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REPORT FROM THE COMMISSION

on the assessment of customs infringements and penalties in Member States Union Customs Code

{SWD(2023) 2 final}

EXECUTIVE SUMMARY[1]

The European Union´s customs legislation is harmonised through the Union Customs Code ("UCC") [2]. The UCC includes the obligation for Member States to provide for penalties for failure to comply with the customs legislation and establishes that such penalties shall be effective, proportionate and dissuasive. Member States shall notify to the Commission the national provisions in force with regard to customs penalties, within a certain timeframe from the date of application of such provisions and, without delay, of any subsequent modification of those provisions.

Member States have, therefore, the choice of customs penalties . Drawn directly from national legislation in Member States, the systems of penalties vary across Member States and are subject to evolution over time. This report is meant to provide a broad overview of the individual system of penalties in each Member State in accordance with the UCC. It is a blueprint of the legal situation in Member States, based on the input provided by them in a project Group established by the Commission for this purpose. Member State submitted detailed country reports and validated the accuracy of their legal provisions.

The report addresses the following issues:

→ A Project group for collection of data – Staff Working Document linked to the report

The Commission proposed to set up a Project Group. The explanatory memorandum addresses the structure, the methodology and the results of the work of the Project Group. These results are illustrated in the Staff Working Document ("SWD") linked to this report (PART 1 – General comparative table and PART 2 to 4 - Individual Country Sheets).

→Quantitative assessment / Compliance

Member States have an obligation to impose penalties under the relevant UCC provisions. Title II addresses the issue of compliance with respect to these penalties, more precisely that all Member States have adopted new national provisions or updated existing provisions with respect to penalties.

→Qualitative assessment

In its Title III, the report addresses, in detail, the data provided by Member States according to the criteria set out during the work of the Project Group and structured upon the relevant UCC provisions.

→ Conclusions

Title V highlights the conclusions drawn from the assement of the data provided by the Member States The differences of approach and methodology appear to be extremely significant. The assessment shows very few points of convergence from this perspective.

[1] The project group and the report were initiated before the current situation on international sanctions against Russia and Belarus comes into place. The project group aimed at evaluating the system of penalties in Member States, as per their obligation to adopt penalties under the Union Customs Code. Reference to penalties in the context of this report is strictly relevant to customs offences and not relevant to sanctions against Russia and Belarus.

[2] Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, Official Journal of the European Union, L 269/1, 10.10.2013

Even where convergence points can be identified amongst a high number of Member States (for instance those applying both criminal and administrative penalties) the differences are still significant in terms of severity of the penalties, amounts of the fines or terms of imprisonment. The lack of a common system of infringements and penalties may create legal uncertainty for businesses and possible distortions of competition within the internal market, resulting in vulnerabilities in revenue collection and weaknesses in policy enforcement. The follow up to this report will be outlined in the upcoming reform of the EU Customs Union.

EXPLANATORY MEMORANDUM

1. HISTORICAL BACKGROUND

Given the diverse nature of the customs penalties systems in Member States, which include criminal penalties alongside administrative ones, customs penalties do not form part of the Union legislation on customs. As such, penalties in the field of customs are not harmonised.[3]

The Treaties include the obligation for Member States to take appropriate measures, whether in general or in particular, to ensure fulfilment of the obligations arising from the Treaties or resulting from an action taken by the institutions of the Union. [4]

Regulation (EC, EURATOM) N° 2988/95 of the Council of 18 December 1995 concerning the protection of financial interests of the Community, set out the principle of administrative penalties . [5]

In 2008, the Modernised Customs Code[6] introduced in its article 21, the obligation for Member States to notify the Commission of their penalties regimes. A Customs Project Group carried out an assessment in the field of infringements and customs penalties[7] . Its report was issued by the Commission in 2010[8].

The Union Customs Code, in force since 2016, reinforced the obligation on Member States to notify the Commission of the national provisions in force and any subsequent modifications of these national provisions.

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3 Discussions on the issue of harmonisation in the field of customs penalties date back to early 2000. Differences in the customs sanctioning systems potentially leading to a different treatment of violations of the customs rules in Member States, has been subject to discussions and analysis (for example, in 2004, the WTO case against the EU relating to the non-fulfilment of obligations under GATT).

