HUF) 121,824,709					

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
							Value of seizure (HUF) 87,377,111 2007: 17,440 cases Value of crime (HUF) 229,563,550 Value of seizure (HUF) 192,297,554					

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
							2008: 5,959 cases Value of crime (HUF) 144,432,884 Value of seizure (HUF) 44,126,636 2009: 4,169 cases Value of crime (HUF) 159,963,691 Value of seizure					

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
							(HUF) 33,093,046 2010 I quarter: 496 cases Value of crime (HUF) 13,476,492 Value of seizure (HUF) 5,962,513					
L	All offences	-	-	-	-	-	-	-	-	-	-	-

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	considered criminal offences in this jurisdiction											
M	Differences in quality, quantity, and value of the goods with respect to what has been declared (Article 303 of the	about 20%	about 65%	about 15%	-	-	a) Currency infringements →Presidential Decree No.148 of 31/3/1988 and following amendments b)	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	Presidential Decree No. 43/1973), decriminalized contraband. **According to article 295 a) of Presidential Decree No. 43/1973 smuggling can be considered an administrative**						Ceased/wrong/non existent VAT number c) Non compliance of the origin declared at the time of the final exportation of the goods d) Infringement of the phytosanitary treatment					

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	offence when the following major conditions occur: - **1) Firstly the subject of the offence must be other**						e) Delay in the submission of the accompanying documents on the arrival of the goods (T1, TIR, ATA etc) f) Infringements to the economic prohibitions g) Delayed submission of goods					

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	than the "foreign manufactured tobaccos" since they are regulated by special legislation;						accompanied by a security document for customs control (Article 319, (2) of the Presidential Decree No. 43/1973) 2) In which field the most frequent infringements not affecting the					

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	- **2) Secondly, the amount of border duties due must not exceed € 3.999,96;** - **3)**						customs debt occur? Mostly for importation /exportation, transit Can you express the frequency in percentage? No stat. avbl.					

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	Thirdly, the circumstances must not occur referred to in Article 295, paragraph 2 of the Presidential											

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	Decree No 43 (Consolidation Act of the Customs Law) of 23.01.1973.											
N	Related with the value of goods, origin	16%	51%	12 %	7 %	14 %	Cases when the declarant has provided	2 %	3,5 %	7,5 %	13 %	74 %

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	and tariff classification.						incorrect data in the customs declaration, and the customs authorities have changed the data specified in the customs declaration without calculating additional duty and taxes.					

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
O	Wrong tarification, wrong bills	-	50%	50%	-	-	destruction of customs seals without autorisation	-	-	-	-	100%
P	• incorrect Tariff classification; • incorrect valuation of goods;	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	Smuggling – 1007 cases; Infringements related customs regime – 461 cases.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	• failure to adhere to the conditions for use of a customs procedure; failure to declare goods at all.						For the period 2007-2008 there has been the following number of infringement cases according to the P Administrative Violations Code: (iii) (ii) (iii) Provision of documents					

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	For the period 2007-2008 there has been the following number of infringement cases according to the P Administrative Violations Code (including infringements affecting and not affecting customs						containing false information – 349 cases; Tariff – 177 cases; Activities, as a result of which the full amount of customs tax and other customs payments (VAT, excise)					

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	debt): (i), (ii), (iii) Provision of documents containing false information to the customs – 349 cases; Declaration of goods with a fake name or non-complying						has not been paid – 13 cases. **(**iv) Application of a customs-approved treatment or use of goods – 2 cases; **Smuggling – 1007 cases; Customs Regime – 461 cases.**					

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	Code – 177 cases; (iv) Utilization of such goods for a different purpose without the customs permission – 2 cases; Export of goods from the customs											

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	control zone without the permission of the customs – 5 cases; Activities, as a result of which the full amount of customs tax and other customs payments (VAT, excise) has not been paid – 13											

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	cases.											
Q	All Customs offences are considered as criminal offences in this jurisdiction	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	- N/A
R	There is no statistical information available as to	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	There is no statistical information available as to	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	whether the administrative penalties that were issued are referring to behaviour that actually affected customs debt or not. The customs infringements to which administrative penalties were						whether the administrative penalties that were issued are referring to behaviour that actually affected customs debt or not. The customs infringements to which administrative penalties were					

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	applied most frequently were: 1. Not assigning a customs-approved treatment or use to goods within the period envisaged under section 49 of the CCC (844). 2. Non-fulfilment of obligations						applied most frequently were: 1. Not assigning a customs-approved treatment or use to goods within the period envisaged under section 49 of the CCC (844). 2. Non-fulfilment of obligations					

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	under certain customs procedures (621). 3. Disappearance of goods from a customs warehouse or a free warehouse (44).						under certain customs procedures (621). 3. Disappearance of goods from a customs warehouse or a free warehouse (44).					
S	In S we have not any penalties for non criminal	-	-	-	-	-	-	-	-	-	-	-

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	customs offences											
T	To import, to export, to introduce, to remove goods without presenting them to a custom-house or a place authorized by customs authorities from the interior of	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	Infringements to the conditions of a customs procedure	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	custom-house or places under customs control (art.108º). To obtain, with false declarations or another fraudulent way, the customs dispatch of any goods or a tax advantage (art.108º).											

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
U	Infringements related to the value, origin, tariff classification, preferential tariff treatment, eluding from customs inspection of goods, suspensive customs regimes with economic	15%	15%	6%	4%	60%	Infringements related to the cases when the declarant or his customs representative failing to meet some terms, conditions and obligations provided by the customs provisions	These infringements affect customs debt generally.	These infringements affect customs debt generally.	These infringements affect customs debt generally.	These infringements affect customs debt generally.	These infringements affect customs debt generally.

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	impact;											
V	Giving the incorrect data	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	Incorrect keeping of customs registers.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.
W	For example: stating incorrect data about goods subjecting to customs	10 %	25 %	25%	35 %	5 %	For example: Non fulfilment of the obligation to follow a call of customs officer or he/she or	5 %	5 %	5 %	5 %	80 %

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	surveillance, causing that goods shall be released for him/her on the basis of false, modified or falsified documents, or incorrect or fictive data, falsifying						obstruction of his/her activity otherwise.					

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	documents concerning imported or exported goods or goods in transit, consealing goods that escape from customs surveillance.											

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
X	Misdescriptoion of goods incorrect Tariff classification incorrect valuation of goods, incorrect claim to a relief. failure to adhere to the conditions for use of a customs procedure, failure to declare	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	Export infringements, licence infringements. At this time we cannot provide the detailed breakdown requested. However, from an analysis of the warning letters issued in respect	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.	No stat. avbl.

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	goods at all. All such infringements may be as a result of innocent error, failure to exercise reasonable care, or deliberate attempts to mislead the authority. At this time we						of infringements we calculate that 'non-financial' infringements discovered comprised 45% of the total identified during the financial year 2007/8.					

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	cannot provide the detailed breakdown requested. However, from an analysis of the warning letters issued in respect of infringements we calculate that those resulting in errors in duty or tax calculations											

MS	The most frequent Non-criminal offences affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other	The most frequent Non-criminal offences non affecting the customs debt	Origin	Value	Tariff	Application of a customs-approved treatment or use of goods	Other
	comprised 55% of the total infringements identified during the financial year 2007/8.											

TABLE 7002

	2.1. Criminal offences	
	for which of these customs infringements are criminal penalties applicable?	**under which precise circumstances are these infringements regarded as criminal offences (i.e. in any event/ in serious negligence cases/ in intentional cases)**
I	The I Fiscal Penal Code only knows customs offences; within that term it has to be differentiated between proper customs offences and minor violations of duties (customs irregularities). All foreseen punishments are criminal penalties with penal character in the sense of Art. 6 ECHR. See above 2.4.	in any event
G	In G customs law, all infringements give cause to the application of a penalty or a criminal sanction, excluding civil or administrative penalties.	Irrelevant.
J	In accordance with art.242 and art.242a of the Criminal Code, the customs infringements "smuggling" and "deviation from transit procedure" are determined as crimes (criminal infringements) – see answer to p.1.1.	These infringements are considered crimes (criminal infringements),in case they are committed deliberately.
P	Criminal penalties are imposed for all customs infringements, which according to national law, the Customs Code Law No. 94(I) of 2004, are considered as criminal offences. For more details, please see Sections 89 to 102 of Customs Code Law No. 94(I) of 2004	All customs infringements according to national law, the Customs Code Law No. 94(I) of 2004, are regarded as criminal offences.

-	No answers given	
-	No answers given	
D	Illicit traffic Illicit import and export of prohibited goods or goods requiring a special permit Unlawful acts with goods subject to customs preferences	Only intentional acts shall be punishable as criminal offences unless a punishment for a negligent act is provided by the penal code. This means only intentional customs infringements may qualify as crimes. For illicit traffic and unlawful acts with goods subject to customs preferences these apply: 1) the object of the act must be a large quantity of goods or 2) a punishment for a misdemeanour has been imposed on the offender for the same act before. For illicit import and export of prohibited goods or goods requiring a special permit to constitute a crime the goods must be prohibited goods, or radioactive substances, explosive substances, narcotic drugs or psychotropic substances, precursors for narcotic drugs or

		psychotropic substances, non-narcotic medicinal products, dangerous chemicals or waste, strategic goods, firearms or ammunition without a mandatory document or without an entry in the state register.
K	In principle, all (as regards practice, cf. the answer to question no 4 in item 2).	In intentional cases (for the part of exceptions, cf. the answer to question no 3) (iii) in item 4.1).
R	Every customs infringement is punishable by criminal penalties.	

S	Tax evasion *(Art. 370 Fiscal Code)* Organised, criminal gangs, violent smuggling *(Art. 373 Fiscal Code)* Tax receiving *(Art. 374 Fiscal Code)* *Several contraventions concerning prohibitions and restrictions.*	Only intentional acts shall be punishable as criminal offences concerning the Fiscal Code. Contraventions concerning prohibitions and restrictions shall be punishable as criminal offences, if they are committed intentionally or they are committed negligently and a negligent act is provided for by criminal law.
E	Only smuggling: ·The evasion or attempt to evade duties and taxes owed ·The illicit import and export of prohibited goods or goods requiring special permit (p.ex. CITES, culture goods, dual use goods, etc) ·Falsification of documents	Only intentional cases

A	Illegal Importation from the Criminal Code Article 312. (1) Any person who withholds non-Community goods from customs inspection, or makes an untrue declaration before the authorities in respect of the circumstances relevant for the assessment of customs debts, non-Community taxes and dues, or customs security, and thereby diminishes customs revenues, is guilty of a isdemeanour punishable by imprisonment of up to two years, community service work, or a fine. (2) The punishment for a felony shall be imprisonment of up to three years if: a) the aforesaid crime results in considerable losses in customs revenues; b) the smuggling defined under Subsection (1) is committed in a pattern of business operation or as part of a criminal conspiracy. (3) The punishment shall be imprisonment between one to five years if: a) the aforesaid crime results in substantial losses in customs revenues; b) the smuggling defined under Paragraph a) of Subsection (2) is committed in a pattern of business operation or as part of a criminal conspiracy. (4) The punishment shall be imprisonment between two to eight years if: a) the aforesaid crime results in particularly considerable or higher losses in customs revenues; b) the smuggling defined under Paragraph a) of Subsection (3) is committed in a pattern of business operation or as part of a criminal conspiracy. (5) The perpetrator of the crime described in Subsection (1) above shall not be liable for prosecution if he settles his customs debt in the amount of the loss in customs revenues prior to indictment. (6) For the purposes of Subsections (1)-(4): a) 'security' shall mean the security provided for customs debts and non-Community taxes and dues in the form prescribed in customs laws; b) 'losses in customs revenues' shall mean any loss in revenues resulting from isdemeanou of customs debts and non-Community taxes and dues. Annex III. Receiving of Stolen Goods from the Criminal Code Article 326.

	(1) 'Receiving stolen goods' shall mean when a person – for financial gain or advantage – obtains, conceals or collaborates in the selling of any thing that originates from smuggling, theft, embezzlement, fraud, misappropriation of funds, robbery, plundering, extortion, illegal appropriation, or from another receiver of stolen goods. (2) The punishment shall be imprisonment for a isdemeanour for up to two years, community service work, or a fine, if receiving of stolen goods is committed: a) in respect of a minor value; b) in respect of a petty offense value, in a pattern of business operation. (3) The punishment for a felony shall be imprisonment for up to three years, if the crime of receiving of stolen goods is committed in respect of a considerable value or in respect of an object qualified as part of a cultural heritage. (4) The punishment shall be imprisonment between one to five years if the crime of receiving of stolen goods is committed: a) in respect of a substantial value; b) in respect of a considerable value in a pattern of business operation. (5) The punishment shall be imprisonment between two to eight years if the crime of receiving stolen goods is committed: a) in respect of a particularly considerable value; b) in respect of substantial value in a pattern of business operation. (6) The punishment shall be imprisonment between five to ten years if the crime of receiving stolen goods is committed: a) in respect of particularly substantial value; b) in respect of particularly considerable value in a pattern of business operation.

S	Failure to submit documentation Making an incorrect return, statement or account Smuggling	Any deliberate attempt to evade payment of customs duties
L	the most important customs offences for which are applicable criminal penalties are: contraband, false indication on the made in Italy; false or misleading declaration of the origin (in the case of misleading the crime regarding goods with distinguish marks that can induce the consumer to think that the goods are Italian), counterfeiting.	According to article 42 (2) of the Penal Code crimes are normally criminal offences in intentional cases.
T	Criminal liability is applicable to the following customs infringements: · Movement of goods the circulation of which is prohibited or specially regulated (for instance narcotic or psychotropic substances, alcohol or other alcoholic beverages, as well as radioactive or hazardous substances) across the state border of Latvia And the following infringements, if they are committed within a period of one year: · Smuggling, · Unauthorised activities with goods subject to customs clearance, Avoidance of declaring of cash in case of crossing the state border of Latvia is brought into the customs territory of the European Union or taken out thereof.	General rules of criminal law apply – either negligence or intent has to be established.

U	Smuggling – in case of illegitimate transportation of the following: (i) the goods or other items subject for customs control which value exceeds the amount of 250 minimal living standards (provided penalty – fine or imprisonment for up to 8 years); (ii) movable cultural items and antiquities (provided penalty – fine or imprisonment for up to 8 years); (iii) strategic goods, toxic, narcotic, psychotropic substances, substances featuring strong effects, precursors of narcotic and psychotropic substances (provided penalty – imprisonment from 3 to 10 years). 1.2. Customs fraud, i.e. carrying of items subject for customs control which value exceeds the amount of 250 minimal living standards, to Lithuania from the European Union Member State without submitting them for the customs control of Lithuania or another Member State of the European Union, or otherwise avoiding such control (provided penalty – fine or imprisonment for up to 8 years). 1.3. Illegitimate failure to carry the goods or products across the border of Lithuania, which value exceeds the amount of 250 minimal living standards, and which according to the transit or export documents were to be carried from Lithuania (provided penalty – imprisonment for up to 7 years). Note. One minimal living standard currently equals 130 LTL (37.7 EUR).	Criminal intents, criminal responsibility arises if the value of goods exceeds the amount of 250 minimal living standards
F	All customs infringements lead to the application of criminal penalties	Irrelevant.
V	According to Article 65(2) of the Customs Ordinance (Cap.37), all infringements of Customs legislation are considered as crimes. ***When the offender is found guilty*** the Court may impose a term of imprisonment not exceeding 2 years ***besides a pecuniary penalty***. - However law dictates that illegal activities re-tobacco alcohol, ammunition and firearms all incur ***imprisonment besides*** pecuniary penalties; - Imprisonment may be a suspended term; - 1/3 of the pecuniary penalty is considered as civil debt payable to Customs ***while 2/3 are retained by the Courts***.	***In any event.*** Refer to Articles 18, 60 and 62 of the Customs Ordinance (Cap.37); Article 18a of the Import Duties Act (Cap. 337).

W	§ introducing goods into the customs territory of the Community in violation of sections 38 and 39 of the CCC (section 10:1 (1) of the ADW) § introducing goods into other parts of the customs territory of the Community in violation of section 177 of the CCC (section 10:1 (1) of the ADW) § not reporting goods introduced to the inspector in violation of sections 40 and 41 of the CCC (section 10:1 (1) of the ADW) § not making a summary declaration of the goods reported pursuant to section 40 of the CCC in violation of sections 43 and 44 of the CCC (section 10:1 (1) of the ADW) § removing goods without the inspector's permission in violation of the provisions of section 47 of the CCC (section 10:1 of the ADW) § not declaring goods to a customs exit office in violation of customs legislation (section 10:2 of the ADW) § taking goods outside the customs territory of the Community in violation of section 183 of the CCC (section 10:2 of the ADW) § unloading, loading, transporting, storing in, possessing in or removing from any building, premises/property or site, buying, selling, offering for sale or delivering goods for which a declaration was not made as prescribed by customs legislation (section 10:3 (1) of the ADW) § in violation of customs legislation, using or causing to be used goods for which an exemption from import duties has been granted in a way or for purposes for which the exemption does not apply (section 10:4 (1) of the ADW) § giving to goods that have been released for free circulation following application of a reduced import duty or a zero rate on account of their special purpose, a purpose that is different from the purpose with a view to which the reduced import duty or the zero rate was applied (section 10:4 (1) of the ADW) § making a declaration required by customs legislation incorrectly or incompletely (section 10:5 (1) (a) of the ADW) § although obliged pursuant to customs legislation to show, surrender or make available for reference certain data carriers or their contents, showing, surrendering or making available for reference false or forged data carriers, or making their contents available for this purpose in a false or forged form (section 10:5 (1) (b) (3°) of the ADW) § although obliged by customs legislation to furnish information, details or instructions, not doing so	All the offences summed up are punishable as summary or minor offences. Some offences can in certain circumstances be prosecuted as crimes, provided certain additional conditions as to criminal liability can be proved.

	or doing so incorrectly or incompletely (section 10:5 (1) (b) (1°) of the ADW) § although obliged by customs legislation to show, surrender or make available for reference certain data carriers, or their contents, not complying with such obligation (section 10:5 (1) (b) (2°) of the ADW) § although obliged by customs legislation to keep accounts in accordance with the requirements made under or pursuant to the requirements of customs legislation, not keeping such accounts (section 10:5 (1) (b) (4°) of the ADW) § although obliged by customs legislation to retain books, documents or other data carriers, not retaining them (section 10:5 (1) (b) (5°) of the ADW) § not complying with an obligation imposed under or pursuant to sections 1:11, 1:23, 1:24 (3) 1:27 (1), 1:28 (2) or 1:32 (2) of the ADW, or section 14 or 69 (2) of the CCC (section 10:6 of the ADW) § not complying with an obligation imposed by section 1:34 of the ADW (section 10:7 of the ADW) § in violation of customs legislation, damaging an identification measure for a means of transport, salvage vehicle, packaging, goods, piece of equipment, pipeline, building or site, or part thereof (section 10:8 (1) of the ADW) § after having been informed by the inspector of his intention to effectuate an identification measure, not ensuring that the inspector can effectuate this measure properly (section 10:8 (3) of the ADW) § not ensuring that the identification measure effectuated by the inspector remains intact, unless – whether in the context of a customs regulation or otherwise – it involves a case as meant in section 72 (2) of the CCC (section 10:8 (3) of the ADW) § even though empowered to effectuate an identification measure, not ensuring that the measure is effectuated properly (section 10:8 (4) of the ADW) § separating or dissociating in full or in part means of recognition or denaturing added to goods, or eliminating or altering the effect of those means in full or in part (section 10:9 (1) of the ADW) § not informing the inspector in advance of the performance of activities meant in section 172 (1) of the CCC by the interested party meant in section 799 of the Implementing Regulation for the Community Customs Code (section 10:10 of the ADW in conjunction with section 7:1 of the General Customs Decree) § violation of the obligation imposed by section 4:1 of the General Customs Decree (section 10:10 of the ADW in conjunction with section 7:2 of the General Customs Decree) § infringement of the prohibition stipulated in section 3:2 (1) of the General Customs Decree (section	

	10:10 of the ADW in conjunction with section 7:3 of the General Customs Decree) § furnishing incorrect or incomplete information or performing acts which lead or may lead to an incorrect refund of import duties, or remission of import duties (section 10:11 of the ADW in conjunction with section 11:1 of the General Customs Regulation) § furnishing incorrect or incomplete details as a result of which an exemption is wrongly granted or could be wrongly granted (section 10:11 of the ADW in conjunction with section 11:2 of the General Customs Regulation) § violating one of the prohibitions as described in the General Customs Regulation (section 10:11 of the ADW in conjunction with section 11:3 of the General Customs Regulation) § not rendering assistance or not furnishing all necessary documents and information within a fixed term as meant in section 14 of the CCC (section 10:11 of the ADW in conjunction with section 11:4 of the General Customs Regulation) § unloading or loading goods, storing or removing them from storage without the permission required pursuant to statutory provisions (section 10:11 of the ADW in conjunction with section 11:5 of the General Customs Regulation) § in violation of statutory provisions, making alterations to the condition in which imported goods or goods that will leave the customs territory were declared (section 10:11 of the ADW in conjunction with section 11:6 of the General Customs Regulation) § in violation of the statutory provisions, omitting to make, or not making in time, a supplementary declaration as meant in section 76 (2) of the CCC (section 10:11 of the ADW in conjunction with section 11:7 of the General Customs Regulation) § not complying with the obligations imposed under section 60 (2) of the IW 1990 (section 64 (1) of the IW 1990) § although obliged pursuant to the IW 1990 to furnish information or details, not doing so, or doing so incorrectly or incompletely (section 64 (2) (a) of the IW 1990) § although obliged pursuant to the IW 1990 to make available for reference books, documents, other data carriers or their contents, not making them available for this purpose (section 64 (2) (b) of the IW 1990) § although obliged pursuant to the IW 1990 to make available for reference books, documents, other data carriers or their contents, making them available in false or forged form for this purpose (section 64 (2) (c) of the IW 1990)	

	§ not complying with the obligation imposed under section 58 (2) of the IW 1990 (section 64 (3) of the IW 1990)	

X	(i) unlawful introduction to the customs territory or the unlawful removal from the customs territory of goods liable to import or export duties (smuggling), (ii) avoiding of paying customs duties by giving incorrect data, (iii) infringements to the conditions of a temporary procedure, (iv) non respect of one of the obligations arising with regard to goods liable to customs duties, from the use of a customs procedure under which they are placed, (v) unlawful removal of goods from the customs supervision, (vi) customs fencing (buying goods, which were smuggled) (vii) unlawful repayment or remission customs duties, (viii) infringements to the conditions concerning a free zone, free warehouse, customs warehouse and temporary storage. (ix) making the customs controls difficult or opposing refusal or obstacles to customs controls, (x) non-fulfilment of the obligation to keep customs documents available for the customs service.	mentioned infringements are regarded as criminal offences in any event, but they are punishable only in intentional cases

M	To import, to export, to introduce or to remove goods from national territory without presenting them to a custom-house or in a place under customs control (art. 92º of law nº 15 of 2001, approved on the 5th of 2001). To remove from national territory classified historical and artistic objects (also art.92º). To obtain, with false declarations or another fraudulent way, the customs dispatch of any goods or a tax advantage (also art.92º). To put or to detain goods in circulation, in national territory's interior, violating customs law concerning to internal or community merchandise circulation, without processing the relevant documents required by law or without applying seals or other marks required also by law (art.93º). To detain on board, in ships with a tonnage minor than 750 tons, goods destined to trade, which circulation is restricted, with the exception of fish (art.94º). Fraud in the transportation of goods sent under a customs procedure (those mentioned on the art.84º of the Community Customs Code), as to steal or to replace goods transported under those customs procedures; to not respect the fixed itineraries; or to not present the good to the customs-house of destination (art.95º). Fraud on the introduction in consumption of goods submitted to excise, such as alcohol, oil products or tobacco (caused by disrespect of legal formalities related with their introduction in consumption, production, etc…). (art.96º) To destroy or to damage any arrested goods in the act of custom´s seizure or thereafter, being the owner, the trustee or the carrier; or to destroy or to sell arrested goods destined to grant the tax debt, after being notified for a legal procedure related with customs infringements (art. 98º). To open, to violate or to damage a seal or a mark required by customs legislation (art.99º).	Only if there is a fraudulent intention And in the cases foreseen in articles 92º, 93º, 95º and 96º of Law 15/2001, besides the fraudulent intention: only if the infringement affects the customs debt in an amount above € 15.000; or, in the case there is no customs debt, if the good´s value related to the infringement (stemming from the infringement) is higher than € 50.000.

	To buy, to detain or to maintain, goods related with criminal customs offenses (art.100º). To help the criminal offender in taking profits of goods related with criminal customs offenses (art.101º). To import or to export, without the necessary authorisations, goods which could be used for capital punishment, torture, or other cruel inhuman or degrading treatment or punishment (foreseen in Council Regulation (EC) No 1236/2005 of 27 June 2005); or to introduce or to remove those goods from national territory without presenting them to a customs house (article 97º-A)	

B	The customs criminal offences are foreseen in the Law No 86/2006 regarding the Customs Code of B and they are the followings: "Art.270 (1) - Introducing or taking out of the country, by any means, goods or products, through other places than those established for customs control is considered smuggling and shall be punished with 2 to 7 years imprisonment and banning of certain rights. (2) It is also considered smuggling and shall be punished according to paragraph (1) introducing or taking out of the country through places established for customs control, by eluding customs inspection, goods that must be placed under a customs procedure, if the customs value of the eluded goods is higher than 20.000 in the case of excise products and higher than 40.000 for the other goods. Art.271 - The unlawful introduction or taking out of the country of arms, ammunitions, explosive materials, narcotic drugs precursors, nuclear or other radioactive substances, toxic substances, waste, residues or dangerous chemical materials is considered as qualified smuggling and is punished with imprisonment from 3 to 12 years as well as banning of certain rights, if criminal law does not provide for more serious punishment. Art.272 - The use, at the customs authorities, of customs, transport or commercial documents referring to other goods or products or to other quantities of goods or products than those actually presented to customs, is considered an offence of using fictitious documents and is punished with imprisonment between 2 and 7 years and banning of some rights. Art.273 - The use, at the customs authorities, of false customs, transportation or commercial documents is considered an offence of using false documents and is punished with imprisonment of 3 to 10 years and banning of some rights. Art.274 - The facts mentioned in Art.270-273, carried out by one or more armed individuals or gangs, are punished with imprisonment between 5 and 15 years and banning of some rights. Art.275 - The attempt to carry out the offences mentioned in Art. 270-274 shall be punished. Art.276 - If the facts mentioned in Art. 270 – 274 are carried out by the employees or representatives of legal persons involved in import-export operations or to their benefit, then the banning of rights can	The answer can be found to the paragraphs 2. - 6) and 4.1. - 3);

	be applied, according to Art. 64 letter c) of the Criminal Code." (the right of filling a position, of practicing a profession or of carrying out an activity which holds the nature of the one by means of which the convict committed the crime).	
O	The criminal penalties are applicable for the customs infringements in criminal process before court for example - infringement of regulations about circuit of the goods in connection with foreign countries (infringement of ban or restiction of import, export or transit of goods, deprivation or non-payment of customs duty), infringement of provisions on handing controlled goods and technologies, copyright infringement , infringement of fauna and flora protection, counterfeiting of public documents, official stamp, seal of office, official sign and official mark, subvention fraud, tax and insurance evasion.	The infringements mentioned are regarded as criminal offences under circumstances that the damage due to this infringement is more than 266 EUR. Definition of DAMAGE (Criminal Code of the Slovak republic - § 124) Damage means, detriment (damage) on property or real (material) declain on property or rights of damaged (defective) or

		some other detriment and this detriment is in causality (chain of causation) to crime. In Criminal code is several kinds of damage (in dependence on extent of the damage), but illegal act is crime, if incurred damage is „small“, does mean, damage is more than 266 EUR include of tax.
N	Evasion of financial obligations, smuggling, illegal export and import of goods of special cultural or historical significance or outstanding natural features, forgery or destruction of business documents.	Smuggling, illegal export and import of goods of special cultural or historical significance or outstanding natural features – in any event, but the guilt must be established; evasion of financial obligations, forgery or destruction of business documents – special intention (dolus coloratus) must be established.

X	two posibilities, according to General Tax Law in first place, or to Smuggling Law on the second: · When customs debt is bigger than 50.000 eurs, (it´s only possible to apply when a customs debt exists) or · When value of smuggling goods is bigger than 18.000 eurs (it´s possible to apply whether customs debt exists or not.	a subjective element of the offence (bad faith) must be established and on the other side some quantitative measure of seriousness of the offence (customs debt or value of goods)

Z	Obstruction of an officer; uncleared landing or flying from outside a customs & excise airport; breaking conditions over the movement of hovercraft; uncleared movement of goods by pipeline; failure to comply with transit shed conditions; breaking regulations concerning the movement of goods into and out of Northern Ireland; refusal to give safe access to a ship in port; failure to comply with licence conditions when moving uncleared goods; failure to comply with conditions concerning the movement of goods to and from inland clearance depots; not permitting access to aircraft, aerodromes and records; flying an aircraft when flight permission has been denied by the Commissioners; failure to report inwards movements of goods; failure to comply with conditions concerning postponed entries; failure to comply with provisions as to entry of goods; failure to comply with regulations concerning the unloading, removal, etc of imported goods; importing goods that are either prohibited, restricted or on which a duty has not been paid; shipping goods for export before entry outwards has been delivered and accepted; failure to furnish information relating to the cancellation of an entry outwards; furnishing export control documents that relate to another person; failure to surrender an authenticated Community customs document; contravening regulations concerning the loading of goods for export; loading or unloading stores outside the Z without authority; improper use of stores; failure to provide information relating to export goods; failure to follow General regulations made by the Commissioners as to exportation; unloading goods for export in the Z exportation of prohibited goods as stores; evasion of any agricultural levy; contravening provisions regarding costal trade; failure of a coasting ship to obtain clearance; removal of goods from a coasting ship at sea or outside the United Kingdom; landing a coasting ship at a point outside the Z; carrying explosives without authority; failure to provide information or documents in relation to	In almost all cases we must prove an intention to break the law. The exceptions are known as absolute offences, where mens rea does not need to be proven. Such offences are rare, but an example is entering the 'Nothing to declare' area of an airport or port when you are in possession of duty free goods in excess of your legal allowance.

	imported or exported goods; failure to declare things contained in baggage or to produce baggage; failure to produce information or documents where origin of goods exported is evidence under Community law or practice; removal of a seal, lock or mark used to secure or identify goods; signalling to smugglers; offering smuggled goods for sale; being armed or disguised when contravening any prohibition or restriction; failure to bring to a ship liable to forfeiture; deficiency in warehoused goods; failure to pay a penalty in respect of deficiencies in warehoused goods; accessing a warehouse or Queen's warehouse without proper authority or cause; removal of warehoused goods with intent to defraud duty or evade any prohibition or restriction; failure to deliver up an excise licence; failure to furnish information or produce records relating to drawback claims; attempting to obtain drawback unlawfully or inflate drawback claims; failure to comply with requirements over seizure or detention of goods; being owner or master of a ship not exceeding 100 tons, an aircraft, or a hovercraft liable to forfeiture; failure to enable officers to examine bonded premises or premises at which a security for goods has been provided; damaging locks or lock fittings of bonded premises; removing goods liable to forfeiture; preventing search of a vehicle or vessel; making an untrue declaration in relation to an assigned matter; falsifying documents in relation to an assigned matter or counterfeiting seals/signatures/marks etc used by officers; Providing or using false or unjust scales; preventing a true examination where false scales are used; knowingly acquiring possession of goods unlawfully removed from a Queen's warehouse, goods on which duty has not been paid, prohibited goods, or dealing in any way with such goods with intent to defraud or evade duty; being knowingly concerned in attempted or actual fraudulent evasion of any duty, prohibition or restriction or any provision of CEMA 1979; taking steps with a view to the fraudulent evasion of duty.	

TABLE 7003

Member State	Question 1	Question 2	Question 3
	Does your national system provide for measures applied in addition to criminal and non-criminal penalties aimed at ensuring compliance?	**If so, please list the main types of measures you can apply or that will automatically apply (examples might include withdrawal of approvals, revision of existing conditions of approval, requirement to provide financial security or lodge funds to cover future debts, mandatory training of personnel, disqualification of company officials from holding office, publication of condemnatory decisions etc.)**	**Please identify any ancillary penalties that you can apply, and also the main penalties that they may be paired with. For example, the main penalty is imprisonment of a company director or manager, the ancillary penalty is disqualification from engaging in industrial or commercial activity. If you do not recognise the concept of ancillary penalties please just say so.**

A	Yes	These can be applied: • Confiscation of object used to commit offence and direct object of offence • Confiscation of assets acquired through offence • In aggravated criminal cases, extended confiscation of assets • Refusal to make a decision favourable to the person or revocation of an initial decision favourable to the person (includes withdrawal of approvals, revision of existing conditions of approval etc) This is automatically applied: • Publication of condemnatory decisions	We call them supplementary punishments. In criminal cases for natural persons these can be applied: • Occupational ban • Expulsion of a foreign citizen (There are more but none are relevant to the customs matter) One too many supplementary punishments can be applied beside one principal punishment.
B	Yes	Refusal, annulment, suspension or withdrawal of authorisations.	Criminal penalties 1. For natural persons: A: Main criminal penalty: • imprisonment; B: Ancillary (complementary) criminal penalties: a) banning of certain rights from 1 year to 10 year;

			• the right of elect and being elected in public authority or public elective positions • the right of filling a position involving the exercise of the state authority • the right of filling a position or of practising a profession which holds the nature of the one by means of which the convict committed the crime • parental rights • the right of being a tutor or curator b) military degradation. 2. For legal persons: A: Main criminal penalty: • fine B: Ancillary (complementary) criminal penalties: • Dissolving of a legal person • Suspension of a legal person's activity from 3 month to 1 year

			or suspension from 3 month to 3 years of one of a legal person's activities related at which the criminal offence was committed; • Closing of some working points of a legal person, from 3 month to 3 years • Ban on access to public acquisition procedures from 1 to 3 year • Display or spreading of the judicial conviction decision; Non-Criminal penalties (Both for natural persons and legal persons) A: Main non-criminal penalty: • Warning • Fine B: Ancillary (complementary) non-criminal penalties: • Confiscation of goods • Payment of the goods value, in case of confiscation of goods, if the goods are missing • Confiscation of the vehicles and

			means of carrying that are changed in such a way as to allow concealment of goods, which were used in the transportation or the carriage of the goods subject to the customs offence • Seizure of the means of transport used for committing the contravention until the fine is paid.

C	Yes	Decisions which relate to: • reject an application for authorization or licence • total withdrawal of an existing authorization or licence • time-limited withdrawal of an existing authorization or licence • revision of conditions of authorization or licence (such as requirement to submit financially a greater guarantee covering future debts arising, requirement to pay part of existing debts, obligation to submit specific information of the company such as economic matters, key persons to customs authorities etc.)	• ban on business operations from 2 up to 5 years which is mainly applied in criminal proceedings by the court where main penalty is imprisonment or fines
D	**Criminal procedure: YES** **Non-criminal procedures:** 1. Contravention procedure: YES 2. Administrative procedure: YES, at the Customs Directorate's responsibility (Withdrawal of the status of "reliable debtor", a specific status granted to reliable clients of the customs administration as	1. **Regarding crimes:** • • The <u>types of measures</u> are the following: • 1. Reprimand • 2. Probation • 3. Involuntary treatment in a mental institute	• **<u>Regarding crimes:</u>** The punishments in our Criminal Code are the followings: - Imprisonment, - community service work, - Fine, - Restraint of profession,

	stipulated in national customs legislation)	• 4. Confiscation • 5. Civil Forfeiture • 6. Supervision by probation officer • 7. Sanctions in connection with the criminal liability of legal persons 2. **Regarding Contraventions (non-criminal) Procedure:** <u>Punishment</u> is detention and pecuniary charge; there are no ancillary punishments at all. <u>Measures:</u> a) prohibition from driving vehicles (not applicable in case of customs infringements), b) confiscation c) warning/notice d) Banishment (not applicable for customs infringements).	- Prohibition of driving vehicles, - Expulsion. Regarding customs infringements the general punishment is imprisonment. If the crime committed carries a maximums sentence of 3 years of imprisonment, the imprisonment can be substituted by community service work, fine, restraint of profession, prohibition of driving vehicles or expulsion or by any combination of these. The punishments may be imposed simultaneously as well, with the following exceptions: - Where fine is the sole means of punishment, this penalty may not be substituted with another form of punishment, o Imprisonment cannot be imposed simultaneously with community service work, and expulsion with community service work or fine. • • <u>Ancillary punishments</u> are: • 1. Deprivation of civil rights

		3. **Regarding (non-criminal)administrative procedure:** All authorisations (e.g. for self-declaration of VAT on importation) based on this statutes are revoked, annulled or suspended. Seizure.	2. Banishment • Deprivation of civil rights and banishment may be imposed in addition to a sentence of imprisonment. If the fine is not paid or an instalment is late, it shall be substituted by imprisonment. • **<u>Regarding contraventions (non-criminal):</u>** Pecuniary charge if not paid can be changed to community service work or detention. There are no ancillary punishments in the case of contraventions. Punishments are detention and pecuniary charge. Punishments can be applied with measures on the basis of the following: Confiscation can be applied individually as well. Warning/notice can be applied instead of the penalty.

			• **<u>Regarding administrative infringements:</u>** There are no ancillary penalties.
E	Yes	• Withdrawal of approvals • Revision of existing conditions of approval • Requirement of final security (financial guarantee to cover future debts) • Disqualification as customs agency • Publication of condemnatory decisions	Ancillary penalties may only be requested by public prosecutor on demand of the customs administration. According to the Penal code (1st Book) applicable to customs criminal penalties, ancillary penalties are especially: • Interdiction of civil and political rights • Interdiction to exercise certain professional activities, like customs agency or other customs related activities • Non remunerated public work of general interest
F	No		In F there are 3 main penalties: • fine, • placing under judicial supervision, • Imprisonment. Other penalties, mentioned in the report that are existed in F, according to the F legal system are treatment as criminal

			measures, but for the purpose of the report should be regarded as penalties because they can be applied alone (except of ancillary penalties indicated below). According to the definition that was agreed, in F we can recognize 2 ancillary penalties: • disqualification from commercial activity • deprivation of public rights, that may be paired with main penalty – imprisonment; and 1 ancillary penalty: • publication of judicial decision, that may be paired with all 3 main penalties mentioned above.
G	Yes	• suspension of granted authorisation • annulment of granted authorisation note: the national legislation provides annulment of authorisation only for 1 type of an authorisation – submission of import customs declaration with electronic means. In other cases the penalty (fine) is relevant only in process of issuing and prolonging of	Criminal penalties (only for natural persons): <u>Main criminal penalties</u>: • imprisonment • community service • fine <u>Ancillary (complementary) criminal penalty:</u>

		the authorisation. The authorisation is not issued if the person is punished several times during a year.	• confiscation of property Non-Criminal penalties (both for natural persons and legal persons) <u>Main non-criminal penalties:</u> • warning • fine <u>Ancillary (complementary) non-criminal penalties</u>: • confiscation of goods
H	Theoretically there is a possibility to ban import or export operations for a period from 6 months to 2 years on a person who has committed a very grave smuggling infringement or repeated infringements. This is a punishment. A revocation of an AEO approval will be made because of non-appliance with art. 5a of the CCC. This is a measure.	The above mentioned punishment and measure will be applied, none of them applies automatically.	The above mentioned penalty can be applied only if the person is found guilty for the very grave smuggling infringement or repeated infringements.
I	Yes	Suspension and withdrawal of approvals in respect of customs procedures or amendment of existing conditions. Refusal of new due to previous non compliance Provision of security for future debts	We don't recognise the concept of ancillary penalties.
J	Yes	The loss of the authorisation for simplified custom regimes or Status EAO	Main penalties:

			For administrative infringements • Fine • Confiscation of the goods (Only in administrative smuggling infringements) For criminal infringements. • Imprisonment • Fine • Confiscation of the goods (Only in Criminal smuggling infringements) Ancillary penalties: For administrative infringements • Ban to access to public assistance, contracts or subsidies • Annulment or suspension of grant authorisation • The ban of the commercial activity temporally (Only in administrative smuggling infringements) For criminal infringements

			• Confiscation money earned with the operation and all elements used for committing the infringements (Only in Criminal smuggling infringements)
K	Yes	• Refusing to grant an authorisation • Suspension of a granted authorisation • Withdrawal of a granted authorisation • Expansion of a granted authorisation with additional requirements (e.g. financial security or lodge funds, reporting commitment • *Surcharge in tourist traffic*	Main penalties: • imprisonment • fine Ancillary penalties: • confiscation of goods and vehicles • ban of driving • withdrawal of driving license • publication of conviction • official warning In the K legislation an ancillary penalty is a consequence provided in the penal law with special conditions. In general an ancillary penalty is imposed in addition to a main penalty, but some types of ancillary penalties can be imposed without a main one, e.g. confiscation of goods, which were smuggled by an unknown or if the

			procedure is ceased because of opportunity reasons. An official warning is never imposed together with a main penalty.
L	Yes	• Confiscation of goods or other items in criminal procedure • Refusal to grant authorisation • Annulment or suspension of granted authorisation • Temporary or permanent prohibition to carry out activities in free zones or free warehouses • Publication of condemnatory decisions (when criminal penalty is imposed on a legal person) Note. Confiscation of goods and other items is considered: • as "punitive measure" in criminal procedure • as ancillary penalty in administrative procedure	There are no ancillary penalties in criminal procedure. In administrative procedure the only ancillary penalty is confiscation of goods and items used for transportation or concealing of the goods. It may be paired with the fine.
M	Yes	• Suspension and withdrawal of approvals in respect of customs procedures • Revision of existing conditions of	These ancillary penalties do not apply under the Irish tax or customs law.

		approval • Refusal of new approvals based on non-compliance • Requirement to provide increased financial security for potential debts • Increased levels of customs controls	
N	Yes	Refusal, suspension and withdrawal of approvals. Revision of existing conditions of approval. Requirement to provide financial security or lodge funds to cover future debts. N.B. Publication of condemnatory decisions can be either a penalty or an obligatory/optional measure in N, but we won't enter into to much details because we realised that publication is never , "strictly speaking", pronounced for customs infringements (but only for common infringements related to customs infringements, for example : bankruptcy – in that case as an informative measure)	Main penalties : imprisonment and fines Ancillary penalties : confiscation (never pronounced alone but can be obligatory) temporary or permanent disqualification from the practice of industrial or commercial activities a judicial winding-up order disqualification from engaging in an activity requiring official authorisation or approval, or funding, managing or directing a company or a foundation

O	Yes	In case of smuggling or fraud, when the taxes and duties evaded exceeds 150.000, in order to ensure payment of customs debt and fines, customs authorities take measures to seize 50% of bank accounts in the name of the offender and forbid issuing certificates of tax compliance necessary for selling property. (article153 of National customs code).	
P	Yes	As already mentioned in earlier documents: • Surcharge in tourist traffic (pecuniary charge) • Refusal to grant authorisation • Annulment of granted authorisation • Suspension of granted authorisation	Main penalty in all cases: • fine (or imprisonment for failure to pay) • imprisonment Ancillary penalties: • imprisonment (in some cases) • confiscation/forfeiture (or compensation) – but under certain conditions confiscation can be applied without condemnation (e.g. smuggled tobacco if the perpetrator of the smuggle cannot be prosecuted).

Q	Yes, as a result of a criminal infringement additional measures may be applied in addition to criminal penalties.	• Withdrawal of an approval/licence, i.e. of a customs warehouse, tax warehouse, customs agent • Suspension of an approval/licence • Warning in writing	N/A
R	In R, measures such as withdrawal of authorisations to use customs procedures or to be granted some for of advantageous status, such as AEO, are applied when the criteria under the Code are met.		Main penalty : fine only or fine and imprisonment for misdemeanour Ancillary penalties (only for offences qualified as crimes) Ban to run in the stock exchange, to practice as stockbroker or broker, to vote or be elected to the chambers of commerce, commercial courts and industrial tribunals. Publication of extracts of judgements in all courts and stock exchange.
S	YES, these measures fall within a different category with respect to criminal and not criminal penalties. In particular, when the authorization is not granted or is revoked such measures are taken failing the prerequisite for the granting of the authorisation or they are measures resulting from an offence committed by the operator that jeopardize the relation of trust between him and the tax administration. Therefore,	YES, they are mainly *1) rejection of application for authorization (i.e. cases when the authorization is not granted);* *2) suspension of authorizations;* *3) Revocation of authorizations.*	For Criminal offences: *Remark:* There are ancillary penalty established by the general rules of the Criminal Code and they are applied by a court. The principal penalties are imposed by the court by a sentence of condemnation; the ancillary legally result as criminal consequences of them.

	as regards the above-mentioned cases, the difference lies in the lack of ***the punishing nature***, an element which should underpin the penalties, that is the intention to punish behaviours deemed illegal by the legal system and giving rise therefore to a liability for the offender.		For non criminal offences: Under Article 21, paragraph 1, of Legislative Decree n. 472/1997 administrative ancillary penalties are: a) – the disqualification for up to six months from the office of director, auditor or chartered accountant of companies or public, private legal entities; b) - disqualification from public tenders and provisions for up to six months; c) – ban on obtaining licences, concessions or administrative authorisations for doing business and self-employment and their suspension for up to six months; d) – the suspension for up to six months from doing business or self-employment other than c) above. However, as highlighted when answering the Questionnaire, Article 21, paragraph 2 also states that "each tax law when regulating the cases where ancillary penalties are applied establishes the time limits in relation to the seriousness of the offence and to the minimum and maximum time limits of the main penalty".

			Therefore, it is the specific legislation regulating the different taxes that establishes the cases where ancillary penalties are applied. As for customs duties we must point out here that there is a wide time gap between the entry into force of the customs rules of the Presidential Decree No. 43/1973, containing most of the customs punishing rules, and the entry into force of the general provisions set forth in the Legislative Decree No. 472/1997 also including Article 21, paragraph 1 on the ancillary penalties. Therefore it is not easy to coordinate the two regulating measures since the legal principles inspiring the rules under examination have evolved. Accordingly, it seems difficult to directly apply the list, which is not exhaustive, of ancillary penalties set forth in Article 21, paragraph 1 to the customs field.
T	Yes	T customs can refuse to accept an application or revoke an authorization (Chapter 382 Regulation 5 of Excise Duty goods in the 6th Schedule) Example: Excise Tax Warehouse permit	Not Applicable

U	Yes	Within criminal procedures, publication of a criminal judicial verdict including personal data is a penalty. Publication of condemnatory administrative decisions including personal data is not possible, either as non criminal penalty or as measure. Publication of judicial decisions in criminal as well as non-criminal cases without personal data is always possible.	The legal system in the U does not recognise the concept of ancillary penalties.
V	V legal system foresees, in specific legislation, some administrative measures to be adopted in cases of non compliance behaviours.	• Destruction of goods; • Refusal to grant authorisation; • Withdrawal of granted authorisations;	Criminal procedure Main Penalties: • imprisonment • fine Ancillary penalties: • Confiscation of the goods, means of transport and other instruments used in the perpetration of the crime • Ban on access to subsidies for 3 years • Loss of tax or customs benefits • Temporary ban on access to some fairs, markets, auctions and public sales as well as to tenders for public works or the supply of goods or services, promoted by public entities for no more than 3 years

			• Closure of business establishment • Judicial winding-up order; • Annulment or suspension of granted authorization for no more than 3 years • Publication of judicial decision, being the expenses paid by the condemned perpetrator. Non criminal procedure Main penalty: • pecuniary charge Ancillary penalties: • confiscation of the goods • Ban on access to subsidies for 2 years • Loss of tax or customs benefits • Temporary ban on access to some fairs, markets, auctions and public sales as well as to tenders for public works or the supply of goods or services, promoted by public entities for

			no more than 2 years • Closure of business establishment for no more than 2 years • Annulment or suspension of granted authorization for no more than 2 years • Publication of condemnatory decision, being the expenses paid by the condemned perpetrator
W			
X		Withdrawal of licence, revision of existing conditions of approval, determination or increase of financial security.	Criminal procedure: Imprisonment is always possible just as main penalty. Pecuniary charge is possible as main and also as ancillary penalty (beside that also prohibition of driving is an ancillary penalty, but is not relevant in "customs" criminal acts). Beside ancillary penalties we also have so called security measures (for example publication of a decision or forfeiture are consider as security measures) and legal consequences of the decision (prohibition of acting on the basis of licences, given by state).

			Non-criminal procedure: ancillary penalties are deportation of foreigners, forfeiture (both possible to sentence together with fine), educational measures for juveniles.

TABLE 8001: Legal Persons

	1. Is there a definition of legal person under your national regulation? Can you specify the reference?	**2. Does your legislation provide for responsibility of legal persons in case of customs related infringements committed by this legal person?**	**3. Can the responsibility of a legal person be criminal according to your legislation?**	**4. Who is liable for the customs penalty in the case of infringement committed by a legal person?**
A	§ 28a Fiscal Penal Code in connection with § 1 para 2 and 3 of the Federal Statute on the Responsibility of Entities for Criminal Offences legal persons: limited liability company, joint-stock company, European Society, cooperative society, European cooperative, associations and private foundations; plus: commercial partnerships, European Economic Interest Grouping.	On 1st January 2006 the new A Federal Statute on the Responsibility of Entities for Criminal Offences came into force. The new legislation provides a general criminal liability for legal persons and other bodies like partnerships to all penal offences, whether they are intentional or negligent, in addition to and independent from the criminal liability of natural persons involved.	Yes. See question 2. There are the same pecuniary penalties foreseen as to natural persons except imprisonment.	According to A legislation, an infringement can only be committed by a natural person, but in addition, a legal person can be liable separately for such an offence. The liability for an offence of a legal person excludes a possible liability for the payment of fines, imposed to a related natural person.
B	The Interpretation Act 2005 Section 18(c) provides "Person" shall be read as incorporating a body corporate (whether a corporation aggregate or a corporation	Yes.	Yes. Similar sanctions as would apply in any other case.	The legal person e.g. in the case of a company the company although officers of the company could also be held liable in some

	1. Is there a definition of legal person under your national regulation? Can you specify the reference?	2. Does your legislation provide for responsibility of legal persons in case of customs related infringements committed by this legal person?	3. Can the responsibility of a legal person be criminal according to your legislation?	4. Who is liable for the customs penalty in the case of infringement committed by a legal person?
	sole) and an unincorporated body of persons as well as individual and the subsequent use of any pronoun in place of a further use of "person" shall be read accordingly".			circumstances. In Ireland in order to impose legal liability on both the legal and natural persons a conviction must be obtained against both of them. The fine is imposed on both the legal and natural persons.
C	The term 'legal person' is not defined in law. According to the prevailing opinion, a legal person is an association of individuals or a legal estate, which has a legal capacity on the basis of legal recognition, meaning that the legal person itself can be the holder of rights and duties, but that it is not a natural person either.	Legal persons cannot act in a culpable way. As a result, they cannot be the defendant/respondent in a criminal procedure and/or the affected party in an administrative fine procedure. Pursuant to § 30 Law Concerning Administrative Offences, only a corporate fine can be imposed on a legal person as a secondary party.	No.	The natural person who fulfils the facts of the criminal / administrative penal norm is responsible. For a corporate fine (§ 30 Law Concerning Administrative Offences) the offender (natural person) must either belong to an organ of the legal person who is authorised to represent it or must be an employee in a managerial position, and his/her conduct must contravene a duty incumbent

	1. Is there a definition of legal person under your national regulation? Can you specify the reference?	2. Does your legislation provide for responsibility of legal persons in case of customs related infringements committed by this legal person?	3. Can the responsibility of a legal person be criminal according to your legislation?	4. Who is liable for the customs penalty in the case of infringement committed by a legal person?
				on the legal person, and/or the legal person must have financially benefited from the offence. The legal person has to pay its corporate fine. The natural person the penalty imposed on her/ him There is no joint liability between natural and legal person.
D	In the civil code there isn't a general definition of legal person. From the article 11 to article 35 of the civil code there are general provisions that regulate the different types of legal person (such as to say foundations or association). The article 2247 and from article 2325 of the Civil Code there are general provisions that regulate the different types	According to article 7 of the Law Decree No 30.09.2003, 269 transformed with amendments into law No 24.11.2003, 326, administrative penalties that concern fiscal procedures of company or legal person are exclusively in charge of the legal person.	No. They are administrative penalties that concern fiscal procedures of company or legal person are exclusively in charge of the legal person.	According to article 7 of the Law Decree No. 30.09.2003, 269 transformed with amendments into law No. 24.11.2003, 326, administrative penalties that concern fiscal procedures of company or legal person are exclusively in charge of the legal person. The legal provisions on administrative penalties are

	1. Is there a definition of legal person under your national regulation? Can you specify the reference?	2. Does your legislation provide for responsibility of legal persons in case of customs related infringements committed by this legal person?	3. Can the responsibility of a legal person be criminal according to your legislation?	4. Who is liable for the customs penalty in the case of infringement committed by a legal person?
	of a company.			based on the principle of the character of the offence: Article 5 of the Legislative Decree N. 472/1997 states that each individual is liable for his action or omission. Article 11, paragraph 2, of the Legislative Decree N. 472/1997, provides that, “unless otherwise provided” the offender is supposed to be he who has undersigned or committed the illegal acts. In view of this, the lawmaker, with Article 7 of the Law Decree N. 269/2003, transformed with amendments into the Law N. 326/2003, has provided that the administrative penalties on tax relations of companies and entities having legal status are

	1. Is there a definition of legal person under your national regulation? Can you specify the reference?	2. Does your legislation provide for responsibility of legal persons in case of customs related infringements committed by this legal person?	3. Can the responsibility of a legal person be criminal according to your legislation?	4. Who is liable for the customs penalty in the case of infringement committed by a legal person?
				exclusively imposed on the legal person. In these cases the provisions set forth in the Legislative Decree no. 472/1997 are applied since they are compatible. In the customs area the issue of the liability to the administrative penalties is particularly critical for the figure of the customs agent that acts on behalf of the trader. The customs agent can act with a direct or indirect representation. In both cases he is the person that materially signs and performs the acts, in particular the customs declaration. Therefore, pursuant to Article

	1. Is there a definition of legal person under your national regulation? Can you specify the reference?	2. Does your legislation provide for responsibility of legal persons in case of customs related infringements committed by this legal person?	3. Can the responsibility of a legal person be criminal according to your legislation?	4. Who is liable for the customs penalty in the case of infringement committed by a legal person?
				11, paragraph 2, of the Legislative Decree N. 472/1997 he is supposed to be, until proved otherwise, the offender, unless he acts as a direct representative of an entity having legal status; in fact in this latter case, under the Law Decree No. 269/2003, transformed with amendments into Law No 326/2003 the penalties would only be imposed on the entity. However, customs agents can not be held responsible for the offence, neither as the material author of the offence, neither he is the person who commits the same infringement with the operator, when his behaviour is inspired by a full and proper professional diligence as it happens if he it has merely

	1. Is there a definition of legal person under your national regulation? Can you specify the reference?	2. Does your legislation provide for responsibility of legal persons in case of customs related infringements committed by this legal person?	3. Can the responsibility of a legal person be criminal according to your legislation?	4. Who is liable for the customs penalty in the case of infringement committed by a legal person?
				stated in the declaration elements supplied by the operator. As regards the entities without legal status, under Article 11, paragraph 1, of the Legislative Decree No. 472/1997, when an offence has influence on the assessment or payment of the tax and has been committed by an employee, the representative or the administrator, also the actual one, of the entity, in the execution of his duty and charges, the said entity, to the advantage of which the offender has acted, is jointly liable. The joint liability has not an afflictive and penalty character (since it cannot contradict the

	1. Is there a definition of legal person under your national regulation? Can you specify the reference?	2. Does your legislation provide for responsibility of legal persons in case of customs related infringements committed by this legal person?	3. Can the responsibility of a legal person be criminal according to your legislation?	4. Who is liable for the customs penalty in the case of infringement committed by a legal person?
				principle of status) but has a character of civil liability of a measure equal to the penalty imposed on the offender.
E	Generally no, but e.g.as regards the scope of corporate criminal liability a liable legal entity in the Finnish Penal Code is defined a corporation, foundation or other legal entity in whose operations an offence has been committed.	Yes.	Yes. Corporate fine. The penal scale of corporate fine is 850 to 850 000 EUR. Corporate fine is applicable in cases of: • tax fraud and aggravated tax fraud if the customs duties have been avoided (if they are other duties, taxes or levies which have been avoided, corporate fine is not applicable) [Cf. the answers to questions no 1 and 8 in item 1.] • smuggling, regulation offence and aggravated regulation offence [Cf. the answers to questions no 1 and 8 in item 1.]	The legal person concerned. As regards criminal liability, a legal person may be sentenced to a corporate fine if a person who is part of its statutory organ or other management or who exercises actual decision-making authority therein has been an accomplice in an offence or allowed the commission of the offence or if the care and diligence necessary for the prevention of the offence has not been observed in the operations of the legal person.

	1. Is there a definition of legal person under your national regulation? Can you specify the reference?	2. Does your legislation provide for responsibility of legal persons in case of customs related infringements committed by this legal person?	3. Can the responsibility of a legal person be criminal according to your legislation?	4. Who is liable for the customs penalty in the case of infringement committed by a legal person?
F	No.	Yes, when the infringements are committed by the legal person's representatives, directors or managers, in the name and own interest of the legal person.	Yes.	**Criminal penalties:** The legal person is always condemned in participation with its representatives. Each of them has its own liability for the fulfilment of the separate customs criminal penalties. **Non criminal penalties:** The legal person itself (the legal person's non criminal liability excludes its representatives' liability). When there is a default from the legal person, either in what regards criminal or non criminal penalties, and that default is caused by its representatives (in those cases where the legal person goes into bankruptcy or simply doesn't pay the fine/pecuniary charge due to the conduct of

	1. Is there a definition of legal person under your national regulation? Can you specify the reference?	2. Does your legislation provide for responsibility of legal persons in case of customs related infringements committed by this legal person?	3. Can the responsibility of a legal person be criminal according to your legislation?	4. Who is liable for the customs penalty in the case of infringement committed by a legal person?
				its representatives), they will have a subsidiary liability (as a civil obligation) to fulfil the penalty.
G	In accordance with article 2.33 of the Civil Code, a legal person is an enterprise or an organisation which has its business name, which may in its name gain and enjoy rights and assume obligations as well as act as a defendant and as a plaintiff in courts. In accordance with article 2 of the Law on Tax Administration, any organisation of a foreign state recognised as having legal personality under the laws of the Republic of Lithuania or a foreign state is treated as a legal person.	Responsibility of legal persons for customs infringements is provided for in the Law on Tax Administration and the Criminal Code. Suspension and annulment of granted authorisation can also by applied in respect of legal persons.	The responsibility of a legal person can be criminal. According to the Criminal Code, a legal person can be imposed a fine, restriction on the activities, confiscation of property or liquidation. Upon imposing a penalty for legal person, the court may pronounce the sentence via mass media.	When a legal person commits the customs infringement specified in the Law on Tax Administration, he is imposed a fine stipulated in article 139 of this Law. The employee of this legal person, who is guilty for the infringement, can be liable according to the Code of Administrative Offences or the Criminal Code. The criminal responsibility of a legal person is derived from the criminal responsibility of a natural person. For the criminal responsibility of a legal person to arise, at first the natural person who has committed a criminal act for the interests or

	1. Is there a definition of legal person under your national regulation? Can you specify the reference?	2. Does your legislation provide for responsibility of legal persons in case of customs related infringements committed by this legal person?	3. Can the responsibility of a legal person be criminal according to your legislation?	4. Who is liable for the customs penalty in the case of infringement committed by a legal person?
				benefit of the specific legal person must be identified. The criminal responsibility of a legal person does not eliminate the criminal responsibility of a natural person who has committed a criminal act. Possibility to inflict a penalty to legal person is provided for in these legal acts of Lithuania: • Law on Tax Administration – fine; • Criminal Code – criminal penalty; Penalties provided for in the Code of Administrative Offences can be inflicted only to natural persons.

	1. Is there a definition of legal person under your national regulation? Can you specify the reference?	2. Does your legislation provide for responsibility of legal persons in case of customs related infringements committed by this legal person?	3. Can the responsibility of a legal person be criminal according to your legislation?	4. Who is liable for the customs penalty in the case of infringement committed by a legal person?
H	In H law, legal persons who can be held criminally liable, are the following (Art. 5 of the Criminal Code): 1. the legal persons under private law, i.e. the commercial companies with legal personality and the companies or associations which do not have commercial activities. 2. the legal persons under public law (save exceptions), i.e. administrations with legal personality, local authority associations, autonomous public undertakings and publicly owned credit institutions. 3. certain entities without legal personality to be treated as legal persons pursuant to the	The Act of 4 May 1999 introduced the criminal liability of legal persons into H. The criminal liability of legal persons covers all types of infringements to the legislation applying in H, i.e. including customs and excise infringements. When a legal person and a natural person are prosecuted for the same offences, the joint and several sentence to the payment of the taxes and the fines at issue shall be mentioned in the writ of summons.	Yes it can. The Act of 4 May 1999 introduced the criminal liability of legal persons into H. The principle regarding the criminal liability of legal persons was included in the new Article 5 of the Criminal Code (see Art. 2 of the Act of 4 May 1999). The fine shall be the principal penalty which is common for all legal persons. Furthermore, accessory penalties are provided for in certain cases. a. The fine: As a legal person cannot be penalised with deprivation of liberty, there is a conversion mechanism for penalties involving deprivation of liberty which can be imposed to a natural person and the penalties involving	In practice, it occurs that only the legal person is sentenced, that only the natural person is sentenced or that both of them are sentenced together. a. Conviction of the legal person only 2 hypotheses: - when the natural person who committed the offence (the infringement) cannot be identified; - in case the natural person can be identified, when the legal person committed the most severe offence. In that case the legal person is criminally liable for the offence itself, and must pay the fines on that ground. The natural persons are not liable

	1. Is there a definition of legal person under your national regulation? Can you specify the reference?	2. Does your legislation provide for responsibility of legal persons in case of customs related infringements committed by this legal person?	3. Can the responsibility of a legal person be criminal according to your legislation?	4. Who is liable for the customs penalty in the case of infringement committed by a legal person?
	Criminal Code: the consortiums and the arrangements in participation; the companies with a commercial objective not having deposited their deed; the trade companies being formed; the civil companies not having the structure of a trade company.		fines which can be imposed to a legal person. b. The confiscation c. The dissolution of the legal person The dissolution of the legal person is an optional sentence. d. The disqualification from the practice of activities connected with the objectives of the legal person e. The closure of one or more establishments	for any fines to which the legal person is sentenced. b. Conviction of the natural person only: when the facts show that the most severe offence was committed by the identified natural person, then this person only can be convicted. In that case the natural person is criminally liable for the offence itself, and must pay the fines on that ground. The legal person is liable for the payment of the fines imposed to its representatives or employees (application of Article 265 of the General Customs and Excise Act). c. Conviction of both the legal person and the natural person: when the facts show that the

	1. Is there a definition of legal person under your national regulation? Can you specify the reference?	2. Does your legislation provide for responsibility of legal persons in case of customs related infringements committed by this legal person?	3. Can the responsibility of a legal person be criminal according to your legislation?	4. Who is liable for the customs penalty in the case of infringement committed by a legal person?
				most severe offence was committed by the legal person, it is in principle solely liable as far as criminal law is concerned. However, if the identified natural person committed the offence knowingly and voluntarily, he can be convicted together with the legal person. With respect to customs, in general, the identified natural person will have acted knowingly and voluntarily in case of - organised or intentional fraud; - fraud concerning other goods that are heavily taxed; - fraudulent importation. In that case, the legal person and the natural person(s) are made jointly liable. They must

	1. Is there a definition of legal person under your national regulation? Can you specify the reference?	2. Does your legislation provide for responsibility of legal persons in case of customs related infringements committed by this legal person?	3. Can the responsibility of a legal person be criminal according to your legislation?	4. Who is liable for the customs penalty in the case of infringement committed by a legal person?
				pay the fines (jointly) on that ground.
I	The legal definition is not uniform. Some specific acts contain definitions of certain types of legal persons.	Yes. In accordance with art.83 of the Administrative Violations and Sanctions Act, where the perpetrator is a legal person, the penalty is property sanction, which is a type of pecuniary penalty, different from the fine, which could be imposed only on a physical person.	No. In accordance with the I legislation, criminally liable could only be a physical person.	The property sanction shall be imposed on the legal person. In I the "liability for customs penalty" covers the liability of the legal person for the offence itself as well as the liability for the payment of fines, imposed to a natural person and vice versa.
J	Finance Act 2003. Part 3 Taxes and Duties on Importation and Exportation: Penalties, section 24(1).	Yes.	Yes, but we would also generally take the individuals who were the controlling minds to court too. So the company and the responsible director(s), for example, would	The legal person business/trader is liable for the penalty.

	1. Is there a definition of legal person under your national regulation? Can you specify the reference?	2. Does your legislation provide for responsibility of legal persons in case of customs related infringements committed by this legal person?	3. Can the responsibility of a legal person be criminal according to your legislation?	4. Who is liable for the customs penalty in the case of infringement committed by a legal person?
			be subject to criminal action. A company could be fined.	
K	Yes. The Customs Code Law No. 94(I) of 2004 – Part I "Definitions – Customs Territory", Section 2 (Interpretation). : "legal person" includes a company, a partnership, a corporation, a club, an association, a union, an organisation or any other union of persons, irrespective of whether it has been set up or not according to provisions of any Law or Regulation.	Yes.	Yes. The legal person is subject to a fine provided for the specific offence in the Customs Code Law No. 94(I) of 2004. The responsible director(s), manager(s), secretary, or other similar officer(s) of the legal person are subject to criminal penalties (fine and or imprisonment) as specified in the Customs Code Law No. 94(I) of 2004.	The legal person itself and the director(s), manager(s), secretary, or other similar officer(s) of the legal person or any person purporting to act in any such capacity, are liable for the customs penalty.
L	§ 24 of the General Part of the Civil Code Act gives a definition: A legal person is a subject of law founded pursuant to law. A legal person	Yes. Legal person shall be held responsible for an act which is committed by a body or senior official or competent representative thereof in the	Yes it can. A pecuniary punishment or compulsory dissolution for a criminal offence. A fine for misdemeanour.	Legal person is. Prosecution of a legal person does not preclude prosecution of the natural person who committed

	1. Is there a definition of legal person under your national regulation? Can you specify the reference?	2. Does your legislation provide for responsibility of legal persons in case of customs related infringements committed by this legal person?	3. Can the responsibility of a legal person be criminal according to your legislation?	4. Who is liable for the customs penalty in the case of infringement committed by a legal person?
	is either a legal person in private law or a legal person in public law.	interest of the legal person. Prosecution of a legal person does not preclude prosecution of the natural person who committed the offence. The provisions of the penal code do not apply to the state, local governments or to legal persons in public law.		the offence.
M	The concept of a legal person exists in France (see in particular Articles 1842 of the Civil Code and Article L210-6 of the Commercial Code).	The Criminal Code provides that legal persons may be held criminally responsible (Article 121-2 of the Criminal Code): *But the customs code does not contain a similar provision.*	However, the Customs Code does not contain a similar provision. Legal persons may be made parties to proceedings in application of the Customs Code, in the following way: • The theory of being an accessory to fraud defined in Article 399 of the Customs Code[41] (see the answer to Question 3 second □ of point 1, above).	

41 This does not cover customs infractions. Nevertheless, the M Supreme Court of Appeal has created a concept comparable to accessory to fraud but applicable to customs infractions. The Court considers that Article 407 of the Customs Code – imposing joint and several liability consisting of payment of customs fines and confiscation with respect to accomplices – strengthens its theory. The Court's Criminal Law Chamber nevertheless considered that it is up to the Court of Appeal to first qualify the circumstances with respect to Articles 392 to 397 of the Customs Code before ascertaining an instance of being party to a fraud (Cass. Crim., 4 September 2002, appeals no. 01-84.011 and 01-85.816)

	1. Is there a definition of legal person under your national regulation? Can you specify the reference?	2. Does your legislation provide for responsibility of legal persons in case of customs related infringements committed by this legal person?	3. Can the responsibility of a legal person be criminal according to your legislation?	4. Who is liable for the customs penalty in the case of infringement committed by a legal person?
			• It appears that this same liability may also arise in terms of being an accessory (pending case-law confirmation), as Article 398 of the Customs Code refers to Articles 121-6 and 121-7 of the Criminal Code. This would involve invoking the rules concerning criminal responsibility stipulated by the Criminal Code in terms of legal persons. (Article 121-2). • Finally, legal persons may be declared liable for paying customs fines (Article 404 of the Customs Code).	
N	The National civil code defines of the legal person (Art 61).	Yes.	Yes.	The legal representative.
O	The definition of legal persons is stipulated in the Act CIV. Of 2001 on measures applicable to legal persons under criminal	Yes.	The measures defined in the Act CIV. Of 2001 on measures applicable to legal persons under criminal law are	The legal person's member or officer entitled to manage or represent it, its supervisory board member and/or their

	1. Is there a definition of legal person under your national regulation? Can you specify the reference?	2. Does your legislation provide for responsibility of legal persons in case of customs related infringements committed by this legal person?	3. Can the responsibility of a legal person be criminal according to your legislation?	4. Who is liable for the customs penalty in the case of infringement committed by a legal person?
	law. According to it legal person is every organization and its constitutional unit with independent right for representation, being acknowledged as a legal person by the legal provisions, and that organization as well which can be an independent subject of civil law relations and with funds separated from the members, including pre-associations established on the basis of the Act IV. of 2006 on Economic Associations.		applicable to legal persons in the event of committing any intentional crime defined in Act on the Criminal Code if the perpetration of such an act was aimed at or has resulted in the legal entity gaining financial advantage, and the crime was committed by the legal person's member or officer entitled to manage or represent it, its supervisory board member and/or their representatives, within the legal entity's scope of activity, or by its member or employee within the legal entity's scope of activity, and it could have been prevented by the chief executive by fulfilling his supervisory or control obligations. If the court imposes punishment on the person	representatives, within the legal entity's scope of activity, or by its member or employee within the legal entity's scope of activity (see the previous answer).

	1. Is there a definition of legal person under your national regulation? Can you specify the reference?	2. Does your legislation provide for responsibility of legal persons in case of customs related infringements committed by this legal person?	3. Can the responsibility of a legal person be criminal according to your legislation?	4. Who is liable for the customs penalty in the case of infringement committed by a legal person?
			committing the listed crimes, it may take measures against the legal entity (liquidating the legal entity, limiting the activity of the legal entity, imposing a pecuniary charge).	
P	Civil law - Part 4 Article 1407. The State, local governments, associations of persons, institutions, establishments, and such aggregations of property as have been granted the rights of a legal person shall be considered to be legal persons.	Yes for the administrative and tax infringements. No for the criminal infringements.	No.	In the case of criminal infringement it would be persons, who make decisions in this legal entity. In a legal person matter, a natural person who has committed a criminal offence acting as an individual or as a member of the collegial institution of the relevant legal person on the basis of a right to represent the legal person, to act on behalf of or to take decisions in the name of such legal person, or realising control within the scope of the

	1. Is there a definition of legal person under your national regulation? Can you specify the reference?	2. Does your legislation provide for responsibility of legal persons in case of customs related infringements committed by this legal person?	3. Can the responsibility of a legal person be criminal according to your legislation?	4. Who is liable for the customs penalty in the case of infringement committed by a legal person?
				legal person or while in the service of the legal person, shall be criminally liable therefore.
Q	Yes. Art. 70-3 General Law on Customs and Excise.	According to national legislation and jurisprudence, penal liability is individual; a criminal penalty can only be retained against a physical person as author, perpetrator of the infringement, in consequence cannot be pronounced against a legal person. Unless special non equivocal legal provisions, the above-mentioned principal has to be applied in matters ruled by special laws so as customs and excise law. In this respect a fine in fiscal matters, being considered as	No.	The legal representative of the legal person.

	1. Is there a definition of legal person under your national regulation? Can you specify the reference?	2. Does your legislation provide for responsibility of legal persons in case of customs related infringements committed by this legal person?	3. Can the responsibility of a legal person be criminal according to your legislation?	4. Who is liable for the customs penalty in the case of infringement committed by a legal person?
		criminal penalty can only be pronounced against a physical person. A legal person nevertheless is civilly, jointly and severally liable in respect of article 265 of General Customs Law.		
R	There is no specific legal definition of a legal person as such in Customs legislation, but Article 34 of the Import Duties Act (Cap. 337) states that: Where an offence against the provisions of this Act or any regulations or order made thereunder is committed by an association or body of persons, every person who, at the time of the commission of the offence was a director, manager, secretary or other similar officer of such association or body of persons,	No. Not specifically, given that the Customs law does not refer to legal persons. However, Article 34 of the Import Duties Act (Cap. 337) covers "Offences by body of persons" while Article 62 of the Customs Ordinance Act (Cap.37) covers all cases.	No, as Customs law does not make specific reference. However, Articles 18 and 62 of the Customs Ordinance (Cap. 37) together with Article 18A of the Import Duties Act (Cap. 337) prescribe the relative penalties to be imposed on all participants.	All persons involved in an infringement are liable. Article 34 of the Import Duties Act (Cap. 337) refers. Note that under Customs law the representatives (natural persons) of the legal person are personally liable for any charges arising out of infringement committed by the legal person, and will be prosecuted in their own name.

	1. Is there a definition of legal person under your national regulation? Can you specify the reference?	2. Does your legislation provide for responsibility of legal persons in case of customs related infringements committed by this legal person?	3. Can the responsibility of a legal person be criminal according to your legislation?	4. Who is liable for the customs penalty in the case of infringement committed by a legal person?
	or was purporting to act in any such capacity, shall be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence. Note, however, that according to Article 4(d) of the Interpretation Act (Chapter 249) the term 'person' covers legal persons. This is supported by Article 1A of the Civil Code (Chapter 16). Interpretation of Customs law is also subject to the definitions of legal person and legal personality given in the Civil Code (Chapter 16), which are of general application.			

	1. Is there a definition of legal person under your national regulation? Can you specify the reference?	**2. Does your legislation provide for responsibility of legal persons in case of customs related infringements committed by this legal person?**	**3. Can the responsibility of a legal person be criminal according to your legislation?**	**4. Who is liable for the customs penalty in the case of infringement committed by a legal person?**
S	The S Civil Code (DCC) defines the legal person by means of granting legal personality to specific legal entities such as the association, the cooperative, the public limited company, the private limited company and the foundation (section 2:3 of the CC). Under property law, a legal person is equivalent to a natural person (section 2:5 of the CC).	Yes. Section 51 (1) of the Criminal Code stipulates that it makes no difference whether a criminal offence is committed by a natural person or by a legal person.	See question (5) 2. A legal person cannot undergo a prison term. Therefore, if a legal person is convicted only a financial penalty can be imposed. Such a financial penalty may be higher than it would be for a natural person (section 23 (7) of the Criminal Code).	Criminally liable for an infringement committed by a legal person are: a. the legal person itself; b.1. the person who gave instructions to carry out the prohibited conduct; b.2. the person who conducted the actual leadership of the prohibited conduct by the legal person; c. the persons named in parts a and b together.
T	Under the Polish legislation a legal person is defined in the Civil Code. According to the art. 33 of the Civil Code legal persons are the Treasury and organisations, which are regarded as a legal person under generic legislation.	The Polish legislation provide for responsibility of legal persons in case of customs related infringements committed by this legal person.	According to the Polish legislation the responsibility of a legal person can be criminal. Penalties foreseen in this case are as follows: (i) pecuniary charge (ii) confiscation of the goods, instruments and products stemming from the	For the customs penalty in the case of infringements committed by legal person are liable both the legal person and the natural person who committed the offence (e.g. manager, director etc.), but they are punished under different criminal treatment.

	1. Is there a definition of legal person under your national regulation? Can you specify the reference?	2. Does your legislation provide for responsibility of legal persons in case of customs related infringements committed by this legal person?	3. Can the responsibility of a legal person be criminal according to your legislation?	4. Who is liable for the customs penalty in the case of infringement committed by a legal person?
			infringement (iii) ban on access to public assistance or subsidies (iv) temporary disqualification from the practice of industrial or commercial activities (v) publication of judicial decisions	
U	Yes. The characteristics and the way to set up of legal persons are provided in the Decree 31/1954 regarding the natural persons and legal persons.	Yes.	Yes. The penalties foreseen in this case are: **A:** Main criminal penalty: fine; **B:** Ancillary (complementary) criminal penalties: **a)** Dissolving of a legal person; **b)** Suspension of a legal person's activity from 3 month to 1 year or suspension from 3 month to 3 years of one of a legal person's activities related at which the criminal offence	The legal person is the liable person. In the case of criminal offences, can be also liable the natural persons contributing to the perpetration of the crime;

	1. Is there a definition of legal person under your national regulation? Can you specify the reference?	2. Does your legislation provide for responsibility of legal persons in case of customs related infringements committed by this legal person?	3. Can the responsibility of a legal person be criminal according to your legislation?	4. Who is liable for the customs penalty in the case of infringement committed by a legal person?
			was committed; **c)** Closing of some working points of a legal person, from 3 month to 3 years; **d)** Ban on access to public acquisition procedures from 1 to 3 year; **e)** Display or spreading of the judicial conviction decision.	
V	There is not a definition of legal person under V national regulation, but there exists an enumeration of the types of legal persons in the Article 18 par. 2 of the Civil Code (40/1964 Coll.) as amended according to the legal person are: a) corporation of natural or legal persons b) specific corporation of property	YES In the case of customs related infringements the V national act - Custom Act (No. 199/2004 Coll. as amended) differentiate a responsibility of natural person and a legal person (there are for example different amount of fine for customs offence (the infringement of customs regulations by natural person) and custom delict (the	This responsibility could not be criminal because the Slovak national law does not provide for the criminal responsibility of the legal person.	In the case mentioned above is liable the person, who act on behalf of the legal person (statutary body).

	1. Is there a definition of legal person under your national regulation? Can you specify the reference?	2. Does your legislation provide for responsibility of legal persons in case of customs related infringements committed by this legal person?	3. Can the responsibility of a legal person be criminal according to your legislation?	4. Who is liable for the customs penalty in the case of infringement committed by a legal person?
	c) territorial entity of self-administration d) another subjects according to code.	infringement of customs regulations by legal person).		
W	We can find a definition of legal person in the field of commercial law as following: A legal person is a group of natural persons or property established for certain purposes created by law and recognized as a legal entity having distinct identity, legal personality, duties and rights.	Yes.	Yes, but only for some criminal offences. Possible sentences: a fine, confiscation of property, winding-up of legal person.	Both, the natural and legal person. For criminal offence it is possible that only legal person is liable (it is not a general rule – only in case when the perpetrators liability is not established).
X	Yes, Comercial Code de 1885	No.	–	The liable person is the legal representative of the legal persons and the person who helps to commit the infringement.

TABLE 9001

1. MS in which burden of shifts from investigating authorities to alleged perpetrator and general circumstances:

MS	General circumstances
A	For infringements provided in Code of Administrative offences the guilt must be proved by the customs authority. Infringements provided in the Law on Tax Administration – the guilt is presumed. If the person proves the absence of his guilt, he is to be exempted of penalty.
B	In terms of demonstrating that an infringement has occurred, the burden of proof always rests with the authorities. However, in our non-criminal sanction regime a trader can usually avoid liability to a penalty where they can demonstrate that a reasonable excuse exists. Where a trader invokes the defence of reasonable excuse the trader carries the burden of proof.
D	For non-criminal infringements (named "contraventions"). If the perpetrator of the non-criminal infringement made an appeal against the non-criminal penalty which had been imposed by the customs authority, he can prove only in court the existence of the causes that remove the contraventional character of the deed. These causes are provided by the law: legitimate self defence, state of necessity , physical or moral constraint, fortuitous event , irresponsibility, involuntary complete drunkenness, error in facts, as well as infirmity, if it has connection with the committed deed. Only the court finds the causes that remove the contraventional character of the deed
E	According to article 121 of The Customs Code law No. 94(I) of 2004, the burden of proof moves from the customs administration to the alleged perpetrator of the infringement, where in any proceedings relating to the customs or the other legislation any question arises as to – (a) the place from which any goods have been brought; or (b) any duty and or tax and or other charge have been paid or secured in respect of any goods; or (c) any goods or other things whatsoever are of the description or nature alleged in the information, writ or other process; or (d) any goods have been lawfully imported or lawfully unloaded from any ship or aircraft; or (e) any goods have been lawfully loaded into any ship or aircraft or lawfully exported or were lawfully waterborne; or (f) any goods were lawfully brought to any place for the purpose of being loaded into any ship or aircraft; or (g) any goods are or were subject to any prohibition of or restriction on their importation or exportation from and to the Republic of Cyprus.
F	Only in the case of active defence (e.g. an alibi or accusing another person), the defending person must provide for their defence contrary but not again prove it beyond any doubt.
G	According to Article 392 of the French Customs Code, the owner of the goods of fraud is liable for fraud unless he proves his good faith
H	The perpetrator must prove the existence of mitigating factors, facts that exclude mens rea or facts that exclude punishment. For example: force majeure or gross negligence.
I	In any proceedings in relation to goods exported or seized under the Customs Acts where a question arises as to whether the goods were

	(i) subject to any prohibition or restriction ,or (ii) whether the goods were lawfully exported the burdens of proof in relation to any such question shall lie on the person against whom such proceedings were brought. In any criminal proceedings in relation to the importation or exportation of goods, where any question arises as to the place from which such goods were brought and any question arises as to proving the place from which such goods were brought, the burden shall rest on the accused person. The burden also shifts to the accused person to show that such goods were imported on payment of the proper Customs Duty. There is a requirement to provide documentation as to proof of payment of duty.
J	For administrative penalties for violation of tax rules, under Article 2, par. 2 of the Legislative Decree n. 472/1997 the penalty is related to the natural person that has committed or concurred to committing the infringement. Article 11, paragraph 2, of the Legislative Decree n. 472/1997, provides that, "unless otherwise provided" the offender is supposed to be he who has undersigned or committed the illegal acts, but the alleged perpetrator is open to prove his innocence. However, it is important to underline that the articles of the Legislative Decree n .472/1997 above-mentioned, establish a principle for the identification of the offender with the person who commits a material breach. This principle is in line with the provisions of the Article 5 of the Legislative Decree n .472/1997 that states each person will be liable for his own voluntary and conscious deed or omission whether negligent or malicious. However, in case of an administrative investigation it is the customs office that has discovered the infringement which gathers all the elements of proof needed for supporting the tax claim and, accordingly, the infliction of the penalty.
K	The payment of customs duties is in dispute or whether the items in question have actually been lawfully imported, then and in every such case the onus of proof thereof shall lie on the defendant in such a criminal court procedure.
L	The burden of proof that illegal behaviour is not punishable under the circumstances because of a lack of any guilt ("afwezigheid van alle schuld") rests with the alleged perpetrator. This may be an error about a fact ("error facti") or about the law ("error iuris").

2. MS that have **'**strict liability**'** offences and cases of application:

MS	Cases of application
B	Applied mainly in the area of border controls for passengers. A passenger walking through the green Channel with goods in excess of the duty free limits or with prohibited goods is (at the very least) guilty of a strict liability criminal offence.
C	According to Section 31, Paragraph 1, Customs Act, a duty increase can be imposed if the customs declaration or any other particular or document required for customs taxation has been lodged after the date due. Furthermore according to Section 32, Paragraph 1, Customs Act, a surcharge can be imposed if the delay or any other fault referred to in subparagraphs 1 to 3 of paragraph 1 of section 31 is related to customs procedure not liable to duty or liable to a small amount of duty and no duty increase has been imposed, or an incomplete or incorrect document or particular has been lodged in the

	application procedure or in order to gain a customs benefit. Finally according to Section 32, Paragraph 2, Customs Act, a surcharge can be imposed if a delay or any other fault is related to the compiling of the statistics on the internal trade of the Community or to entry of goods into customs territory of the Community, presentation of goods to Customs, summary declaration and unloading of goods presented to Customs, temporary storage of goods or to another customs approved treatment or use than placing under a customs procedure.
D	Only for non-criminal infringements: the law provides that the infringement is found by the finding agents, but the law doesn't provide anything about proving the guilt. In the same time, the law provides that the causes that remove the contraventional character of the deed (for example lack of guilt) are found only by the court. So, we could say that for non-criminal infringements the guilt is presumed and that can be interpreted as "strict liability".
E	Article 92 (4) of The Customs Code Law No. 94(I) of 2004 provides for strict liability where any person makes an untrue declaration in such circumstances that he is not liable as defined in subsection (1) of the same article. Article 92(1) refers to intention to defraud. Article 95 (Contravention of the provisions of customs legislation) and article 96 (Contravention of conditions or restrictions of a licence or approval by the Director) of the above – mentioned law, provide also for strict liability offences.
G	All customs offenses are treated the same way: it is for the offender to establish his good faith. This is therefore the principle of "strict liability". Example: According to Article 392 of the French Customs Code, the owner of the goods of fraud is liable for fraud unless he proves his good faith.
	In Greek customs legislation all simple customs procedures infringements, for which only administrative penalties are imposed, are considered as strict liability offences and no intention of the offender is required.
K	Departure of a vessel from Malta without affecting the necessary customs clearance outwards procedures. A person making use of any means of conveyance (even belonging to third parties who are unaware) for contraband activities. Such conveyance is subject to compulsory forfeiture.
L	A customs agent who made a mistake when entering a customs declaration; The party concerned, when goods are missing from a free zone.
	When goods leave the customs territory of the Community without export declaration although export declaration should be lodged (Article 795 of CCIP), the export declaration shall be lodged retrospectively but this retrospective lodgment does not preclude the application of penalty established in the national legislation.
	The details of application are not indicated.