4 Article 10 of the Treaty on the European Community (TEC) – now Article 4(3) of the Treaty on the European Union (TEU)

5 Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests, *OJ L 312, 23.12.1995, p. 1–4*

6 Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code), OJ L 145, 4.6.2008, p. 1–64

7 A Project Group was created with the purpose of gathering information from the Member States with respect to their respective penalties regimes. Although the Project Group was not entirely and solely linked to the obligation of notification, that obligation remained in the background of the work of the group.

8 SWD(2013) 514 final

In its Communication "Taking the Customs Union to the Next Level: a Plan for Action" [9], adopted in September 2020, the Commission highlighted the issues stemming from an uneven enforcement of customs rules and proposed, with the support of Member States in a project group, to draw up an updated comprehensive report on the individual systems of customs penalties in each Member State.

Most recently, in the report published in March 2022[10], the Wise Persons Group on Challenges Facing the Customs Union, stressed the divergences and differences in the field of customs penalties, but most importantly the consequences these may lead to and the necessity to take action in this area.

2. LEGAL CONTEXT

Article 4(3) TEU requires that Member States take all necessary measures to ensure fulfilment of obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. For that purpose, while the choice of penalties in the field of customs remains within their discretion, they must ensure, in particular, that violations of EU law are penalised under conditions, both procedural and substantive, which make the penalty effective, proportionate and deterrent.

Article 42(3) of the UCC lays down the obligation for Member States to "notify the Commission, within 180 days from the date of the application of this Article, as determined in accordance with Article 288(2), of the national provisions in force, as envisaged in paragraph 1 of this Article and shall notify without delay of any subsequent amendment affecting those provisions".

Article 42(1) of the UCC imposes an obligation on Member States to provide for penalties for failure to comply with the customs legislation. In the absence of harmonisation of the EU legislation relating to customs penalties, Member States enjoy a discretion to choose the penalties that seem appropriate to them, with the principles of proportionality, effectiveness and dissuasiveness in mind[11,12] .

The directive on the protection of the financial interests of the EU[13] (the "PIF directive") provides for a number of offences against the EU budget, including evasion of customs duties. Although customs infringements may fall under the scope of the PIF directive provided certain strict conditions are met, the PIF directive only aims at intentional offences. Customs infringements under the UCC of less than EUR 10.000 are not covered by the PIF directive, whether intentional or done by negligence.

3. KEY CHARACTERISTICS OF THE REPORT

Description of the UCC infringements and methodology

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9 COM(2020) 581 final

10 Report by the Wise Persons Group on the Reform of the EU Customs Union, Ten proposals to make the EU Customs Union fit for a Geopolitical Europe. https://ec.europa.eu/taxation_customs/system/files/2022-03/TAX-20-002-Future%20customs-REPORT_BIS_v5%20%28WEB%29.pdf

11 The case law is very clear on this matter, the Court of Justice recalled several times the discretion of Member States in terms of choice of penalties, but also the framework within which Member States can exercise their power.

12 See Case C36/94 Siesse v Director da Alfândega de Alcântara [1995] ECR I-3573; see C-68/88, [1989] EUECJ C-68/88, [1989] ECR 2965;

13 Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law; OJ L 198, 28.7.2017

The UCC articles providing for an infringement have been identified and listed in the general comparative table accompanying the Report. The analysis of the penalties notified by the Member States concerning the infringements of those UCC articles has been built around 10 criteria which gives a clear picture of the application of Article 42(1) of the UCC.

Quantitative assessment/Compliance

The quantitative data gathered in the general comparative table shows that Member States provide for penalties in case of infringements under the UCC and as such can be considered as compliant with their obligation to adopt penalties. It is important to stress that these penalties are drawn from national legislation and not from a common harmonised approach and methodology.

Qualitative assessment / Diversity and divergences

In terms of qualitative assessment, the situation across Member States appears more divergent, in the sense that, while every Member State enjoys a discretion to apply the penalties it feels to be most appropriate for a given UCC infringement, the methodology when choosing and applying penalties differs both in terms of the nature and the severity of the penalties.

4. METHODOLOGY

The Commission established a project group [14] of its own initiative in order to collect relevant data from Member States for assessment. "The Project Group" under the Customs 2020 program.