3. The rights to seize or coercively acquire necessary evidence related to the customs infringement investigation and types in MS:

MS	Type of Rights

A	Search of private houses and other premises; Seizure of evidence; Visualization and seizure of goods; Person search; Performance of customs audits.
B	Criminal procedure: Seizure vehicles, goods, related documents, evidence relating to an offence, both documentary and physical Search of premises and private dwellings. Forcibly enter premises to search Arrest Access orders for information from 3rd parties
	Non-criminal Demand of documents Produced and have the power of entry to premises Removal of any evidence (not coercively)
C	Inspect means of transport, persons; Seize goods; Access warehouses, premises and other places; Obtain required documents and information; Issue orders relating.
D	Check; Take samples; Carry out investigations, surveillance and controls; Post-import control at the location of the trade agents in order to check their foreign trade operations, on the observing of customs regulations.
E	The power to search private houses with a search warrant and any other premises without such a warrant, where there are reasonable grounds to suspect that in any premises an offence is being committed or has been committed or is about to be committed and where anything liable to forfeiture is laying therein.
F	All the investigatory power given by the criminal procedure law is useable in customs-related criminal cases.
G	Investigative powers according to the French Customs Code are: - Right to require any person to produce any document relevant to an investigation and seize such documents; - Right to inspect means of transport and persons; - Right of access to local professionals with the information public prosecutor; - Home visitation; - Right to seize goods.
H	The customs authorities have investigating authority for search in premises, seizure of evidence from third parties, seizure of fiscal documents, access to fiscal data, seizure of merchandise, seizure of vehicles or other means used for the customs infringement.
I	Search of private houses and other premises; Seizure of evidence.
J	Non-criminal: Take samples of goods for the analysis Request additional documents relevant to the ongoing customs operation Request for documents

	Access, by permission, to premises pertaining to the operation of productive and trade activities and on other places where records and documentation relating to the goods subject to customs operations need to be kept, in order to proceed to any inspections of such goods and to the verification of the related documentation.
	Criminal procedure: Inspections; Search for documents or goods; Seizure; Arrest;
K	Search any house, building or enclosure against a warrant issued by a Magistrate or the Attorney General, provided that where there is imminent danger that any such proof or evidence will be removed or suppressed, an authority by Comptroller of Customs would suffice.
L	(Only in criminal procedure) Seizure or coercive acquisition of evidence; Placement of a suspect in custody/pre-trial detention; Entrance to places Search; Conduct of systematic surveillance; Infiltration; Engagement in undercover purchase and undercover provision of services; Systematic enquiries; Enter enclosed places; Recording of confidential communications; Interception and recording of telecommunications; Demand information in relation to telecommunications; Demand information from third parties.
M	The authority has the right to conduct criminal/contravention procedure such as execute all the coercive measures permitted by the relevant legislation, including e.g. seizures as well.
N	Entrance to the territory or the premises companies, and special and open; economic zones in which the goods subject to customs control are located; Performance of customs audits; Detection and prevent criminal offences; Stop vehicles in the customs territory for customs control and seize vehicles if violation found; Arrest violators.
O	Seizure of evidence; Search of houses.
P	Visitation goods, vehicles etc; Take copies and to withhold documents etc; Seize and take any books etc; Request to produce invoice books, invoices etc.
Q	In criminal and administrative procedures: Asking other authorities for information; Hearing of witnesses; Search private rooms; Seizure of goods and documents.

	In criminal procedures only: Wire tapping; Listening in the spoken word in private and outside the home (so-called bugging operation); Call data information; Confidential informants; Observation; Using technical equipment (e.g. tracking devices); Cooperation with confidants.
R	Seizure any evidence from any persons (legal and natural); Search any places (public and private) in cases of suspected criminal customs infringements.
S	Seize of evidence from third parties; Coercively a search in a person; Search private houses in criminal; Phone-tapping; Interception of electronic communications.
T	In criminal procedure: Search of houses; Seizure all evidences found.
	Non-criminal: Demand all necessary documents; Search in business.

TABLE 10001

Member State	*(Q6.1)Under your national legislation can penalties be imposed retroactively? (for example if there is a change of law between the time the infringement was committed and the judgement.)* *(Q6.2) If so, (i) ,for how long and (ii) under what conditions*
F	Penalties can only be imposed if the criminal law in force at the time the infringement was committed has provided a related offence and if this law is still in force at the time the sentence is pronounced. If the criminal law has changed, the more favourable legislation with respect to the offender has to be applied. Changes to customs legislation have no effects on the penalties.
D	Criminal laws regarding customs infringements do not violate general principle of non-retroactive effect of criminal laws stipulated by our criminal code. An offence is punishable only where it is able to be penalised by a valid legal provision at the moment of infringement. The offence cannot be sentenced with a more severe penalty than the one which applied at the moment of infringement. However our Criminal Code holds an exception to the principle of non-retroactive effect which is beneficial to the suspect as it stipulates that the less severe penalty shall apply when the penalty imposed at the moment of the judgment is different from the penalty applying at the moment of the infringement. Any new law which no longer attaches a penalty to an offence which resulted in a final conviction does not prevent the enforcement of the penalty imposed before the change of law takes effect. If this succession of principles seems to be unconscionable it can be adjusted by a clemency measure. If an offence which is classified as a customs infringement at the day it was committed is no longer considered an infringement at the day of the suspect's conviction no penalty can be imposed.
G	Penalties for criminal and non criminal infringements cannot be imposed retroactively. Under our legislation for both criminal and non criminal infringements the law applicable at the time of the infringement determines the penalty to be imposed. The exception to this general rule occurs where there is a change in the law and as this results in an advantage to the offender the more lenient law will apply at the time when the penalty is imposed.
H	We have only criminal penalties for customs infringements, although we add a non-criminal financial penalty of 10% to any customs debt arising from a customs infringement. We do apply the principle of more lenient law.
I	A punishment shall be imposed pursuant to the law in force at the time of commission of the act. An Act which precludes the punish ability of an act, mitigates a punishment or otherwise alleviates the situation of a person shall have retroactive effect. An Act which declares an act as punishable, aggravates a punishment or otherwise exacerbates the situation of a person shall not have retroactive effect. Time limit is set only by the time limit of the procedural law in use.
J	Penalties cannot be imposed retroactively. If a certain act was not punishable in the time of its commission a penalty based on the

	subsequent criminalisation of that kind of act cannot be imposed. If a certain crime would be punishable by a more severe penalty in the time of judgment compared with a penalty possible according to the law in force in the time of the commission of the crime in question, the law in force in the time of the commission of the crime applies. However, if a certain crime would be punishable by a more lenient penalty in the time of judgment compared with a penalty possible according to the law in force in the time of the commission of the crime in question, the law in force in the time of the judgment applies (principle of the more lenient law).
K	Both case-law and the Criminal Code forbid penalising acts committed prior to the introduction of a milder law. This principle is applicable whether the law in question has reduced or eliminated a penalty or whether it has revoked a formal procedure non-respect of which could be penalised. There is no derogation from this principle. It should also be stressed that this principle has been enshrined in the Charter of Fundamental Rights
C	An offence can only be prosecuted if its criminal nature was legally established prior to when the offence was committed. The penalty is determined by the law which applied at the time of the offence. If the legal penalty changed during the period in which the offence was committed then the law which is valid at the end of the offence is to be applied. If the law which is valid at the end of the offence is changed prior to the adjudication then the mildest law is to be applied. A law which is only supposed to be valid for a limited period is also to be applied to offences which are committed during its period of validity even when it is no longer effective. This does not apply if a law determines otherwise.
L	No, except where we adopt the principle of more lenient law. Where a change in law means that a lesser penalty applies than was the case when the infringement was committed, both the courts and customs administration are bound to apply the more lenient law.
E	Yes. Under our Criminal Code a crime shall be adjudicated in accordance with the law in force at the time when it is committed. If, in accordance with the new penal laws in force at the time an act is adjudicated, the act is no longer treated as an act of crime or if it draws a more lenient penalty, then the new law shall apply; otherwise, new penal laws have no retroactive application for customs infringements. There is not a time limit. E has 2 types of non-criminal acts. In the first type (contraventions) the rules are the same as for criminal offences as regards retroactivity. And the treatment of acts that were punishable when committed but are no longer following a change in law For the other (administrative infringements) the concept of customs fines was introduced as of 1st of January 2008 so it cannot cover the infringements committed before that date. Generally and in line with the rules on the general lapse period customs fines will be imposable for infringements within 3 years from the perpetration.
M	No
A	For the criminal penalties our Penal Code establishes that nobody can be punished for his deed if his action or omission of action is not a criminal offence according to the law in force when the behaviour was committed. Nobody can be punished for his deed when, according to an ex post facto law, it is not a criminal offence. In this case if the offender was sentenced, the execution and

	the effects of the criminal sentence cease. If the law in force when the offence was committed and the subsequent are different, the more favourable law for the offender applies, except where the sentence has become irrevocable. Thus it is possible that a subsequent law, if it is more favourable for the offender, can be applied for an offence committed before its coming into force. In this case, the subsequent law can be considered as an ex post facto law. For non criminal penalties, nobody can be punished if the penalties are not imposed by law before the infringement was committed. Except to other provision of law, no-one can be punished for behaviour that, according to an ex post facto law, it is not an infringement. In this case If the penalty imposed has been finally disposed, the remaining debt is extinguished, but it is not allowed repetition of money already paid. If the law in force at the time the infringement was committed and the subsequent laws provide for different penalties, it is applied the more favourable law for the offender, unless the measure imposing the penalty is become final.
N	Under the criminal law, and except where specifically prohibited by law, any law which decriminalises an offence, reduces the sentence or otherwise is beneficial to a person has retrospective effect in relation to offences committed prior to the applicable law coming into force, as well as to a person serving a sentence or who has served a sentence but still has a conviction against their name. Any law which introduces a new offence, or which increases a sentence for an existing offence or is otherwise not beneficial to a person does not have retrospective effect. Under our Administrative Violations Code (which covers non-criminal penalties) a person committing a non criminal violation shall be liable in accordance with the law in force at the time of committing the violation. Acts which remove or mitigate liability regarding non criminal violations do have retrospective effect. Acts which introduce new offences or aggravate liability regarding non criminal violations do not have retrospective effect.
B	According to our Criminal Code the retroactivity provision is applied in respect of the law decriminalizing the act, mitigating the penalty or otherwise mitigating the legal condition of a person who has committed a criminal act. Only milder penalties can be imposed retroactively according to the Criminal Code in comparison to the penalties stipulated on the moment of committing a criminal act. The analogous provision of the Code of Administrative Offences (i.e. non criminal) according to which the law, mitigating or eliminating the liability for any non criminal offence, can be applied retroactively. Legal acts concerning tax administration, whereby penalties are reduced or annulled, apply also with respect to the infringements committed before the entry into force of the said legal acts if a legal act reducing or annulling penalties comes into effect not later than the day on which the decision, wherein the tax and/or related amounts is calculated anew and the person is instructed to pay it, was adopted and, in the event that the person appeals against the customs authorities' decision, not later than the day on which a tax dispute settlement institution adopts a decision. Since 2004 no liability has been mitigated or eliminated in B for customs infringements.
O	No there is no retroactivity for criminal penalties, and we do not use non criminal sanctions. The concept of less lenient law does not apply in customs infringements.

P	The Customs Ordinance stipulates that "proceedings shall be instituted within ten years from the day of the commission of the offence." Offenders are entitled to the imposition of the lowest pecuniary penalty in case were amendments were implemented in the legislation after commission of offence up to the pronouncement of judgment. But this does not apply in cases when such penalties were revoked. In the latter case the penalties which were *in vigore* prior amendment apply.
Q	Pursuant to section 16 of the Dutch Constitution, no offence is punishable other than by virtue of a statutory provision that preceded it. If the legislation is amended after the offence was committed, then pursuant to the Criminal Code, the provisions most favourable for the suspect are applied.
S	Under the S legislation penalties for customs infringements cannot be imposed retroactively. The infringement must be punishable at the time when it was committed. If there is a change of the law between the times the infringement was committed and the judgment, the less severe law was applied.
T	Under T constitutional law penalties cannot be imposed retroactively. Nevertheless, when the new law, which has entered in force after the infringement was committed and before the judgment, provides a lower penalty for the same infringement, it shall be applied retroactively.
U	No, penalties can not be imposed retroactively. Only the more favourable criminal or contraventional law can be applied retroactively.
V	The penalties could not be imposed retroactively.
X	General rule: no sentence shall be imposed on any person for an offence that was not determined as a criminal offence by the law prior to being committed and for which a sentence was not prescribed by the statute. The law in force at the time the offence was committed shall be applied. If the law changes during the process, the law that is lenient to the perpetrator shall be applied.
W	In the infringements W legislation applies the non-retroactivity rule, except when there is a change on the penalty legislation, and the new legislation is more favourable than the old one in the penalty for the liable person. In that case it is possible to apply the new legislation.
Z	No. The Z does not adopt the principle of 'more lenient law', so that the penalty for an offence is that which applied on the day the offence was committed. However, as a matter of policy we may elect not to take action in rare cases where to application of the old law is deemed inappropriate.

TABLE 11001

QUESTION 7.1.: PROCEDURAL ISSUES/SETTLEMENT OF CUTSOMS OFFENCES APPLIED

1) Are there procedures for settlement of customs offences in your country?
2) If so, what is the scope of it?
3) Is it applicable also to serious infringements?
4) Is settlement procedure considered to be an alternative to administrative or criminal penalty?
5) What are the relevant provisions?
6) How often the procedures for settlement of customs offences are applied in your country?
7) Are there preliminary procedures (i.e. warning letters) which must be issued prior the issue of a penalty demand?
8) In that case what happens if any deadline of such procedure is not respected by the liable person?
9) Is there discretion from customs authorities in issuing a penalty to infringements? If so under which conditions is possible to apply such discretion?
10) Are penalties reduced or waived in case a settlement between the liable person and the customs administration has been reached?
11) Has a "voluntary disclosure" from the liable person any relevance in the determination of the penalty?
12) What is the number of cases resolved by a settlement in the last two years?

I	1) No settlement procedure. 11) A “voluntary disclosure” or better “self-accusation” done in the right way can deliberate a person from punishment or at least mitigate the penalty. But in I this legal institution is not related to any form of settlement (§ 29 FPC).
J	1) The customs administration can institute criminal proceedings for infringements which it is allowed to penalise. It has the exclusive right to institute proceedings (Art. 281 (3) of the General Customs and Excise Act). This right of prosecution particularly includes the power to offer a settlement instead of bringing a case before court. The settlement cancels the criminal proceedings regarding customs issues (Art. 228, General Customs and Excise Act). The administration can enter into a settlement even after the case has been brought before the court and as long as no judgment has been pronounced in the case by court of last resort, which acquired the authority of a final decision.

Obviously, after a definitive judgment, the infringement can no longer be the object of a settlement.

2) The regional directors are entitled to settle all infringements which are penalised by the customs and excise administration (the infringements to common law are not involved), independent of the amount of the duties at stake, the fine and the confiscation imposed.

The settlement affects the fines, the confiscation and the closure of establishments. The tax due in its own cannot be affected (Art. 172 of the Belgian Constitution).

3) In principle, the settlement is applicable to all kinds of customs infringements, however, provided that mitigating circumstances are considered, for example in case of absence of a fraudulent intention (Art. 263 and 264 of the General Customs and Excise Act). The customs and excise administration assesses the existence of mitigating circumstances itself.

4) The settlement falls within the scope of criminal law and concerns criminal penalties: fines, confiscation and closure of establishments. The settlement aims at the cancellation of the criminal proceedings on account of customs offences (Art. 228 of the General Customs and Excise Act). In that respect, it is an alternative for the prosecutions before the Criminal Court.
The settlement is personal. The criminal proceedings shall only be cancelled on behalf of the offender who accepted the settlement and not on behalf of (other) offenders and/or accomplices.

5) The stipulations of Articles 263 and 264 of the General Customs and Excise Act.

6) Almost all infringements are the subject of a procedure for settlement. Criminal proceedings are only instituted in case of a fraudulent intention or in case of the offender's refusal to enter into a procedure for settlement.

7) No, there are no preliminary procedures.

8) Irrelevant.

9) The regional directors have the power to pronounce a judgment with respect to all infringements which are to be penalised by the customs and excise administration, within the framework of the general instructions given by the central administration. The power to pronounce a judgment includes the power to offer a settlement or to bring the case before the court, to reject or to preserve appeals by the lawyers of the ministry of Finance, to leave aside the findings of the civil

servants entrusted with surveillance when the punishable nature of the revealed activities seems to be questionable to such an extent that the conviction would be problematic in case of criminal proceedings.
However, the regional director leaves the following items to the discretion of the director general:

1. the cases which evoke a question of principle or a question of interpretation of a legal or regulatory provision;
2. the appeals against the decisions, except when he considers it his duty to allow the appeal because of circumstances revealed after he pronounced the judgment;
3. the disagreements which oppose him to the administration's lawyer and which regard legal proceedings which were ordered;
4. the proposals to introduce or to withdraw further appeal;
5. the proposals concerning civil discontinuance;
6. the cases of which the files have been requested by the central administration;
7. the large cases (e.g. files concerning serious tax infringements charged to foreigners residing in J), particularly those revealing fraudulent activities carried out from various points in the country or by an organised gang, or the use of new fraud methods or procedures;
8. the cases in which persons with a special statute are taken to court: civil magistrates, members of the diplomatic body or international institutions, law enforcement officers, etc.
9. the files which reveal an indisputable relation between the findings at various places or between the offenders, insofar as the competent regional directors do not agree on the conditions of the settlement which is offered.

	10. The settlement concerns the fines, the confiscation and the closure of establishments. It cannot concern the duties owed as a tax reduction cannot be granted pursuant to Art. 172 of the J Constitution. The fines which are the object of a settlement, are always less than the legal fines. The settlement aims at the cancellation of the criminal proceedings on account of customs offences (Art. 228 of the General Customs and Excise Act). The settlement is personal. The criminal proceedings shall only be cancelled on behalf of the offender who accepted the settlement and not on behalf of (other) offenders and/or accomplices. 11) The offender's collaboration to the investigation and the prosecution regarding a customs infringement can be taken into account for the assessment of mitigating circumstances and the conclusion of the settlement. Furthermore, Article 261 of the General Customs and Excise Act stipulates that the penalties provided for in the customs legislation are not applicable to persons who spontaneously draw the attention of the minister of Finance or his representative to fraud or irregularities and who pay the supplement of the owed duties**.** 12) Generally, around 40,000 infringements relating to import, export and transit are found in J per year, the majority of which is ended by settlement.
D	1) The Customs Act provides such a procedure for the administrative infringements. The Criminal Code prescribes the possibility of signing an agreement for the crimes (criminal infringements). 2) In accordance with the Customs Act, agreements could be signed only for the following types of customs infringements – smuggling (art.233, par.1, 2, 3 of the Customs Act), customs fraud (art.234 of the Customs act) and deviation temporarily stored goods or goods subject to customs regime or customs assignment (art.234a of the Customs Act). In accordance with the Criminal Procedure Code, agreements could be signed for each type of customs crimes (criminal infringements). 3) The answer is included in the previous point. 4) Yes. The approved agreement has the power of a penalty decree in the cases of administrative infringements and the power of a sentence in the cases of crimes (criminal infringements).

5) The following provisions of the Customs Act are applicable:

- Article 229a. Until the issuing of the penal ordinance but not later than 30 days after drawing up the act on establishing a customs violation agreement may be reached between the administrative sanctioning authority and the violator on terminating the administrative penal proceedings for violations under Article 233, Paragraph 1 and 2 and 3, Article 234 and Article 234a except for the cases when the act is a criminal offence.

- Article 229b. (1) The agreement shall be drawn up in writing and shall reflect the agreement of the administrative sanctioning authority and the violator on the following issues:
- has an act been perpetrated, has it been perpetrated by the violator, has it been perpetrated guiltily, does the act constitute a customs violation;
- what will the type and size of the sanction be;
- (amended, SG No. 45/2005) will the goods that are the object of the violation be confiscated in favour of the state as well as the vehicles and carriers used for their transport or carriage or shall they be paid for in an amount at least 25 percent of their equivalent value.
- (2) The agreement shall not specify:
- a sanction other than the one provided for in the act for the specific customs violation;
- an amount of the fine or pecuniary sanction lower than the minimum provided for the specific customs violation;
- (amended, SG No. 45/2005) a sum amounting to less than 25 percent of the cash equivalent of the object of the violation as well as of the cash equivalent of the vehicle or carrier representing their customs value.

- (3) The agreement shall be signed by the administrative sanctioning authority and by the violator or his agent authorized expressly for reaching agreement.
- (4) Within fourteen days after the signing of the agreement on terminating the administrative penal proceedings the Director of the Customs Agency or a person authorised by him shall issue a decision approving or refusing to approve the agreement. Decisions with which agreements on terminating the administrative penal proceedings are approved shall be sent to the respective public prosecutor within seven days after their issuing.
- (5) The agreement on terminating the administrative penal proceedings shall be approved on condition that the requirements of the law have been complied with and the specified in it public state receivables have been paid or have been secured in the deposit account of the respective customs authority.
- (6) The decision under Paragraph 4 shall not be subject to appeal save for a decision approving an agreement on terminating the administrative penal proceedings against which the public prosecutor may file an objection in court in relation to its conformity with the law under the procedure of the Administrative Procedure Code. In this case the Prosecutor's objection shall not stop the execution of the decision.
- (7) The terms for issuing a penal ordinance shall stop running as of the moment of instituting judicial proceedings on a prosecutor's objection until their conclusion.
- (8) In the cases when the agreement on terminating the administrative penal proceedings is not approved or the decision with which it is approved is rescinded by the court the administrative sanctioning authority shall issue a penal ordinance without exception.
- Article 229c. The agreement on terminating the administrative penal proceedings shall enter into force on the date of its approval. The agreement shall have the consequences of a penal ordinance that has entered into force and

shall be subject to compulsory execution.

- The following provisions of the Criminal Procedure Code are applicable:

- Article 381
    - Upon completion of the investigation based on a proposal of the prosecutor or of the defence counsel an agreement may be drawn up between them in order to dispose of the case. Where the accused party has not authorised a defence counsel, upon request of the prosecutor a judge from the respective first instance court shall appoint a defence counsel thereto with whom the prosecutor shall negotiate the agreement.
    - Where property damages have been caused by the crime, the agreement shall be admitted after their recovery or securing.
    - By virtue of the agreement a sentence may be imposed following the provisions of Article 55 Criminal Code , even in the absence of exceptional or numerous circumstances mitigating the level of responsibility.
    - The agreement shall be drawn up in writing and shall set out consent on the following matters:
- whether an act has been committed, has it been committed by the accused party and has it been culpably committed, whether the act constitutes a crime and what its legal qualification is;
- what type and amount of penalty shall apply;
- what initial regime should be set in serving the penalty of deprivation of liberty, where the provisions of Article 66 of the Criminal Code shall not apply;
- who should be entrusted with educational work in the cases of conditional sentencing;

- how to dispose of the pieces of material evidence, where they are not required for the needs of criminal proceedings with respect to other persons or other crimes, and who should be charged with the costs of the case.
    - The agreement shall be signed by the prosecutor and the defence counsel. The accused party shall sign the agreement, provided he/she agrees to it, after a statement that he/she makes a waiver from the examination of the case in court following the general procedure.
- (7)Where proceedings are conducted against several persons or for several crimes, an agreement may be reached for some of the persons or for some of the crimes.
- (8)Where the accused party has committed several crimes by one and the same act or where one and the same accused party has committed several separate crimes, Article 23 and 25 Criminal Code shall be taken into account and implemented within the agreement.
- Pronouncement on the agreement by the court
- Article 382
    - The agreement shall be submitted by the prosecutor to the respective first instance court forthwith after it has been drawn up, along with the case-file.
    - The court shall schedule the hearing within seven days after receipt thereof and shall examine it in a single-judge panel.
    - The public prosecutor, the counsel and the accused party shall take part in the court hearing.
    - The court shall ask the accused party whether he/she understands the charges, whether he/she pleads guilty, whether he/she understands the effects of the agreement, agrees to them and has voluntarily signed the agreement.

- The court may propose changes in the agreement which shall be discussed with the prosecutor and the defence counsel. The last to hear shall be the accused party.

- (6)In the record of the court the content of the final agreement shall be noted, which shall be signed by the prosecutor, the defence counsel and the accused party.
  - The court shall approve the agreement where it is not contrary to the law or the morals.
  - If the court does not approve the agreement, it shall return the case-file to the prosecutor. In this case confessions of the accused party made in accordance with the procedure under paragraph (4) shall not be treated as evidence.
- (9)The ruling of the court shall be final.
- (10) The victim or his/her heirs shall be notified of the ruling under para 7 with the instruction that they can file a civil claim for immaterial damages before a civil court.
- Effects criminal proceedings disposed of by agreement
- Article 383
  - The agreement to dispose of criminal proceedings as approved by the court shall have the effects of a sentence entered into force.
- Agreement to dispose of the case during court proceedings
- Article 384
- Under the conditions and procedure of this Chapter, the first instance court may approve an agreement to dispose of the case reached after institution of court proceedings, but prior to completion of the judicial trial.

- The court shall appoint a defence counsel to the defendant, where the defendant himself has not authorized one.
- In this case the agreement shall be approved only after all parties give their consent

6) The Customs administration is competent in signing agreements only for administrative infringements, and not for crimes (criminal infringements). The statistics below refer to the administrative infringements.
The total number of the agreements signed in 2006 is 484. 293 agreements have been signed in 2007. The number of administrative proceedings concluded with agreements in 2006 (484) represent 3, 2% of the total number (15 071) of the administrative proceedings initiated for customs infringements. The number of administrative proceedings concluded with agreements in 2007 (293) represent 5% of the total number (5960) of the administrative proceedings initiated for customs infringements.
In view of the fact that the agreements for crimes (criminal infringements) shall be signed by the perpetrator and the prosecutor and shall be approved by the court, the Customs Administration does not have any statistics on its disposal regarding this type of agreements.

7) The question is not distinct enough. There are no explicitly prescribed preliminary procedures in relation to agreement signing. The Customs authorities inform the perpetrator of the possibility to sign an agreement in the term of 30 days after the Statement for ascertaining customs violation has been drawn up.

8) If no agreement has been signed within the term of 30 days, a penal decree for the committed infringement shall be issued.

9) The administrative punishing authority has the right of assessment during determination of the penalty, but in compliance with the requirements of article 229b, par.2 of the Customs Act.

10) The penalty could not be repealed and it shall be determined in accordance with art.229b, par.2 of the Customs Act.

11) The voluntary confession does not have direct influence on determent of the penalty, but according to art.229b, par.1, p.1 of the Customs Act, the parties reach an agreement on the following issues: has an act been perpetrated, has it been perpetrated by the violator, has it been perpetrated guiltily, which represents a voluntary confession.

	12) The information is included in p.6 of the section.
K	1) Yes, The Director of the Department of Customs & Excise may compound any offence committed by any person against the customs legislation, except of the criminal offences provided in sections 89(3), (4) and (5) of the above-mentioned Law such as bribery, the obstruction of a customs officer to perform of any duty or the damaging or destruction of evidence, on such terms and conditions as he in his discretion thinks proper, in lieu of any criminal proceedings against this person. It is noted that the Director may accept from such person a payment in money not exceeding the maximum penalty provided by the legislation for such offence. This process is known as compounding 2) The person admits guilt and offers to pay a compounding sum instead of being taken to court. If the penalty is not paid, court proceedings are instituted. With the compounding there are no costs for the offender and the Customs Authorities and the publication of the decision is avoided. 3) Yes. However, according to the Department's of Customs & Excise policy, for such infringements, court proceedings are usually instituted. 4) Settlement procedure is considered to be an alternative only to criminal penalty. 5) The Customs Code Law No. 94(I) of 2004 – Part XVIII "General Powers", Section 88 (Power to compound offences). 6) No statistics are available. 7) No. 8) N/A 9) Yes. As the Director of the Department of Customs & Excise sees fit.

	10) No 11) Yes. The voluntary disclosure is considered as a mitigating factor for the determination of the penalty. 12) Such data is not available.
L	1) Settlement proceedings rules are included in the Code of Criminal Procedure. No special customs-related settlement proceedings exist. 2) The scope is defined by the settlement between the accused and the prosecutor. Limitations apply. 3) Settlement proceedings shall not be applied: in the case of criminal offences in the first degree for which the lightest punishment is prescribed as at least four years' imprisonment or the most severe punishment is prescribed as life imprisonment in the Penal Code; if the accused, his or her counsel or the Prosecutor's Office does not consent to the application of settlement proceedings; in the case of a criminal matter where several persons are accused and at least one of the accused does not consent to the application of settlement proceedings; if the victim or the civil defendant does not consent to the application of settlement proceedings. 4) Is settlement procedure considered to be an alternative to administrative penalty or criminal penalty Criminal penalty under settlement procedure is considered a criminal penalty 5) The relevant provisions §§ 239-250 of the Code of Criminal Procedure 6) How often the procedures for settlement of customs offences are applied in your country? Data not available to me at this point of time 7) Are there preliminary procedures which must be issued prior the issue of a penalty demand? If I understand this correctly and this corresponds to the settlement procedure, then a written settlement must be reached before the court accepts or dismisses it.

	8) What happens if any deadline of such procedure is not respected? The settlement will not be reached 9) is there a discretion from customs authorities in issuing a penalty to infringements? No. The court is independent. 10)Are penalties reduced or waived in case a settlement between the liable person and the customs administration has been reached? See answer to question 1 of this section 11) Has a "voluntary disclosure" from the liable person any relevance? Question not understood 12) What is the number of cases resolved by a settlement in the last two years? Data not available to me at this point of time
C	However, there slight features of settlement in the C system in that sense that if the amount of the avoided duties or taxes is at the most 350 EUR duty increase is imposed by the customs and If the amount of the avoided duties, taxes and levies is over 350 EUR but at most 2 000 EUR, a customs officer issues a penalty demand (a penal notice) and then a prosecutor affirms it unless the offender resists it within certain deadline after its issue (if that is the case, the infringement will be dealt with in the normal court proceedings). The affirmed criminal penalty is fine and the affirmed offence petty tax fraud.
M	1-3) There are two ways to penalise customs infringements: • Bringing the case before a criminal court (police court for infractions and misdemeanour court for offences).

	• An amicable settlement: see answer to Question 2 above. Every infringement is subject to one of the above two procedures. 4-5) The Customs Code does not provide for a preliminary procedure when an infringement has been ascertained. Customs procedure does, however, include mechanisms for discussion between taxpayers and the customs authorities. • Within this framework, the taxpayer may offer proof of compliance of the customs declaration that has been made. Exchanges between the customs authorities and the operators serve as *contradictoire* (M legal concept that holds that all suspects should be able to contradict the allegations that they face). • • Irregularities, breaches and other infringements are noted in a report. The authorities may furnish proof. The procedure concludes with a "summary" report that qualifies, *de jure* and *de facto*, the elements forming the accusation against the taxpayer, and to which he or she may append observations. Finally, in the event that the infringement is not ascertained within the limitation period stipulated in Article 351 of the Customs Code, prosecution may not be pursued. 6) We do not understand the question. 7) Settlement: see answer to question 2 e) above. 8) No. Mitigating factors may, however, be taken into consideration.
G	1) Yes. *Art. 153a Criminal Procedure Code*: With the agreement of the responsible court and the defendant, in the event of a misdemeanour, the office of public

prosecution is able to temporarily abandon the imposing of a public action and at the same time issue the defendant sanctions and directives if these are suitable for removing public interest in the criminal prosecution and are not opposed to the degree of guilt. The following come into consideration as sanctions or directives:

1. to provide a certain payment in compensation of the damage caused by the offence,
2. to pay a sum of money to a charitable organisation or the public purse,
3. to provide other charitable services,
4. to make a sustained effort to achieve a settlement with the injured party (offender-victim-settlement) and in doing so strive towards compensating for the offence either in full or to a great extent.

The payment of an appropriate sum of money to the public purse (no. 2) and the payment of the taxes which have been avoided (No. 1, 4) are often demanded. The public prosecutor's office often imposes a deadline for the fulfilment of the sanctions and directives which lasts six months at the most and can be subsequently lengthened by three months on one occasion. If the defendant fulfils the sanctions and directives, then the offence can no longer be prosecuted as a misdemeanour. If the defendant does not fulfil the sanctions and directives, then the payments that they have already made cannot be reimbursed. The agreement of the court is not required with a misdemeanour which is not, to its lowest extent, punishable with a severe penalty and in which the consequences of the offence are low. All criminal tax offences pertaining to customs offences are misdemeanours. Only especially serious cases of tax evasion and/or tax receiving are punishable with a severe penalty at their least serious level. After the abandonment of criminal proceedings, the offence can then be prosecuted by the customs authorities as an administrative tax infringement.

2) The legal possibilities of the cessation of criminal proceedings only exists for misdemeanours, meaning for criminal offences whose minimum legal penalty is not less than one year of imprisonment.
3) See question 2 above.

4) *Yes. If the offender fulfils the directive(s), the infringement cannot be punished by a criminal or administrative penalty.*

	5) See questions 1 to 4 above 6) The central customs office and/or office of public prosecution frequently avails itself of the option of ending criminal and/or fine proceedings out of court. *Precise numerical details are not available.* 7) No. 8) No answer necessary. 9) The customs authorities are not able to decide about a punishment. Only the court has the legal authority to determine the guilt of the offender and to impose an appropriate penalty. The main customs offices (§ 399 Section 1 AO) only have the possibilities stated above to end the proceedings. This decision is at the discretion of the main customs office. 10) See questions 4. 11) *Yes, see table 5002.* 12) No exact statistic for the area of customs infringements is available. The customs authorities are urged to make as much possible use of the legal possibilities for a more rapid and simple ending to the proceedings.
N	There is no settlement provided for by in the National Customs code.
O	1) Yes there are. 2) According to the Criminal Code the perpetrator of the crime shall not be liable for prosecution if he settles his customs debt in the amount of the loss in customs revenues prior to indictment. But this applies only if the loss of the customs revenue is minor, namely less than HUF 200 000. 3) In case of crime illegal importation only if the loss of the customs revenue is minor, namely less than HUF 200 000. 4) In case of criminal penalty yes it is an alternative as in case of settlement the criminal procedure is terminated. 5) These provisions are stipulated in Art. 312(5) of Act IV. of 1978 on Criminal Code. 6) No statistics on the frequency. 7) No preliminary procedure is applied. 8) In case of a crime the criminal procedure goes on. 9) In the course of the establishment of the exact amount of the customs fine for infringements not affecting the customs

	debt, the customs authority takes into account the circumstances of the case, the significance and the frequency of the non-compliant behaviour and the diligence of the person concerned. 10) The Criminal Code does not provide for a possibility to reduce or waive the amount to be paid. 11) No. 12) For the crimes we have no statistics either.
E	1) Yes. 2) The scope is as per extract from S35 E Revenue Regulation Act 1890 as follows: "The Commissioners may in their discretion mitigate any fine or penalty incurred or stays or compound any proceedings for the recovery of any fine or penalty, and may also, after judgment, further mitigate the fine or penalty…" 3) Yes. 4) Yes. 5) Section 209 of Customs Consolidation Act and S.35 E Revenue Regulation Act 1890 as amended by Art 24 of Excise Transfer Order 1909. 6) Data not readily available. 7) No. 8) Yes. Section 35 Inland Revenue Regulation Act 1890.. 9) Discretion exists and could be used depending on the circumstances of the case. 10) It is taken into account. 11) Data not readily available.

H	1) For administrative penalties , under article 16 (3-4) of the Legislative Decree No 472/1997 the offender and those who have joint and several liability can settle the dispute by paying an amount equal to a quarter of the indicated penalty within the time period provided for the appeal. However this amount shall not be less than a quarter of the minimum amount established by law for the most serious offences concerning each tax. No ancillary penalties are imposed as a result of this facilitated settlement of the dispute. If the said settlement does not take place, the offender and those who have joint and several liability can, within the same period of time, lodge a defensive deed. Failing this, the served document is considered a deed through which the penalty is imposed and can be appealed pursuant Article 18. The Article 48 of the Legislative Decree No. 546/1992 concerning the judicial conciliation. The Paragraph 6 of this Article specifically provides that, in case of conciliation, the administrative penalties imposed correspond to a third of the sums which can be imposed with respect to the tax amount resulting from the said conciliation. However, the amount of the imposed penalty cannot be less than a third of the prescribed minimum laid down for the most serious offences relevant to each tax. 2) As for the facilitated settlement in the criminal field, as already written in the document TAXUD 1718/2008, Article 334 of the Presidential Decree No. 43/1973 provides for a cash settlement of the penalty and establishes that for crimes of smuggling, punishable only by a fine, the customs administration may allow the payment by the offender not only of the tax due but also of a sum between twice and ten times the amount of the duty due, to be established by the same administration. The payment of the said sum and of the duty due extinguishes the crime. The extinction of the crime, however, does not stop confiscation which is a measure taken by the customs administration. 2) Please, see the answer given to the question above mentioned 3) It is possible for administrative sanctions, it is not possible for the contraband when there are aggravating factors; 4) The settlement procedure is an alternative remedy to the usual application of the penalty provided for in the legal system for a specific kind of offence. However, in the criminal field we refer to the conditions provided for article 334 of the Presidential Decree n. 43/1973. In addition, we would like to point out, respect what we have already written in the Document TAXUD n. 1718/2008, that the facilitated settlement procedure, directly managed by the administrative authority within the framework of an administrative procedure, for an administrative infringement is a procedure provided for in Article 16, paragraph 3, of the Legislative Decree 472/1997, already mentioned. 5) Please see the answers given to the questions above mentioned 6) It is more frequent for the administrative sanctions.

	7) In the customs national set of rules it isn't foreseen a warning letter, however the agent receives a report concerning the infringements checked by customs authority, sent before penalties are imposed. 8) Please, see the answer above mentioned 9) No there is not discretion for customs authorities in issuing an administrative penalty to infringements, because if there is an infringement the penalty must follow. However for administrative penalties, according to article 7 (1-2) of the Legislative Decree No 472/1997, the penalty is established according to the seriousness of the infringement , also inferred from the behaviour of the offender, to what he has done to cancel or mitigate the consequences as well as his personality and social and economical conditions. The personality of the offender is inferred also from his previous fiscal behaviour. So for our legislation it is not necessary, for administrative penalties, that the court can decide the amount of the penalty. Obviously, if the infringement is criminal it will be the Judicial Authority to decide the amount of the penalties 10) For administrative sanctions, under article 16 (3) of the Legislative Decree No 472/1997 the offender and those who have joint and several liability can settle the dispute by paying an amount equal to a quarter of the indicated penalty within the time period provided for the appeal. However this amount shall not be less than a quarter of the minimum amount established by law for the most serious offences concerning each tax. No ancillary penalties are imposed as a result of this facilitated settlement of the dispute. The Article 48 of the Legislative Decree No. 546/1992 concerning the judicial conciliation. The Paragraph 6 of this Article specifically provides that, in case of conciliation, the administrative penalties imposed correspond to a third of the sums which can be imposed with respect to the tax amount resulting from the said conciliation. However, the amount of the imposed penalty cannot be less than a third of the prescribed minimum laid down for the most serious offences relevant to each tax. 11) For administrative sanctions, under article 13 (1) of the Legislative Decree No 472/1997 the measure of the penalty is reduced if the infringement is not checked yet by customs authority. 12) There are several cases resolved by a settlement.
P	We do not have a specific settlement procedure.
B	1) The term "settlement of customs offences" is not used in national legislation. However, there is a procedure which can be considered as settlement proceedings. 2) Trial proceedings in criminal procedure may be dispensed with and the penalty may be imposed by a penal order. The judge is entitled to draw up the penal order upon receipt of the prosecutor's application. Customs authorities don't

participate in this procedure.

3) The abovementioned procedure may be applied in case of criminal acts which are punishable only by a fine or where a fine is treated as alternative penalty.

4) Settlement procedure is not considered to be an alternative to administrative penalty (imposed under the Code of Administrative Offences) or criminal penalty.

5) Articles 418-425 of the Code of Criminal procedure.

6) As customs authorities don't participate in this procedure, we have no concrete data.

7. No

8. –

9) By imposing the administrative penalty according to the Code of Administrative Offences, the customs authorities cons the
nature of offence, personality of offender and the circumstances mitigating or aggravating the liability. In case of mitigating circumstances and based on the criteria of justice and reason, a milder administrative penalty can be imposed than the one specified in a certain article, or no administrative penalty can be imposed. But such decision must be sanctioned by the judg the
District Court.
The amount of fine imposed according to the Law on Tax Administration may vary from 10 to 50 percent of tax and duty amount additionally calculated for the offender. The amount of the actual fine is conditional on the type of infringement, on whether the offender has cooperated with the customs authorities, on the acknowledgment of having committed an infringem and on other circumstances which the customs authorities deem to be relevant when imposing a smaller or larger fine.

10) No settlement between the liable person and the customs administration can be reached, but reduction and waiver of penalty are provided. A person in respect of whom a fine is imposed according to the Law on Tax Administration, may in

	20 days apply to the territorial customs office with the application of exempting from the fine. In at least one ground specified in article 141 of the Law on Tax Administration is present, the territorial customs office exempts such person from fine. If at least one ground specified in article 141 of the Law on Tax Administration is present, the territorial customs office exempts such person from fine. By imposing the administrative penalty according to the Code of Administrative Offences, in case of mitigating circumstances and based on the criteria of justice and reason, a milder administrative penalty can be imposed than the one specified in a certain article, or no administrative penalty can be imposed (such decision must be sanctioned by the judge of the District Court). 11) The fine stipulated in the Law on Tax Administration is not imposed if after submitting the customs declaration the pe has noticed that he has incorrectly calculated duties or taxes, and has contacted the customs authorities with the applicatio correction of the customs declaration. If the person has filed such application after the customs authorities have made a decisio inspecting him, the fine will be imposed. The confession about committing an offence and assistance in solving it is qualified in the Code of Administrative Offences and in the Criminal Code as a mitigating circumstance. 12) As customs authorities don't participate in this procedure, we have no concrete data.
Q	1) Yes the Customs penal transactional act 2) To handle the cases in an effective and efficient way and to avoid bringing the case before a court, where time consuming procedure is a reality and the lack of specific knowledge of the court is a risk. 3) Yes as the settlement is itself of a penal nature 4) The settlement is a penal alternative to a court case and is often combined with an administrative penalty.

	5) If the person responsible for the infringement asks for a settlement and customs is willing to allow this procedure. 6) As often as possible 7) No 8) The case has to be brought before the court 9) Customs are legally empowered to decide and fix a criminal penalty. 10) Penalties can be reduced, but there is no obligation for the Customs 11) Yes 12) Nearly all cases are resolved by a penal settlement
S	1) Yes. 2) Because dues are recouped quicker with fewer resources, while eliminating the risk of losing court litigations on technicalities. Furthermore, by implementing this procedure collection of dues / taxes and the application of penalties is rapidly effected. 3) Settlements are possible in cases of serious infringement, but criminal proceedings remain in force in terms of Article 18A (Cap. 337). 4) Under national legislation a settlement is considered an out of court procedure, therefore is not an alternative to an administrative penalty. As far as criminal penalties are concerned, an out of court settlement does not prevent police from pursuing criminal proceedings against the same person for breach of other criminal laws arising from the same circumstance. 5) Article 63 of the Customs Ordinance Act (Cap.37) states: In case when the loss of customs duty not exceeding €1,164.69, impose a penalty equivalent to the duty endangered as an alternative to proceedings in court while in the case of related infringements concerning non dutiable goods a penalty of five per cent of the value of the goods is imposed. Article 63A (Cap. 37) states: The offender pays a sum equivalent to the fine (multa) that would be due by way of penalty in accordance with the provisions of this Ordinance. Besides the forfeiture contemplated in the Ordinance as a consequence to the offence the

offender elects to pay also to the Comptroller, a sum equivalent to the value of the goods forfeited together with any amount of duty or levy due thereon. Such value shall be determined in accordance with the provisions of the Import Duties Act.

(2) The provisions of sub article (1) shall apply also in any case where the offender has been charged before a court in relation to the offence, but before final judgment has been given in the case:

Provided that where proceedings before a court have not been commenced, the sum payable in accordance with any agreement as contemplated in sub article (1) shall be reduced by ten per centum.

(3) The provisions of sub article (1) shall not apply in relation to an offence concerning goods mentioned in the Schedule to this Ordinance.

(4) Any sum due in virtue of an agreement entered into in terms of sub article (1), shall be due to the Government as a civil debt.

The Comptroller shall not enter into an agreement as is referred to in sub article (1), unless such agreement is accompanied by the payment of the sum due or a sufficient security for its payment.

Article 18A of the Import Duties Act (Cap. 337) states:

1) Every person

who in contravention of this Act, wilfully or negligently makes or causes to be made any statement, or furnishes or causes to be furnished any document or information to the Comptroller which is untrue in any material particular, shall without prejudice to any other liability be guilty of an offence and shall, on conviction, be liable for every offence to a fine of not less than the equivalent of ten per centum of the amount of duty endangered or €58.23, whichever is the greater, but not exceeding €2,329.37).

(2) Every person who knowingly registers or presents a second or subsequent bill of entry for the same goods in contravention of this Act shall be guilty of an offence and shall, on conviction, be liable for every offence to a fine equivalent to twice the amount of duty chargeable on such goods.

(3) For the purpose of an offence under this Act, the court shall not take into consideration any verbal or written declaration which purports to correct in a material particular a previous declaration to Customs and which is made when discovery of the offence is imminent.

(4) All proceedings for any offence under this article shall be instituted by or in the name of the Comptroller.

(5) It shall be lawful for the Comptroller in every case of an offence under this article, and where the duty endangered does not exceed €1,164.69, to allow the offender, in lieu of prosecution, to pay the fine provided for that offence

	reduced by twenty per centum, as a civil penalty due to Customs. 6) Quite frequently. 7) If penalty imposed as part of the settlement is either not accepted by the offender or not paid by the same, Customs will proceed with court action and the offender will receive the relevant Court citation. 8) In such cases, Court proceedings are instituted. 9) It is at the discretion of the Comptroller of Customs to either refuse or accept a request for an out of court settlement (within the thresholds set by the law) but penalties are prescribed under national legislation, namely Articles 63 and 63A of the Customs Ordinance (Cap. 37) and Article 18A of the Import Duties Act (Cap. 337). 10) In case of settlement as prescribed in Article 63A of the Customs Ordinance (Cap. 37) penalties are reduced by 10% but goods are confiscated and the criminal liability may be extinguished. In each and every case settlements are made by mutual agreement without prejudice on either part. Article 18A of the Import Duties Act (Cap. 337) may still apply and penalty is solely administered by court. 11) No, national legislation does not provide for such cases. All infringements must be pursued. 12) 40 cases during 2006; 66 during 2007; 118 during 2008 and 87 during 2009
A	1) So far we have the fixed penalty as a form of settlement. A court case before the criminal court can be avoided on the basis of bilateral coordination between customs (which makes the offer) and the suspect (who accepts it). This system is about to be changed by new legislation (Public Prosecutions Service (Out-of-Court Settlement) Act). As soon as the new legislation has taken effect for customs cases, customs will be able to impose a punishment order. The punishment order, in contrast to the fixed penalty, is characterised by its one-sided nature. If the suspect wishes to contest the punishment order, it will require active action on his part because he must lodge an appeal against the order with the court. In the present system, if the suspect does not comply with the conditions of the fixed penalty, then in order for a punishment to be imposed, customs must take the initiative and prosecute the suspect before the criminal court. 2-12) See answer to question (7.1) 1.
T	1) In T there is procedure for settlement of customs offences. 2) Settlement is applicable to every type of customs infringements.

	3) Settlement is not applicable to serious infringements. 4) Settlement procedure is the type of criminal procedure and settlement is alternative to ordinary criminal penalty. 5) The provisions relevant to settlement are the chapter of the Penal Fiscal Code. 6) The procedures for settlement of customs offences are applied in T quite often (see the last point). 7) Under the T legislation are not any preliminary procedures (i.e. warning letters) which must be issued prior the issue of a penalty demand. 8) If any deadline of settlement procedure is not respected by the liable person, the ordinary criminal procedure was applied. 9) The customs authorities has a discretion in issuing a penalty to infringements, but the settlement that has been reached must be confirmed by court which pass judgement in that case. 10) A settlement between the liable person and the customs administration is reached by the way of negotiation and penalties are usually reduced in that case. 11) The liable person who voluntary disclosure to the customs authorities committing the offences are not punished. Only the goods are confiscated or duties/taxes must be paying in correct amount. 12) 2067 cases in 2006 and 2413 cases in 2007 were resolved by settlement.
U	There are not procedures for settlement of customs offenses in U.
V	There are not procedures for settlement of customs offenses in V.

X	X national law has not adopted the possibility of settlement of customs offences and this process is not applied in X republic. In the case of infringement of customs regulations the case is always disputes and penalty is set. (The only situation when the customs authorities will not set the penalty is situation, when the period for set the penalty expired – the period is two years from the moment the customs authority get knowledge about the infringement of customs regulations - maximum period of six years from the moment, when the customs regulation had been disturbed).
F	1) Yes, for certain criminal offences. 2) Settlement is possible for criminal offences for which a fine or not more than three years imprisonment is prescribed. It is done on a proposal of a public prosecutor. When deciding about settlement, he takes into account type and nature of the offence, the circumstances in which it was committed, the personality of the offender and his prior convictions for the same type or for other criminal offences, as well as his degree of criminal responsibility. Settlement shall be run by the adjuster, who is obliged to accept the case into procedure. Settlement may be implemented only with the consent of the offender and the injured party. 3) Yes, if special circumstances exist, settlement may also be permitted for the criminal offences such as aggravated bodily harm. 4) Alternative to criminal penalty. 5) Article 161 a of Criminal Procedure Act. 6) For customs related criminal offences not often. 7) No. 8) If so under which conditions is possible to apply such discretion? 9) No. But in criminal procedure the public prosecutor shall not be obliged to start criminal prosecution, or shall be entitled to abandon prosecution - where the Penal Code lays down that that the court may or must grant remission of penalty to a criminal offender and the public prosecutor assesses that in the view of the actual circumstances of the case a conviction alone without a criminal sanction is not necessary

	- where the Penal Code provides for a specific offence a fine or imprisonment up to one year and the suspect or the accused has prevented harmful consequences or compensated for damage and the public prosecutor assesses that in view of the actual circumstances of the case a criminal sanction would not be justified 10) Waived. 11) Yes. 12) Public prosecutor has this information, but is not often in area of customs infringements.
W	1) There is a single procedure for settlement in tax offences, and it is only possible to apply in the auditing procedure but not in the sanction procedure, having a direct effect in the final sanction with an automatic 50 % reduction of the fine. 2) It is a discretional customs procedure but the liable person can ask for it. It is only applied: • When there are difficulties to apply or to interpret the law in a specific situation (it can be interpreted in several different ways). • When there are problems to value the final debt or the goods. The final result is a settlement about the final customs debt with an automatic 50 % reduction of the fine. 3) – It is not applied in criminal or smuggling infringements. 4) It is not an alternative, in the case of administrative infringements, only reduce penalty. 6) For the moment it has never been applied for customs investigations. 7) No, we have not. 8) He loses the possibility to reduce the penalty. 9) No, when the facts regulated on the law occur, it is mandatory to start the procedure. 10) Yes, we have two different situations: • If we begin a settlement procedure, a 50% reduction of the fine is possible.

	• In the common procedure, if the liable person agrees with the penalty, there is a reduction between 25 % and 45 % in the fine. 11) No, we have not. 12) (This question is the same as 6) Zero.
Z	1) In certain cases dealt with under criminal rules, we offer the option of payment of a sum of money in lieu of court proceedings. The process is known as compounding. 2) The person admits guilt and agrees to pay a financial penalty instead of being taken to court. If the penalty is not paid, proceedings are instituted. 3) All infringements dealt with under criminal rules are deemed to be serious. Compounding is an administrative tool designed to save time and money for the offender, the customs authority, and the courts. Nevertheless, it is used sparingly. 4) Yes. 5) Customs & Excise management Act (CEMA)152 (a). 6) No statistics immediately available. 7) Not normally. However, we make great use of warning letters as an alternative to penalties, for the purpose of encouraging future voluntary compliance (see section 10). 8) N/A 9) .As the Commissioners see fit. 10) No 11) Yes. Save in cases of evasion or those exclusively covered by criminal law, voluntary disclosure will normally result in no penalty. Such disclosure also counts as a mitigating factor in determining the level of penalty in cases of duty evasion.'. 12) Unknown.

TABLE 11002

Territorial Competences

A : 1) The territorial competence of an authority is determined either by the place of detection or the place of commitment

2) i) Administrative criminal procedures:
The "Independent Financial Senate" (Unabhängiger Finanzsenat – UFS) against decisions of this senate, there is the possibility of an appeal to the Administrative court, resp. the Constitutional Court.
Judicial procedures: The A Supreme Court.

2)ii) /

3) It can be mitigating

C : 1) The infringements and the civil proceedings which arise, are prosecuted under the rules of common law and are tried in accordance with the regulations of the Criminal Investigations Code (Art 282, 283 of the General Customs and Excise Act)
The customs proceedings with regard to natural persons are instituted before one of the following courts:
- the court which is competent in the district where the infringement was committed.
- the court which is competent at the location where the offender was domiciled at the moment that the civil proceedings are instituted.
- the court which is competent at the location where the offender was arrested.
- the court which is competent at the location of the seizure, if it can be established in any way that goods were not mentioned on the required import declaration, these goods are seized on the territory of the country present to article 224 of the General Customs and Excise Act.

As far as customs issues are concerned, a legal person can be summoned to appear before the Criminal Court:
- which is located where the infringement was committed
- which is located where the goods were seized
- which is located where the company has its statutory seat or its place of business

Following the same distinction, the proceedings are instituted by the regional director who is competent at the place where the infringement was committed or where the offender was domiciled or arrested.

2)i) The administration and the public prosecutor are entitled to give notice of appeal within the limits of its competence which consists in:
- for the administration: the fine, the alternative imprisonment, the confiscations and the closure.
- for the public prosecutor: the principal imprisonment and the public policy provisions, for example: the application of an illegal penalty.
The administration's appeals concern the entire proceedings which it instituted before the court of appeal. The Minister of Finance can limit the appeal to only a part of the penalties. The public prosecutor is in principle not legally competent to appeal against a judgement which is limited to the confiscation. That kind of appeal is inadmissible.

2)ii) Irrelevant

3) None of the provisions in the C customs law stipulate that the payment of the customs debt can affect the result of the appeal.

P: 1) In accordance with art.48, par. 1 of the Administrative Violations and Sanctions Act, an administrative penalty case shall be examined by the administrative body authorised to impose sanctions in whose territory of jurisdiction, the violation has been committed.
Art 48, par. 2: Where the scene of the commission of a violation may not be established for sure, competent to examine the case shall be either the penalising authority in whose territory of jurisdiction the violation resides, or the penalising body in whose territory of jurisdiction the administrative proceedings were first initiated.
In accordance with art. 231 of the customs act, penal ordinances shall be issued by the Director of the National Customs Agency or by officials appointed by him. Officials appointed by the Director of the NCA are the Director of the "Customs Intelligence and Investigation Directorate", Central Customs Directorate, the Directors of the Regional Customs Directorates and the Heads of the Territorial Customs Directorates.
The provisions regarding the territorial competence in respect of customs crimes (criminal infringements) are included in art 35 of the Criminal Procedure Code.

2)i) Before the court of the second instance.

2)ii) There are no civil penalties provided by the P legislation.
Remark: the administrative penalties are subject to appeal before the relevant district court.

3) The result of the appeal depends only on the evidence gathered and the established facts, which the court shall assess.

Q: 1) According to the Department's of Customs and Excise policy, District Customs Stations are competent to deal with infringements committed in their district, up to a specific extent.

2)i) The Supreme court is responsible to examine the appeals against the decisions of criminal courts for penalties.

2)ii) Civil penalty is not subject to an appeal. This penalty is provided in article 52 of the Customs Code Law No 94(I) of 2004 and consist of a specific percentage on the assessed evaded duty or tax, when due to the infringement a customs debt is occurred.

3) No

D: 1) Not an issue mostly. We are a small country. The rules are lined out in the procedure law applied. The general rule is that the case is proceeded according to the place of commission of the act.

2)i) The court

2)ii) The court

3) No.

E: 1) That authority is competent to deal with the infringement in whose territory the infringement has taken place.

2)i) General higher court

2)ii) Administrative court

3) No Besides, the main rule is that the due customs debt must be paid regardless of the appeal.

F: 1) Territorial competence in terms of settlements is determined by the place where the infringement was committed. However, depending on the type of infringement or the amount of the fine, the Director General for Customs and Excise or the Minister may be competent.

2) et 3) The settlement is a contract freely entered into by both parties. Within this framework, the infringer admits to having committed a customs infringement and agrees to pay a settlement fine that is always less than that which is stipulated by law.

Given this, the settlement – although it has to do with a penalty that is criminal in nature and it extinguishes any and all legal prosecution – complies with the rules defined by article 2052 of the civil code. This means that, with respect to the contracting parties, customs settlements have the authority of decisions not subject to appeal.
The only remedy against the settlement contract must be brought before a civil court.
Finally, for infringements involving sums in excess of € 100.000 (or, if there are no duties to pay, when the value of the goods is greater than € 250.000) the case is referred to the Commission for Tax, Customs and Foreign Exchange Disputes (Article 460 of the Customs Code and Decree no 78-365 of 12 June 1978), who issues an opinion that the customs authorities almost systematically follow.

G : 1) The local authority is responsible for the prosecution of the offence:

- in whose area of jurisdiction, the offence was committed and/or where the benefits from the offence occurred (*Art. 7 Criminal Procedure Code*; *Art. 388 Section 1 No. 1 Fiscal Code*)
- in whose area of jurisdiction the offence was discovered (*Art. 388 Section 1 No. 1 Fiscal Code*)
- in whose area of jurisdiction the offender lives or normally stays (Art. 8 *Criminal Procedure Code; Art. 388 Section 1 No. 3, Section 3 Fiscal Code*)
- who is responsible for the matters concerning the duties (*Art. 388 Section 1 No. 2 Fiscal Code*)

If several financial authorities are locally responsible, priority is given to the financial authority that initially instigated criminal proceedings due to the offence. (*Art. 12 Section 1 Criminal Procedure Code; Art. 390 Section 1 Fiscal Code*)

2)
i) If the criminal proceedings were in the first instance heard in the county court, the court of appeal for criminal penalties due to customs infringements is the district court. (§ 74 Section 3 GVG) The appeal is not admissible against rulings made in the first instance by the district court.

ii) /

3) As the appeal procedure is also a verification procedure, the possibility generally exists that the court of appeal will consider the payment of customs debt during the appeal procedure as being conducive to a reduction in the severity of the penalty.

R: 1) According to art 152 of our National Customs Code, territorial competence depends on.

a) the place where the infringement occurred

b) the place where the infringement was discovered

c) the place of residence of the offender (legal or natural person)

2)i) National court

2)ii) National court

3) Yes

J : 1) According to Art 36(2) of Act XIX of 1998 on the Rules of Criminal Procedure crimes related to Customs infringements are investigated by the J Customs and Finance Guard. On the basis of Art 5 of Joint Decree of 17/2003, the territorial competence of the investigation authority for the crimes defined in the art 36 (2) shall be determined by the place of the perpetration. If the place of the perpetration cannot be determined that investigation authority shall process on whose territory the crime was detected. If the crime was committed abroad, the investigation authority determined in accordance with the perpetrator's residence or place of stay shall proceed.

2)i) In criminal cases, the appeal shall be lodged to the court issuing the decision of first instance, but will be judged by the court of second instance. The appeal shall be submitted within 8 days from the receipt of the decision.

2)ii) In case of administrative penalties levied by the customs office, the appeal will be dealt with by the competent Regional Directorate of the Customs and Finance Guard. The territorial competence of the Regional Criminal Investigation Offices of the J Customs and Finance Guard is determined by Art 4 of the Decree No 24/2004 on the implementation of the Act on the J Customs and Finance Guard.

3) Customs debt paid during the appeal procedure might be considered as a mitigating factor by the court. However, the fact that the customs debt is paid does not preclude penalty imposition.

K : 1) Revenue commissioners are the national authority for investigating customs infringements. The Director of Public Prosecution (DPP) prosecutes criminal cases.

2)i) The courts

2)ii) Not applicable

3) Not necessarily. In criminal procedures, the payment of a customs debt is not interpreted by the prosecuting authorities to be a mitigating factor, but defence side will attempt to put it forward so and the court will take it into account.

H 1) Offences providing for an administrative penalty:

- If the offence has been checked as a result of a customs declaration control, the customs office responsible for charging and imposing the penalty is the customs office which has made the control of the customs declaration (during the clearance or an ex-post control).

- For criminal offences, the criminal court in whose territory the infringement has taken place.

2)i) For criminal offences: the criminal court

2)ii) Administrative penalties: the appeal is lodged before the bodies of the tax justice (specialized court) in whose territorial area is located the customs office which has issued the document issuing a penalty.

3) No, unless we assume that the appeal procedure regards administrative penalty. In this case the appeal procedure can be defined only if the offender has paid what is due by the same offender; this includes not only customs debt but also the penalty.

S : 1) A director general of the State Revenue Service determines territorial competence of customs authorities.
With criminal infringements deals only the Customs Criminal Board of State Revenue Service.

2)i) The courts

2)ii) Director General of the State Revenue Service and courts

3) No

B: 1) There are five territorial customs offices in B. When the investigation of customs infringement and imposition of penalty is within the customs authorities competence, customs infringement is being investigated, and penalties are being imposed by the territorial customs office in which territory it was committed. The Customs Criminal Service investigates criminal acts committed in the entire territory of B.

2) Penalties for criminal acts related with customs activity are imposed by the County Court. Pre-trial investigation is carried out by the Customs Criminal Service; later the prosecutor prepares an indictment and submits the case to the County Court. The appeal against the decision of the County Court can be filed with the Court of Appeals, and the appeal against the decision of the Court of Appeals can be filed with the Supreme Court. The decision of the Supreme Court is final.
The person can file an appeal against a fine imposed by the territorial customs office according to the Law on Tax Administration, with the Customs Department. The person can file the appeal against a decision of the Customs Department with the Commission on Tax Disputes under the Government of the Republic of B. The decision of this Commission can be appealed for the Vilnius Regional Administrative Court. The decision of the Customs Department, at the discretion of the person, can be appealed also directly to the Vilnius Regional Administrative Court, without submitting a claim to the Commission on Tax Disputes. The decision of the Vilnius Regional Administrative Court can be appealed for the Supreme Administrative Court which decision is final.
The administrative penalty imposed by the territorial customs office according to the Code of Administrative Offences, can be appealed by the person to the Regional Administrative Court. The decision of the Regional Administrative Court can be appealed to the Supreme Administrative Court, which decision is final. In certain cases (in cases of more Grave offences) the territorial customs office only records the fact of offence, and drafts a protocol in respect of it, and the administrative penalty is imposed by the District Court. The appeal against the decision of the District Court can be filed with the Supreme Administrative Court which decision is final.
The decision of the territorial customs office to annul or suspend granted authorisation can be appealed by the person to the Customs Department. The decision of the Customs Department can be appealed to the Chief Administrative Disputes Commission or the Vilnius Regional Administrative Court. The decision of the Vilnius Regional Administrative Court can be appealed for the Supreme Administrative Court which decision is final.

3) The payment of the customs debt during the appeal procedure does not affect the result of the latter.
Exception: according to article 141 of the Law on Tax Administration, exemption from fine imposed under this law may be applied (also during the appeal procedure) only in cases where the person has paid the amount of tax or duty related to the imposed penalty or the time limit for the payment of tax or duty has been deferred or spread.

L: 1) Customs are competent for the whole territory of L. On a jurisdictional consideration, the district courts are competent.

2)i) The criminal district court

2)ii) /

3) This will be of the court's decision.

T]: 1) Every officer of Customs shall, in addition to the powers and duties assigned to him/her under Articles 70 and 71 of the Customs Ordinance (Cap. 37), is empowered by Subsidiary Legislation 37.09:
to exercise all the powers and duties as are by law vested in an officer of the Executive Police in any place set out in the Schedule to these Regulations in connection with an offence committed or suspected of having been committed: Provided that such functions, powers and duties as are by law reserved to officers holding the rank not below that of inspector of Police shall only be exercisable by officials not below the rank of Officer I.
Schedule:
- Any harbour, bay or creek, or the sea within the territorial jurisdiction of T
- Any airport, any place within the precincts of any airport, and any place outside such precincts if such place is ancillary to and in the vicinity of any airport;
- Any office, building, shed or other premises occupied by, or under the charge of the Comptroller of Customs;
Any part of the foreshore of T or the immediate vicinity thereof.
However when Police officers encounter any uncustomed goods outside customs areas, they are empowered to proceed on their own as prescribed in Article 70 and 71 of the Customs Ordinance (Cap. 37) but on concluding the investigations written authorisation from Comptroller of Customs to institute court proceedings must be sought.
The Armed Forces of T have been conferred the right to act on behalf of Customs through the Assignment of Powers to Armed Forces of T Regulations (SL22.06)

2)i) A Judge presiding the Superior Criminal Courts

2)ii) A Judge presiding the Superior Civil Courts decides whether an amount of duty is due or not in civil proceedings, rather than decide about civil penalties.

3) yes, outcome of civil appeal proceedings is affected when the payment of customs debt is settled prior to judgement being delivered, including the condition that case be withdrawn by debtor himself paying all judicial fees incurved in the process.

M : 1) M does not have such territorial restrictions. Customs is authorised to deal with customs infringements throughout the entire territory.

2)i) The district court rules in first instance on punishable offences. After that appeal to the court of appeal is open and – for points of law – appeal in cassation to the Supreme Court

2)ii) An administrative fine is imposed by a decision issued by customs. The person involved can ask customs to review thedecision. If the decision on the request for review is negative, the person can lodge an appeal with the district court. After this appeal to the court of appeal is open and – for points of law – appeal in cassation to the Supreme Court.

3) No

N : 1) Territorial competence for deciding which authority is competent to deal with the infringement is determined by the place where it was committed.

2)i) The court of appeal

2)ii) Do not exist

3) No

O : 1) Territorial competence for deciding which authority is competent to deal with the infringement is fixed regarding the geographical area where customs infringement took place (art. 5/1 and 67 of law 15/2001 for administrative procedure; art. 19 of Penal Code).
In the case of customs obligations / duties that could have been complied in any customs service of the country, the law considers that the customs infringement is committed in the agent's domicile, and in these cases the authority which is competent to deal with the infringement is the correspondent to the agent's domicile.

2)i) The competent authority to settle the appeals against criminal penalties is a criminal court (of a higher level), which is a common court.

2)ii) In what regards administrative penalties the competent authority to settle the appeals is a specialised court on tax issues (it is not a common court)

3) The answer is no. In fact, the payment of the customs debt during the appeal procedure does not affect its result.

However, the payment of the customs debt is able to suspend a criminal penalty of imprisonment execution if the agent is not recidivist (a confirmed criminal). – art. 14 of law 15/2001

U : 1) Taking into account the place of the perpetration of the infringement

2)i) Criminal court

2)ii) Civil court

3) No

V: 1) The competence to deal with the infringement (in the case of customs offence and custom delict) is the customs authority in which territory have the person, who infringement the customs regulations, place of permanent residence or establishment.

2)i) in the case of criminal penalties - Court of appeal

2)ii) in the case of administrative penalties is Customs Directorate of the V Republic against decision of Custom offices.
In the case of filling an action the regional court is competent (appeal Supreme Court of the V Republic),

3) No, because the process about assessment of customs debt and process about the infringement customs regulation are two independent a self-employed actions.

X : 1) the competent authority is the authority where the infringement was done.

2)i) Higher court

2)ii) we do not have civil penalties

3) No

I : 1) It's necessary to distinguish two different control systems.
Import – Export controls and post clearance controls: in this cases, the control corresponds to the custom office where the import has been done

Post clearance audits: in this type of control (more extend), the competence to audit corresponds to the custom authority where the liable person is officially located.

2)i) The Judge

2)ii) Customs Authorities

3) No

P : .P policy is set out in guidance. This determines which authority is competent to deal with these particular areas.

2)i) The courts

2)ii) The VAT and Duties Tribunal, then higher civil courts

3) No

TABLE 11003

	POINT 2.3.1 SAME BEHAVIOUR AFFECTING SEVERAL IMPORTS		**POINT 2.3.2 SAME BEHAVIOUR AFFECTING SEVERAL INFRINGEMENTS**		**POINT 2.3.3 & 2.3.4. OVERLAPPING**	
MS	***ONE PENALTY FILE PER IMPORT***	***ONE PENALTY FILE IN TOTAL***	***ONE PENALTY PER INFRINGED NORM***	***ONE PENALTY (AGGRAVATED) IN TOTAL***	***ALLOWED***	***BANNED***
A	X (if not within competence of same local authority)	X (If within competence of same local authority)		X (if legal conditions are fulfilled one procedure and one penalty) *Within the A legal system they are separate offences but -if the legal conditions are fulfilled- they are treated in one procedure and one penalty applies.		X
B	X			X		X
C	X		X			X
D	X		X		X	
K		X		X		X

E	X (as regards imposition to administrative penalties in E they are treated separate infringements) (as regards imposition to criminal penalties in E they are mainly treated separate offences but the imposed penalty due to the offences is a common one).	X However, if several imports have taken place during a relative short period of time and the place of entry to E is the same, these several imports are treated as one offence).		X (If a person is to be sentenced to imprisonment for two or more offences at one time, he or she shall be sentenced to a joint punishment of imprisonment, unless otherwise provided elsewhere in the law. In cases where one offence would be punishable by imprisonment and two or more other offences by a fine, the court may pass a joint sentence of imprisonment for all the offences or a joint sentence of imprisonment for some of the offences and, in addition, a fine for the other offences.	X	

				When sentencing to a joint punishment, the most severe maximum penalty for among the respective offences may be exceeded, but the sentence shall not be longer than the sum total of the maximum penalties of the respective offences. In addition, the most severe maximum penalty shall also not be exceeded by more than (1) one year, if the most severe maximum penalty is imprisonment for less than one year and six months, (2) two years, if the most severe maximum penalty is imprisonment for at least		

				one year and six months but less than four years, or (3) three years, if the most severe maximum penalty is imprisonment for a fixed period for at least four years. The sentence shall not be shorter than the most severe minimum penalty for among the respective offences. The most severe maximum and minimum penalty refers to the sentence that, according to the provisions to be applied in the case, can be passed as the maximum and minimum penalty. If one or more offences are punishable only by		

				a fine, the fines altogether shall be considered to equal one month's imprisonment when calculating the sum total of the maximum penalties of the various offences.		
G		X (taking into account the total hidden debt)		X		X
H	X			X		X
J	X			X	X	
L	X (Typical)	X (only in case of crimes in judicial cases)	X	X (theoretically it can exist but not typical)	X	
I	X		X			X
O	X			X		X
P		X (but only referred to errors)		X	X	
Q	X		X		X	
R		X (sanction		X	X	

		accumulated)				
S		X (prescription from the date of the final one)		X (with separated charges)		X
2. T	3. X			X		X
M		X	X			X
U	X (yet there can be just one file regarding several charges, in case the court/public prosecutor (criminal procedure) or the customs authority (non criminal procedure) consider the existence of cummulation of offences)		X (yet there can be just one penalty regarding several infringements, in case the court (criminal procedure) or the customs authority (non criminal procedure) consider the existence of cummulation of offences)		X (only when by the same behaviour an offender commits both a crime and an administrative infringement)	
V	X		X			X
N	X (optional)	X (optional)	X			X
F	X (optional)	X (optional)		X (one procedure, several charges)		X
X	X		X (administrative ones)	X (judicial cases)		X

Z		X		X (not a fixed criterion)		X

Annex 5

8. Investigatory Powers of the Customs Authorities

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
A	The competent customs authority in its function as penal authority, in judicial cases together with the public prosecutor.	Inspections Search for documents or goods Seizure Arrest Other: information about bank accounts, search of persons, supervision of telecommunication (only in judicial cases), measures of customs supervision (Art. 16ff AICL, Art. 34 AICL)	These powers are applied by special customs investigation teams implemented within the customs authorities.	For searching, arresting and supervision of telecommunication a judicial authorization is needed, except danger is at hand.	Art. 85 to 97 and Art. 195 ff Fiscal Penal Code Art. 109 to 172 Criminal Procedure Code
B	All sworn civil servants with the Customs and	<u>(i) inspections</u> The customs and excise civil servants exercise the		Certain powers are subject to restrictions:	The General Customs and Excise Act of 18

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
	Excise Administration can investigate and determine customs infringements (Art. 267 of the General Customs and Excise Act). However, the use of various means of investigation which are particularly intricate for those undergoing the investigation, is allocated to certain groups of civil servants or is subject to the authorisation of a high ranking civil servant. Other persons who are not entitled to act on their own behalf, are empowered by law to co-operate with the administration's civil servants, i.e. the civil	following rights: • the right of visitation of the goods and the means of transport (Article 182 of the General Customs and Excise Act); • the right of visitation of persons (article 182 L.G.D.A.); • the right to open packaging (article 184 L.G.D.A.) • the right of visitation of domiciles (Articles 188, 197 and 199 of the General Customs and Excise Act) provided the judicial authorization; • the right to take specimens (Article 206 of the General Customs and Excise Act). <u>(ii) search for documents or goods</u> The customs and excise civil servants can request to produce the following items:		• either these powers are conferred to certain groups of civil servants or subjected to the authorisation of high ranking civil servant (the right to request the submission of documents and the right to maintain them, request for an extract from the judicial records, the right of visitation of domicile, etc.);	July 1977 : Articles 182, 184, 188, 190 to 192, 197, 199, 201, 203, 205, 210, 221, 222, 224, 231, 236 to 238, 247 to 252, 281, 327. The Act of 22 April 2003 granting the capacity of law enforcement officer to certain civil servants of the customs and excise administration and the Act of 6 January 2003 on the use of special investigation methods and other methods of inquiry .

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
	servants of public administrations, the state police, the police officers, the civil servants of municipal administrations, the forestry officers, the private sworn security guards (who are only competent in customs matters), the bailiffs and the tax bailiffs (Art. 186 and 187 of the General Customs and Excise Act. They must be provided with their proof of appointment or with another document which proves their public power to participate to the civil servants' official acts. A private individual cannot co-operate in the	• all documents and correspondence, all information concerning these goods, whenever these items are considered to be necessary for the verification of the elements mentioned on the customs declaration (Art. 201 (2) of the General Customs and Excise Act); • invoice books, invoices, copies of letters, cash books, books, inventories and all books, registers, documents and correspondence related to the commercial and professional activities of which the submission is considered to be necessary (Art. 203 (1) of the General Customs and Excise Act). There are particular provisions for financial institutions, credit institutions and brokers. These civil servants also have the right to take		• or these powers must be granted by a judge (right of visitation of domiciles, request for legal information, use of special investigation methods, provisional arrest) or a public prosecutor (access to legal files); • or these powers are connected to a certain kind of infringement (seizure , use of special	

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
	investigations by the administration's civil servants. Pursuant to Council Regulation 1468/81 of 19 May 1981 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs or agricultural matters or the Convention of 7 September 1967 on mutual assistance between customs administrations, the civil servants of customs administrations of European Community	copies and to withhold documents and correspondence which constitute or contribute to the constitution of a customs or excise infringement. Based on the documents withheld, they draw up an inventory of which they submit an undersigned copy to the owner or the holder (Art. 203 (2) of the General Customs and Excise Act). The civil servants can seize and take any books, correspondence or documents which are detected during a search provided that they can serve as proof of the offenders' guilt (Art. 189 of the General Customs and Excise Act). (iii) seizure The customs civil servants can provisionally seize the goods and the means of transport in order to ensure the confiscation in the cases provided for by law. The confiscation of goods is particularly imposed in case of an incorrect designation or an incomplete declaration (Art. 236 to 238 of the General Customs and Excise Act), fraudulent importation or exportation or attempted fraudulent importation or exportation, prohibited storage and irregular movement (Art. 221, 224, 231 and 232 of the		investigation methods, provisional arrest).	

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
	Member States who are entitled to investigate infringements to the customs laws, can assist to these civil servants' investigations on the B territory - provided the approval of the civil servants who are competent for our administration - with a view to investigating and determining similar infringements for which the applicant customs administration is competent. Actually, foreign civil servants cannot actively co-operate in the official acts carried out by the country's civil servants with a view to the investigation of fraud.	General Customs and Excise Act). Are particularly concerned: • the fraudulent goods; • the goods used to hide the fraudulent objects (Art. 222 (3) of the General Customs and Excise Act); • the gear and the machines used with a view to committing fraud (Art. 42 of the Criminal Code); • the means of transport used with a view to committing fraud or put into action to that end. <u>(iv) arrest</u> The offenders can at all times be provisionally arrested when the infringement might result in the application of an imprisonment (Art. 247 to 252 of the General Customs and Excise Act). The arrest can occur anywhere in the kingdom provided that the infringement which warrants the arrest has been			

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
	They are authorized to give indications, particularly with a view to directing and advising the civil servants during their investigations and in their choice of incriminating documents to be withheld, if necessary.	established. This measure shall only be applied: • in case of aggravating circumstances, independent of the size of the infringement: rebellion, violence towards the civil servants, armed offences, offences revealing activities at various points in the country, offences committed by offenders belonging to an organized gang, offences by gangs of at least three persons, use of hiding places in vehicles, use of fraudulent means or special fraudulent procedures, repeated legal recidivism, etc., and if the administration considers it to be indispensable; • in case of offences involving narcotic substances which are found at the importation or			

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
		exportation within the customs radius or during a control in road transport; • if the offenders are non-residents or unknown persons. In practice, this arrest only occurs when offenders are caught in the act of committing a misdemeanour or within a very brief period of time after the misdemeanour. <u>(v) other</u> The right to request • the opening of a judicial inquiry (Article 281 (2) of the General Customs and Excise Act) with a view to obtaining affidavits, conducting searches of premises within the framework of the right of visitation of domiciles, applying special investigation methods; • an extract from the central judicial records			

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
		(Article 210 (1) of the General Customs and Excise Act); • the consultation of a judicial file (Article 210 of the General Customs and Excise Act). The civil servants of the Customs and Excise Administration acting as law enforcement officers can use special investigation methods: observation; the use of informers; deferred intervention; with a view to investigating and finding: 1° infringements to the regulation on the protection of the European Communities financial interests (Council Regulation (EC) No. 2988/95 of 18 December 1995); 2° infringements to all laws and regulations conferring certain powers to the civil servants of the customs administration at the moment of the import, export or transit of goods; 3° infringements related to those stipulated in 1° and 2° (Act of 22 April 2003).			

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
C	In accordance with Article 223 of the Customs Act, the customs authorities shall examine, establish and sanction each violation or attempt at violation of the provisions of the customs legislation insofar as the action is not a criminal offence. The authorities of the Ministry of Interior shall investigate the cases of customs crime (criminal infringement).	(i) Inspections: In accordance with art.16 of the Customs Act, while performing their professional duties customs officers shall be entitled: 1. to conduct inspections related to customs supervision and control of goods, vehicles and persons in the zones of border checkpoints and throughout the customs territory of the country; 2. to undertake the necessary measures, allowed by law, for performing customs control; 3. to require the presentation or delivery of goods, documents, data or other information carriers related to customs supervision and control; 4. to require presentation of personal identification documents; 5. to require written or oral explanations; 6. to perform follow-up customs control of goods and documents related to importation, exportation and transit; 7. to collect sums: for customs duties for imported and exported goods; for unfulfilled liabilities and guarantees; for payment of the equivalent amount for goods confiscated in favour of the state when they are missing or expropriated and for any state receivables, collectable by the customs authorities; 8. to levy, according to the procedure established by the law, distraint and injunctions for securing due customs duties and other state receivables collectable by them; 9. to carry out individual searches of persons crossing the state border; 10. to conduct searches and seize goods that have been or should have been subject to customs supervision and control and related documentation in offices, official and other premises, as well as personal searches of the persons located therein, in compliance with the procedures of the Criminal Procedure Code; 11. to execute controlled deliveries jointly with the competent authorities of the Ministry of Interior and of the State Agency for National Security with the permission of the respective prosecution office. (ii) Search for documents or goods: the information is included in the previous point.			

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
		(iii) Seizure: The Customs authorities are not competent in putting physical persons – perpetrators under arrest. In the cases of customs crimes (criminal infringements) competent in putting the perpetrators under arrest are the authorities of the Ministry of Interior. In accordance with art.229 of the Customs Act, the customs authorities shall be entitled to seize and retain under their control the goods that are the object of customs violations, including vehicles and other means used for their concealment, importation to or exportation from the country as well as material evidence necessary or related to the investigation proceedings as well as goods and cash for securing possible receivables under the penal ordinance.			
D	The Department of Customs & Excise through its authorised officers.	(i) – (v) Customs Officers are vested by the Customs Code Law No. 94(I) of 2004 with all these powers. Please see the Customs Code Law No. 94(I) of 2004 – Part XVIII "General Powers", Sections 75 to 88.	Through the Customs Code Law No. 94(I) of 2004 and guidance.	Yes. A judge may authorise by warrant a customs officer or any other person named in the warrant, to enter and search any. dwelling house or place.	Please see the Customs Code Law No. 94(I) of 2004 – Part XVIII "General Powers", Sections 75 to 88.
E	Tax and Customs Board.	Inspections Search for documents or goods	Extensively.	Yes, mainly the Prosecutor's Office.	Chapter 3 of Code of Criminal Procedure.

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
		Seizure Arrest (with a permit) Other: surveillance			
F	Customs.	(i) to (v); (v): imprisoning, travel ban, restraint on alienation, seizure for security, search of the premises, search of the person, telecommunications listening, telecommunications monitoring and technical surveillance. As regards customs offences, the Customs has the same investigatory powers as the Police (excluding working under cover and fictitious purchase). The definition of customs offence included in the F Customs Act is very extensive: Customs offence means an offence which constitutes violation of this or any other act that the Customs is responsible for supervising and enforcing, or violation of the provisions or regulations issued under or by virtue of such acts as well as the unlawful dealing in imported goods referred to in Chapter 46 of the Penal Code, and the offence of concealment referred to in paragraph 2 of Section 1 of Chapter 32 of the Penal Code or any other infringement involving the importation and exportation of property. *These powers are applied in compliance with the*		Yes: Imprisoning, restraint on alienation, seizure for security, telecommunications listening, telecommunications monitoring and technical surveillance (including technical listening, technical viewing and technical tracking) require a decision by the court. Excluding imprisoning and telecommunications listening, until the court has taken the decision and if the matter does not endure any delay, a specified Customs officer can decide on	Criminal Investigations Act (449/1987) and Coercive Measures Act (450/1987).

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
		needs of the investigation and when the conditions provided for in the law for the application of each power are fulfilled.		these measures. Furthermore, in certain cases of technical surveillance, also a final decision on the measure concerned is taken by a specified Customs officer.	
G	Customs agents are given authority under the Customs Code to observe, research and prosecute customs infractions.	**a) Ex ante inspections** Ex ante inspections are based on Articles 66 and 68 to 75 of the Community Customs Code (CCC) and on Articles 239 to 252 in the Code's implementing provisions (CCIP). Goods shall be inspected in the places designated and during the hours appointed for that purpose by the customs authorities (see article 239(1) of the CCIP). Inspections in any other location are done at the expense of the declarant (Articles 239(2) of the CCIP and 102(1) of the Customs Code). In the same way, any handling and all sampling are carried out by the declarant or under his or her responsibility (Articles 242(2) and 243(1) of the CCIP and 102(2) of the Customs Code). After inspection of a declaration to customs and the goods it contains, the result of the inspection is recorded in an inspection certificate, generally written on the back of the declaration (Article 247 of the CCIP). This certificate constitutes an official document that has authority unless its authenticity is challenged by a specific civil proceeding (*inscription de faux*), provided that it is drawn up under the same conditions as a customs report (by at least two agents). If no breaches have been found, release of the goods is granted and the customs debt is immediately taken into account (Article 248(1) of the CCIP).			