The work of the Project Group was built around two objectives: ***a)*** fact-finding: the collection of information from Member States in order to build a comprehensive report, and b) guidelines[15]: on the basis of the information gathered, and in co-operation with the Member States, to attempt an assessment, albeit in a legally non-binding way, of the application of penalties in Member States .

Participation in the Project Group was voluntary and all 27 Member States enrolled in the group. Two independent experts were invited to participate in the Project Group.

The work of the group was conducted in three plenary meetings and 27 individual meetings having regard to situations specific to each country.The work of the Project Group was structured as follows:

a) Members of the group were provided with a predefined template, the "Country sheet" in order for them to provide structured information in relation to infringements as set out in the relevant articles of the UCC.
b) The country sheet used a common methodology:
   - List of the relevant UCC Articles providing for an infringement for which Member States had to provide the relevant penalties according to their national legislation.
   - The data collected was structured around ten relevant criteria which allowed for an objective assessment and comparison.

[14] Customs Action Plan, COM(2020) 581 final

[15] Due to the upcoming reform of the Customs Union, the need to develop guidelines will be re-assessed in the future

c) The data collected was grouped into a general common table which followed the same common methodology as for the individual country sheets.

The work of the Project Group resulted in the retrieval of a subsequent amount of data, thanks to the active participation of the Member States. The individual country sheets (represented in the Staff Working Document (the "SWD") - Parts 2-4) show that all Member States have fulfilled their obligations, by adopting penalties in the customs field, drawn from their national legislation.

The assessment of the data was structured into a general table, represented in Part 1 of the SWD. This table gathers all provisions related to infringements of the UCC, as set out in the national legislation of each Member State, and gives a broad overview of the current situation in the Member States.

The present report is based on detailed information provided by and with the help of the Member States.

ASSESSMENT OF THE NATIONAL PROVISIONS IN FORCE IN MEMBER STATES

TITLE I. GLOSSARY OF TERMS

For the purposes of this report, Staff Working Document linked to the report and the terminology of the criteria used as the basis of the report, the following terms are defined as follows:

1) *Sanctions.* Any measure, administrative, criminal, pecuniary etc adopted for an infringement of a UCC provision. For this report "sanctions" will be strictly linked to the field of Customs.
2) *Penalty.* Any measure, administrative, criminal, pecuniary etc adopted for an infringement to a UCC provision.
3) *Customs offence.* Customs offence refers to an infringement of a UCC provision. For this report, only Customs infringement will be used.
4) *Iinfringement.* Infringement refers to an infringement to a UCC provision. For this report "infringement" will strictly refer to infringements in the field of Customs.

TITLE II. PRESENTATION OF THE RELEVANT UCC ARTICLES AND CRITERIA FOR ASSESSMENT

2.1 Relevant UCC articles and criteria used for assessment

The assessment has been based on the articles of the UCC which impose obligations on operators that they could potentially infringe on. [16] They are as follows:

[16] See PART 1 of the Staff Working Document linked to the report (general comparative table) and https://eur-lex.europa.eu/legalcontent/EN/TXT/HTML/?uri=CELEX:32013R0952&from=EN

Articles 15, 23, 51, 108, 127, 135, 137, 139, 140, 145, 147, 148, 149, 158, 163, 166, 167, 177, 179, 182, 185, 192, 211, 233, 241, 242, 244, 244, 245, 257, 262, 263, 267, 270, 271 and 274

The analysis of the penalties notified by the Member States concerning the infringements of those UCC articles has been built around the following 10 criteria which gives a clear picture of the application of Article 42(1) of the UCC.

The nature of the sanctions	→	Sanctions can be of two types: administrative or criminal. This criterion determines which types of sanctions are used for a specific infringement. This criterion is the most determinative as it helps distinguish between the different systems of sanctions operating in Member States.
Negligence or intent	→	According to the type of sanction imposed, Member States consider negligence or intent when determining the nature of the sanction imposed.
Liability	→	The criterion determines whether legal persons can be held liable in Member States when imposing sanctions.
The type of sanction	→	The criterion identifies the different types of sanctions, whether of a pecuniary nature, imprisonment or any other type of sanction which can be imposed.
Thresholds	→	This criterion references the minimum and maximum imposed in terms of sanctions.
Settlement	→	In order to avoid criminal proceedings, a settlement procedure may be opted for.
The existence of mitigating factors	→	All factors which contribute towards diminishing the sanction imposed.
The existence of aggravating factors	→	All factors which may determine a more severe sanction.
The limitation periods	→	All times limits within which a procedure can be considered as completed.
Reference to national provisions in force	→	Link to national provisions in force.