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
		On the other hand, all breaches are noted in the inspection certificate for the purposes of legal action. If this breach incurs additional customs debt, payment of such debt must be guaranteed and the goods are then released, unless the goods are prohibited or restricted (Articles 248(2) and (3) of the CCIP). In a case where a breach that brings about or may bring about the confiscation of the goods is noted (generally, this is a question of a fraudulent operation concerning prohibited goods as described in Article 38(1) of the Customs Code), release is not granted and the goods are seized in compliance with Article 323 of the Customs Code. **b) Ex post inspections** Article 78 of the CCC stipulates the principle of ex post inspections, but without defining how they are to be carried out. The powers that may be mobilised on this occasion are laid down by G law, i.e. the Customs Code. The most commonly-used prerogatives for inspection during customs investigations are given in five articles of the Customs Code (Articles 60, 61, 63c, 64 and 65). □ *The right to search means of transport and persons (Article 60 of the Customs Code in combination with Article 61 of the same code)* Article 60 of the Customs Code allows customs agents to search all vehicles and persons circulating within the customs territory. Searches may be carried out throughout this territory in which the customs service normally operates, as well as on the public thoroughfare. These areas may be determined in the following manner: the public thoroughfare, train stations, airports, border zones, customs offices, warehouses, temporary storage rooms and areas, etc. Private sites and premises are thus excluded from inspections based on Article 60 of the Customs Code, as are sites and premises for professional use. Inasmuch as means of transport may be visited by customs agents, the agents must be authorised, thanks to			

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
		Article 61 of the Customs Code, to require that drivers submit to these inspections. □ *The right to search sites and premises for professional use (Article 63c of the Customs Code)* The right to search stipulated in Article 63c of the Customs Code is granted to agents who have reached the grade of customs controller, or to category C agents accompanied by an agent of a higher grade. It includes access to goods and to related documents on any medium whatsoever (and thus including computer media), located on these professional sites and premises. Agents may take samples and retain documents required for the investigation. Intervention sites are those sites and premises that are exclusively professional (such as land and warehouses, for example). Any part of these sites and premises that is for private use is thus excluded from the scope of Article 63c of the Customs Code. Means of transport may also be visited, but only when they are not on the public thoroughfare (inspection on the public thoroughfare may be carried out on the basis of Articles 60 and 61 of the Customs Code (see above)). The right to search must be exercised between 8am and 8pm. During this period, agents have the right to access professional sites and premises, including when no activities are taking place there. On the other hand, outside of this time period, customs agents only have access to sites and premises open to the public or, when such sites are not open, to sites and premises where certain activities are carried out (production, manufacture, packaging, transport, handling, storage and sales). The public prosecutor with territorial jurisdiction must be informed before every implementation of Article 63c of the Customs Code. The duly informed public prosecutor may rule against access or pursuit of the investigation. The right to search sites and premises for professional use on the basis of Article 63c of the Customs Code is not a coercive power. Nevertheless, any refusal towards a customs agent may be interpreted as obstruction of customs in the performance of their duties, which is penalised by Article 413b of the			

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
		Customs Code. All inspections based on Article 63c of the Customs Code must result in a report that details the inspection operations. The person present is requested to sign the report; the person may require insertion of any and all remarks that he or she deems useful. If the person refuses to sign, mention of this will be made in the report. In the five days following its creation, a copy of the report is transmitted to the public prosecutor's office. Within the same time period, a copy is also given to the person in question. As part of the inspection based on Article 63c of the Customs Code, customs agents may take samples from the inspected goods. The procedure for sampling is determined by Decree no. 96-866 of 27 January 1996. □ *The right to search private premises (Article 64 of the Customs Code)* The right to search private premises granted to agents under Article 64 of the Customs Code must be distinguished from the right to search as stipulated by the Code of Criminal Procedure (Articles 76, 92 and 94). Private premises searches may be conducted at all sites, even private ones, in which goods and documents (on any medium whatsoever) connected with the offences set out in the Customs Code are likely to be held. Searches may thus be conducted in private homes, in other premises considered to be private, as well as in premises not considered to be private (professional premises, for example). Nevertheless, in the case of the latter, the right of investigation as stipulated in Article 63c of the Customs Code is preferred. A private premises search is coercive in nature; this is why it is only carried out under judicial authorisation, except in cases of *flagrante delicto*. The concept of *flagrante delicto* must be viewed in light of the definition set out in Article 53 of the Code of Criminal Procedure. Except for cases of *flagrante delicto*, all private premises searches must be authorised by a court order issued by the liberty and custody judge (*juge des libertés et de la détention*) from the same place as the customs directorate with competence for the service that will carry out the search, or by a judge delegated		

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
		by the liberty and custody judge. When authorising a private premises search, the judge also appoints a law enforcement officer in charge of assisting with the search and informing the judge of how the search was conducted. The officer signs the report along with the customs agents. A search may not begin before 6am or after 9pm. However, if the search is initiated within these limits, it may continue after 9pm. The order authorising the private premises search must be served verbally and *in situ* at the time of the search to the occupant of the premises or his or her representative. A copy must be handed over against a receipt or signature of the report that will be drawn up. If the occupant of the premises or his or her representative is absent, the law enforcement officer must call for two witnesses. The report must list their names and the requisition asked of them. In such a case, the order is notified to the occupant of the premises by registered letter, return receipt requested. The date of notification is that which appears on the return receipt. If the notification is not received, it is served according to the conditions stipulated in Articles 550 *et seq*. of the Code of Criminal Procedure. If the occupant refuses to open the door, the customs agents may have it opened in the presence of a law enforcement officer. Every private premises search must be described in a report to which is attached an inventory of any and all goods and documents seized. The report is signed by the customs agents, the law enforcement officer and the occupant of the premises or his or her representative. If the occupant or representative refuses to sign, mention of this must be made in the report. Copies of this document and the inventory are given to the occupant of the premises or his or her representative. □ *The right to have documents made available for inspection (Article 65 of the Customs Code)* Customs agents who have reached the grade of customs controller, or category C agents acting on the			

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
		written instructions of an agent of at least inspector grade may require that papers and documents of any kind and on any medium whatsoever is produced in connection with operations involving the customs service. The request may be made of any individual or legal entity that is either directly or indirectly concerned by customs or foreign exchange operations, whether regular or irregular, that fall within their sphere of competence (Article 65(1) of the Customs Code). This right to have documents made available for inspection is carried out, under the provisions of Article 65 of the Customs Code: - in railway stations (waybills, invoices, cargo bills, account books, registers, etc.) - on the premises of shipping companies, shipowners, forwarding agents and brokers (freight manifests, bills of lading, mate's receipts, shipping notice, delivery orders, etc.) - on the premises of airline companies (dispatch note, delivery slips and notes, warehouse dockets, etc.) - on the premises of road transport firms (acceptance ledgers, freight registration books, delivery cards, journey slips, waybills, shipping slips, etc.) - on the premises of agencies (including so-called "express delivery" agencies) that arrange for the reception, consolidation and shipping of every type of package by any means of transport (rail, road, sea and air) (detailed grouped delivery slips, receipts, delivery books, etc.) - on the premises of brokers or forwarding agents - on the premises of warehouse, dock and bonded warehouse brokers (deposit registers and files, warrants and securities notebooks, registers for entry and exit of goods, position of goods, stock records, etc.) - on the premises of the effective recipients or consignors of goods declared to customs - on the premises of telecommunication operators and service providers listed in Articles 43-7 and 43-8 of Law no. 86-1067 of 30 September 1986 within the framework of Article L32-3-1 of the Postal and			

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
		Telecommunications Code. This possibility upholds the right of customs agents with respect to telecommunication operators and internet service providers - finally, and as a general rule, customs agents may exercise the right to have documents made available for inspection with respect to any individual or legal entity that is either directly or indirectly concerned by operations, whether regular or irregular, that fall within customs' sphere of competence. Article 65 of the Customs Code allows agents to obtain papers and documents of all types, and on any medium whatsoever (and thus including computer media), with respect to operations of interest to the service. This particularly concerns those subject to record-keeping requirements. When the person or entity concerned has supplied the documents of any type, such documents may be seized by customs agents who have reached the grade of inspector or controller. The right to have documents made available for inspection as stipulated in Article 65 of the Customs Code involves the voluntary provision of such documents by those concerned. **c) Detention of persons and the right of seizure** □ *Detention of persons* Under the terms of Article 323(3) of the Customs Code, customs agents may proceed, in the case of *flagrante delicto*, with the capture of accused persons. Given the loss of liberty that this entails, this measure is subject to formalities aimed at protecting the rights of persons. □In accordance with the provisions of this article, customs agents "may not proceed with the capture of accused persons except in the case of *flagrante delicto*". The conditions for applying a state of *flagrante delicto* are set out in Article 53 of the Code of Criminal Procedure. □In order to comply with the basic formalities stipulated in Article 323(3) of the Customs Code, the public			

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
		prosecutor's office must be immediately notified, and by any means of communications whatever (fax, telephone call, etc.), that an individual has been placed in detention by the customs authorities. □As soon as an individual has been placed in detention by customs, and when the public prosecutor's office having jurisdiction has been informed, a report must be drawn up by the service. This report is independent of the seizure report stating that an infringement has been committed. The report will allow for follow-up of the various stages of the customs proceedings, particularly by specifying the length of questioning sessions, meals and the exact time and date of the beginning and end of the detention by customs. These facts must also be entered in a special register kept on the premises of the customs office liable to keep persons placed in customs detention. □The competent public prosecutor may, throughout the detention period, visit the premises to ensure the lawfulness of the detention conditions, and to be shown reports and the special register. Additionally, he or she may appoint a doctor to examine the person held in detention. The public prosecutor is thus in a position to ensure the lawfulness of the customs proceedings and that the rights and material conditions are compatible with the safety and good treatment of the person temporarily deprived of liberty. □Detention may last no longer than 24 hours, but may be extended for an equivalent period by the public prosecutor. Nevertheless, in order to limit the maximum length of the deprivation of liberty for the person involved, the length of customs detention will be deducted from the length of police custody, which begins with notice of said custody being served by a law enforcement officer in a police station or *gendarmerie*. □The report detailing the customs detention is closed when the customs detention comes to an end, i.e. as soon as the accused person is, at the request of the public prosecutor, remanded either to the public prosecutor or to a law enforcement officer appointed by him or her. The report may also be closed when the customs services free the person in question.		

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
		□ *Seizure of goods* Article 323(2) of the Customs Code authorises agents who have observed a customs infringement to seize the goods liable for confiscation.			
H	As a general rule, the public prosecutor´s office conducts the investigations into criminal offences. If the offence is purely a tax offence, meaning tax evasion or tax receiving, the main customs office administrates the rights and the duties of the public prosecutor´s office in the investigatory proceedings. The public prosecutor´s office is able to complete individual investigatory proceedings itself or have them completed by investigatory personnel.	The prosecuting authorities have powers (i) to (iii), where powers (ii) and (iii) may generally only be carried out on the basis of court order. An order of these powers by the prosecuting authorities is only permitted when danger is in delay. Apart from this, the prosecuting authorities also have the power to apprehend persons if detention is warranted. The apprehended person is to be brought before the investigating judge on the following day at the latest.	The investigatory powers are applied as far as the legal conditions are present and they are necessary and appropriate for the prosecution of the offence.	For all investigatory proceedings which affect the basic rights of the person concerned, a court order is generally necessary. Depending on the investigatory measure, when danger is in delay, the order for investigatory measures can be prescribed by the public prosecutor´s office and/or the main customs office, and also by the customs investigation office or the police as the investigatory person of the public prosecutor´s office. Such non-judicial orders must be	Home search (§§ 102 ff. StPO) Confiscation (§§ 94 ff. StPO, § 108 StPO, § 110 StPO, §§ 111b StPO, § 132 Section 2 StPO) Remand (§§ 112 ff. StPO); provisional detention (§ 127 StPO) Monitoring of telecommunications (§§ 100a StPO) Listening in to dialogue spoken in private and outside the home (§ 100f StPO) Connection data information (§§ 100g StPO)

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
	The public prosecutor´s office is authorised to issue investigatory personnel with instructions. Investigatory personnel are: • the main customs office • the customs investigations office, • the police.	Further investigatory measures (v) are: • the monitoring of telecommunications • listening in to dialogue spoken in private and outside the home (so-called bugging operation) • the call data information • the use of undercover investigators • observation • the use of technical		confirmed by court.	The use of undercover investigators (§§ 110a ff. StPO) Observation (§ 100h StPO) the use of technical equipment (§ 100h StPO)

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
		equipment (e.g. tracking devices) • cooperation with confidants.			
I	Customs authorities.	All the above.	Customs authorities undertake investigations, perform the hearing of the offender, they prepare the case file and in criminal cases they notify the public prosecutor and submit the case file.	In some cases of undergoing investigation the authorization of the pubic prosecutor is necessary.	The National Customs Code (Law 2960/01) and the National Code of penal procedures.
J	The J Customs and Finance Guard.	The J Customs and Finance Guard has the investigative powers described below: Inspections, Search for documents and goods,	All the rules are stipulated in the Act XIX. Of 1998 on the Rules of Criminal Procedure.	In case of gathering information by using covered instruments and methods related to the authorization of a judge the authorization of a so called „investigator judge” is needed.	Art. 36.(2) entitles the J Customs and Finance Guard as the investigative authority related to 30 different (mostly financial) crimes. The investigative powers are determined

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
		Seizure, Arrest, Other – gathering information by using covered instruments and methods, search, oblige the person concerned to keep the data recorded with IT techniques, closure, insurance measure to hinder the accused to dispose of his belongings, appoint of experts, hearing witnesses.		Detailed rules are determined by Art. 200-206/A. of XIX. Of 1998 on the Rules of Criminal Procedure.	by the Joint Decree of 17/2003.
K	Office of the Revenue Commissioners.	(i) Various powers of inspection under Community Customs Code, Customs Consolidation Act 1876, Customs Act 1956. (ii) For search under warrant - goods - S.205	Only officers authorised to do so can use the powers – powers of inspection are used routinely for regular day-to-day operations and any non-routine operations which are not of an intense or sensitive	In some cases search warrants must be authorised by a member of the Judiciary.	As (ii) above and Section 858 TCA 1997.

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
		CCA 1876; documents - S908(C) TCA 1997. For inspection of documents and search if necessary without warrant – S9052A TCA 1997. (iii) Seizure under S. 177 CCA 1876. (iv) Arrest – S. 202 CCA 1876. (v) Other – Detention of goods for further enquiry under S. 7 C&E Miscellaneous Provisions Act 1988.	nature. Non-routine operations, search of premises, etc may require specific authority from senior management.		
L	The authority in charge of the investigation differs according to the type of investigation. In case of a criminal investigation it is the Judicial Authority to identify the judicial	In relation to the point 1 above, the investigating authorities have broad powers when the activities have been given by the Judicial Authority; the customs authority powers, instead are much more limited: it can carry out accurate investigations within customs areas when the goods have not yet been released to the owner (eg. To take samples of goods for the analysis, to request additional		The answer is no in case of a criminal investigation, because judicial authority except in exceptional and special cases (see limits provided for in the Constitution or in	This is the customs legislation applicable: - Articles 19, 20 and 20a of the Presidential Decree No. 43/1973; - Articles 324 and 325 of the Presidential Decree No. 43/1973;

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
	police body which will conduct the investigations (please note that usually the Judicial Authority makes use of the G.d.F. or other law enforcement bodies in permanent service at the Public Prosecutor's office at the Tribunal). In case of an administrative investigation it is the customs office that has discovered the infringement which gathers all the elements of proof needed for supporting the tax claim and, accordingly, the infliction of the penalty.	documents relevant to the ongoing customs operation, etc.); outside the customs areas, when the goods have already been released to the owner these powers are limited to sheer request for documents to be submitted, or to carry out checks at the premises of the company (provided that it is located within the territory of its competence) which has carried out the customs operation for which an infringement to the customs legislation is suspected of being committed **The investigative powers are**: (i) Inspections YES these are among the means facilitating the search for elements of proof and useful to establish the trail and the other physical effects of the offence (ii) Search for documents or goods YES only upon authorization by the Judicial Authority. This is a means facilitating the search for elements of proof and it is used when there are grounded reasons for thinking that the corpus delicti or the elements related to the offence are in a given place (iii) Seizure		International Treaties – diplomatic guaranties) doesn't need any authorization from third bodies.	- Articles 30 and 31 of the Law 4/1929; - Articles 8 and 11 of the Legislative Decree No. 374/1990; - Articles 18, 19 and 58 of the Legislative Decree No. 504/1995; - Articles 55 et seq. Of the Code of Criminal Procedure.

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
		YES It is a means facilitating the search for elements of proof and consists in seizing the corpus delicti or the elements related thereto which are needed for establishing the facts (iv) Arrest YES when the person being investigated is caught in flagrante delictu, the police officers must arrest him if it is a non culpable offence which can be punished with the imprisonment for a minimum period of 5 years (Art. 380 of the Code of Criminal Procedure) (v) Other: forwarding of questionnaires, checks and body searches *These are means facilitating the search for elements of proof needed to the Judicial Authority to ensure enough grounds for sustaining the charge.*			
M	The powers is prescribed in the Law On the State Revenue Service: 1. Customs officers have the right to enter the territory or the premises companies, and special and open economic zones in which the goods subject to customs control are located. 2. Customs officers have the right, if necessary, to carry and use firearms, special means of protection, as well as special means for stopping transport on the customs border of the Republic of M.			For tax and administrative infractions - No. For Criminal Penalties - Yes under certain circumstances.	The Law on Tax and Duties, The Administrative Violations Code, the Criminal Law, The Criminal Procedures Law, the Law On The State Revenue Service.

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
	3. Customs officers have rights to perform customs audits. 4. Customs authorities have the right and duty independently or together with the employees of the border guard, immigration and public order service to arrest violators of the State border of the Republic of M in accordance with the procedures specified in regulatory enactments. 6. Customs officers specially authorised by the Director General of the State Revenue Service or the Director of the National Customs Board have the right in accordance with the procedures prescribed by law to perform investigatory operations activities to detect and prevent criminal offences regarding matters within the competence of the customs authorities. 7. Customs officers of the Customs Criminal Board have rights according to the Criminal Processing Law.				
N	The Customs Criminal Service carries out pre-trial investigations in respect of criminal acts provided for in the Criminal Code. Other customs infringements are investigated by the territorial customs offices.	The customs officers of the above institutions, in order to investigate the customs infringements, are entitled: (i) to stop, inspect, check and detain the vehicles, transported goods and documents related to their transportation as well as persons transporting them; (ii) to perform person's inspection according to the procedure provided by legal provisions; (iii) to open and enter premises, used for economic commercial activities, or vehicles;		When investigating the customs infringements, it is not mandatory for the territorial customs offices to obtain authorisation from other institutions or officials (save for the case specified in item 6 of section 7.1 of the questionnaire).	Articles 20, 21, 24, 25, 26 of the Law on Customs; Articles 15, 23, 25, 26, 33 of the Law on Tax Administration; Articles 259-271 of the Code of Administrative Offences; Parts 3 and 4 of the Code

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
		(iv) to receive oral and written explanations, certificates, documents or their copies, computer data and other information from the checked persons. In addition to the above rights, the officers of the Customs Criminal Service authorised to carry out operational activity and (or) pre-trial investigations are entitled: (i) on suspicion that persons make or have made customs infringements, to pursuit, detain them, deliver to the premises of customs offices or law enforcement institutions for identifying them, drawing up protocols, statements and other documents or for inspecting items possessed by such persons; (ii) on suspicion that the person carries the forbidden or restricted products in his/her internals, to apply in the order set by legal provisions the medical examination to establish the above fact; (iii) to restrict temporarily the rights of the persons to enter certain territories, premises or vehicles, to stop the works being carried out in case they prevent customs officer from accomplishing his direct	The officers of the Customs Criminal Service carrying out pre-trial investigations are guided by the prosecutor. The prosecutor can decide on engaging himself in the pre-trial investigation in part or in full. Coercive measures which affect the basic rights of the person (e.g. arrest, search, monitoring and recording of the information transmitted through the telecommunications networks) can by applied by decision of the pre-trial judge.	of Criminal Procedure. 1. Articles 3, 7 of the Law on operational activities

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
		functions; (iv) upon fulfilling the functions of the customs authorities and following the order established by the Code of Criminal Procedure and Law on Operational Activities, to perform operational activities and pre-trial investigation; (v) while travelling to the site of criminal act or in pursuing the suspect, to freely use any vehicles or communication means owned by any person, except diplomatic or consular representatives of foreign states (any expenses incurred due to this by the owner of the vehicle or communication means shall be reimbursed within the order established by legal provisions). The customs officers whose list of positions is approved by Director General of the Customs Department have a right to possess, carry and use an office gun as well as use physical or other coercion. The customs officers cannot arrest a person. Arrest is the strictest means of coercion and can be applied only by the judge, at the request of the prosecutor. *In the territorial customs offices the above reservations are implemented by the officers of the*			

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
		administration, customs posts and mobile groups. Every performed action is recorded in the protocol. By carrying out the pre-trial investigation, the officers of the Customs Criminal Service are being guided by the Code of Criminal Procedure. The Customs Criminal Service is the entity of operational activities, i.e. overt and covert intelligence.			
O	Customs.	(i) In customs and excise matters, customs are empowered to proceed to all inspections without restrictions (ii) idem to (i) (iii) idem to (i) (iv) Customs can in specific considerations arrest people. Normally nevertheless this is handed over to the police in advance or after arresting a person as soon as possible. *They are applied when needed and depending on the case.*		In customs and excise matters, customs normally don't need an authorization from third bodies. For more general police matters where customs have complementary competence, the authorization from the public prosecutor's office is needed.	The general law on customs and excise for the customs matters. The criminal instruction code for police related matters.
P	Comptroller of Customs : All appointed Customs	**(i) Inspections**	***Certain Inspections*** are carried out by Customs Officers attached to the Enforcement Unit, upon	No	Article 69A of the Customs Ordinance (Cap.37) states: *(1) The Comptroller*

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
	Officers can investigate and determine customs infringements. However, once a violation is detected, the Customs Officer refers the matter to his Superior who in turn determines which specific Customs Unit must carry out further verification of facts and documentation. Subsequently, the compiled case file is referred to the Enforcement & Investigation Customs Directorate to finalize the gathering of proofs and supporting documentation. If it transpires that the taxes due remained	(ii) **Search for documents or goods**	alerts submitted by the Customs Intelligence Services or on any other information received from elsewhere. Random checks are also effected in :- a) Commercial premises, etc. b) Residential premises. ***Searches*** are conducted in premises /conveyances accordingly. Customs Officials may	In residential premises searches must be conducted upon authorization by means of a warrant granted by the Attorney General or duty Magistrate. (Cap 37 Art. 71(1) Customs Ordinance)	*may, upon reasonable suspicion, direct that any packages lying under customs control be opened and their contents examined for the purpose of ascertaining that the provisions of this Ordinance and of any other law relating to customs are being complied with.* *(2) A reasonable notice of the opening and examination of the goods shall be given to the consignee, if known, so that he or his agent may attend.* *(3) If the circumstances do not permit that such notice be given it shall be dispensed with.*

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
	unpaid to Customs, the Directorate refers case for Civil Court Action. But if smuggling or other fraudulent activities be the case, the Directorate refers the Customs report of facts to the Commissioner of Police for any further investigations. The nominated Police Inspector upon concluding such investigations submits his conclusive report back to the Customs Directorate, and where applicable requests a signed official authorisation by the Comptroller Of Customs complete with full particulars of perpetrator	(iii) **Seizure** (iv) **Arrest**	even conduct personal searches but solely in Customs Areas ***Seizures*** are conducted by physically withdrawing of goods. In principle, **arrests** are limited to customs areas but in exceptional cases practically everywhere. *Any officer of customs or Police officer may, upon reasonable suspicion, stop and examine any cart or other conveyance, to ascertain whether any smuggled goods are contained therein; and if no*	No No, while in customs areas and under special circumstances, particularly for those Customs Officers vested with the police Executive powers.	*(4) The Comptroller shall not, on account of any such opening or examination, be liable to any action whatsoever*. Article 72 of the Customs Ordinance (Cap. 37). Article 70(1) of the Customs Ordinance (Cap. 37)

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
	and the listed violations with the respective breached Customs Law Chapters and Articles to initiate the prosecution procedures before the Criminal court. The Police Commissioner is empowered to act on behalf of Customs when encountering breaches of Customs laws during the course of routine police duties. The Commander of the Armed Forces of P is likewise empowered to act on behalf of Customs when encountering breaches of Customs laws during the course of routine duties when conducting, land, sea	(v) **Other** Withholding goods for further investigations	*smuggled goods are found, such officer shall not, on account of such stoppage and examination, be liable to any action or prosecution.* *Every officer of Customs shall, in addition to the powers and duties assigned to him under the Customs Ordinance, be empowered to exercise all the powers and duties as are by law vested in an officer of the Executive Police in any place set out in the Schedule to these Regulations in connection with an offence committed or suspected*	:	Subsidiary Legislation 37.09 relates to executive powers conferred to certain Customs Officers

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
	and air patrols. The latter two enforcement entities even carry out joint operations with Customs whenever the need arises.		*of having been committed*		
Q	The official of the Q Tax Administration who is competent in customs cases (section 11:3 of the ADW).	***Administrative enforcement*** <u>Powers of control:</u> • cancellation of the customs forwarding agent's licence (1:13 of the ADW) • entering places, including homes (1:23 of the ADW) • investigating the goods without an underlying customs declaration (1:24 of the ADW) • inspection after import (1:25 of the ADW) • inspection and investigation of goods and certain		***Administrative enforcement*** To carry out their powers of control, the customs authorities only need permission from third bodies if they wish to open a letter (section 1:36). ***Criminal enforcement*** In carrying out their investigative powers they require the permission of a Public Prosecutor or a judge in	See question (8) 2.

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
		sites, such as ports and airports (1:26 of the DW) • stopping vehicles (1:27 of the ADW) • conducting bodily searches (1:28 of the ADW) • putting up roadblocks (1:29 of the ADW) • using violence in relation to goods (1:30 of the ADW) • investigating the clothing of persons if life or security are endangered (1:30.3 of the ADW) • power to make any type of copy of administrative records (1:32 of the ADW) • power to determine a person's identity (1:34 of the ADW) • power to open letters (with written permission of a judge) (1:36 of the ADW)		the following cases: • placing a suspect in custody/pre-trial detention (57 & 67 of the Code of Criminal Procedure) • seizure of goods (11:4 of the ADW) • entering places (11:6 of the ADW) • searching places (96b; 96c; 97 of the Code of Criminal Procedure) • systematic surveillance (126g of	

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
		• seizure of goods kept in a concealed place of storage (1:37 of the ADW) ***Criminal enforcement*** <u>Investigative powers:</u> • stopping a suspect and asking his name, address and place of residence (52 of the Code of Criminal Procedure) • arresting a suspect (53 of the Code of Criminal Procedure) • holding for questioning (61 of the Code of Criminal Procedure) • placing suspect in custody/pre-trial detention (57 & 67 of the Code of Criminal Procedure) • seizure of goods (11:4 of the ADW) • entering places (11:6 of the ADW)		the Code of Criminal Procedure) • infiltration (126h of the Code of Criminal Procedure) • undercover purchase and undercover provision of services (126i of the Code of Criminal Procedure) • systematic making of enquiries (126j of the Code of Criminal Procedure) • entering enclosed	

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
		• searching places (96b; 96c; 97 of the Code of Criminal Procedure) • systematic surveillance (126g of the Code of Criminal Procedure) • infiltration (126h of the Code of Criminal Procedure) • undercover purchase and undercover provision of services (126i of the Code of Criminal Procedure) • systematically making enquiries (126j of the Code of Criminal Procedure) • entering enclosed places (126k of the Code of Criminal Procedure) • recording confidential information (126l of the Code of Criminal Procedure)		places (126k of the Code of Criminal Procedure) • recording confidential communications (126l of the Code of Criminal Procedure) • intercepting and recording telecommunications (126m of the Code of Criminal Procedure) • demanding information in relation to	

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
		• intercepting and recording telecommunications (126m of the Code of Criminal Procedure) • demanding information in relation to telecommunications (126n of the Code of Criminal Procedure) • demanding information from third parties (126nc of the Code of Criminal Procedure) *As soon as it is possible to speak of a criminal charge as meant in Article 6 of the ECHR, in applying the powers cited in question (8) 2, consideration must be given to the procedural safeguards in relation to obtaining evidence.*		telecommunications (126n of the Code of Criminal Procedure) • demanding information from third parties (126nc of the Code of Criminal Procedure)	
R	The authority entitled to investigate on customs law infringements is customs office.	The investigating authorities have the powers to: Inspections: yes search for documents or goods: yes seizure: yes arrest: no other: the customs office (the investigating authority) is entitled to punish by fine the liable		The customs office (the investigating authority) needs the authorisation from a public prosecutor to search for documents or goods.	In R the relevant legislation applicable to the powers of the customs office (the investigating authority) is the Penal Fiscal Code and the Penal Procedure

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
		person in not very serious cases (who committed minor offence). *The most common type of powers that is applied in practice is seizure, because in almost every case goods are seized.*			Code.
S	Concerning to criminal offences, the anti-fraud services director, who has a delegated competence given by the Public Prosecutor, who is also always entitled to the power of taking control of investigation – art. 41/1/a of law 15/2001. Concerning to non-criminal offences, the authority entitled to investigate is the customs-hose chief who is in charge in the geographical area where the infringement took	(i) Inspections (ii) Search for documents or goods (only possible with judicial authorization, except in cases of red-handed detention related with a criminal infringement or urgent cases related with the commitment of a crime, in which the proof could be lost – articles 174º and 251º of Criminal Procedure Code) (iii) Seizure (article 73º of Law 15/2001, concerning non-criminal offences and article 178º of Criminal Procedure Code) (iv) Arrest (investigating authorities can arrest, but only in red-handed cases related with criminal infringements – articles 256º and 257º of Criminal Procedure Code			Law 15/2001 (Tax Infringements General Regiment) Criminal Procedure Code

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
	place (art. 69º of law 15/2001).				
T	According to the national criminal provisions, T customs authority doesn't have powers in the field of the criminal investigation or prosecution. These powers belong to the Police, Border Police and to the Prosecutors. Therefore, the cases when there are criminal infringements are delivered to the Police, Border Police or to the Prosecutors. Customs authority applies the non criminal sanctions – administrative sanctions – for the non criminal offences	(i) – Yes (ii) – Yes (iii) – Yes (iv) – No (v) -	Customs authority applies these measures as administrative measures.	No.	For the powers of the customs authority (administrative powers): - Law No 86/2006 regarding the Customs Code of T; - Government Decision No 707/2006 laying down the Regulation for the implementation of the Customs Code of T; - For the powers of the criminal investigation bodies – the police, border police and the prosecutors (criminal powers): - T Criminal Procedure Code.

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
	(contraventions).				
U	The competence and agency (venue, subject mater) is indicated in the special legislation – Act No. 652/2004 Coll. on state administration authorities in the customs as amended. Customs delict is proceeded by customs office, in territory of which offender has his/her permanent residence or establishment. If offender has not his/her permanent residence or establishment in the Slovak Republic, violation of customs law shall be proceeded by customs office in territory of which violation of custom law was committed or found. Customs offence is proceeded by customs office, in the territory of which customs offence was found, even if the customs offence was committed in the territory of another customs office. The competent customs office is authorised to cede the case to the customs office, in the territory of which a natural person who has committed an offence resides or is employed. In the criminal proceeding is the competent authority – commissioned (vicarious) custom authority according to Code of Criminal procedure No. 301/20005 Coll. as amended. Investigating authorities in U have all above mentioned powers. Commissioned (vicarious) customs authorities according to Code of Criminal procedure No. 301/20005 Coll. as amended have powers to inspection, search for document or goods, seizure, arrest and other powers.			In criminal proceedings the authorisation from third bodies (prosecutor or judge) is necessary for some investigation activities. Commissioned (vicarious) customs authorities act absolutely, however are under supervision of prosecution. For some specific operation they need the acceptance of competent prosecution or court.	

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
	Our authorities apply these powers in compliance with national and community law. These powers are applied in practise in dependence of concrete case. It is not possible to define uniform operation process.				
V	Customs authority (Investigation division) – administrative infringements; also possible to put in a criminal complaint, but no powers according Criminal procedure act. Police- criminal infringements	Customs authority: inspections, search for documents or goods, seizure, information of bank accounts, search of business premises, search of persons, detaining, Police: house search, seizure, interrogation, arrest, observation, communication surveillance, bugging, the use of undercover investigators,		Customs authority: only for house search. Police: yes, for certain measures they need an approval from state prosecutor or investigation judge.	Customs Service Act (OJ RS Nr 56/1999 and relevant changes). Criminal procedure act (OJ RS, Nr. 63/1994 and relevant changes).
W	We must distinguish between administrative and criminal penalties. <u>Criminal infringements</u> (smuggling criminal too): In the first moment the public prosecutor is the entitled, and when he	Customs. The proper of the inspections. These include the search for documents or goods. In the case of smuggling the seizure of the goods is possible. The public prosecutor and the Judge. Both of	In practice, the use of the powers is very common and there are not many problems. It is necessary to follow a mandatory procedure to use those powers. Perhaps the only problem that we find some times (in specific	Normally no. Only when customs authorities are investigating possible criminal smuggling infringements and need extra powers with judge authorization, like listening private conversation.	Ley 58/2003, de 17 de diciembre, general tributaria, art 181 al 212, about tax infringements in general, including customs infringements and Real Decreto 2063/2004, de 15 de octubre, about sanction

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
	finishes, then the judge. When a custom civil servant discovers a possible criminal infringement, he must send the whole file to the public prosecutor, who will continue with the investigation. During all the procedure, the custom civil servant can help in the investigation to the public prosecutor or the Judge, if any of them demands it. <u>Administrative infringements:</u> the customs office.	them have competences in inspections, search for documents or goods, seizure, arrest and others (typical powers in a judicial procedure).	situations) is the difficulty to comply with that procedure. We have cases, when the civil servant makes a mistake in the procedure and as a result we have the invalidation of the sanction.		procedure,.
X	Customs Officer-Customs & Excise Management Act 1979 ,Commissioners' for Revenue and Customs	(i) & (ii) For civil penalties the Finance Act 2003, Implementing regulations and the Community Customs	Through national legislation and guidance.	For customs civil regulatory penalties -No. For Criminal Penalties-Yes under certain circumstances, for	Customs & Excise Management Act (CEMA) 1979, Police and Criminal Evidence Act (PACE) 1984,

	1. Who is the authority entitled to investigate on customs law infringements?	2. What are the powers of the investigating authorities?	3. How are these powers applied in practice?	4. Do the investigating authorities need any authorization from third bodies?	5. What is the relevant national legislation applicable to the powers of the investigating authorities? References?
	Act 2005.	Code. (i)-(v) for Criminal Penalties. Customs & Excise Management Act.		instance we usually need to obtain permission from a magistrate or judge to execute search warrants.	Regulation of Investigatory Powers Act (RIPA) 2000, Regulation of Investigatory Powers (Sources Records) Act (RIPSA) 2000, Crime (International Co-operation) Act CICA 2003.

Annex 6:

Case Studies

Case 1: Non-presentation of goods to Customs (item 1/4)

5 000 cartons cigarettes were imported from a third country Y to a MS X. In the customs declaration the goods were described as 60 cases of cooking utensils. However, the Customs found the cigarettes concealed behind the cases of cooking utensils. Due to this action 548.019,12 EUR customs duties, excise duties and VAT on importation remained uncharged (In L the proportion of customs duties is 5,32 EUR, excise duties 23,03 EUR and VAT 8,27 EUR, all duties and taxes per carton). D and E had a mutual agreement on the purchase and receipt of the goods with A. C had introduced cigarettes into the customs territory of the MS X in his combination vehicle. B had come from the third country Y to the MS X in order to move the cigarettes from the above mentioned combination vehicle to the industrial hall where the cigarettes were unloaded. The industrial hall was rented by D and E for this particular purpose and the unloading of the cigarettes at the hall was agreed with A, B, D and E. D and E resold the cigarettes.

Question: What would be the penalties to be imposed on A, B, C, D and E in your country? If the case is too imaginary in your circumstances, please tell the penalties to be imposed on so many persons referred to above as possible (e.g. in addition to the penalty imposed on C, the penalties imposed on D and E in which case you can also leave out the resell).

Case 1 – Conclusions

A. CRIMINAL PENALTIES – IN 24 MS

In **Case 1 – Non-presentation of goods to Customs**, all the **24 MS** that have sent replies to the Questionnaire apply Criminal penalties. From these, **2 MS** (**R, L)** also apply Non-Criminal penalties additionally to the mentioned Criminal penalties.

1. Imprisonment – in 23 MS

This offence is punished with Imprisonment, as Criminal penalty, in **23 MS** from the 24 MS that apply Criminal penalties, exception being **1 MS (F)** where Confiscation of the goods and the vehicle are applied as Criminal penalties.

From these MS, **11 MS** apply Imprisonment together with Pecuniary penalty or fine, both as Criminal penalties. In **4 MS (V; T; I, H)** Imprisonment is applied alternative with Fine, both

being Criminal penalties. In **1 MS (G)** Imprisonment can be applied together with or alternative with Pecuniary penalty or fine, both as Criminal penalties. In **1 MS (K)** if the crime committed carries a maximum sentence of 3 years of imprisonment, the term of imprisonment may be substituted by community service work or financial penalty.

The maximum level of Imprisonment varies from a MS to another, and the highest of these maximum levels is 10 years, being common for 4 MS **(D, V, T, A).** The lowest level of maximum levels of Imprisonment is 1 year, being applicable in 1 MS (**S)**.

2. Pecuniary penalty/fine – in 17 MS

In **17 MS** is applied or can be applied in this case a Pecuniary penalty or fine as criminal penalty. The highest level of the maximum Pecuniary penalty or fine is 10 times the evaded customs and excises duties + 2 times the evaded VAT, jointly and severally applied in **1 MS (S)** to natural persons involved. The lowest level of the maximum Pecuniary penalty or fine is 300 minimal living standards (11.304 EUR), being applied in **1 MS (I)**.

3. Confiscation of the cigarettes – in 19 MS

Another penalty that is applied is Confiscation of the cigarettes, as Criminal penalty, in **19 MS.**

4. Confiscation of the vehicle – in 17 MS

Confiscation of the vehicle, as Criminal penalty, was mentioned by **17 MS(X–only for the rebuilt vehicles purposely to hide illicit goods).** In K this case is a „typical" smuggler behaviour where seizure of the vehicle is a real opportunity, but not mandatory. Relevant authorities for seizure is the K Customs Administration and for Confiscation the Criminal Court.

B. NON - CRIMINAL PENALTIES – IN 3 MS, applied additionally to criminal penalties

In **Case 1 – Non-presentation of goods to Customs,** Non-Criminal penalties are applied in 3 MS **(R, L, P**), in all these MS additionally to the criminal penalty and consisting in Pecuniary penalty. In **R** this Non-criminal penalty is 10% of the assessed amount of duty and or tax and in **L** this represent a pecuniary penalty of 50% duty increase, as administrative penalty. In **P** the administrative penalty is the duties and taxies evaded multiplied from 3 to 5 times.

C. SETTLEMENT

Settlement is provided in the national legislations of **15 MS.** In case 1, from among the MS that have this procedure provided in the national legislation, settlement is possible in **5 MS** (**D**; **X, W**; **B**, **F)** and it is not possible in **10 MS.**

Settlement is not provided in the national legislations of **9 MS (G (according to the new legislation)).**

The explanations sent by MS regarding theoretical minimum and maximum penalties, the confiscation of goods and vehicles, the most likely penalty that would be imposed in this case and the conditions for settlement can be found in the table.

Some MS mentioned the most likely penalty that would be imposed in Case 1, as follows:

C – Based on the facts given: 350.000 EUR - 400.000 EUR. Imprisonment for failure to pay the fine: 8 – 10 months to approx. 1 year imprisonment – may vary according to the special circumstances, the personal and economic situation of the perpetrator and may be higher in particular cases.

R – 50.000 EUR and 10% non-criminal penalty on the assessed amount of the customs debt occurred.

L – Imprisonment of 2 years and 5 months for aggravated tax fraud. Additionally they were levied 50 % duty increase (administrative penalty).

V – 1 - 3 years Imprisonment.

P – This case is handled as smuggling leading to both administrative and criminal penalties. The administrative penalty is the duties and taxies evaded multiplied from 3 to 5 times. It is decided and imposed by the customs authorities. The criminal penalty is imprisonment for minimum period of 1 year. The criminal penalty is decided and imposed by the criminal court. Both the administrative and criminal penalty will be imposed to all the liable persons, i.e., those with proven intention for the smuggling. In practice, A, B, C, D and E will share the administrative fine according to the degree of their involvement after the customs officers have proven their liability for the infringement. The criminal court will decide on the criminal penalty to be imposed to each offender.

- **K** – If we accept that the Most Popular Price Category (further: MPPC) of the cigarettes is ... 540/pack (it was accepted in K in 2008) then the market value of the cigarette is: ... 27.000.000 (considering the 50.000 packets or 1.000.000 pieces of cigarette). The customs value of a packet of cigarette is ... 131,88. The customs duty is ... 76, the excise duty is ... 318,12, while the VAT is ... 105,2. So the loss in customs revenue is ... 499,32/packet, so ... 24.966.000 altogether.

The punishment of person C - according to the K Criminal Code (Smuggling and Receiving of Smuggled Goods) shall be imprisonment between one to five years, if the aforesaid crime results in substantial losses in customs revenues. The perpetrator of the crime described above shall not be liable for prosecution if he settles his customs debt in the amount of the loss in customs revenues prior to indictment. As in this case the value of the offence exceeds … 200.000 namely the minor case, settlement is not possible at all. As a general rule, if the crime committed carries a maximum sentence of 3 years of imprisonment, the term of imprisonment may be substituted by community service work or financial penalty.

The case is ambiguous because if the customs authority seized the cigarette at the border it could not have been unloaded from the vehicle in the industrial hall. If the cigarette was seized at the border person C committed the above illegal importation but the other persons committed only preparation which cannot be punished.

If the cigarette was found by the customs only in the hall, in that case persons A, B, D and E are all sentenced to illegal trafficking of excise goods and according to Criminal Code Section and Punishment shall be imprisonment for up to three years if the excise goods involved in the criminal conduct are of substantial value. In this case there is no place for settlement at all. The above qualification does not change even if the cigarette is resold by persons D and E. There is no place for settlement.

B – See our original response regarding Cases 1 - 6. The maximum penalties are quoted therein. As indicated previously, minimum sanctions exist in certain cases (e.g., s186 of the CCA 1876) where there is a fixed monetary penalty for conviction on indictment of 12,695 EUR or treble the duty paid value of the goods. In those instances the monetary fine is mandatory - the only discretion for the Court is in relation to whether there should also be a sentence of imprisonment or suspended imprisonment within the specified tariff). However, it is not impossible that our court could find justification for ignoring such prescriptions on grounds of judicial discretion in the light of the specific circumstances of an individual case. The limited frequency with which cases of this nature come before our courts makes it impossible to state with certainty the likely sanction that would be imposed in a ”real” situation. The courts are always likely to have regard for individual mitigating or aggravating circumstances that are unique to each case.

I – 5 years of imprisonment.

F – Confiscation of the goods and the vehicle

U – 15000 cartons = 150000 pkts x 20 cigarettes.**PENALTY**

a) 3 X (Import duty – 50112 EUR + Excise duty – 343590 EUR) = ***1181106 EUR***

b) 3 X (VAT – 86526,36 EUR) = ***259579,08 EUR***

Total a+b= **1.440.685,08 EUR**

c) In addition to the above the court has to impose a penalty of up to 11646,87 EUR in terms of Excise Duty Act.

d) a term of imprisonment of up to 2 years (for each person)

e) confiscation of cigarettes, vehicle and cooking utensils

N.B.: i) Local legislation Criminal Code Ch. 9 Article 17 (f) provides for a reduction by half of the penalties indicated under (b) and (c)

ii) Computation based on a specific cigarettes brand.

- **A** – The facts given in that case are not enough for the right answer. In every case the criminal penalties can be different, because of independent of courts in their decision. When the court gives the sentence, takes into account a lot of elements, not only amount of jeopardized duties but personal situation of committer too, specially his income and behaviour before and after committing the offence. Despite the lack of details, the most likely average concrete penalty that would be imposed by court for every committer is 1 year imprisonment and about 25.000 euro fine.

- **M** – A, D, E (only for natural persons) – 7 years of imprisonment and forfeiture of good. C, B (only for natural persons) - 3 years of imprisonment.

- **Q** – The common Penalty is 1 year imprisonment and a fine twice of the value of the goods.

- **N** – Imprisonment of around 2 - 3 years, confiscation order, demand for the duties and taxes evaded.

Case 2 – Conclusions

Case 2: Unlawful removal of goods from customs supervision (item 2)

2 900 cartons cigarettes were introduced into L at external Community transit. Then the cigarettes were declared to be exported at external Community transit from the MS A city X to the MS B city Y and further to a certain third country city. A MS A company was declared to be an exporter. This company was owned by A and B. The cigarettes were never presented at the customs office of destination, city Y in MS B.

A and B had unanimously purchased the cigarettes referred to above hiding that they did not have any intention to present the cigarettes within the prescribed period at the customs office of destination. Due to unlawful removal of goods from customs supervision, 106.198,00 EUR customs duties, excise duties and VAT on importation remained uncharged (In L the proportion of customs duties is 5,32 EUR, excise duties 23,03 EUR and VAT 8,27 EUR, all duties and taxes per carton).

Question: What would be the penalties to be imposed on A and B in your country?

Case 2 – Conclusions

A. CRIMINAL PENALTIES – IN 23 MS

In **Case 2: Unlawful removal of goods from customs supervision, 23 MS** apply Criminal penalties. From these, **3 MS** (**R, L, P)** also apply Non Criminal penalties additionally to the mentioned Criminal penalties. **1 MS** (**D)** applies this Criminal penalty alternative with a Non-criminal penalty.

1. Imprisonment – in 22 MS

This offence is punished with Imprisonment, as Criminal penalty, in **22 MS.** Exception from Imprisonment is **1 MS (F**) that applies a fine as Criminal penalty in this case.

Frome these MS, **11 MS** apply Imprisonment together with Pecuniary penalty or fine, both as Criminal penalties. In **2 MS (V, G)** Imprisonment can be applied together with or alternative with Pecuniary penalty or fine, both as Criminal penalties. In **2 MS (X and H, for natural persons)** Imprisonment is applied alternative with Fine, both being Criminal penalties. In **1 MS (K)** if the crime committed carries a maximum sentence of 3 years of imprisonment, the term of imprisonment may be substituted by community service work or financial penalty.

The maximum level of Imprisonment varies from a MS to another, and the highest of these maximum levels is 10 years (**T).**

The lowest of maximum levels of Imprisonment is 1 year, being common for **3 MS** (**S**; **G, Q**).

2. Pecuniary penalty/fine – in 17 MS

In **17 MS** is or can be applied in this case a Pecuniary penalty or fine as criminal penalty.

The highest level of the maximum Pecuniary penalty or fine is 3.000.000 EUR fine in **A**.

The lowest level of the maximum Pecuniary penalty/fine is 1250 EUR in **F,** if acts are committed unknowingly.

3. Confiscation of the cigarettes and of the vehicle – in **16 MS**

Another penalties applied together with Imprisonment and/or with Pecuniary penalty/fine are Confiscation of the cigarettes and of the vehicle, as Criminal penalties, in **16 MS** (**T – only for goods, U – if goods are tangible**).

B. NON - CRIMINAL PENALTIES – IN 5 MS

In **Case 2: Unlawful removal of goods from customs supervision**, Non Criminal penalties are applied in **5 MS (D – alternative with criminal penalty; R – additionally to a criminal penalty; L – additionally to a criminal penalty; P – additionally to a criminal penalty; J**).

In 3 from the mentioned MS **(R, L, P)**, Non Criminal penalties are applied additionally to criminal penalties.

1. Pecuniary penalty/fine – in 4 MS

In **4 MS (D**; **R (10% of the assessed amount of duty and or tax additionally to the criminal penalty); L – in addition to a criminal penalty; J)** is applied in this case a Pecuniary penalty or fine as Non criminal penalty.

The highest level of the maximum Pecuniary penalty or fine is 250% of the customs value (**D**).

The lowest level of the maximum Pecuniary penalty or fine is 10% of the assessed amount of duty and or tax additionally to the criminal penalty **(R).**

2. Confiscation of goods and of the vehicle – in 1 MS

Confiscation of goods and of the vehicle, as Non Criminal penalty, was mentioned by 1 MS (**D, together with Fine**)

C. SETTLEMENT

Settlement is provided in the national legislations of **15 MS.**

In case 2, from among the MS that have this procedure provided in the national legislation, settlement is possible in **7 MS** (**S**; **D; X, W, V – it's theoretically possible, but in practice not very likely; B; F**) and it is not possible in **8 MS** (**R**; **K, E, I**; **U**; **A**; **O, N**).

Settlement is not provided in the national legislations of 9 MS (**C, L, P, T, G (according to the new legislation), H, J, M, Q).**

The explanations sent by MS regarding theoretical minimum and maximum penalties, the confiscation of goods and vehicles, the most likely penalty that would be imposed in this case and the conditions for settlement can be found in the table.

Some MS mentioned the most likely penalty that would be imposed in Case 2, as follows:

- **C** – Based on the facts given: 80.000 EUR - 100.000 EUR (imprisonment for failure to pay the fine: 2-3 months) and approx. 3 months imprisonment – may vary according to the special circumstances, the personal and economic situation of the perpetrator and may be higher in particular cases.

- **S** – The seizure and confiscation of goods (cigarettes and vehicles) if they can be found; jointly and severally, a fine amounting to ten times the customs and excise duties evaded plus a fine amounting to two times the evaded VAT-duties; possibly, imprisonment of four months at least and one year at most.

- **R** – 10.000 EUR and 10% non-criminal penalty on the assessed amount of the customs debt occurred.

- **L** – - Imprisonment of 1 year 2 months for aggravated tax fraud. Additionally they were levied 50 % duty increase (administrative penalty).

- **V** – 6 months - 2 years (often placed on probation), Confiscation of goods and vehicles is possible.

- **P** – This case is handled, just like case No 1, as smuggling leading to both administrative and criminal penalties. The administrative penalty is the duties and taxies evaded multiplied from 3 to 5 times. It is decided and imposed by the customs authorities. The criminal penalty is imprisonment for minimum period of 1 year. The criminal penalty is decided and imposed by the criminal court. Both the administrative and criminal penalty will be imposed to all the liable persons, i.e., those with proven intention for the smuggling. In practice, A, B will share the administrative fine equally, after the customs officers have proven their liability for the infringement. The criminal court will decide on the criminal penalty to be imposed to each offender.

- **K** – The case does not specify what happens exactly to the cigarettes, but considering the available information the perpetrators (A and B) act is according to Section 311 (3) point a) of Act IV of 1978 on the K Criminal Code, qualifying as excise violation, (3) Punishment shall be imprisonment of up to three years if:

a) the criminal conduct results in substantial losses in (excise) tax revenues.

In case of 2.900 cartons of cigarettes (29.000 packets or 580.000 pieces altogether) according to MPPC detailed in case 1, the value of the cigarette is: ... 15.660.000 so the excise duty is ... 9.225.480 altogether (1.000 pieces/... 8.265+28,3% of the retail price).

The perpetrator of the crime described in Section 311 Subsection (1) above shall not be liable for prosecution if he settles his excise tax debt prior to indictment. But this possibility is only granted for those cases where the excise debt is minor, namely less than ... 200.000.

- **B** – See our original response regarding Cases 1 - 6. The maximum penalties are quoted therein. As indicated previously, minimum sanctions exist in certain cases (e.g., s186 of the CCA 1876 where there is a fixed monetary penalty for conviction on indictment of 12.695 EUR or treble the duty paid value of the goods. In those instances the monetary fine is mandatory – the only discretion for the Court is in relation to whether there should also be a sentence of imprisonment or suspended imprisonment within the specified tariff). However, it is not impossible that our court could find justification for ignoring such prescriptions on grounds of judicial discretion in the light of the specific circumstances of an individual case. The limited frequency with which cases of this nature come before our courts makes it impossible to state with certainty the likely sanction that would be imposed in a "real" situation. The courts are always likely to have regard for individual mitigating or aggravating circumstances that are unique to each case.

- **I** – 4 years of imprisonment

- **U** – 2900 cartons cigarettes = 29000 pkts x 20 cigs.

Penalty

a) 3 X (Import duty – 9688,32 EUR + Excise duty – 66427,40EUR) = ***228347,16 EUR***

b) 3 X (VAT – 16728,43 EUR) = ***50185,29 EUR***

Total a + b = **278532,45 EUR**

c) In addition to the above the court has to impose a penalty of up to 11646,87 EUR in terms of Excise Duty Act

d) A term of imprisonment of up to 2 years (for each person)

e) Confiscation of cigarettes and vehicle ***if tangible***.

N.B.:i) Local legislation Criminal Code Ch. 9 Article 17 (f) provides for a reduction by half of the penalties indicated under (b) and (c)

ii) Computation based on a specific cigarettes brand.

- **A** – The facts given in that case are not enough for the right answer. In every cases the criminal penalties can be different, because of independent of courts in their decision. When the court give the sentence, take into account a lot of elements, not only amount of jeopardized duties but personal situation of committer too, specially his income and behaviour before and after committing the offence. Despite the lack of details, the most likely average concrete penalty that would be imposed by court for every committer is about 12.000 euro fine.

- **M** – For natural persons***:*** in this case imprisonment of four years. For legal person: fine 15.000 EUR.

- **Q** – The common Penalty is 1 year imprisonment and a fine twice of the value of the goods.

- **N** – Imprisonment of around 2 years, confiscation order, demand for the duties and taxes evaded.

Case 3 – Conclusions

Case 3: Lodging of a customs declaration after the date due (item 5)

Company X lodged a supplementary declaration for release for free circulation 5 days after the date due.

Questions:

- What would be the penalty to be imposed on company X in your country if the customs value of goods is 5.000 EUR and customs duties are 200 EUR (duty rate 4 %) and value added tax is 1.040 EUR (VAT rate 20 %)?

- What would be the penalty to be imposed on company X in your country if the customs value of goods is 5.000 EUR but the goods are exempted from customs duties and VAT?

Case 3 – Conclusions

PRELIMINARY MENTION:

First of all, it must be mentioned that **1 MS** (**U**) doesn't apply customs simplified procedures and **1 MS (E)** doesn't apply a penalty in this case.

A. CRIMINAL PENALTIES – IN 8 MS

In **Case 3: Lodging of a customs declaration after the date due, 8 MS** (**C**; **S**; **R – additionally is also applied a Non-criminal penalty; W; B; F; G; A**) apply Criminal penalties. From these, **1 MS** (**R)** also applies a Non-Criminal penalty additionally to the mentioned Criminal penalty.

1. Imprisonment – in 2 MS

This offence is punished with Imprisonment, as Criminal penalty, in **2 MS** (**R – 1 year, together with Fine**; **B – together with Fine)**.

2. Pecuniary penalty/fine – in 8 MS

In 8 MS **(C**; **S**; **R – together with Imprisonment**; **W**; **B – together with Imprisonment**; **F**; **G**; **A)** is applied in this case a Pecuniary penalty or fine as criminal penalty.

B. NON - CRIMINAL PENALTIES – IN 15 MS

In **Case 3: Lodging of a customs declaration after the date due,** Non-Criminal penalties are applied in **15 MS** (**R – additionally to the criminal penalty**). **1 MS** (**R)** applies this Non-Criminal penalty, in amount of 10% of the assessed amount of duty or tax, additionally to a Criminal penalty, only for first question – when there are customs duties.

1. Pecuniary penalty/fine – in 14 MS

In **14 MS (R (10% of the assessed amount of duty and or tax additionally to the criminal penalty, only for first question)**) is applied in this case a Pecuniary penalty or fine as Non-criminal penalty.

2. Confiscation of goods and vehicle – 2 MS

Confiscation of goods and vehicle, as Non-Criminal penalty, can be applied in **2 MS** (**X, together with Fine – for vehicle, only if is rebuilt purposely to hide illicit goods**; **V – together with Fine).**

3. Warning – in 2 MS

Another Non-Criminal penalty mentioned by MS is Warning - in **2 MS** (**T – only for natural person, alternative with fine; N**).

Regarding the amount of maximum of Pecuniary penalty or fine, either as Criminal or as Non-criminal penalty, the highest and the lowest levels are the following:

First question : there are customs duties and VAT

The highest level of maximum of Pecuniary penalty or fine is 125.000 EUR (**O**).

The lowest level of maximum of Pecuniary penalty or fine is fine for natural person 140 EUR, and for legal person 702 EUR **(T).**

Second question: the goods are exempted from customs duties and VAT

The highest level of maximum of Pecuniary penalty or fine is 125.000 EUR (**O**).

The lowest level of maximum of Pecuniary penalty or fine is fine for natural person 140 EUR, and for legal person 702 EUR **(T).**

Regarding the level of the most likely Pecuniary penalty or fine that would be imposed in this case, either as Criminal or as Non-criminal penalty, communicated by some MS, the highest and the lowest levels are the following:

First question : there are customs duties and VAT

The highest level of the most likely Pecuniary penalty or fine that would be imposed in this case is 1.000 EUR (**C**).

The lowest level of the most likely Pecuniary penalty or fine that would be imposed in this case is 31 EUR (**L**).

Second question: the goods are exempted from customs duties and VAT

The highest level of the most likely Pecuniary penalty or fine that would be imposed in this case is 1.000 EUR (**C**).

The lowest level of the most likely Pecuniary penalty or fine that would be imposed in this case is 25 EUR (**L**).

C. SETTLEMENT

Settlement is provided in the national legislations of **15 MS.**

In case 3, from among the MS that have this procedure provided in the national legislation, settlement is possible in **9 MS** (**S**; **D**; **R**; **X; W**; **B, F**; **A; N**) and it is not possible in **4 MS** (**V**; **K**; **I**; **O)**.

Settlement is not provided in the national legislations of **9 MS** (**C, L, P, T, G (according to the new legislation), H, J, M, Q).**

The explanations sent by MS regarding theoretical minimum and maximum penalties, the confiscation of goods and vehicles, the most likely penalty that would be imposed in this case and the conditions for settlement can be found in the table.

Some MS mentioned the most likely penalty that would be imposed in Case 3, as follows:

- **C** – Based on the facts given, in both cases only if the infringement was committed intentionally: 500 - 1.000 EUR (imprisonment for failure to pay the fine: 1-2 days) – may vary according to the special circumstances, the personal and economic situation of the perpetrator and may be higher in particular cases;

- **S** – Assuming that the goods are held in temporary storage, and that the declaration is not lodged within the prescribed period, it is likely that no fine will be imposed as long as it doesn't occur repeatedly (the customs authorities could possibly take hold of the goods or ask the importer to re-export them). If the storage's time-limits are regularly exceeded by the importer, a fine could be imposed, by means of transaction (settlement) of 125 EUR. If the goods are removed from the temporary storage facility, and that the declaration is lodged 5 days after the date due, the goods cannot be presented to the customs office and it will be considered as a fraudulent importation into the customs territory (see case 1).

- **D** – In the first indent: a company X will be sanctioned by the customs by a fine ... 500-1000 (255 – 511 EUR)(administrative penalty); In the second indent : fine of ... 50 – 200 (25 – 102 EUR) (administrative penalty).

- **R** – 170 EUR and 10% non-criminal penalty on the assessed amount of the customs debt occurred.

- **X** – fine 130 EUR for a natural person, fine 638 EUR for a legal person.

- **L** – First indent: duty increase (administrative penalty) of 31 EUR; Second indent: surcharge for fault (administrative penalty) of 25 EUR.

- **V** – 100 - 200 EUR administrative fine.

- **P** – In practice, for lodging a customs declaration after due date, customs authorities will impose a fine of 300 EUR, plus a fine of 100 EUR for each day of delay. This means that a fine of 800 EUR (300 + 100 x 5 = 800 EUR) will be imposed. The same fine will be imposed even if the goods are exempted from duties and taxes.

- - **K –** Article 61/A(1) of Act CXXVI of 2003. on the implementation of Community customs legislation stipulates the infringements when it is possible to impose a pecuniary charge: any violation of obligations pertaining to the reporting, declaration and presentation of goods, lodging of customs declarations, temporary storage, customs supervision, presentation for customs treatment and customs clearance, or for the violation of obligations related to the fulfilment of conditions of inspection to be carried out by the customs authority under legal authorization, or for the violation of obligations related to free zones, customs warehouses or transit areas and/or controls are hindered.

Pecuniary charge is levied if a failure or an activity results in outstanding customs duties. In this case 50 percent of the outstanding amount shall be levied as pecuniary charge. The outstanding amount is EUR 1.240/... 310.000, so the pecuniary charge is ... 155.000 (approx. 574 EUR; 1 euro=270 ...).. But we think that as the client submits the supplementary declaration, namely fulfilled his failed obligation causing outstanding customs debt subsequently, before the customs administration detects the failure, the amount of the pecuniary charge is 12,5 % of the outstanding customs debt (one forth of the pecuniary charge to be levied without subsequent non-fulfilment, namely ... 77.500 (approx. 287 EUR; 1 euro=270 ...).. The penalty demand is issued in form of a decision.

2) Here loss of customs debt does not occur, so the pecuniary charge is up to ... 1.000.000 (approx. 3700 EUR; 1 euro=270 ...) in case of legal persons so taking the present exchange rate into account even the whole amount can be imposed. There is no place for settlement. In this case in the course of the decision making process the customs office has the right to take the circumstances of the case (significance and the frequency of the non-compliant behaviour and the diligence of the person concerned) into account. The principle of proportionality and gradualism shall be followed.

- **B** – See our original response regarding Cases 1 - 6. The maximum penalties are quoted therein. As indicated previously, minimum sanctions exist in certain cases (e.g., s186 of the CCA 1876 where there is a fixed monetary penalty for conviction on indictment of 12.695 EUR or treble the duty paid value of the goods. In those instances the monetary fine is mandatory - the only discretion for the Court is in relation to whether there should also be a sentence of imprisonment or suspended imprisonment within the specified tariff). However, it is not impossible that our court could find justification for ignoring such prescriptions on grounds of judicial discretion in the light of the specific circumstances of an individual case. The limited frequency with which cases of this nature come before our courts makes it impossible to state with certainty the likely sanction that would be imposed in a ”real” situation. The courts are always likely to have regard for individual mitigating or aggravating circumstances that are unique to each case.

- **I** – First question: Fine 869,6 EUR; Second question: Fine 289,9 EUR (in the case of mitigating circumstances and based on the criteria of justice and reason, a milder administrative penalty can be imposed than the one specified in the law. Such decision must be sanctioned by the judge). Note: In case 3 (both situations) the fine would be imposed on the employee of the company X who is responsible for lodging the supplementary declaration.

- **G** – Question 1: The G General Customs Act does not provide for a specific penalty on lodging a supplementary declaration after the date due. When the supplementary

declaration is not lodged within the allowed period of time, this is considered to be lodging a declaration incorrectly or incompletely and will be punishable as such. Usually this would be punishable as a minor criminal offence with a punishment order of 226 Euro. If the company deliberately lodged the declaration too late, the punishment order would amount to 453 Euro.

Question 2: As above. This would be punishable as a minor criminal offence with a punishment order of 226 Euro. If Company X deliberately lodged the declaration too late, the punishment order would amount to 453 Euro.

- **A** – The average fine would be the same like below in point 2, i.e. about 130 euro. The facts given in that case are not enough for the right answer. In every case the criminal penalties can be different. When the customs authorities imposed the penalty, take into account a lot of elements, not only dates but personal situation of committer too, specially his income and behaviour before and after committing the offence. Despite the lack of details, the most likely average concrete penalty that would be imposed by the customs authorities is about 130 euro fine.

- **H** – Abstractly, the same administrative infringement in both situations: Pecuniary charge of 300 EUR.

- **M** – For legal person

1. penalty 450 EUR (approximately 10 % value of goods)
2. penalty 350 EUR (approximately 10 % value of goods)

- **Q** – It is only possibly a penalty of 200 EUR**.**

- **N** – An administrative penalty. There is no difference in penalty dependant on whether – or how much – duty and other taxes are involved (If this was a first offence a non-financial penalty warning letter would be considered. The company is warned that any further similar contraventions within a two year period would result in a financial penalty).

Case 4 – Conclusions

Case 4: Infringement of the orders of the Customs based on the Community customs legislation (item 7)

According to Article 14 of the CC**,** for the purposes of applying customs legislation, any person directly or indirectly involved in the operations concerned for the purposes of trade in goods shall provide the customs authorities with all the requisite documents and information, irrespective of the medium used, and all the requisite assistance at their request and by any time limit prescribed.

The customs officials are performing the post-clearance examination referred to in Article 78 of the CC at the premises of company X. Company X was a declarant of the goods included in the declarations subject to the post-clearance examination in question. The customs officials request the managing director of the company to provide them with certain commercial documents relating to the goods concerned. The managing director declines this.

Questions:

- What would be the penalty to be imposed on the managing director in your country and in what legislation it is provided for?

- By which means your Customs (or other authority) can compel the managing director to provide the Customs with the requested documents?

Case 4 – Conclusions

PRELIMINARY MENTIONS:

- **V**: This behaviour is not an infringement; only coercive can be imposed, which are neither criminal nor administrative penalties

- **P**: In this case the customs does not imply any penalty; instead, the customs officer send a written request for the missing documents and if the company is not able to submit the appropriate documents then asks for a command of the prosecutor in order to carry out an on the spot control. If still in this case the company does not comply with order the customs suits the representative of the company for disobedience. Finally the customs officer proceeds to the clearance of based on the documents on hand.

A. CRIMINAL PENALTIES – IN 11 MS

In **Case 4 – Infringement of the orders of the Customs based on the Community customs legislation**, **11 MS** apply Criminal penalties.

1. Imprisonment – in 3 MS

This offence is punished with Imprisonment, as Criminal penalty, in **3 MS (R – alternative or together with a fine; B – together with a fine; J – alternative with a fine)**

The maximum level of Imprisonment varies from a MS to another, and the highest of these maximum levels is 3 years (**J).**

The lowest level of maximum Imprisonment is 1 year (**R**).

2. Pecuniary penalty/Fine – in 11 MS

In **11 MS** can be applied in this case a Pecuniary penalty or Fine as Criminal penalty (**C**; **S**; **R – alternative or together with imprisonment; L; W; B – together with imprisonment; F; U; G; A; J – alternative with imprisonment).**

The highest level of maximum of Pecuniary penalty or Fine is 3.000.000 EUR (**A**).

The lowest level of maximum of Pecuniary penalty or Fine is 250 EUR (**S, F**).

B. NON - CRIMINAL PENALTIES – IN 11 MS

In **Case 4 – Infringement of the orders of the Customs based on the Community customs legislation,** Non-Criminal penalties are applied in **11 MS.**

1. Pecuniary penalty/fine – in 11 MS

In all **11 MS** that apply in this case Non-Criminal penalties, these penalties consist in Pecuniary penalty or fine (**D**; **X**; **K**; **E; T**; **I**; **H**; **M**; **O**; **Q; N**).

The highest level of maximum of Pecuniary penalty or fine is 20.000 EUR, for legal person (**H**).

The lowest level of maximum of Pecuniary penalty or fine is 210 EUR for natural persons (**T)**.

C. SETTLEMENT

Settlement is provided in the national legislations of **15 MS.**

In case 4, from among the MS that have this procedure provided in the national legislation, settlement is possible in **10 MS** and it is not possible in **5 MS** (**V**; **K; E; I**; **O)**.

Settlement is not provided in the national legislations of **9 MS (C, L, P, T, G (according to the new legislation), H, J, M, Q).**

The explanations sent by MS regarding theoretical minimum and maximum penalties, the confiscation of goods and vehicles, the most likely penalty that would be imposed in this case and the conditions for settlement can be found in the table.

Some MS mentioned the most likely penalty that would be imposed in Case 4, as follows:

- **C** – Based on the facts given: pecuniary penalty of 800 – 1.000 EUR.

- **S** – A transaction can be offered for 125 EUR.

- **D** – In the case as described the fine imposed by the customs authority shall be ... 100 – 200 (51 – 102 EUR)1 EUR = 1,956 ...

- **R** – 300 EUR.

- **X** – Fine 130 EUR for a natural person, fine 638 EUR for a legal person.

- **L** – First indent: Fine on the basis of the Customs Act (due to customs violation). In the Penal Code there is also a crime called "obstruction of a public official". Our evaluation (no cases where the fine would have been imposed) is 20 day fines (the scale is 1 to 120 day fines).

- **P** – In this case the customs does not imply any penalty; instead, the customs officer send a written request for the missing documents and if the company is not able to submit the appropriate documents then asks for a command of the prosecutor in order to carry out an on the spot control. If still in this case the company does not comply with order the customs suits the representative of the company for disobedience. Finally the customs officer proceeds to the clearance of based on the documents on hand.

- **B** – See our original response regarding Cases1 - 6. The maximum penalties are quoted therein. As indicated previously, minimum sanctions exist in certain cases (e.g., s186 of the CCA 1876 where there is a fixed monetary penalty for conviction on indictment of €12,695 or treble the duty paid value of the goods. In those instances the monetary fine is mandatory - the only discretion for the Court is in relation to whether there should also be a sentence of imprisonment or suspended imprisonment within the specified tariff). However, it is not impossible that our court could find justification for ignoring such prescriptions on grounds of judicial discretion in the light of the specific circumstances of an individual case. The limited frequency with which cases of this nature come before our courts makes it impossible to state with certainty the likely sanction that would be imposed in a ”real” situation. The courts are always likely to have regard for individual mitigating or aggravating circumstances that are unique to each case.

- **I** – Fine 362, 3 EUR

- **U** – The court may impose a penalty ranging from 465,87 EUR to 5.823,43 EUR

- **A** – The average fine would be the same like below in point 2, i.e. about 250 EUR. However, give the right answer is difficult because in that case there is any information about the kind of goods and the financial conditions of the Company and the managing director. The facts given in that case are not enough for the right answer. In every case the criminal penalties can be different. When the customs authorities imposed the penalty, take into account a lot of elements, not only the requested documents but personal situation of committer too, specially his income and behaviour before and after committing the offence. Despite the lack of details, the most likely average concrete penalty that would be imposed by the customs authorities is about 250 EUR fine.

- **H** – This kind of behaviour is considered a serious violation of cooperation duty, which can make much harder the Customs activity. Proposed penalty for company X: pecuniary charge of 2500 EUR (the managing director is obliged to provide the requested documents, under penalty of a pecuniary charge as the one above mentioned. In case he subsists in refusing to present the documents, it could be requested the judicial confiscation of the documents).

- **M** – Penalty would be to imposed: 100 – 150 EUR an than would be managing director of the company request again to provide certain commercial documents relating to the goods concerned.

- **Q** – It is only possibly a penalty of 150 EUR by each declination.

- **N** – If documents were requested at the time of the visit and they were not made available for inspection, the Customs Authority would write to the company requesting that the documents be made available for inspection. A deadline would be given with a warning that failure to produce the documentation by the deadline would result in penalty action. If this deadline was exceeded a non-financial penalty warning letter would be issued with a further deadline for producing the records. If this deadline was exceeded a financial penalty ...250 would be issued with a further deadline for producing the records. If this deadline was exceeded, a further financial penalty would be issued and so on, increasing up to a maximum of ...1000.00. Subsequent penalties would be issued for the maximum amount. Where the

commercial documentation was required to verify a lower duty rate or preferential rate claimed by the company, the Customs Authority will issue a debt for the full duty rate that they consider applicable. On receiving a bill the company will normally produce the required documentation.

Case 5 – Conclusions

Case 5: Lodging of a customs declaration (or a particular) incorrect (item 4)

Company X declared the customs values of clothing material in the customs declarations lodged during 12 ½ months too low with the effect that 82.831,71 EUR customs duties and 15.719,18 EUR value added tax remained uncharged. Persons A, B and C, all members of the board of directors of company X and acting together and unanimously, were everybody aware of the circumstance that the customs values were declared too low.

Questions:

- What would be the penalties to be imposed on A, B and C in your country and what is the name of the infringement in question according to your legislation?

- What would be the penalties, if any, to be imposed on company X in your country?

Case 5 – Conclusions

A. CRIMINAL PENALTIES – IN 18 MS

In **Case 5: Lodging of a customs declaration (or a particular) incorrect, 18 MS** (**R – additionally is also applied a Non-criminal penalty**) apply Criminal penalties. From these, **2 MS** (**R, P)** also applies a Non-Criminal penalty additionally to the mentioned Criminal penalty.

I. First question: penalties to be imposed on natural persons, members of the board of directors of company

1. Imprisonment – in 16 MS

For this offence, the natural persons, members of the board of directors of company, are punished with Imprisonment, as Criminal penalty, in **16 MS**.

Frome these MS, **7 MS (C**; **R**; **W**; **B**; **E**; **U, A**) apply Imprisonment together with Pecuniary penalty or fine, both as Criminal penalties. In **1 MS (G)** Imprisonment can be applied together with or alternative with Pecuniary penalty or fine, both as Criminal penalties. In **1 MS (H, for natural persons)** Imprisonment is applied alternative with Fine, both being Criminal penalties. In **1 MS (K)** if the crime committed carries a maximum sentence of 3

years of imprisonment, the term of imprisonment may be substituted by community service work or financial penalty.

The highest level of maximum of Imprisonment, is 15 years in 2 MS (**V**; **J**)

The lowest level of maximum of Imprisonment is 3 years, being common for 5 MS (**C**; **R; W; K; H**).

2. Pecuniary penalty/fine – in 11 MS

In **11 MS** is or can be applied in this case a Pecuniary penalty or fine as Criminal penalty.

The highest level of maximum of Pecuniary penalty or fine for the natural persons, members of the board of directors of company, is 3.000.000 EUR (**A.)**

The lowest level of maximum of Pecuniary penalty or fine for the natural persons, members of the board of directors of company is 1.500 EUR (**W**).

3. Confiscation of goods and vehicle – 12 MS

Confiscation of goods and vehicle, as Criminal penalty, can be applied in **12 MS (C – if the goods are found)**, together with Imprisonment and/or with Pecuniary penalty/fine, as Criminal penalties.

II. Second question: penalties to be imposed on company

1. Pecuniary penalty/fine – in 7 MS

For this offence, the company is punished with Pecuniary penalty or corporate fine, as Criminal penalty, in **7 MS** (**L – possible but in this concrete case the prosecutor did not claim corporate fine**).

The highest level of maximum of Pecuniary penalty or fine for company is 3.192.000 EUR (**X).**

The lowest level of maximum of Pecuniary penalty or fine for company is 10.000 EUR (**S**).

B. NON - CRIMINAL PENALTIES – IN 8 MS

In **Case 5: Lodging of a customs declaration (or a particular) incorrect,** Non-Criminal penalties are applied in **8 MS** (**R – additionally to the criminal penalty; P – additionally to the criminal penalty**). **2 MS** (**R, P)** applies this Non-Criminal penalty additionally to a Criminal penalty.

I. First question: penalties to be imposed on natural persons, members of the board of directors of company

1. Pecuniary penalty/fine – in 6 MS

In **6 MS** (**R (10% of the assessed amount of duty and or tax additionally to the criminal penalty), I – fine would be imposed on the natural person who signed the declarations)** is applied in this case a Pecuniary penalty or fine as Non-criminal penalty.

The highest level of maximum of Pecuniary penalty or fine for the natural persons, members of the board of directors of company, is 200% of customs value of goods (**D**).

In **1 MS** (**I**) a fine of maximum 2.898,6 EUR can be imposed on the natural person who signed the declarations.

II. Second question: penalties to be imposed on company

2. Pecuniary penalty/fine – in 6 MS

For this offence, the company is punished with Pecuniary penalty or fine, as Non-Criminal penalty, in **6 MS** (**R (10% of the assessed amount of duty and or tax additionally to the criminal penalty)**)

The highest level of maximum of Pecuniary penalty or fine for company is 200% of customs value of goods (**D**).

The lowest level of maximum of Pecuniary penalty or fine for company is 50% of the amount of tax and duty underpayment, being common for **2 MS** (**T and I**).

C. SETTLEMENT

Settlement is provided in the national legislations of **15 MS.**

In case 5, from among the MS that have this procedure provided in the national legislation, settlement is possible in **9 MS** (**V – it's theoretically possible, but in practice not very likely**) and it is not possible in **6 MS** (**R**; **K; E; I**; **A; O)**.

Settlement is not provided in the national legislations of **9 MS** (**C, L, P, T, G (according to the new legislation), H, J, M, Q).**

The explanations sent by MS regarding theoretical minimum and maximum penalties, the confiscation of goods and vehicles, the most likely penalty that would be imposed in this case and the conditions for settlement can be found in the table.

Some MS mentioned the most likely penalty that would be imposed in Case 5, as follows:

- **C** – Based on the facts given: 80.000 - 100.000 EUR (imprisonment for failure to pay the fine: 2 - 3 months) and approx. 3 months imprisonment – may vary according to the special circumstances, the personal and economic situation of the perpetrator and may be higher in particular cases.

- **S** – Jointly and severally, a fine amounting to ten times the customs and excise duties evaded + a fine amounting to two times the evaded VAT-duties. Only in case of recidivism: imprisonment of 8 days at least and one month at most. For company X : 2500 EUR up to 10000 EUR.

- **D** – In the first indent: for A, B and C a separate sanction will be imposed – 100%, the name of the infringement in question is customs fraud. In the second indent: for the legal person – the sanction will be 200%.

- **R** – 50.000 EUR and 10% non-criminal penalty on the assessed amount of the customs debt occurred.

- **L** –First indent: A, B, and C were all sentenced imprisonment of 1 year for aggravated tax fraud. Second indent: The prosecutor did not claim any penalty (corporate fine) to be imposed on company X although it according to Penal Code would have been possible.

- **V** – 6 month - 2 years (often placed on probation). Confiscation of goods and vehicles is possible.

- **P** – This case of undervaluation is handled as smuggling leading to both administrative and criminal penalties. The administrative penalty is the duties and taxies evaded multiplied from 3 to 5 times. It is decided and imposed by the customs authorities. The criminal penalty is imprisonment for minimum period of 1 year. The criminal penalty is decided and imposed by the criminal court.

Both the administrative and criminal penalty will be imposed to all the liable persons, ie, those with proven intention for the smuggling. In practice, since A, B and C were aware of the infringement and acting together, they will share the administrative fine equally. The criminal court will decide on the criminal penalty to be imposed to each offender.

A penalty cannot be imposed on the company. According to the Greek Customs Code, in order to impose penalty for smuggling, the customs authorities must prove intention and intention can exist only in natural persons, never in legal persons.

- **B** – See our original response regarding Cases 1 - 6. The maximum penalties are quoted therein. As indicated previously, minimum sanctions exist in certain cases (e.g., s186 of the CCA 1876 where there is a fixed monetary penalty for conviction on indictment of €12,695 or treble the duty paid value of the goods. In those instances the monetary fine is mandatory - the only discretion for the Court is in relation to whether there should also be a sentence of imprisonment or suspended imprisonment within the specified tariff). However, it is not impossible that our court could find justification for ignoring such prescriptions on grounds of judicial discretion in the light of the specific circumstances of an individual case. The limited frequency with which cases of this nature come before our courts makes it impossible to state with certainty the likely sanction that would be imposed in a ”real” situation. The courts are always likely to have regard for individual mitigating or aggravating circumstances that are unique to each case.

- **I** – Fine (imposed on the company X) 40% of the amount of tax and duty underpayment; Fine (imposed on the natural person who signed the declarations) 2173,9 EUR

- **F** – The providing of incorrect information relating to the origin of the goods convinced as false information is considered as fraudulent importation of goods without customs declaration. In consequence the infringement leads to the application of criminal penalties - imprisonment of minimum 4 months to maximum 1 year; tenfold of customs duties involved, confiscation of goods and transport means). Providing incorrect information relating to the value of the goods convinced as false information is an infringement parallel to a Community regulation and to article 139 of GCL and leads to the application of criminal penalties falling within the scope of article 261 of GCL, i.e. a fine of minimum 125 EUR to maximum 1250 EUR plus the confiscation of the goods. If the infringement of undervaluation of goods is detected on the basis of a false invoice produced intentionally and wilfully in order to harm the Treasury, i.e. to fraud the customs duties (*malus dolus*), the infringement is punished with a fine of 250 EUR min. to 625 EUR max. in the case of goods free from customs duties, and a fine of tenfold of customs duties in the case of *ad valorem* customs duties (criminal penalties).

- **U** – Irrespective of the amounts already paid up thru' the initial declaration to Customs, each of the directors is penalized:

a) 3 x (Import Duty)

b) 3 x (VAT)

c) not less than 10% of the amount of duty endangered or 58,23 EUR, which ever is the greater but not exceeding 2329,37 EUR

d) Confiscation of clothing item *if tangible*

e) A term of imprisonment of up to 2 years for each person

Note: Local legislation Criminal Code Ch. 9 Article 17 (f) prescribes the highest fine in addition to one half of each of the other fines.

- **A** – The facts given in that case are not enough for the right answer. In every cases the criminal penalties can be different, because of independent of courts in their decision. When the court give the sentence, take into account a lot of elements, not only amount of jeopardized duties but personal situation of committer too, specially his income and behaviour before and after committing the offence. Despite the lack of details, the most likely average concrete penalty that would be imposed by court for every committer is about 10.000 euro fine. The name of this infringement is the customs fraud. The penalty that would be imposed by court on company is ban of dealing with economic activity in customs matters.

- **H** – However, giving the fact that the same infringement was committed during 12 ½ months without being discovered in that period of time, it would be possible to consider it as a continuous infringement, according to article 30º nº2 of Penal Code, which would have favourable consequences for the perpetrators in what regards the valuation of their guilt.

- **M** – Penalty 9.700 EUR.

- **Q** – - The most common penalty consists in 70 % of the debt for each debs, Customs duties and VAT.

- **N** – This case concerns the fraudulent evasion of customs duty and VAT. In N law fraudulent evasion is a criminal offence. However, N law provides that the punishment can be either criminal or administrative in nature. The Customs Authority has the power to decide whether to seek criminal or administrative penalties. They must decide which penalty route to adopt very soon after the offence is discovered. This is because the way that the case is

investigated and the procedures to be followed differ depending on which route is chosen. The parameters for determining which route we take are not set out in statute. General guidance issued to the taxpayer makes it clear that we reserve the criminal route for the more serious cases.

Under N National Law for a case to be considered suitable for a criminal prosecution various criteria have to be met. In this case we would probably elect to deal with the case by way of administrative penalty. N law provides a specific administrative penalty equal to 100% of the duty and tax evaded where the Customs authority can prove, on a balance of probability, that the duty and VAT has been evaded through dishonesty. Where a company is the entity that has effected the evasion, but the persons who caused the company to evade duty and taxes is a director or managing officer of the company, N law allows us to transfer the penalty liability from the company to the individuals. So, in this scenario the penalty would equal the duty and Vat evaded, and we would probably apportion the penalty equally between A, B and C.

The evader can reduce the amount of penalty by cooperating with the Customs authority in the investigation. The penalty can be reduced by up to 75% where there are full admissions of guilt at an early stage of the investigation and full cooperation in determining the extent of the outstanding duty and taxes.

If the evidence needed to allege dishonesty is insufficiently strong the case would have to be considered under the (administrative procedure) Customs Civil Penalty regime.

This offence would be treated as a serious error due the amount of duty involved and would be misdeclaration. In this instance the maximum penalty would be applied for ... 2500.00

Case 6 – Conclusions

Case 6: Removal of goods from the customs territory of the Community without a customs declaration (item 6/5)

Company X lodged an export declaration at the customs office of export 2 days after the goods were loaded in the export container.

Question: What is the penalty to be imposed on company X in your country?

PRELIMINARY MENTION:

In **1 MS** (**A**) any penalty is not imposed on the company in that case.

A. CRIMINAL PENALTIES – IN 9 MS

In **Case 6: Removal of goods from the customs territory of the Community without a customs declaration, 9 MS** (**C**; **S**; **R**; **W**; **B**; **F**; **U**; **G**; **H – if the customs value of the goods were more than 50.000 EUR and there was an intentional behaviour)** apply Criminal penalties. From these, **1 MS (R)** also applies a Non-Criminal penalty additionally to the mentioned Criminal penalty.

1. Imprisonment – in 2 MS

This offence is punished with Imprisonment, as Criminal penalty, in **2 MS** (**R – 1 year, only for the director, manager, secretary etc. of the company**; **B – together with Fine**).

2. Pecuniary penalty/fine – in 9 MS

In **9 MS** (**C**; **S**; **R**; **W**; **B – together with Imprisonment**; **F**; **U – imposed on the directors since legal persons are not liable; G**; **H**) is applied in this case a Pecuniary penalty or fine as criminal penalty.

The highest level of maximum of Pecuniary penalty or fine is 1.800.000 EUR – fine of 5.000 EUR maximum/per day that could go up to 360 days, if the customs value of the goods were more than 50.000 EUR and there was an intentional behaviour (**H**).

The lowest level of maximum of Pecuniary penalty or fine is 1250 EUR (**F**).

B. NON - CRIMINAL PENALTIES – IN 15 MS

In **Case 6: Removal of goods from the customs territory of the Community without a customs declaration,** Non-Criminal penalties are applied in **15 MS** (**H – if the value of the goods were less than 50.000 EUR or there was a negligent behaviour)**). **1 MS** (**R)** applies this Non-Criminal penalty, in amount of 10% of the assessed amount of duty or tax, additionally to a Criminal penalty.

1. Pecuniary penalty/fine – in 15 MS

In **15 M**S - **E (administrative penalty from 258 EUR to 2.582 EUR)** is applied in this case a Pecuniary penalty or fine as Non-criminal penalty.

The highest level of maximum of Pecuniary penalty or fine is 500.000 EUR, if the offence was intentionally committed, otherwise (negligent) maximum is 250.000 EUR (**V**)

The lowest level of maximum of Pecuniary penalty or fine is 393 EUR for natural persons (**X)** and 1022 EUR for legal persons **(D).**

C. SETTLEMENT

Settlement is provided in the national legislations of **15 MS.**

In case 6, from among the MS that have this procedure provided in the national legislation, settlement is possible in **9 MS** (**S**; **D**; **R**; **X; W**; **B; E; F**; **N**) and it is not possible in **5 MS** (**V**; **K; I**; **U; O)**.

Settlement is not provided in the national legislations of **9 MS (C, L, P, T, G (according to the new legislation), H, J, M, Q).**

The explanations sent by MS regarding theoretical minimum and maximum penalties, the confiscation of goods and vehicles, the most likely penalty that would be imposed in this case and the conditions for settlement can be found in the table.

Some MS mentioned the most likely penalty that would be imposed in Case 6, as follows:

- **C** – Based on the facts given: 500 – 1.000 EUR (imprisonment for failure to pay the fine: 1–2 days) – may vary according to the special circumstances, the personal and economic situation of the perpetrator and may be higher in particular cases.

- **S** – Assuming that this case is related to the export of goods that are free to be exported (non prohibited or subject to particular export administration), Company X could be convicted in S of export of free goods without declaration, an infringement that is punished with a fine amounting 125 EUR.

- **D** – In the case as described the sanction will be a fine of ... 200 (102 EUR) (administrative penalty).

- **R** – 500 EUR

- **X** – Fine 130 EUR for a natural person, fine 638 EUR for a legal person.

- **L** – Surcharge for fault (administrative penalty) of 300 EUR (minimum) The scale of imposed surcharge in these situations varies from 50 EUR to 300 EUR.

- **V** – 50 - 100 EUR administrative fine or no avengement.

- **P** – In this case the penalty imposed will be 500 EUR.

- **B** – See our original response regarding Cases 1 - 6. The maximum penalties are quoted therein. As indicated previously, minimum sanctions exist in certain cases (e.g., s186 of the CCA 1876 where there is a fixed monetary penalty for conviction on indictment of €12,695 or treble the duty paid value of the goods. In those instances the monetary fine is mandatory - the only discretion for the Court is in relation to whether there should also be a sentence of imprisonment or suspended imprisonment within the specified tariff). However, it is not impossible that our court could find justification for ignoring such prescriptions on grounds of judicial discretion in the light of the specific circumstances of an individual case. The limited frequency with which cases of this nature come before our courts makes it impossible to state with certainty the likely sanction that would be imposed in a ”real” situation. The courts are always likely to have regard for individual mitigating or aggravating circumstances that are unique to each case.

- **I** – Fine (imposed on the respective employee of the company X) 869,6 EUR

- **U** – It is up to the criminal court to impose a penalty ranging from 232,94 EUR to 2329,27 EUR. Each case is treated on its own merits.

- **G** – Company X would receive a punishment order of 226 Euro.

- **A** – Any penalty is not imposed on the company in that case.

- **H** – Proposed penalty in case of administrative infringement: pecuniary charge of 400 EUR.

- **M** – Penalty 10% value of goods.

- **Q** – It is only possibly a penalty of 200 EUR.

- **N** – This case concerns an infringement of Community Customs law that is classed in N law as a non-criminal offence. Such infringements are known in N law as ‘Contraventions of a relevant rule’, and are punishable by the imposition of an administrative penalty. The company’s compliance history would be taken into consideration when deciding upon which type of penalty to issue. Each case is considered on its own merits and all factors are taken into consideration. If this was a first contravention we would normally issue a warning letter. The company are warned that any further similar contraventions within a two

year period would result in a financial penalty. However, where a first contravention is sufficiently serious we can impose a penalty straight away. The amount would be not less than ...250 (284.10 Euro). If the company had previously been advised on the correct procedure a financial penalty would be considered appropriate. If this was a repeated error where the company had been previously subject to the penalty regime, a financial penalty would be appropriate.

Case 7 – Conclusions

Case 7: Lodging of an export declaration at a customs office in a MS other than that where an export declaration should have been lodged

Company X lodged an export declaration at a customs office in MS B even if it, in compliance with Article 161(5) of the CC and Article 791 of the CCIP, should have been lodged in MS A. The customs office in MS B imposes a penalty on company X due to the infringement in question.

Questions:

- If your country is MS B, does the customs office referred to above impose a penalty on company X?

- If the answer is positive, what is the penalty to be imposed on company X?

Case 7 – Conclusions

PRELIMINARY MENTION:

NO PENALTY – in **15 MS**.

A. CRIMINAL PENALTIES – IN 5 MS

In **Case 7: Lodging of an export declaration at a customs office in a MS other than that where an export declaration should have been lodged, 5 MS** (**C**; **W**; **B**; **F**; **G**) apply Criminal penalties.

1. Imprisonment – in 1 MS

This offence is punished with Imprisonment, as Criminal penalty, in 1 **MS** (**B – together with fine**).

2. Pecuniary penalty/fine – in 4 MS

In **4 MS** (**C**; **W**; **B – together with Imprisonment**; **G**) is applied in this case a Pecuniary penalty or fine as criminal penalty.

The highest level of maximum of Pecuniary penalty or fine is 5.000 EUR (**C**).

The lowest level of maximum of Pecuniary penalty or fine is 226 EUR or, if the declaration was wrongly lodged in the G intentionally, 453 EUR (**G**).

3. Confiscation of goods and vehicle – in 1 MS

Confiscation of goods and vehicle, as Criminal penalty, is applied in 1 MS (**F).**

B. NON - CRIMINAL PENALTIES – IN 4 MS

In **Case 7: Lodging of an export declaration at a customs office in a MS other than that where an export declaration should have been lodged,** Non-Criminal penalties are applied in **4 MS** (**D**; **L**; **M; Q**).