4.2 Quantitative assessment

The overall assessment leads to the conclusion that all Member States impose penalties in the field of customs, drawn either from their national legislation or from specific provisions[17] adopted for the purpose of infringements of the UCC. Where Member States have adopted specific provisions in light of the UCC, these provisions are exclusively of an administrative nature. The first part of the general comparative table shows the nature of the penalties, addressed in the following section of this Report. Nevertheless, overall, it aims at showing that Member States are compliant with the obligation laid down in article 42(1) of the UCC. The same part of the general table highlights areas in which penalties are not applied, either in general or according to the specific situation in Member States. Two of these areas are the most prominent:

- ***Article 108 of the UCC*** - Non-payment of import or export duties by the person liable to pay within the period prescribed: 11 Member States[18] did not adopt penalties for this infringement. The non-payment of import duties is not punishable under the administrative law nor under the criminal law, but it is subject to enforcement measures.

- ***Free zones***[19] - articles 135(2), 244(1) and 245 UCC – do not exist in all Member States and therefore those Member States have not adopted penalties in this respect.

Other areas in which penalties are not adopted are individual cases and are very limited in number. In those limited number of cases, a generic Article in the UCC covers the infringement in question and the Member State did not adopt specific measures in this context but rather allow it to be covered by the sanction imposed by the generic Article.

TITLE IV. QUALITATIVE ASSESSMENT OF MEMBER STATES' PROVISIONS – DIVERSITY AND DIVERGENCES

1. GENERAL CONSIDERATIONS

The diversity of national penalty systems does not prevent convergences between them. In particular, the different systems strive to provide for penalties that are dissuasive, efficient and proportionate as stipulated in the UCC. The Court of Justice ensures that these concepts, which are in some ways subjective, are respected by defining their contours.

In terms of similarities, there are no cases of absolute similarity between all Member States, in the sense that each of them apply the exact same penalty, with the same modalities, to the same infringement.

Convergences may exist between certain Member States or groups of Member States. For example, the majority of the Member States have a system that provides for both

[17] An important new element in the field of penalties. The UCC provides in Article 42(1) for the adoption of administrative penalties. Croatia has specific legislation adopted for the purposes of penalties in the field of Customs.

[18] These Member States are: Austria, Croatia, Cyprus, Estonia, Finland, Denmark, Latvia, Poland, Portugal, Spain, Sweden.

[19] Member States which do not have free zone areas: Austria, Belgium, Finland, the Netherlands, Sweden, Ireland , Slovakia

administrative and criminal penalties. Most of them apply limitation periods, most of them use aggravating or mitigating factors when determining the severity of a sanction imposed, etc (a detailed analysis is provided in points 2 to 7 of this report).

The individual country sheets and the general comparative table show how different measures relating to penalties may differ from one Member State to another. These differences stem precisely from the fact that each Member State enjoys a discretion in choosing the type of penalty to apply to a specific infringement and that they are drawn from national legislation. As such, under the national legislation of one Member State an infringement under the UCC may be considered as simply administrative while in another it may entail criminal proceedings. Other Member States may apply administrative penalties where a certain threshold is not crossed, and above this threshold, the penalty imposed will be of a criminal nature.

Article 51 *UCC* provides for the following infringement: "Failure of an economic operator to keep the documents and information related to the accomplishment of customs formalities by any accessible means for the period of time required by customs". In this context, 12 Member States[20] impose an administrative sanction, 5 Member States[21] provide for both criminal and administrative penalties (the choice between the two types of penalties in Member States which provide for both is detailed in point 2 of the present report), one Member State[22] does not provide for a sanction and 9 Member States[23] provide for criminal penalties.

2. NATURE OF PENALTIES: CRIMINAL OR ADMINISTRATIVE

The nature of a customs sanction is important for a number of reasons, like the procedures applicable, enforcement, duration and the consequences it may have for operators.