1. Pecuniary penalty/fine – in 4 MS

In **4 MS** (**D**; **L**; **M; Q**) is applied in this case a Pecuniary penalty or fine as Non criminal penalty.

The highest level of maximum of Pecuniary penalty or fine is 99.581,75 EUR (**M**).

The lowest level of maximum of Pecuniary penalty or fine is 511 EUR (**D**).

C. SETTLEMENT

Settlement is provided in the national legislations of **15 MS.**

In case 7, from among the MS that have this procedure provided in the national legislation, settlement is possible in **4 MS** (**D**; **W**; **B, F)**. The other MS that have settlement in their national legislation don't apply any penalties in this case.

Settlement is not provided in the national legislations of **9 MS** (**C, L, P, T, G (according to the new legislation), H, J, M, Q).**

The explanations sent by MS regarding theoretical minimum and maximum penalties, the confiscation of goods and vehicles, the most likely penalty that would be imposed in this case and the conditions for settlement can be found in the table.

Some MS mentioned the most likely penalty that would be imposed in Case 7, as follows:

- **C** – In C probably no penalty would be imposed.

- **D** – Fine of ... 200 (102 EUR) (administrative penalty).

- **L** – Surcharge for fault (administrative penalty) of 150 EUR (minimum).

- **B** – See our original response regarding Cases 1 - 6. The maximum penalties are quoted therein. As indicated previously, minimum sanctions exist in certain cases (e.g., s186 of the CCA 1876 where there is a fixed monetary penalty for conviction on indictment of €12,695 or treble the duty paid value of the goods. In those instances the monetary fine is mandatory - the only discretion for the Court is in relation to whether there should also be a sentence of imprisonment or suspended imprisonment within the specified tariff). However, it is not impossible that our court could find justification for ignoring such prescriptions on grounds of judicial discretion in the light of the specific circumstances of an individual case. The limited frequency with which cases of this nature come before our courts makes it impossible to state with certainty the likely sanction that would be imposed in a "real" situation. The courts are always likely to have regard for individual mitigating or aggravating circumstances that are unique to each case.

In Case 7, it is not clear that any sanction would arise in B at present.

- **F** – Confiscation of the goods and the vehicle.

- **G** – If the declaration should have been lodged in a different MS, Dutch Customs would refuse the declaration or render it invalid. Thus, in the end, no declaration would have been accepted by Dutch Customs and therefore we would not impose a penalty.

In the unlikely event that in Case 7 the declaration would have been accepted by Dutch Customs, Company X could receive a punishment order of 226 Euro or if the declaration was wrongly lodged in the G intentionally, of 453 Euro.

- **M** –Penalty 10% value of goods.

- **Q** – It is only possibly a penalty of 200 EUR.

IA report: Annex 1-C

CUSTOMS 2013 PROGRAMME

PROJECT GROUP ON CUSTOMS PENALTIES

EXECUTIVE SUMMARY OF THE

FINAL REPORT

NOVEMBER 2010

EXECUTIVE SUMMARY

The Modernised Customs Code (MCC)[42] is conceived for a multinational electronic environment where a decision taken by a MS is applied in all other MS, and customs declaration and procedures often involve more than one MS. Like the for the Authorised Economic Operator (AEO) status, all simplifications foreseen by the MCC will be granted only depending on a satisfactory record of compliance and withdrawn where this condition is no longer met.

An infringement to Community Customs law often impacts on customs debt and can trigger the application of penalties. Although customs debts are partially Community own resources and have their its legal basis in Community provisions, in case of infringement the application of penalties is based on national provisions which differ by nature and by severity according to the Member State (MS) that is competent for it.

Moreover, the global nature of trade and the existence of global economic operators in Europe, as well as fraud, terrorism and other international threats which customs are called to face, may require a uniform approach of customs related infringements and penalties.

For all the above reasons, the Customs Policy Group (Deputies) meeting of 30 January 2008 gave a mandate to the Commission (COM) to examine and assess the situation in the field of infringements and customs penalties.

COM established a Project Group (PG) under the Customs 2013 (C 2013) Program on a voluntary basis which would analyse the national regimes of customs infringements and penalties and report back to the Commission.

24 out of 27 MS divided in two sub-groups managed by two Member States (UK , **Finland** as **sub-group leaders)**, and including also Austria, Belgium, Cyprus, Bulgaria, Estonia, , France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Spain actively participated in the PG and their tasks were to:

- identify the key features of the infringements/penalties national regimes
- identify the legal sources
- spot the differences
- identify areas of convergence
- record different views as to whether it would be beneficial or not to align penalties
- provide indications on the feasibility of such an alignment

For some MS the situation has evolved in so far that their legislation concerning infringements and penalties related to customs has been modified. Therefore several updates

[42] Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 (OJ no L 145 of 4.06.2008, p. 1).

of the contributions took place and there might still be changes in their legislation by the time this report is published.

The structure of the report follows to a certain extent the structure of the Questionnaire established by the Commission although it has been slightly modified in order to avoid duplications. The report has **12 Sections** and **6 Annexes**.

The Union legal background has been highlighted in the beginning of the Report (Lisbon Treaty, MCC (Regulation (EC) No 450/2008, the Convention on the protection of the European Communities' financial interests[43])

National legislation covering customs infringements

MS were asked to state the national legislation applicable to customs infringements and penalties. As expected most MS have a number of acts and codes forming the legislative framework within which they penalise customs infringements.

All MS contributing to this report consider that they operate a system of penalties for dealing with customs infringements that they consider to be effective, proportionate and dissuasive (the very criteria identified with Article 21 of the MCC). MS provided the following general details concerning their systems.

The nature of national penalties for customs infringements

16 out of 24 MS advised that their penalty systems provide for both criminal and non criminal penalties to be applied.

Main & Ancillary Penalties

For the purposes of this report we agreed that an ancillary penalty is one that cannot stand alone but is often applied with a main penalty. The legal systems of 5 MS do not provide for ancillary penalties.

The most common main penalties applied by all MS are fines /pecuniary charges (and this regardless of their criminal or non criminal nature) and imprisonment.

The most common ancillary penalties (8 MS) concern the disqualification from business/commercial activities

Other measures

MS take other action than penalties or sanctions against those failing to comply with customs laws. Typically these will include the revocation, suspension or amendment of authorisations held by the person or persons concerned, or the insistence on new conditions connected with such authorisations (for example the provision of a monetary security against future duty debts). Article 21.2 of the Modernised Customs Code provides that these types of measures may be envisaged as administrative (non criminal) penalties. However many MS do not see them as penalties at all, rather as a consequence of non-compliance.

All MS but one confirm that their national system provides for measures aimed at ensuring compliance in addition to criminal and non criminal penalties. An area of convergence is to be

[43] Council Act of 26 July 1995 drawing up the Convention on the protection of the financial interests of the European Communities [OJ C 316, 27.11.1995].

found in the main type of measure employed as 19 MS engage in the refusal, annulment, suspension and or withdrawal of authorisations, approvals and licence (although one of those MS foresees them only in criminal procedures

Persons liable in cases of infringement

All MS identify three types of persons who can be held liable for customs infringements (the actual perpetrator, the instigator and anyone involved to assist the person who committed the infringement).

For the MS who have non criminal penalties the only point of convergence is the liability of the actual perpetrator

Almost all MS (with the exception of 3 MS for criminal penalties and 1 MS for non criminal penalties) do not foresee in their legislation the transfer of a penalty to another

Intent / negligence / strict liability

We sought to establish the requirements MS have in place aimed at establishing the presence of intent behind an infringement. Most MS require the presence of intent, negligence, or elements of careless or reckless behaviour in all infringements dealt with under criminal procedures (save of course for any strict liability offences punishable under criminal law). This is also true for many infringements dealt with under non criminal procedures.

However 11 MS foresee some strict liability infringements in their legislation, either for criminal or for non criminal infringements.

Treatment of attempted infringements

Treatment under criminal law

4.28 MS were asked if an attempt to commit a customs infringement under **criminal** and under **non criminal law** was punishable.

In 21 MS an attempt to commit a customs infringement is punishable under criminal law and in 7 MS it is punishable under non criminal law.

Moreover in 10 MS under certain conditions (different in each MS) the prosecutor has the discretionary power to pursue attempted customs infringements.

Infringements committed in other MS

MS were asked about what action they might take in respect of customs infringements committed in another MS.

11 MS indicated that they can only do so in specific circumstances. Examples include criterion that the offence must have been detected there or that the perpetrator must be a national and must not have already been punished in the MS where the infringement occurred

12 MS indicated that they cannot normally prosecute offences committed in other MS, although again caveats were identified.

Only 1 MS can take action under non criminal procedures in respect of infringements committed in other countries where the results are felt in that MS.

Time limits

MS were asked whether they had specific time limits for **initiating** a procedure (whether this be classed as starting an investigation, bringing charges or some other action), if such time limits can be **suspended or interrupted**, and if so what can trigger the suspension or interruption and what maximum time limits apply so that after their expiry any investigation or legal action is **time barred**.

We also sought information as to whether MS have time limits concerning the **imposition** (that is the decision to penalise and the notification of that decision) and the **execution** of penalties (that is the carrying out of the sentence or attempted collection of the financial penalty).

Time limits are to some degree an area of convergence, in that all but one MS employs them. However, the actual limits applicable vary considerably. All such time limits are the result of national legislation that in many cases applies not only to customs infringements but also to non-customs offences and infringements.

22 MS have time limits (either variable or fixed for initiating the infringement procedure

For infringements under criminal law the time limits vary between 1and 30 years. In most MS the time limits run from the date the offence was committed

Concerning the suspension and interruption of time limits, most MS impose a maximum deadline after which, notwithstanding any interruptions or suspensions, the investigation will be barred.

All but three MS have time limits for imposing a penalty although they vary considerably

All but five MS have time limits for the execution of the penalty.

AEO authorisations and the impact of infringements

We analysed how infringements can affect AEO status of businesses.

The 22 MS who contributed to this section of the report all pointed out that the Community provisions for granting AEO status apply equally to all and the basic criteria for implementation are standard.

MS were also asked whether as a matter of law or national policy they excluded minor customs infringements when considering the compliance records of established AEOs or new applicants for AEO status. Again there is evidence of convergence here, with 18 MS reporting that they do overlook minor infringements when considering overall compliance. The types of infringements classified as minor by these MS include

- typing mistakes in customs declarations

- incorrect tariff classification (including status) with minor effect
- minor deviation between declared and assessed value and quantities
- failure to comply with time limits
- use of an incorrect account number.

However, it should be noted that several MS indicated that the nature and the frequency of such minor infringements are factors which help determine their overall view of trader compliance.

CRIMINAL PENALTIES

Types of criminal penalties

MS were asked to consider 15 types of penalties and comment as to whether they are deemed to be considered a criminal penalty, a non criminal penalty or both within their national legislation.

The answers to the questionnaire suggest that not all of the 15 alternatives considered in this part of the questionnaire are provided for within the legislation of all MS. .

Fine. 22 MS commonly apply financial penalties of this nature in criminal infringements..

Pecuniary Charge. 11 MS do recognise the term and utilise pecuniary charges in criminal infringements. A number of other MS commented that their legislation does not distinguish between a fine and a pecuniary charge or that pecuniary charges are not provided for, although some use both terms within their legislation, and some use the term pecuniary liability rather than pecuniary charge.

Imprisonment. All 24 MS consider this a criminal penalty and for some it is the main criminal penalty. As with financial penalties the range of sentences across MS depends on the severity of the infringement and takes into account aggravating and mitigating factors). MS reported a range between 1 day and 20 years+.

Disqualification for a natural person from engaging in an activity requiring authorisation or approval, or funding, managing or directoring a company or foundation. 10 MS – advise that this may be considered as a consequence of a criminal penalty. In 3 MS it is a ancillary penalty..

Confiscation of the goods. 2 MS consider this may be either a criminal penalty or a criminal measure

Ban on access to public assistance or subsidies. Only 4 MS consider this as a criminal penalty. Most MS advised that this is not provided for in penalty legislation.

Publicising Judicial decisions. 9 MS consider this to be a criminal penalty. .

Refusal to grant authorisation. Only 2 MS considers this to be a criminal penalty, (only imposed on legal persons). 12 MS consider this type of action or measure as a consequence of the infringement rather than as a criminal penalty.

Withdrawal of granted authorisation. 4 MS consider this may be a criminal penalty. Again other MS comment that this is considered a measure or consequence and not a penalty.

Suspension of granted authorisations. 2 MS apply it as a criminal penalty–

Temporary or permanent disqualification from the practice of industrial or commercial activities. 13 MS considered that this may be a criminal penalty.

Placing under judicial supervision. 4 MS consider this may be a criminal penalty.

Judicial winding up order. 9 MS –consider this as a criminal penalty. This is only applicable in cases where the offender is a legal person.

The obligation to adopt specific measures in order to avoid the consequences of conduct such as that on which the criminal liability was founded. 3 MS consider this as a criminal penalty. Some MS comment that this is not provided for in legislation or applicable to customs infringements.

.

Aggravating and mitigating factors

MS were asked to state whether any aggravating and/or mitigating factors are taken into account when penalising in criminal cases. They were also asked to provide details of the factors taken into account.

One area of convergence is that all MS confirm that an obligation to consider aggravating and/or mitigating factors is provided for in law. Not all specific factors are identified, and the matters MS may take into account are quite wide ranging. Generally they are not specific to customs infringements, and customs authorities' practices and/or policies may be relied upon. It is usually necessary to give consideration to these factors on several occasions throughout the process starting from qualification of the infringement itself through to imposition of the penalty. In some MS within their legal framework the judge has certain discretion to take into consideration other aggravating and/or mitigating factors.

Concerning the main aggravating factors constituting the circumstances of the offence, 19 MS consider perpetration by members of an organised crime gang to be one and 13 MS consider the amount of duties evaded to be an aggravating factor while for the aggravating factors constituting characteristics of the offender and 20 MS see recidivism and 14 MS fraudulent intent as mitigating factors.

The situation is less homogeneous with regard to mitigating factors as so many of them seem to be taken into account across MS. Partial convergence (9MS) considers co-operation with customs authorities (including confession) as a mitigating factor

NON CRIMINAL PENALTIES

Types of non criminal penalties

Those MS that have non criminal penalty regimes were asked to advise which of the 15 penalty types identified in the questionnaire are used.

However, 8 MS do **not** operate non criminal penalty regimes.

The main non criminal penalties are:

Fine. This is the principal penalty imposed in non criminal cases, with 16 MS –

Pecuniary Charge. 13 MS do recognise the term within their non criminal penalty regimes. A number of other MS commented that their legislation does not distinguish between a fine and a pecuniary charge or that pecuniary charges are not provided for. Although a fine and a pecuniary charge are in effect similar outcomes (a financial penalty) there are differences in terminology across MS. Several MS use both terms within their legislation, and some MS use the term pecuniary liability rather than pecuniary charge.

Imprisonment. One MS only considers this as a non criminal penalty.

Disqualification for a natural person from engaging in an activity requiring authorisation or approval, or funding, managing or directoring a company or foundation. 6 MS advise that this type of consequence of an infringement may be considered a non criminal penalty. This type of measure is not considered a penalty in the others .

Confiscation of the goods. 16 MS –consider confiscation of goods can be a non criminal penalty.

Ban on access to public assistance or subsidies. Most MS advised that this is not provided for in legislation therefore is not considered any type of penalty. Only 4 MS –provide for this action as a non criminal penalty .

Publication of condemnatory decisions. Several MS commented that any publication of condemnatory decisions is not done by the Customs authorities.

Temporary or permanent disqualification from the practice of industrial or commercial activities. 4 MS consider this a penalty in non criminal cases.

Aggravating and mitigating factors

MS were also asked to consider if there are any aggravating and/or mitigating factors to be taken into consideration when penalising in non criminal cases.

As with the findings for criminal penalties, it is clear that, although terminology varies across MS, they all consider the same factors when applying penalties. However, in comparison with the field of criminal penalties, there is less common ground as far as aggravating and mitigating factors are concerned

These factors can be divided into two separate groups; those which constitute the circumstances of the offence, and those that constitute characteristics of the offender.

All MS confirm that an obligation to consider aggravating and/or mitigating factors is provided for in law. Not all the specific factors are identified and are generally quite wide ranging. Generally they are not specific to customs infringements and customs authorities' practices / policies may be relied upon. Even in non criminal cases it is usually necessary to give consideration to these factors on several occasions throughout the process starting from qualification of the infringement itself through to imposition of the penalty. In some MS within their legal framework the judge has certain discretion to take into consideration other aggravating and/or mitigating factors.

In some MS certain factors act as eliminating factors that stop certain infringements from being classed as an offence at all. In some these considerations can be the deciding factor between whether the infringement is dealt with as a criminal prosecution or an administrative settlement.

Concerning the main aggravating factors constituting the circumstances of the offence, 8 MS consider perpetration by members of an organised crime gang to be one and 6 MS consider the amount of duties evaded to be an aggravating factor while for the aggravating factors constituting characteristics of the offender 11 MS see recidivism and 8MS fraudulent intent as aggravating factors.

The situation is event more divergent concerning the mitigating factors.

BOUNDARIES BETWEEN CRIMINAL AND NON CRIMINAL INFRINGEMENTS AND PENALTIES WITHIN MEMBER STATES

Boundaries between types of infringements/offences

The Project Group sought to establish the most common infringements committed in MS.

Smuggling, evasion of import or export duties, tax evasion / fraud, tax receiving, importing or exporting goods illegally, receiving stolen goods, and forgery of business documents including false invoices are the most common types of customs related infringements.

MS are divided with regard to the treatment of infringements involving the payment of customs debt as 11 of them do not differentiate it from the treatment of other infringements but 12 MS do so.

The boundaries between criminal and non criminal treatment of customs infringements are diverse.

Financial thresholds are one of the means to establish the nature of the treatment of customs infringement and of the penalty to be imposed. Although there is a threshold of 4000 EUR in the Convention of the Protection of the Community's financial interests (see point …) the specific thresholds in the MS vary between 266 EUR and 50000 Euros.

Of those MS who have both criminal and non criminal penalties for customs offences, 10 MS consider that joint application is prohibited, while 4 consider it to be possible

LEGAL PERSONS

The term 'legal person' is generally used to describe an entity that is not a natural person but which allows natural persons or groups of natural persons to act as a single entity and to possess autonomous legal capacity for various purposes.

Participating MS were asked whether legal persons are defined in national legislation. Responses showed that most MS have either a specific legal definition or identify a number of bodies which are considered in national law (though not necessarily in specific customs legislation) as legal persons: 20 MS have a legal definition of "person" which includes both legal and natural persons.

Four MS indicated that they provide neither a definition or otherwise specifically identify what they consider a legal person to be. However, information from these MS indicates that the concept of non-natural entities is accepted.

MS were asked to clarify the rules concerning the accountability (responsibility) of legal persons in cases of infringements of customs law. In particular, we wished to establish whether a legal person can be held responsible for an infringement.

In most MS national legislation does provide that the legal person itself can be held responsible for their actions relating to any customs related infringements they commit. In those MS customs law does not provide for legal persons to be held responsible but considers the natural representative or representatives of the legal person as the liable person.

In most MS a legal person responsible for a customs infringement punishable under criminal law can be prosecuted. This is not the case however in, 8 MS.

A number of factors determine liability for customs infringements, including whether the infringement is created under criminal or non criminal laws, and whether the penalty imposed is a criminal or non criminal one. As a result there is little uniformity in the way that MS determine the liability for a penalty.

For infringements dealt with under criminal law 9 MS, impose penalty liabilities only on natural persons All other MS participating in the survey are able to make both natural and legal persons liable, either through separate penalties being levied at the same time, or through joint and several liability provisions, or through the ability to transfer the obligation to pay penalties from one to the other in cases where behaviour can be attributed to a natural person.

BURDEN OF PROOF

The study sought information about the rules on burden of proof applicable in each MS.

The presumption of innocence is present in the legislation of MS

In all MS, both in criminal and non criminal cases the burden of proof lies with the State (customs authority or national prosecutor), while in non criminal cases the relevant authority assigned is usually the customs authority

In 8 MS and under specific circumstances the burden of proof shifts from the authority to the perpetrator

In all MS the authorities have the right to oblige the traders to provide information and documentation relevant to the customs infringement

Similarly, all MS have the right to collect seize or acquire evidence although the scope of this right can vary.

RETROACTIVITY

The COM questionnaire sought information on retroactivity.

Retroactive or retrospective law is that which takes away or impairs vested rights acquired under existing laws, creates new obligations, imposes new duties, or attaches a new and different legal effect to transactions or considerations already past.

The Report diistinguishes between:

a) retroactive law that imposes penalties where none previously existed and

b) retroactive application of new law where there is a benefit to the person or entity committing an infringement.

Retroactive imposition of penalties

MS were asked whether under their national legislation penalties can be imposed retroactively, for example if there is a change of law between the time the infringement was committed and the judgement. Responses indicated strong convergence, in that no MS retroactively applies any law where none existed before. Nor does any MS retroactively apply any new law which increases a penalty that existed before.

Retroactive application of more lenient law

Another area of strong convergence is to be found in the application of the 'principle of more lenient law'. The principle provides that where the law changes between the commission of an infringement and the imposition of a penalty, the person penalised for the infringement benefits through the application of the more lenient law. 20 MS adopt the principle of more lenient law for customs infringements. Only 4 MS do not apply the principle to customs infringements..

Regarding the time limits applied to retroactive application, together with any conditions imposed by MS, there is close alignment in national practice. All 21 MS applying the more lenient law principle appear to apply that law at the time the infringement is actually penalised regardless of the timescale between the infringement being committed and the judgement imposing any penalty.

For those MS with both criminal and non criminal regimes there is no differences in the application of retroactivity occurring.

PROCEDURAL ISSUES

Settlement

The COM sought information from MS concerning the potential and procedures for settlement of customs offences. 24 MS responded.

For the purposes of this report we have used the following definition. Settlement is the term applied to any procedure within the legal or administrative system of a MS 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 proceedings. Typically there is no power to impose a settlement and the offender is under no obligation to accept an offer. If an agreement to settle cannot be reached, the normal procedure for prosecution of the infringement would be followed.

MS were asked if there are any procedures in their country for settlement in respect of customs offences. 15 MS indicated that they have a procedure for settlement of customs offences.

In all of those MS but one, it is considered as an alternative action usually for criminal penalties.

If the deadlines for reaching settlement are not respected, in most MS who make use of this alternative, this means that the liable person loses the possibility to have his penalty reduced or the procedure terminated.

Territorial competence, appeals, and the impact on the appeals procedure of payment of customs debt

MS were first asked about territorial competence in deciding which authority is competent to deal with the infringement. The rules determining which authority is competent to deal with the infringement are in principal similar in all MS. It is determined either by the place of detection, the place of commitment of the infringement or the place of living of the person committing the infringement or the place where the person has been arrested. In most MS, it is the place where the infringement has taken place that determines the competent authority, in most cases, the competent customs office or directorate.

MS were asked to identify the competent authority for settling appeals against customs penalties. In the case of criminal penalties, the courts are the competent authorities. The names (and perhaps the relative status) of these courts varies from MS to MS, but the essential point is that they are all judicial bodies separate from the customs authority.

For those MS who employ non-criminal penalties the position is slightly different. In 4 MS, the competent authority is the customs administration .

In 8 MS, the competent authority is the court. Again, the names vary, but they can be a civil court, administrative court or a specialised court.

MS were also asked whether the payment of the customs debt during the appeals procedure has any effect on the appeal itself. 17 MS, confirmed that payment has no impact on the appeal. 5 MS, stated that payment can be a mitigating factor in an appeal case, but the decision lies in the hands of the competent court.

Treatment of several imports

MS were also asked to provide information concerning the penalty treatment of scenarios in which infringements cover several separate importation events, and where the same conduct results in several different infringements.

It seems that the majority of MS opt for a 'one import one infringement' system, but that there are several types of exceptions and 'special treatments'. For instance, several countries recognise the concept of a continuing offence and, depending on the circumstances of such cases, may some treat such types of infringement as a single event for penalty purposes.

As regards conduct resulting in several infringements, a number of MS impose penalties in respect of the most severe infringement, even where they separately identify the different infringements

It can also be seen that the vast majority of MS do not allow overlapping of criminal and non criminal penalties where several infringements occur. It is clear that diversity is well implanted in the individual systems of the MS.

GENERAL CONCLUSIONS AND RECOMMENDATIONS:

Conclusions

The study gives an overview of the convergences and divergences in MS legal penalty systems, based on identification of MS legal texts (legal analysis and practices completed by the 7 cases). The partial conclusions give a detailed picture of specific convergences and divergences. The study deals with provisions relating to purely customs infringements; any other infringements are not part of the study.

Part of the MS penalty systems are based on customs provisions; part on general criminal (and where relevant non criminal) law. Possible recommendations will have to respect this distinction.

At first sight the diversity of legal systems and the diversity of the treatment of customs infringements, the difference on the nature of the penalty for the same customs offence and the procedure according to which the customs penalty is imposed and executed is obvious.

However convergence areas have been identified by the group (in particular regarding the terms of treatment of the infringement and of the imposition of the penalty and some times in terms of the procedure (e.g. time limits).

Recommendations

Recommendations to the COM:

The implementation of customs legislation by the MS and the effects of the convergences and divergences on day to day work of trade in the EU and the MS need to be further examined.

In examining these questions the guiding principles of the MCC, such as electronic declaration, AEO, systems based approach and centralised clearance, should be the starting point.

In order to get a balanced view the compliance strategy of MS should be taken into account, including elements such as general measures for improving compliance and the checks on declarations and internal management systems within companies.

Care should also be taken to include in the impact assessment all MS accounting for the highest number of dealings with customs. The distinction between small and large MS is less relevant

COM should take action to invite the MS who have not participated to the group yet, to provide the relevant information in order to have a complete view of the situation in the EU.

Recommendations to the MS:

(5) MS are invited to co-operate to the further examination of the penalties regime by the Commission.

(6) MS (in particular those reviewing their legislation) should take into consideration good practices identified during the life of the project and actively consider adopting those which are likely to provide simplification benefits for the customs authorities and the trade, like:

- strict liability infringements: not all MS have strict liability infringements, which is however a concept which may be considered a useful simplification in less serious customs infringements;

- time limits: some MS do not foresee time limits to impose the penalty, while consideration should be given to the fact that this might have an adverse economic impact to the liable companies which are waiting for the decision.

IA Report: Annex 2

COPENHAGEN DECLARATION

COPENHAGEN DECLARATION COMPLIANCE AND COMPLIANCE RISK MANAGEMENT

High Level Seminar on Compliance and Compliance Risk Management
(Copenhagen, 20-21 March, 2012)

The Heads of Customs Administrations of EU Member States, Candidate Countries, the European Commission, meeting on 20-21 March, 2012 in Copenhagen,

Recalling the need to

- Promote growth and economic prosperity in the EU;
- Protect society against threats to health, safety, and security, and to protect and support the EU business environment, as well as safeguard the EU and its Member States' financial interests, and to achieve these objectives efficiently and effectively throughout the entire EU;
- Innovate and find the best and most effective ways to ensure that the economic operators comply with the rules and meet their obligations;
- Allocate limited resources in the most efficient way to be able to 'do more and better with less';
- Support the community of legitimate businesses who strive to comply with rules and regulations;
- Identify, control and intercept non-compliance, and penalize the non-compliant businesses.

Noting

- The Strategy for the Evolution of the Customs Union **COM (2008) 169** and the objectives and priorities expressed therein;
- The **EU legal framework** and its ongoing developments;
- The **comprehensive and complex concept of 'compliance'** in the customs area, referring to the act and quality of complying to all EU legal rules and formalities (including non-customs), as applied by customs in the EU;
- The **differences in definition** and approach across EU towards 'compliance' and its management, which are to some extent linked to the different circumstances and operating environments of the Member States;
- The **value added of EU tools** at our disposal to the already existing national tools to ensuring a level playing field for all economic operators across the EU;
- The **solid foundation of the AEO** concept and experience, upon which further development work should be based;

- **The legal differences** in the area of customs offences and penalties in dealing with non-compliance;
- The **importance of dialogue and cooperation with economic operators**, the importance to understand their needs and expectations, and to take into account the different needs among them, especially the SMEs;
- The **challenge of dealing with growing volumes and growing complexity** of customs work and decreasing resources, using only a transaction based approach;
- The need to **keep things simple**.

Underlining

- The need **to increase the common understanding** of the term 'compliance' and how to apply a compliance management strategy;
- The need to develop an approach **to client segmentation** with a view to providing simplifications and different treatments according to the quality of compliance;
- The need to ensure that **small and medium size enterprises** also can benefit from AEO, including AEO-C;
- The need to strengthen the dialogue with stakeholders to support and increase the level of **voluntary compliance**, as well as to develop better tools and processes;
- The need to **spread best practices, learn from each other, exchange information** among the customs administrations;
- The need to launch **more research and exchange of experience** regarding the measurement of outcomes of customs compliance projects, to provide a solid basis for future developments;
- The need to explore the potential of new technologies in the area of compliance.

Declare that

- The Customs administrations and the European Commission shall, as a priority:
- Continue the **debate on EU rules and tools related to compliance**, such as
- improving the **incentives** for compliance based on better understanding of the needs of business,
- improving EU **tools and capability to help economic operators comply easily**, and
- ensuring that non-compliance is **appropriately dealt with** across the EU;
- Continue to discuss how we could jointly enhance compliance and compliance risk management in customs;
- Continue to discuss **client segmentation** with a view to defining models of common or comparable types of client profiles;
- Continue to discuss the definition of **common criteria** to evaluate compliance and non-compliance;
- Continue to discuss how to **define different qualities of compliance** and their link with potential simplifications and sanctions;

- Develop **solutions for SMEs** to obtain simplifications and AEO status, when appropriate;
- Continue to discuss the question of approximation of **customs offences and penalties**;
- Increase **cooperation and consultation with the business community** in order to understand their needs and identify how AEO status and simplifications can provide **more benefits** for economic operators;
- Seek EU-wide implementation of **compliance and control strategies**, ensuring an adequate and effective level of protection of EU interests (financial and otherwise) across all of the EU;
- Establish a **working group** to exchange experience, to benchmark compliance management projects, and discuss and develop an approach to client segmentation.

IA Report: Annex 3A

EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Customs Policy, Legislation, Tariff
Customs Legislation

Brussels, 30/03/2012

TAXUD/A2/KS/JMG
D(2012) 419159

- **CONSULTATION OF TAXUD'S TRADE CONTACT GROUP ON CUSTOMS PENALTIES**

- **Subject: Summary Record of the meeting hold on 26.03.2012**

Chair: Jean Michel Grave (COM -TAXUD/A2)

Participants: COM (Panayota Anaboli and Fernanda Limao - TAXUD/A2), AmCham EU (Keith Vaughan), AEA/IATA (Axel Klein) CECCM (Christa Pelsers and Ksenija Barysiene), CLECAT (Van Den Peere), CONFIAD (Mauro Giffoni)), ECSA (Dario Bazargan), ESC (Bernard Daguzan and Dennis Heijnen), OCEAN (Sandra Splouchal) and WSC (Christian Piaget)

Welcome and introduction

The chair initiated the meeting by thanking association's representatives for attending and clarified that although the question of customs offences was raised in a recent past in the context of AEO with regard to the record of compliance criterion, now the COM envisages a legislative approach addressing both the issue of offences and penalties

Adoption of the agenda

The agenda was adopted without any amendments.

Context/Objectives

COM explained that the need to develop the proposal to approximate customs offences and penalties had 3 main causes: legacy of the past, external pressure and evolution of law.

As legacy from the past, reference was made to past studies of the 80's with the perspective to take action regarding customs offences and penalties,.

External pressure was mentioned in connexion to the dispute of WTO – EC Selected Customs Matters, where the USA issued a complaint against the EU raising, amongst others, a question about penalties and proving, documented based, that there wasn't any common approach and uniform administration of penalties for violation of customs' laws. The question of penalties is now one of the topics in discussion in the WTO negotiation on trade facilitation.

With reference to the evolution of law, the legal customs simplifications and status that have been introduced and developed in the past years in order to assure EU economic operators a level playing field to develop their customs activity throughout the EU, were pointed as requiring a common approach in the way customs law is enforced in the 27 MS.

Then, the submission by the Commission of a proposal in respect of customs offences and penalties was foreseen in the Action Plan Implementing the Stockholm Program for 2012 and, after some adjustments of the forecast, the COM has included in its Legislative Work Plan the launching of an initiative in the beginning of 2013.

In this context, an impact assessment has started to be developed by COM (TAXUD/A2), where consultation of stakeholders plays an important role.

COM highlighted that the proposal was not meant to fully harmonise customs offences and penalties, but rather approximate them and that the level of approximation may be different for offences and for penalties, also to taken into account legal constraints in relation to criminal penalties.

It was also clarified by COM that, while it is one of the options identified in the road map of the initiative, it does not see guidelines as prima facie being an appropriate way of addressing the problem, namely given its non binding character.

COM's aim is to have a legal instrument to approximate customs offences and penalties encompassing two branches: action on the offences (still to be determined to what extent can their definition go) and action on the penalties, to ensure that there fulfil the three conditions to be effective, proportionate and dissuasive.

It was as well emphasised by COM that, given the specificity of the proposal, it was decided not to have an open consultation on the options at stake in the impact assessment, but to target it on TAXUD Trade Contact Group and Member States, as the specific audience covered by the proposal.

TCG representatives were invited to give their opinion on the context and objectives of the proposal.

CONFIAD, AmCham EU, CLECAT, WSC, CECCM and ESC expressed their global agreement on the relevance of the initiative, with special focus on the following issues:

- the fact that for the same kind of offence the economic operator could have a criminal or an administrative penalty depending on the MS' penalties system where it occurred;
- the way MS will apply penalties in concrete cases irrespective of the existence of a common scale of penalties
- the need to have as much transparency as possible in the penalties systems;
- the need to specify who is considered responsible for the offence within the logistic chain;
- the existence of penalty shopping done by illicit trade which in the tobacco trade field and how to avoid it;
- the need to have the same approach regarding legal person's liability;
- the importance to leave a certain flexibility to the MS (not having a complete harmonisation), in so far that a certain "penalty shopping" may in some cases preserve companies' competitiveness.

Available information

• **Report by the Project Group on Customs Penalties**

COM informed that for questions of confidentiality the full report from the Project Group on Customs Penalties could not be published and only the executive summary is available.

The Project Group on Customs Penalties was established under the Customs 2013 Program and 24 out of 27 MS participated in it on a voluntary basis with COM's collaboration.

The main aim of this Project Group was to analyse the national regimes for customs offences and related penalties and had as context the exercise of notification foreseen in article 21(3) of the MCC.

The work done by the group not only had as an outcome the report but also a very positive interaction between MS and an useful comparison exercise that even influenced some changes in MS legislations (in one concrete MS, legislation was modified after the study with the introduction of non criminal penalties).

From this analysis several differences in MS penalties systems were noted, being the main ones as follows:

- Unclear boundaries between what is considered to be criminal and non criminal (which gave COM the certainty that offences classification as criminal and non criminal could not be established in the initiative);
- Different procedures;
- Different time limits (and the total absence of time limits in 1 MS);
- Divergence on the penalties applied;
- Differences in MS' attitude towards the way of dealing with non compliant behaviour – while some are focused on a proactive attitude rather than a sanctioning one, others, namely the southern ones, concentrate on penalties;
- Great division on MS regarding strict liability offences, which do exist in some MS but are totally excluded in those MS where the existence of the offence's subjective element is one of the conditions to apply a penalty.

• Study on the impact of existing national penalty regimes on the competitiveness of European companies

This study was conducted by an external contractor and, due to several constrains, had its scope limited, which made it not really illustrative of the situation and, therefore the COM decided not to publish it.

However, the main conclusion which came out of the study was that although in general terms penalties are very important for companies, they are not the most significant factor for business.

The interviewed companies and trade associations expressed they would like to have more legal certainty.

Nevertheless, penalties start to play an increasing role when we go from a macro perspective (limited global impact on business decisions and management) to a micro perspective (where individual companies face various levels of penalties).

• Seminar on Compliance and Compliance Risk Management

COM informed about the seminar that had recently taken place on Copenhagen, under the theme "Compliance and Compliance Risk Management", where customs offences and penalties were discussed as an element of compliance and was agreed to have further discussion on the issue.

Consultation on the options for action

COM presented the questionnaire and highlighted its relevance to the impact assessment that is being developed.

Concerns about the anonymity of the questionnaire's answers were raised by the representatives and COM reassured that, as it is said in the introductory part of the questionnaire, all the answers can be anonymous.

Changes in view of clarifying question's 1 and 10 texts were made and put on circa.

Regarding the options for action, TAXUD insisted on the fact that TCG should base its assessment of the need for action and ways and means of acting on an evaluation of concrete problems faced by companies in respect of Member States' policy (criminal or non criminal approach, substantive rules, procedural rules, application) regarding customs offences and penalties in the EU, irrespective (at this stage) of the limitations which would result in particular from the breakdown of competences between the EU and its Member States and from the legal and procedural requirements it entails.

Several participants already emphasised that any realistic approach to the issue would only encompass options on "do nothing" and legislative action but not go through guidelines.

COM invited representatives to add to the existing options new ones that they consider to be more appropriate.

Representatives were invited to provide their answers to the questionnaire and propose any changes by 14th May.

Answers should preferably come from the associations represented in TCG. However, in particular to save time, answers could also be provided directly to TAXUD by members of TCG associations.

In both cases, answers shall be send to the following email address: fernanda-isabel.limao@ec.europa.eu.

Report by F. LIMAO

Copies: participants, Mr. Zielinski, Mr. Kastrissianakis, Mr. Kucirek, Ms. Edery. Ms. Cabral,

IA report: Annex 3B

IMPACT ASSESSMENT ON THE PROPOSAL TO APPROXIMATE CUSTOMS OFFENCES AND PENALTIES

CONSULTATION

TAXUD'S TRADE CONTACT GROUP

The European Union is a customs union and constitutes a single customs entity with regard to international agreements concluded under the EU common commercial policy and WTO's EU membership. While customs legislation referring to the trade in goods between the customs territory of the Union and third countries is almost unified, law enforcement which secures the compliance with customs rules and the lawful imposition of penalties or sanctions is still regulated through national legislation.

The Modernised Customs Code (now to be recast as the 'Union Customs Code'), not only further pushes the degree of legislative harmonisation, but is conceived for a multinational electronic environment where a decision taken by a Member State is applied in all other Member States. For example, the granting of the Authorised Economic Operator status, which provides the reliable economic operators with reduced requirements in terms of security or safety and/or an easier access to customs simplifications, depends largely on the record of compliance of the economic operator. If compliance with customs law has different criteria, such status – as any simplification based on the same conditions - may not be granted in a uniform manner.

A first assessment of the situation took place through a report prepared by the Commission services with a group of 24 Member States (MS) on the legal situation and through an external study on the impact of existing national penalty regimes on the competitiveness of EU companies.

These studies have highlighted the existence of divergences throughout MS' legal systems regarding the qualification of offences, their procedural treatment and the respective levels of penalties.

Given these circumstances, the Commission has envisaged in its Working Program for the first quarter of 2013 a legislative proposal to approximate customs offences and penalties, aiming at: (i) ensuring effective implementation and law enforcement in the area of customs legislation; (ii) providing for a common framework for the approximation of non criminal customs infringements and penalties and (iii) assuring a level playing field with regard to simplifications concerning reliable economic operators, through the existence of common grounds on the customs offences and penalties field.

In order to determine the best option to reach the proposed objectives, an impact assessment is being developed, under which the economic operators, as one of the main stakeholders, have an important role to play by sharing their experiences in this field and giving their point of view.

For that purpose, TAXUD has developed the following questionnaire. By replying to these questions you will help the Commission shaping the future legislative proposal.

Answers to the questionnaire should be provided by the **14th May** and, if companies wish so, can be anonymous

QUESTION 1:

Does any of your members or your own company have experienced problems with differences in Member States' policy on customs offences and penalties (qualifications of offences as "criminal" or "non criminal", procedural rules or types and levels of penalties)? If so, please specify and provide examples.

QUESTION 2:

Are you or any of your members aware of any different treatment in granting AEO status or authorising simplified procedures to economic operators throughout EU due to divergent *approaches* on the "non-compliance with customs requirements" criterion from national Customs Administrations?

QUESTION 3

Having AEO status issued in your country, did any of your members or your own company experience any reluctance from other MS regarding the granting of that status, provided for in customs legislation? If so, was this due to the fact that your members or your own

company did not comply with customs requirements compared to that MS' standards on the criterion "non-compliance with customs requirements"?

QUESTION 4

Do you or any of your members have knowledge of any situation where an AEO status of a company has been suspended due to some specific offence to customs rules, whereas other company holder of an AEO authorisation who committed the same offence in another MS didn't suffer the same consequence? And are you aware of any situation like that with regards revocation of the AEO certificate?

QUESTION 5

Have you or any of your members experienced totally different customs penalties and related procedures on dealing with similar customs offences by different national customs administrations? If so, did that differences had any financial impact on you or your members?

QUESTION 6

From your experience with MS policies on customs offences and penalties (qualifications of offences as "criminal" or "non-criminal", procedural rules or types and levels of penalties) that you and your members have dealt with, would you indicate one as "best practice" and one as "bad practice", from your business point of view?

If so, please explain the main reasons for your choice.

QUESTION 7

Do you or any of your members find that different MS policies on customs offences and penalties (qualifications of offences as "criminal" or "non-criminal", procedural rules or types and levels of penalties) throughout EU have a negative impact on EU companies' competitiveness? Why?

How can you describe the effects?

QUESTION 8

Are potential customs penalties and the severity thereof a factor within you or your members which is taken into account when assessing new business opportunities in other MS than the ones you have your regular business in? To what degree?

QUESTION 9

Would you or any of your members be in favour of the creation of one common framework on customs offences and penalties, which would be applicable throughout the EU and reduce the differences between MS policies on customs offences and penalties?

QUESTION 10

Is there an estimation of "compliance costs" in your members or your own company in relation to MS policies on customs offences and penalties?

If so, could you provide us with some information on this?

QUESTION 11

Which one of the four options for action below would you and your members favour?

Why?

A. Do nothing –.

While being bound to provide for effective, proportionate and dissuasive penalties for failure to comply with Union customs legislation (on the basis of case-law of the Court of Justice and Article 21 MCC), each Member State would keep its own policy and legislation on customs offences and penalties, with national courts being in charge of applying it.

B. Soft law approach

- To issue guidelines/recommendations for Member States on the interpretation of customs compliance legal concept, which is the basis for economic operators to accede the main customs simplifications and is directly related with customs infringements and penalties issue. And, in parallel,

- To develop, in close and voluntarily collaboration with Member States, monitoring measures to assess the effectiveness, proportionality and dissuasiveness of Member States' penalties for failure to comply with Union customs legislation, mentioned in Art. 21 of the MCC.

C. New legislative initiative through a regulation

That legislative approach would imply the adoption of a regulation based on Article 207 TFEU (EU area of competence: common commercial policy) to approximate the types of customs offences and the level of penalties, together with some common procedural rules, in order to eliminate the most unacceptable divergences.

.

D. New legislative initiative through a regulation and a directive

That legislative approach would imply the adoption of two separate new legislative acts, with different legal bases, in order to take action on both criminal and non-criminal customs offences and penalties:

-a regulation on the approximation of non-criminal customs offences and penalties based on article 207 TFEU, as foreseen in option C; and

- a directive on the approximation of criminal customs offences and penalties beyond the scope of EU financial interests, under article 83(2) TFEU (EU area of competence: judicial cooperation in judicial matters); a possible approximation of

some elements of criminal procedure may be considered as well in that context, on the basis of Article 82 TFEU.