In terms of consequences, the nature of a customs sanction may have an impact on operators concerning the Authorised Economic Operator ("AEO") status. One of the requirements for obtaining and maintaining the AEO status is that the operator has not committed a serious infringement or repeated infringements of customs rules. The qualification of "serious infringement" or "repeated infringement" are criteria for determining the type of sanction applicable (see aggravating factors) which in this case will become criminal in the case of Member States which operate systems which allow for both criminal and administrative penalties. The distinction is not necessary in those Member States which only apply criminal penalties. However, the consequence that this aspect has on the operator is that, in those Member States applying criminal penalties, acquiring or maintaining AEO status may be more difficult as opposed to those applying only administrative penalties, thus creating an unequal playing field.

The assessment of the nature of penalties applied by the Member States reveals the complexity of the methods used by Member States when defining a penalty. The data

[20] Member States imposing an administrative sanction: Bulgaria, Croatia, Czech Republic, Greece, Germany, Hungary, Italy, Latvia, Portugal, Romania, Slovakia, Spain.

[21] Member States imposing either an administrative or a criminal sanction: Estonia, Ireland, Lithuania, The Netherlands, Sweden.

[22] Member States not imposing a sanction: Finland.

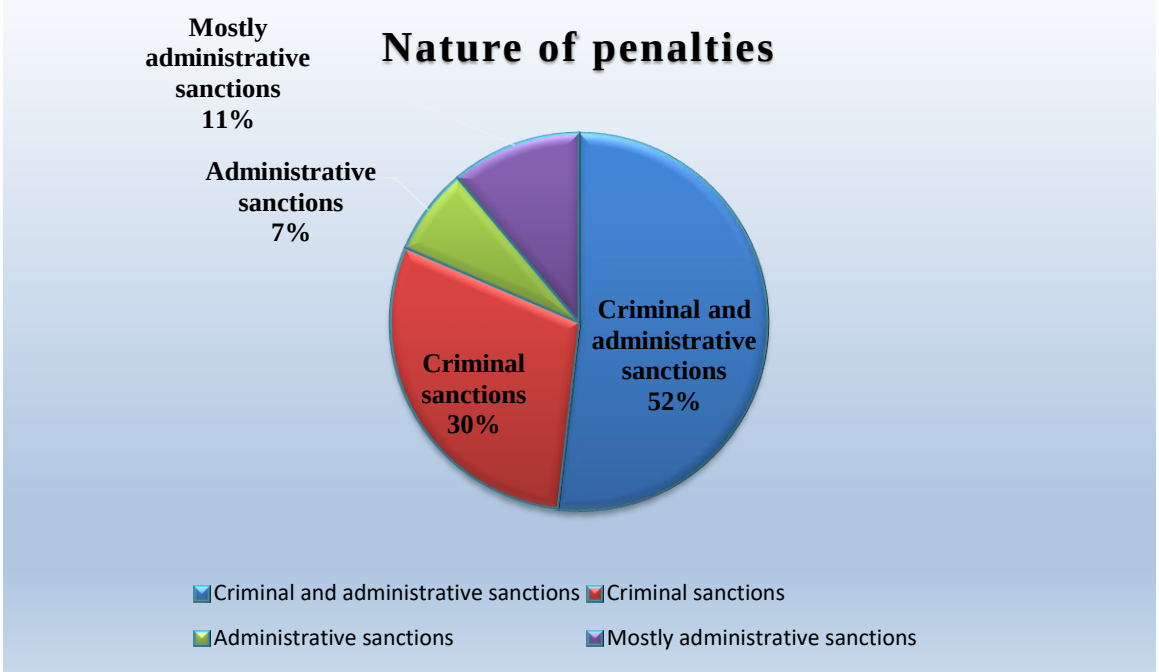
[23] Member States imposing a criminal sanction: Austria, Belgium, Cyprus, Denmark, France , Luxembourg, Malta, Poland, Slovenia.

provided has shown that those Member States who use a system that operates both criminal and administrative penalties, apply those systems for the same infringement under the same UCC article[24]. Those Member States have been considered as Member States with both Criminal and Administrative penalties (point a) below). Three Member States apply mostly administrative penalties with exceptions for some infringements under the UCC, where they only provide for criminal penalties. These 3 Member States have been considered as countries with an overall administrative systems of penalties (point d) below)

The analysis of the data provided in terms of nature of the penalties has shown that:

a) 14 Member States have a system that provides for both criminal and administrative penalties ;[25]
b) 8 Member States have a system that provides only for criminal penalties ;[26]
c) 2 Member States have administrative penalties; [27]
d) 3 Member States operate mostly administrative penalties [28].