IA report: Annex 3C

TAXUD'S TRADE CONTACT GROUP CONSULTATION'S RESULTS

QUESTION 1: Does any of your members or your own company have experienced problems with differences in Member States' policy on customs offences and penalties (qualifications of offences as "criminal" or "non criminal", procedural rules or types and levels of penalties)? If so, please specify and provide examples.

EuroCommerce	Majority of members: "yes". Too long and complicated procedure of certain MS' justice systems as well as calculation methods of the penalties were identified as examples
Verband der Chemischen Industry E.V. (member of CEFIC)	No
ECASBA	Confirmed a wide variation in the scope and level of fines applied by national authorities and a lack of consistency in the way customs infringements are viewed and dealt with across the EU
CECCM	As far as offences and penalties are concerned, the type and level of penalty can vary considerably between Member States.
CLECAT	

QUESTION 2: Are you or any of your members aware of any different treatment in granting AEO status or authorising simplified procedures to economic operators throughout EU due to divergent *approaches* on the "non-compliance with customs requirements" criterion from national Customs Administrations?

EuroCommerce	Almost none of the companies
Verband der Chemischen Industry E.V.	No

(member of CEFIC)	
ECASBA	There are variations across the EU in the conditions regulating the grant of AEO status
CECCM	Member States differ in their approach to the application process and audit programme for AEO. We are aware of different treatments, for example, in one Member State it is required to link screening of employees to AEO status and failure to do this will result in the loss of AEO status where it is understood this is not the case in other Member States.
CLECAT	1 member federation stressed the fact that in France and Belgium each and every infringement – including a typing error – is treated as a criminal offence. Moreover, offences are penalised irrespective of the offender's intention (objective liability). This has consequences in terms of granting/suspension/revocation of AEO status. Because of the "objective liability" compliance has a different connotation in France/Belgium than in other countries.

QUESTION 3: Having AEO status issued in your country, did any of your members or your own company experience any reluctance from other MS regarding the granting of that status, provided for in customs legislation? If so, was this due to the fact that your members or your own company did not comply with customs requirements compared to that MS' standards on the criterion "non-compliance with customs requirements"?

EuroCommerce	Almost none of the companies, except for 1 company
Verband der Chemischen Industry E.V.	No

(member of CEFIC)	
ECASBA	Most MS recognise AEO status granted by other countries
CECCM	No experience of objections from Member States relating to granting AEO status and non-compliance with customs requirements.
CLECAT	N/A

QUESTION 4: Do you or any of your members have knowledge of any situation where an AEO status of a company has been suspended due to some specific offence to customs rules, whereas other company holder of an AEO authorisation who committed the same offence in another MS didn't suffer the same consequence? And are you aware of any situation like that with regards revocation of the AEO certificate?

EuroCommerce	Except for 1, companies have no knowledge of AEO status being suspended
Verband der Chemischen Industry E.V. (member of CEFIC)	No
ECASBA	No report of variations in how companies committing the same offence have been treated differently in respect of their AEO status.
CECCM	No experience of a situation where AEO status has been revoked or suspended
CLECAT	N/A

QUESTION 5: Have you or any of your members experienced totally different customs penalties and related procedures on dealing with similar customs offences by different national customs administrations? If so, did that differences had any financial impact on you or your members?

EuroCommerce	Some companies have, others don't. The main problem is not the application of different customs penalties, but the different interpretation of customs procedures around

	EU
Verband der Chemischen Industry E.V. (member of CEFIC)	No
ECASBA	Significant variation across the EU in respect of the actions taken by the authorities when infringements occur.
CECCM	Yes. Penalties as well as controls and enforcement practices differ across EU. The decision whether to prosecute offenders varies from case to case both within countries and across MS.
CLECAT	1 member federation addressed in particular the divergence in the limitation on the maximum level of penalties

QUESTION 6: From your experience with MS policies on customs offences and penalties (qualifications of offences as "criminal" or "non criminal", procedural rules or types and levels of penalties) that you and your members have dealt with, would you indicate one as "best practice" and one as "bad practice", from your business point of view?

If so, please explain the main reasons for your choice.

EuroCommerce	2 companies experienced bad practices in some countries (not identified) 1 company mentioned UK as example of best practice – good communicative skills and ability to apply some flexibility when legally possible.
Verband der Chemischen Industry E.V. (member of CEFIC)	No
ECASBA	UK presented as an example of best practice, among other MS (not identified), whose authorities are proactive in working with trade to ensure that their activities compliment those of the transport industries

	by facilitating the movement of goods with minimal intervention from customs officers. As bad practice, customs authorities (not identified) who see their main role as a revenue generating exercise were pointed out.
CECCM	Romania where an element of their success in reducing levels of cigarette smuggling has been increased penalties.
CLECAT	2 member federations identified as best practise the so called "partnership agreement" (in Finland, companies that have it will not be penalised except in cases of gross negligence of fraud. In the Netherlands the national authorities are open to dialogue and there is a co-operation based on mutual understanding to achieve a common goal)

QUESTION 7: Do you or any of your members find that different MS policies on customs offences and penalties (qualifications of offences as "criminal" or "non criminal", procedural rules or types and levels of penalties) throughout EU have a negative impact on EU companies' competitiveness? Why? How can you describe the effects?

EuroCommerce	Yes. Different penalties and prosecution inevitably results in distortion of competition.
Verband der Chemischen Industry E.V. (member of CEFIC)	No
ECASBA	Since the large proportion of the cargo being brought into the EU cannot be routed via more trade focussed MS, the overall effect is perhaps less significant
CECCM	The illicit trade of cigarettes is a factor distorting virtually all the EU MS and those

	with policies which provide lower level of sanctions or controls can serve as a gateway into the EU single market.
CLECAT	Due to national divergences some economic operators in some MS may be "better off" than in others. Some of the respondents have no doubt that this can only deviate traffic and business to neighbouring countries. 1 member federation mentioned that the risk and the importance of heavy customs penalties that exist in its country entail additional cost for economic operators, which among others, leads to certain "shippers" to bypass the country end, therefore, constitutes a distortion of completion.

QUESTION 8: Are potential customs penalties and the severity thereof a factor within you or your members which is taken into account when assessing new business opportunities in other MS than the ones you have your regular business in? To what degree?

EuroCommerce	For some yes, for others no. A number of companies have taken the potential customs penalties in consideration when assessing business opportunities in different MS
Verband der Chemischen Industry E.V. (member of CEFIC)	No
ECASBA	Since the large proportion of the cargo being brought into the EU cannot be routed via more trade focussed MS, the overall effect is perhaps less significant
CECCM	When evaluating new investment in a market in general, the level of illicit trade, the sanctions (including customs penalties) are among the usually applied criteria.

CLECAT	N/A

QUESTION 9: Would you or any of your members be in favour of the creation of one common framework on customs offences and penalties, which would be applicable throughout the EU and reduce the differences between MS policies on customs offences and penalties?

EuroCommerce	Yes, but this should not imply any additional bureaucratic burden.
Verband der Chemischen Industry E.V. (member of CEFIC)	No
ECASBA	Supports the introduction of a system of harmonised customs offences and penalties based exclusively on the best practice trade facilitation model (as UK).
CECCM	Intelligence suggests that criminal networks, involved into cigarette smuggling and other activities are operating on the basis of risk–reward analysis e.g. they use as entry points countries with lowest level of sanctions. A common framework on customs offences and penalties, reducing the differences among member states, would contribute to equalising the risk levels for criminals, or at least approximating them.
CLECAT	For 3 member federations yes

QUESTION 10: Is there an estimation of "compliance costs" in your members or your own company in relation to MS policies on customs offences and penalties?

If so, could you provide us with some information on this?

EuroCommerce	No
Verband der Chemischen Industry E.V. (member of CEFIC)	Not available

ECASBA	These costs are not separately identifiable.
CECCM	No concrete information is available for our members. However, using a business approach, we believe that MS who implement stronger anti-smuggling policies involving higher costs (increased number of court cases, more staff, higher costs of imprisonment etc.) could – partly or largely – offset these with higher financial penalties.
CLECAT	N/A

QUESTION 11: Which one of the four options for action below would you and your members favour? Why?

A. **Do nothing –**.

While being bound to provide for effective, proportionate and dissuasive penalties for failure to comply with Union customs legislation (on the basis of case-law of the Court of Justice and Article 21 MCC), each Member State would keep its own policy and legislation on customs offences and penalties, with national courts being in charge of applying it.

B. **Soft law approach**

- To issue guidelines/recommendations for Member States on the interpretation of customs compliance legal concept, which is the basis for economic operators to accede the main customs simplifications and is directly related with customs infringements and penalties issue. And, in parallel,

- To develop, in close and voluntarily collaboration with Member States, monitoring measures to assess the effectiveness, proportionality and dissuasiveness of Member States' penalties for failure to comply with Union customs legislation, mentioned in Art. 21 of the MCC.

C. **New legislative initiative through a regulation**

That legislative approach would imply the adoption of a regulation based on Article 207 TFEU (EU area of competence: common commercial policy) to approximate the types of customs offences and the level of penalties, together with some common procedural rules, in order to eliminate the most unacceptable divergences.

.

D. New legislative initiative through a regulation and a directive

That legislative approach would imply the adoption of two separate new legislative acts, with different legal bases, in order to take action on both criminal and non-criminal customs offences and penalties:

-a regulation on the approximation of non criminal customs offences and penalties based on article 207 TFEU, as foreseen in option C; and

- a directive on the approximation of criminal customs offences and penalties beyond the scope of EU financial interests, under article 83(2) TFEU (EU area of competence: judicial cooperation in judicial matters); a possible approximation of some elements of criminal procedure may be considered as well in that context, on the basis of Article 82 TFEU.

EuroCommerce	Options B and C more voted. Some companies favouring option A, with a strong request to cut red tape and concerns that Options C and D could trigger more bureaucracy.
Verband der Chemischen Industry E.V. (member of CEFIC)	Option A. No need for EU action in the field of customs penalties but rather in the different ways national administrations implement the Customs Code.
ECASBA	Option C – binding regulation, as it would prevent MS to set their own limits and criteria. 2nd choice: Option D, but with minimal room for national variations
CECCM	Option D - a new legislative initiative, taking action on both criminal and non-criminal customs offences and penalties. Taking into consideration the involvement of serious organised crime, this would be the only really viable option.
CLECAT	Option A – 2 members federations (one of these justified the choice arguing that attempts to reconcile different cultures may negatively affect the good national approach of its country) Option B – 1 member federation, although it is of the opinion that approximation of policies on customs offences and penalties may contribute to the creation of level playing field. Option C – 1 one of the members that favoured option A also has some sympathy for C Option D – 1 member federation

	2 members federations are not explicit about their preferred option, but both advocate for an harmonised approach or an approximation

IA report: Annex 3D

1. Customs penalties

2. Trade Contact Group Member Associations – Overview of their membership*

Member Association	Hyperlink to list of members	Members	Type of members
AEA (Association of the European Airlines)	http://www.aea.be/about/memberairlines/index.html	33	Member airlines
AMCHAM EU (American Chamber of Commerce to the EU)	http://www.amchameu.eu/Membership/tabid/60/Default.aspx http://www.amchameu.eu/Portals/0/2011/e-books/Profile/AmCham_EU_Profile.pdf (page 2)	145	Companies
ACEA (European Automobile Manufacturers' Association)	http://www.acea.be/collection/about_us_acea_members/ http://www.acea.be/collection/about_us_acea_associated_organisations/	16 29	Automobile companies Associated national associations
Businesseurope	http://www.businesseurope.eu/Content/Default.asp?PageID=600	48	Associations
CECCM (Confederation of European Community Cigarette Manufacturers)	http://www.ceccm.eu/members.html	3 13	Members Associates
CEFIC (European Chemical Industry Council)	Cefic has 3 distinct groups of members - the corporate members (ACOM), the federation members (AFEM), the business members (ABM) - and 3 distinct types of partnership - the associated companies, the affiliated associations, the partners. http://www.cefic.org/About-us/Our-Members/		
	ACOM corporate members	56	Corporate members
	AFEM federation members	22	Federations
	AFEM associated federation members	5	Federations
	ABM business members	450	Companies
	ABM association business members		

	Affiliated associations	31	Companies
		23	Associations
CELCAA (European liaison Committee for the Agricultural and Agri-food Trade)	http://www.cefic.org/About-us/Our-Members/Affiliated-Associations/	10	Members
		3	Affiliated members
CER (Community of European Railway and Infrastructure Companies)			
CLECAT (European Association for Forwarding, Transport, Logistic and Customs Services)	http://www.clecat.org/members.html	15	Member associations
		1	Associated member
CLEPA (European Association of Automotive Suppliers)	http://www.clepa.eu/membership/members/	93	Corporate members
		1	Associate members
		13	National Trade associations
CONFIAD (Confiad Paneuropan Network for Customs Representation)	http://www.confiad.org/members%201.htm	13	Member organisations
Customs Platform			
DIGITALEUROPE (The European Information & Communications Technology Industry Association)	http://www.digitaleurope.org/Membership/Members.aspx	92	Companies, etc.
EBCA (European Branded Clothing Alliance)			
ECASBA (European Community Association of Ship Brokers and Agents)	http://www.ecasba.com/j56/ECASBA%20MEMBERSHIP%20LIST%20JAN%202012.pdf	25	Members
ECSA (European Community Ship-owners Association)	http://www.european-network-of-maritime-clusters.eu/member	13	Members
EEA (European Express Association)	http://www.euroexpress.org/about-the-eea/membership	4	Delivery services companies
		13	Associated companies
EECA-ESIA (European Semiconductor Industry Association)	https://www.eeca.eu/esia_members/	16	Companies
		8	National associations
		3	Research institutes

EFTA (The European Free Trade Association)	http://www.efta.int/about-efta/the-efta-states.aspx	4	Member countries
EOS (European Organisation for Security)	EOS represents the interests and expertise of 39 Members involved in Security providing technology Solutions and Services from 13 different countries of the European Economic Area, representing more than 65% of the European Security Market and 2 million employees in Europe. http://www.eos-eu.com/?Page=whatiseos&tID=1	39	Members
EPCSA (European Port Community Systems Association)	http://www.epcsa.eu/membership	5	Founding members
ERFA (The European Free Trade Association)			
ESBA (European Small Business Alliance)	http://www.esba-europe.org/sub-section.asp?SectionID=2&SubSectionID=5	15	Members
ESC (European Shippers' Council)	http://www.europeanshippers.be/index.php/members	13	Members
EuPC (European Plastics Converters Aisbl)	http://www.plasticsconverters.eu/organisation/members	48	Members
EURATEX (European Apparel and Textile Confederation)	http://www.euratex.org/content/members-euratex	50	Members
EUROCHAMBERS (The Association of European Chambers of Commerce and Industry)	http://www.eurochambres.be/content/default.asp?PageID=29	48	Chambers of Commerce
EUROCOMMERCE	http://www.eurocommerce.be/content.aspx?PageId=39882&lang=EN	41 29 24	National associations Affiliated companies Affiliated members
EUROPIA (European Petroleum Industry Association)	http://www.europia.com/content/default.asp?PageID=384	17	Companies
EUROPRO			
EurTradeNet (The European Alliance of Customs-related Service Providers)	http://www.eurtradenet.com/alliance.php		
FEPORT (Federation of European Private Port Operators)	http://www.feport.be/index.php?cmd=operators	35	Companies
FTA (Foreign Trade Association)	http://www.fta-intl.org/who-we-are/members	Several hundred	Companies
IAPH (International Association of Ports and Harbors)	http://www.iaphworldports.org/MembersLinks.aspx		

IATA (International AIR Transport Association)	http://www.iata.org/membership/Pages/Index.aspx	241	Airlines
IELA (International Exhibition Logistics Associates	http://www.iela.org/iela09/ExhibitorList.aspx?refer=79&id=mainLnk2	Over 200	Members
IRU (International Road Transport Union)	http://www.iru.org/en_iru_membership	168	Members
MMTA (Minor Metals Trade Association)	http://www.mmta.co.uk/members/		
OCEAN (European Ship Suppliers Organization)	http://www.shipsupply.eu/2_43_OCEAN_Members.html	17	Members
POSTEUROP (Association of European Public Postal Operators)	http://www.posteurop.org/		
SWM INTL (Schweizer Mauduit International)			
TIACA (The International Air Cargo Association)	http://www.tiaca.org/assnfe/CompanyDirectory.asp?SEARCH_TYPE=8	569	Members
UIP (International Union of Private Wagons)	http://www.uiprail.org/members.php	15	Members
UIRR (International Union of combined Road-Rail Transport Companies)	http://www.uirr.com/en/our-members/members.html	17	Members
WSC (World Shipping Council)	http://www.worldshipping.org/about-the-council/member-corporations	29	Members

* where possible the table links to the association's membership overview.

IA report: Annex 4A

Objective of the consultation:

Get information about the effects that different infringements and sanctions systems in force in different Member States regarding customs legislation have over the commercial activity of SMEs and micro-enterprises, in view of completing an Impact Assessment Report on the approximation of customs infringements and sanctions..

Target group of the consultation:

SMEs and micro-enterprises which are involved in international trade.

Background information:

The Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code and the Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2193/92 establishing the Community Customs Code, contain the general rules and procedures applicable to goods brought into or out of the customs territory of the Union. This legal framework ensures the proper and uniform application of EU 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 throughout EU, its enforcement, which ensures compliance with the customs rules and the lawful imposition of sanctions, lies within Member States' national law. In other words, although the obligations and formalities the economic operator must comply with when dealing with imports and exports are substantially coordinated among all Member States, the consequences of breaching those rules are different as they are established autonomously by each Member State. As a consequence of this, the very same infringement of custom rules may have a criminal punishment in one Member State while it may even not be sanctioned in other.

This question has also important implications in other fields of customs procedures. Indeed, the grant of the Authorised Economic Operator (AEO) status or the access to certain facilitations stated in the customs legislation requires a positive "record of compliance with customs requirements". This compliance is evaluated by the Member State where the economic operator is established, in consultation with the other Member States of the EU. However the assessment of the compliance criterion is done within the Member State of the applicant.

This unequal treatment of the very same circumstances may affect the fair competition among companies as it may also affect the access to administrative savings when complying with customs formalities. It even may have an impact on the customs controls an economic operator must face by the grant of the AEO status.

It is the purpose of this consultation to assess and quantify the size of these effects as the European Commission desires to analyse whether it would be advisable to create a common framework for the infringement and sanctions systems within the customs Union. The analysis of the answers provided to this questionnaire will be of importance when assessing the magnitude of the problem and its direct impact on the daily activity of the SMEs and micro-enterprises.

QUESTIONNAIRE

1. Number of employees in your company (the figure should be expressed in annual work units (AWU). Anyone who worked full-time within your enterprise, or on its behalf, during the entire reference year counts as one unit. You should treat part-time staff, seasonal workers and those who did not work the full year as fractions of one unit):

a) 0
b) 1-9
c) 10-49
d) 50-249
e) 250-499
f) 500 +
g) Decline to state

2. When complying with customs formalities in Member States different from the one I am established in:

a) I contract representatives (i.e. customs brokers) established in those Member States
b) I have an internal department with specialised employees to deal with such formalities
c) I have both representatives established in those Member States and an internal department with specialised employees
b) I don't have either
c) Decline to state
d) Don't know

3. If in the course of my commercial activity I had to deal with customs infringements and sanctions rules and procedures not only in the Member State I am established in but also in other Member States,

	Strongly agree	Agree	Disagree	Disagree completely
a) I would find it easier to comply with customs infringements and sanctions rules and procedures in my country of establishment as I am more accustomed with its rules and procedures.				
b) I would find it easy to comply with customs infringements and sanctions rules and procedures in any other Member State.				
c) I would find it rather difficult to comply with customs infringements and sanctions rules and procedures in any other Member State as finding information about them is quite challenging.				
d) I would find it rather difficult to comply with customs infringements and sanctions rules and procedures in any other Member State as although I have all the information				

needed the rules and procedures in other Member States are quite different from the ones in force in my country of establishment.				

3B In case of agreeing to 3b please explain the reasons.

4. The existence of different customs infringements and sanctions in Member States:

a) is the main reason why I try to avoid engaging in customs formalities in other Member States, although it would be positive for my company
b) is one of the reasons (although not the most important one) why I try to avoid engaging in customs formalities in other Member States, although it would be positive for my company
c) doesn't have any impact on my decisions about engaging in customs formalities in other Member States

5. If the EU was considering approximating the customs infringements and sanctions rules and procedures throughout all Member States of the EU, which of the following options would you prefer:

a) Option A: Amending the EU 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 criterion "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.
b) Option B: Proposing a new Directive which would include a list of infringements, a range of non-criminal sanctions for each infringement and a common procedure to impose those sanctions.
c) Option C: Proposing two new Directives 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 end non-criminal field.
d) I don't this this kind of approximation is needed at all

6. Could you give an estimate of the annual costs that your company is spending because of the existence of different customs infringements and sanctions regimes in each Member State? (i.e. costs linked to the necessity of having representatives established in other Member States, costs of special training for your own staff)

7. Could you give an estimate of the savings each one of the options presented in question 6 would produce in the costs mentioned in question 6?

Option A
Option B
Option C

IA report: Annex 4B

QUESTIONNAIRE

1. Number of employees in your company (the figure should be expressed in annual work units (AWU). Anyone who worked full-time within your enterprise, or on its behalf, during the entire reference year counts as one unit. You should treat part-time staff, seasonal workers and those who did not work the full year as fractions of one unit):

Number of employees	Responses	Percentage
0	1	0.592%
1-9	38	22.485%
10-49	49	28.994%
50-249	43	25.444%
250-499	13	7.692%
500 +	25	14.793%
Decline to state	0	0.000%
TOTAL	169	100.000%

2. When complying with customs formalities in Member States different from the one I am established in:

	Responses	Percentage
Representatives	58	34.320%
Internal department	28	16.568%
Both	24	14.201%
Neither	46	27.219%
No answer	5	2.958%
Don't know	8	4.734%
TOTAL	169	100.000%

3. If in the course of my commercial activity I had to deal with customs infringements and sanctions rules and procedures not only in the Member State I am established in but also in other Member States,

	Strongly agree	Agree	Disagree	Disagree completely	No answer	TOTAL
a) I would find it easier to comply with customs infringements and sanctions rules and procedures in my country of establishment as I am more accustomed with its rules and procedures.	106 62.722%	49 28.994%	7 4.142%	1 0.592%	6 3.550%	169 100.000%
b) I would find it easy to comply with customs infringements and sanctions rules and procedures in any	3 1.775%	15 8.875%	77 45.562%	47 27.812%	27 15.976%	169 100.000%

other Member State.						
c) I would find it rather difficult to comply with customs infringements and sanctions rules and procedures in any other Member State as finding information about them is quite challenging.	56 33.136%	75 44.379%	15 8.875%	2 1.184%	21 12.426%	169 100.000%
d) I would find it rather difficult to comply with customs infringements and sanctions rules and procedures in any other Member State as although I have all the information needed the rules and procedures in other Member States are quite different from the ones in force in my country of establishment.	46 27.219%	69 40.828%	26 15.385%	4 2.367%	24 14.201%	169 100.000%

3B In case of agreeing to 3b please explain the reasons.

4. The existence of different customs infringements and sanctions in Member States:

	Responses	Percentage
Main reason	32	18.935%
One reason	43	25.444%
Doesn't affect	86	50.887%
No answer	8	4.734%
TOTAL	169	100.000%

5. If the EU was considering approximating the customs infringements and sanctions rules and procedures throughout all Member States of the EU, which of the following options would you prefer:

	Responses	Percentage
Option A	62	36.471%
Option B	45	26.471%
Option C	35	20.588%
No approximation needed	20	11.765%
Doesn't answer	8	4.705%
TOTAL	170	100.000%

NOTE- One company chose two options

6. Could you give an estimate of the annual costs that your company is spending because of the existence of different customs infringements and sanctions regimes in each Member State? (i.e. costs linked to the necessity of having representatives established in other Member States, costs of special training for your own staff)

Average costs: 3,461.70 EUR

7. Could you give an estimate of the savings each one of the options presented in question 6 would produce in the costs mentioned in question 6?

Average savings of option A: 1,328.22 EUR

Average savings of option B: 1,306.90 EUR

Average savings of option C: 1,634.17 EUR

IA Report: Annex 4C

			Complying with rules				Different infringements					Savings under op	
Answer	Size	Agents / employees	Easier in my country	Easy in other countries	Difficult to find	Different from my country's	Main reason	One reason	Doesn't affect	Option preferred	Annual costs	A	B
001	10-49	None	S Agree	C Disagree	Agree	S Agree		X		C	12000	-	-
002	1-9	None	Agree	Disagree	Disagree	S Agree			X	C	Don't know	-	-
003	10-49	Agents	Agree	Disagree	Agree	Agree	X			C	9000	Don't know	Don't know
004	1-9	Agents	S Agree	Disagree	S Agree	Agree		X		B	15000	10000	10000
005	50-249	Both	S Agree	Disagree	S Agree	S Agree						-	-
006	50-249	Employees	Disagree	Agree	Disagree	Agree			X	A	15300	700	-
007	50-249	Don't know	Disagree	C Disagree	Agree	S Agree			X	A	0	0	0
008	1-9	Agents	S Agree	Disagree	Agree	Disagree		X		B	1500	500	700
009	50-249	Both	S Agree	Disagree	Agree	Disagree		X		C	-	-	-
010	500 +	Both	S Agree	C Disagree	S Agree	S Agree			X	A	-	-	-
011	500 +	Both	S Agree	C Disagree	C Disagree	C Disagree			X	A	-	-	-
012	500 +	Both	S Agree	C Disagree	S Agree	S Agree			X	B	-	Don't know	Don't know
013	50-249	Both	Agree	Disagree	Agree	Disagree	X			A	-	-	-
014	50-249	Agents	Agree	-	-	-			X	A	2307.69231	1384.61538	-
015	500 +	Agents	S Agree	C Disagree	S Agree	S Agree	-	-	-	A	10000	Don't know	Don't know
016	10-49	Employees	S Agree	C Disagree	S Agree	S Agree		X		C	15000	-	-
017	500 +	Agents	S Agree	C Disagree	S Agree	S Agree			X	C	Don't know	0	0
018	500 +	Agents	S Agree	C Disagree	S Agree	Agree			X	A	Don't know	Don't know	Don't know

019	1-9	Both	S Agree	C Disagree	S Agree	S Agree			X	B	Don't know	Don't know	Don't know
020	10-49	Don't know	S Agree	Disagree	Agree	Agree		X		B	Don't know	Don't know	Don't know
021	1-9	None	S Agree	Disagree	S Agree	S Agree			X	A	Don't know	Don't know	Don't know
022	500 +	Both	S Agree	C Disagree	S Agree	S Agree	X			A	-	-	-
023	50-249	Employees	S Agree	Disagree	Agree	Disagree			X	C	0	-	-
024	500 +	Agents	S Agree	C Disagree	S Agree	Agree			X	B	0	0	0
025	500 +	Both	S Agree	Disagree	Agree	None	X			C	-	-	-
026	50-249	Agents	S Agree	Disagree	Agree	Disagree			X	A	-	-	-
027	1-9	Employees	Agree	Agree	Agree	Agree			X	C	-	-	-
028	10-49	None	Agree	-	-	-			X	None	0	-	-
029	10-49	Agents	S Agree	Disagree	S Agree	C Disagree		X		A	0	-	-
030	50-249	Agents	S Agree	Disagree	S Agree	Disagree	X			A	-	-	-
031	50-249	Agents	S Agree	Disagree	S Agree	C Disagree			X	B	-	-	-
032	250-499	Both	S Agree	Agree	Disagree	Disagree			X	A	-	-	-
033	50-249	None	S Agree	C Disagree	S Agree	S Agree		X		B	-	-	-
034	250-499	Employees	Agree	Agree	Disagree	Disagree			X	A	-	-	-
035	1-9	Agents	S Agree	-	Agree	Agree			X	C	-	-	-
036	1-9	None	S Agree	Disagree	-	S Agree			X	C	0	0	0
037	10-49	Agents	S Agree	C Disagree	S Agree	Agree		X		A	-	-	-
038	50-249	Both	Agree	Disagree	Agree	Disagree			X	A	?	50%	-
039	10-49	Don't know	S Agree	C Disagree	S Agree	Agree			X	A	-	-	-
040	50-249	Unanswered	Disagree	Disagree	Agree	Agree			X	A	1900	-	-
041	50-249	Agents	S Agree	Disagree	Agree	Agree	X			C	5000	2000	2000
042	250-499	Agents	S Agree	Disagree	S Agree	Agree	X			C	6000	2000	2000

043	250-499	Agents	S Agree	Disagree	Agree	Agree	X			A / C	5000	-	-
044	1-9	None	Agree	Disagree	Agree	Agree			X	A	-	-	-
045	10-49	Agents	Agree	Disagree	Agree	Agree			X	B	Don't know	Don't know	Don't know
046	1-9	Employees	S Agree	C Disagree	Agree	S Agree	X			B	5000	-	-
047	1-9	Agents	Agree	Disagree	Agree	Agree			X	C	Don't know	-	-
048	500 +	Agents	S Agree	Disagree	Agree	Agree			X	A	Don't know	Don't know	Don't know
049	500 +	Employees	Agree	Disagree	Agree	Agree		X		None	0	0	0
050	10-49	Agents	Agree	Disagree	Disagree	Agree		X		B	0	0	0
051	500 +	Employees	Agree	Disagree	Agree	Agree		X		B	12000	-	10000
052	250-499	Employees	S Agree	Disagree	Agree	Agree			X	A	2000	1000	-
053	1-9	None	Agree	C Disagree	Agree	Agree		X		A	1000	800	500
054	1-9	None	Disagree	Disagree	S Agree	S Agree	X			B	0	-	-
055	50-249	Agents	-	S Agree	-	-			X	None	-	-	-
056	1-9	None	Disagree	Disagree	Agree	Agree			X	B	0	0	0
057	10-49	Both	S Agree	-	Agree	Agree			X	A	10000	10000	-
058	10-49	Unanswered	Disagree	-	Agree	Agree		X		B	0	0	0
059	1-9	None	Agree	S Agree	Disagree	Disagree			X	B	2000	1000	500
060	10-49	Agents	Agree	Disagree	Agree	S Agree		X		B			
061	50-249	None	S Agree	Disagree	Agree	Agree			X	B	-	-	-
062	1-9	None	S Agree	Disagree	Agree	Agree	X			B	-	-	-
063	50-249	Agents	S Agree	S Agree	Disagree	Agree			X	B	1000	100	200
064	1-9	None	Agree	Disagree	Agree	Agree			X	B	-	-	-
065	1-9	Agents	S Agree	Agree	Agree	Agree		X		A	1000	600	500
066	250-499	None	Agree	Agree	Disagree	Disagree		X		A	2000	500	-
067	10-49	None	S Agree	Disagree	Agree	S Agree	X			C	-	-	-
068	50-249	Agents	S Agree	Disagree	S Agree	Agree			X	C	1000	0	0
069	50-249	Employees	Agree	Agree	Disagree	Disagree			X	A	75	75	-

070	500 +	None	Agree	C Disagree	Agree	Disagree			X	B	-	-	-
071	500 +	Both	Agree	C Disagree	S Agree	Agree		X		-	-	-	-
072	500 +	Agents	S Agree	Disagree	Disagree	S Agree		X		C	5000	2000	3000
073	500 +	None	Agree	Disagree	C Disagree	Disagree		X		B	-	-	-
074	50-249	Agents	S Agree	Agree	Disagree	Disagree			X	C	-	-	-
075	250-499	Agents	S Agree	C Disagree	Agree	C Disagree	-	-	-	C	-	-	-
076	1-9	Unanswered	S Agree	C Disagree	Agree	Agree	X			B	-	-	-
077	50-249	Both	Agree	C Disagree	Disagree	Disagree			X	-	-	-	-
078	50-249	Employees	S Agree	-	S Agree	S Agree		X		None	-	-	-
079	500 +	Both	S Agree	Agree	Agree	Agree			X	A	-	-	-
080	500 +	Both	S Agree	C Disagree	Agree	Agree	X			A	-	-	-
081	50-249	Employees	S Agree	Disagree	Disagree	Disagree			X	None	Don't know	Don't know	Don't know
082	1-9	Agents	S Agree	Agree	Agree	Agree			X	B	Don't know	Don't know	Don't know
083	1-9	Agents	Agree	Disagree	Agree	Agree			X	None	Don't know	Don't know	Don't know
084	1-9	Employees	S Agree	C Disagree	Agree	Agree	X			A	2500	500	500
085	50-249	Unanswered	S Agree	-	-	-			X	A	-	-	-
086	50-249	Both	S Agree	Agree	S Agree	Agree			X	C	-	-	-
087	50-249	Both	Agree	Disagree	S Agree	Agree		X		-	3000	-	-
088													
089	1-9	Agents	C Disagree	C Disagree	S Agree	Agree	X			A	0	0	0
090	50-249	None	S Agree	Disagree	S Agree	S Agree			X	None	-	-	-
091	250-499	Both	S Agree	Disagree	Agree	S Agree			X	None	Don't know	Don't know	Don't know
092	50-249	None	S Agree	C Disagree	S Agree	S Agree	X			A	0	0	0

093	500 +	None	Agree	Disagree	Agree	Agree		X		B	0	0	0
094	50-249	None	S Agree	Disagree	Agree	Agree	X			A	15000	12000	8000
095	1-9	Don't know	Agree	-	-	-			X	A	0	0	0
096	1-9	Employees	S Agree	C Disagree	Agree	Agree			X	A	0	0	0
097	0	Both	Agree	Disagree	S Agree	Agree		X		C	0	0	0
098	1-9	Don't know	Agree	Agree	Agree	Disagree			X	None	0	0	0
099	50-249	None	S Agree	Agree	Disagree	Disagree			X	A	0	0	0
100	250-499	Employees	Agree	Disagree	Agree	Disagree			X	None	502.332497	Don't know	Don't know
101	50-249	Agents	S Agree	Disagree	Agree	Disagree		X		None	0	0	0
102	10-49	Agents	S Agree	Disagree	S Agree	Disagree			X	B	-	-	-
103	1-9	None	S Agree	Disagree	Agree	Agree			X	A	-	-	-
104	10-49	None	S Agree	Disagree	Agree	S Agree		X		B	-	-	-
105	1-9	Both	Disagree	Agree	Disagree	Disagree			X	A	2000	-	-
106	500 +	Agents	S Agree	C Disagree	S Agree	S Agree	X			A	10000	-	-
107	500 +	Agents	-	-	-	-			X	None	-	-	-
108	500 +	Agents	-	-	-	-			X	None	-	-	-
109	50-249	Don't know	S Agree	Disagree	S Agree	Agree	X			B	Don't know	Don't know	Don't know
110	10-49	None	S Agree	Disagree	Agree	-			X	-	-	-	-
111	10-49	None	S Agree	Disagree	Agree	S Agree		X		B	-	-	-
112	10-49	None	Agree	C Disagree	Agree	Agree		X		B	-	-	-
113	250-499	Agents	S Agree	C Disagree	S Agree	S Agree	X			A	Don't know	Don't know	Don't know
114	500 +	Agents	S Agree	-	-	-		X		A	Don't know	Don't know	Don't know
115	500 +	Both	S Agree	-	-	S Agree			X	C	Don't know	Don't know	Don't know

					Easier in my country	Easy in other countries	Difficult to find	Different from my country's	
1-9	4	Agents	4	S Agree	14		11	8	Main reason
10-49	13	Employees	5	Agree	6		4	4	One reason
50-249	3	Both	1	Disagree		2		2	Doesn't affect
		None	8	C Disagree		10			
		Unanswered	1						

S02

					Easier in my country	Easy in other countries	Difficult to find	Different from my country's	
1-9	4	Agents	1	S Agree	6		6	5	Main reason
10-49	3	Employees	2	Agree	1		1	1	One reason
50-249		Both	0	Disagree		5		1	Doesn't affect
		None	3	C Disagree		2			
		Unanswered	0						
		Don't know	1						

S03

					Easier in my country	Easy in other countries	Difficult to find	Different from my country's	
1-9	2	Agents	13	S Agree	14		5	4	Main reason
10-49	13	Employees	6	Agree	9	1	15	14	One reason
50-249	7	Both	1	Disagree		13			Doesn't affect
250-499	3	None	6	C Disagree		5			
500 +	2	Unanswered	0						
		Don't know	1						

S04

					Easier in my country	Easy in other countries	Difficult to find	Different from my country's	
1-9	0	Agents	1	S Agree	1		1	1	Main reason
10-49	1	Employees	0	Agree	1		1	1	One reason
50-249	1	Both	0	Disagree		2			Doesn't affect
250-499	0	None	1	C Disagree					
500 +	0	Unanswered	0						
		Don't know	0						

IA Report: Annex 5A

	Main penaltie														
	AT	BE	BG	CY	EE	FI	FR	DE	EL	HU	IE	IT	LV	LT	LU
Fine / Penalty	X	X	X	X	X		X	X	X	X	X		X	X	X
Pecuniary charge	X	X	X	X		X			X	X		X	X	X	X
Imprisonment	X	X		X			X				X				X
Disqualification for a natural person from engaging in an activity requiring official authorisation or approval, or funding, managing or directoring a company or a foundation		X		X	X	X				X					X
Confiscation of the goods	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Ban on access to public assistance, or subsidies					X										X
Publication of judicial decisions		X			X										X
Refusal to grant authorisation															X
Annulment of granted authorisation															X
Suspension of granted authorisation															X
Temporary or permanent disqualification from the practice of industrial or commercial activities		X	X		X										X
Placing under judicial supervision															X
A judicial winding-up order		X		X											X
The obligation to adopt specific measures in order to avoid the consequences of conduct such as that on which the criminal liability was founded					X										X
Official warning													X		
			Means MS **only** operates a criminal penalty re												

IA report: Annex 5B

Information from the article "Customs sanctions of the EU-27: a detailed analysis and a preview on the Modernized Customs Code of the EU and the European Union Customs Code" by Dr Carsten Weerth (Global Trade and Customs Journal, Volume 8, Issue 2).

Legend:

Member States (**MS**) of the EU-27, **lp**: sanctions against **l**egal **p**ersons are allowed, **Pr**ision sentences (max.), **F**ines for minor customs offences (max.), **LS** Legal settlement possible with customs authorities, **1/2/3** Sanctions systems, **#** Number of criminal offences / customs sanctions, customs sanctions in national customs laws (**nCL**) / in national tax laws (**nTL**) / in national criminal laws (**nCrimeL**). Classification of systems (* - *** stars).

MS	*lp*	*Pr*	*F*	*LS*	*1/2/3*	*#*	*nCL*	*nCrimeL*	*nTL*	*Classification*
Germany	-§	10 y	EUR 5000	-	3	4/74	+	-	+	***
Austria	+	7 y	EUR 5000	-	2	5/2	+	-	+*	**
France	-§	10 y	EUR 3000	+	2	3/5	+	-	+	***
Italy	-§	10 y	10-times	-	3	8/19	+	-	-	***
Belgium	+	5 y	10-times	+	2	7/4	+	-	-	**
Luxembourg	+	5 y	10-times	+	2	7/4	-	-	-	Belgium
Netherlands	+	6 y	EUR 45000	+	3	18	+	-	-	**
Great Britain	-§	7 y	EUR 2839, 1-times	+	2	6	+	-	-	**
Denmark	+	8 y	2-times	-	2	6	+	+	-	***
Greece	-§	5 y	10-times	-	3	13	+	-	-	**
Spain	+	4 y	4-fach	-	2	12	-	-	+*	**
Portugal	+	5 y	600 daily rates	-	2	5/2	-	-	+*	**
Poland	+	5 y	720 daily rates	-	2	9/2	-	-	+*	**
Hungary	+	8 y	0.5-times	-	3	1 (4)	-	+	-	***
Czech Republic	-§	12 y	EUR 140000	-	2	4/3	+	+	-	***
Slovak Republic	-§	12 y	EUR 75000	-	2	7/7	+	+	-	***
Sweden	-§	6 y	Yes, how much?	-	3	16	-	-	+*	**
Finland	+	2 y	Yes, how much?	-	2	4/2/ 2	+	-	+	*
Ireland	+	5 y	EUR 2000	+	2	4/2	+	-	+*	**
Estonia	+	10 y	EUR 3200	+	2	3/19	+	+	-	***
Lithuania	+	8 y	Yes, how much?	-	2	4	-	+	-	***
Latvia	-§	8 y	Yes, daily rates	-	3	2	-	+	-	***
Slovenia	+	5 y	EUR 16692	-	2	4/3	+	+	-	**
Malta	-§	2 y	EUR 5823	+	2	4/27	+	-	-	*
Cyprus	+	3 y	EUR 2926	+	2	13	+	-	-	*
Bulgaria	+	10 y	2.5-times	+	3	2/4	+	+	-	***
Romania	+	15 y	EUR 2000	-	2	5/33	+	-	-	***

+* nTL has been published as a special tax or customs criminal law.
§ Criminal liability is applying for acting organs of companies and legal persons.
* = no or only short prison sentences (up to three years);
** = prison sentences up to seven years;
*** = prison sentences of eight years or more.

IA report: Annex 6

STUDIES TAKEN INTO CONSIDERATION

The analysis of the current impact assessment took into consideration 3 studies elaborated in the EU.

- The study from the Project Group on Customs Penalties[44],(Annex 2), which focused MS' relevant national legislation on customs penalties and analysed its several aspects, namely: the nature and types of national penalties for infringements to customs legislation; the main and ancillary penalties; the persons liable in cases of infringements; the time limits and the impact of infringements on AEO authorisations;

- The "Study on the relationship between criminal and administrative sanction systems in the Member States", conducted in 2008, on behalf of DG JUST (Contract reference: JLS/2008/F4/005):

  Since the answers to the questionnaire on customs penalties (point 2.2 of this report) have shown that the customs sanctions throughout the EU can be either of criminal nature or of both criminal and non-criminal nature, special relevance was paid to this study made by DG JUST, which seeks to obtain a description of the relationship between the criminal law system and the administrative system in the 27 EUs MS.

  Its purpose was not to compare the two systems in all their scope, but to analyse the issue of how the two systems are integrated. It has also taken into account the questions of procedure.

  Its scope was more general and not limited to the customs area, however relevant. It shows that there are very little common points in MS on handling the issue of division between administrative and criminal sanctions, namely the existence of different procedures and different criteria used for the differentiation.

  Moreover, it concludes that the main difference between the administrative and criminal sanctioning systems lies in the objectives pursued by the sanctioning system, in the type of sanctions that are used to achieve these objectives which are generally lighter to the extent that they are designed for infringements characterised by a lower degree of criminality and in the competent authorities.

  The study highlights the general trend in MS for bringing the administrative and criminal sanctioning systems closer, noting that there is a gradual extension of criminal procedure guarantees to cover administrative sanctions;

- The "Study on the evaluation of the EU Customs Union", conducted in 2012, on behalf of DG TAXUD, by Price Waterhouse & Coopers

[44] This group was established under the Customs 2013 (C 2013) Program on a voluntary basis and analysed the national regimes for customs offences and related penalties, reporting back to the Commission, based on the responses of 24 Member States to the questionnaire concerning their national customs infringements and penalties' systems

- The study from the Centre of European Policy Studies on "Customs cooperation in the Area of Freedom, Security and Justice, The role of customs in the management of the EU's external border", by Peter Hobbing, CEPS, Liberty and Security in Europe, June 2011

- The study on "Administrative performance differences between Member States recovering Traditional Own Resources of the European Union" elaborated on request of the European Parliament's Committee on Budgetary Affairs and published in February 2013

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

- 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