Figure 1: Nature of penalties



[24] This convergence point is shown in the general comparative table, PART I of the SWD

[25] Austria, Greece, Estonia, Finland, Germany, Ireland, Hungary, Lithuania, Latvia, the Netherlands, Portugal, Slovenia, Spain, Sweden.

[26] Belgium, Cyprus, France, Luxembourg, Malta, Poland, Italy. Denmark has a system that mostly provides for criminal penalties with a few exceptions and for the purpose of this report, Denmark has been considered as a Member State with criminal penalties.

[27] Czech Republic and Croatia. With respect to the Czech Republic, if the illegal act fulfils the characteristics of a criminal offence (e.g. the amount of damage caused, social danger, etc.), the unlawful conduct may be classified as a criminal offence. It depends on the circumstances of the case. Infringements of the relevant provisions of the UCC are, in principle, penalised by administrative penalties under the Czech legal system. However, criminal penalties are not excluded.

[28] Romania, Bulgaria, Slovakia.

From a legal perspective, a criminal court imposes criminal penalties while an administrative body (usually the customs authorities) deals with administrative penalties.

An important element when Member States deal with administrative penalties is the right to appeal defined in the UCC as opposed to the right to appeal in criminal procedures. The right to appeal is set out in Article 44 of the UCC. It consists of a two-step procedure: 1) the first concerns challenging the decision of the customs authorities from an administrative point of view (the operator disagrees officially with the customs decisions directly affecting him) and 2) the second, provides for the possibility to appeal against the decision in front of an administrative national court, according to the provisions in force in Member States. Although not a criterion for the evaluation of the individual country sheet for the collection of data, Member States have confirmed they all ensure this two-step appeal procedure.

The graphic above in Figure 1 shows that 52% of the total of 27 Member States use a system that operates both criminal and administrative penalties . According to the data provided, when applying penalties, the methodology seems to be the same across Member States when deciding the nature of the sanction they will apply. This methodology provides for two factors to be taken into account: thresholds (with reference to amount of duties, value of the goods etc) and aggravating factors (where aggravating factors can either determine the highest administrative fine or qualify the infringement as criminal). As this criterion was not evaluated for the purpose of this report and even though Member States have provided some information regarding the limit, above which a sanction will be considered of a criminal nature, this report will not evaluate this aspect.

3. NEGLIGENCE OR INTENT

In most Member States, a distinction is made between intentional and negligent breaches of customs legislation. However, in the case of two Member States (Czech Republic[29], Croatia) negligence or intent is not a criterion for evaluation of the infringement, considering they generally apply mostly administrative penalties.

4. LIABILITY OF NATURAL AND LEGAL PERSONS

Liability of both natural and legal persons is one of the points of convergence between Member States. The assessment of this criterion does not refer to the definition of the liable person. Only the prevalence of the liability of natural persons as opposed to legal persons was evaluated.

The UCC already identifies the persons who may be held liable in the case of customs infringements. In the case of natural persons, all Member States seem to identify the same types of persons as identified in the UCC.

The overall assessment has led to the conclusion that Member States may also hold legal persons liable for a customs infringement, in addition to natural persons. The data identified has shown that the situation is more divergent however, when it comes to legal persons.

[29] See footnote 23 in relation to the application of penalties in the Czech Republic. In the case of offences committed by natural persons, negligence or intent is a criterion for assessing liability for the offence, since at least negligent fault must be proved in the case of such persons, and the degree of fault is a criterion for determining the amount and type of administrative penalty.

While legal persons can theoretically be held liable for infringements in all 27 Member States, not all types of infringement entail liability for legal persons, in all Member States. Some infringements can only be committed by natural persons[30]..[31]

- Article 15 UCC – legal persons are held liable except in Malta and Poland
- Article 23(2) UCC - legal persons are held liable except for Malta, Poland and Sweden
- As a general feature, Malta, Poland and Lithuania generally do not hold legal persons liable, with the exception of limited infringements under the UCC.

The assessment also showed that it is the person representing the legal person who will be liable for the customs penalties Generally, with respect to legal persons, only administrative penalties, i.e. a fine, will be imposed (together with some ancillary penalties or not).

5. TYPES OF PENALTIES

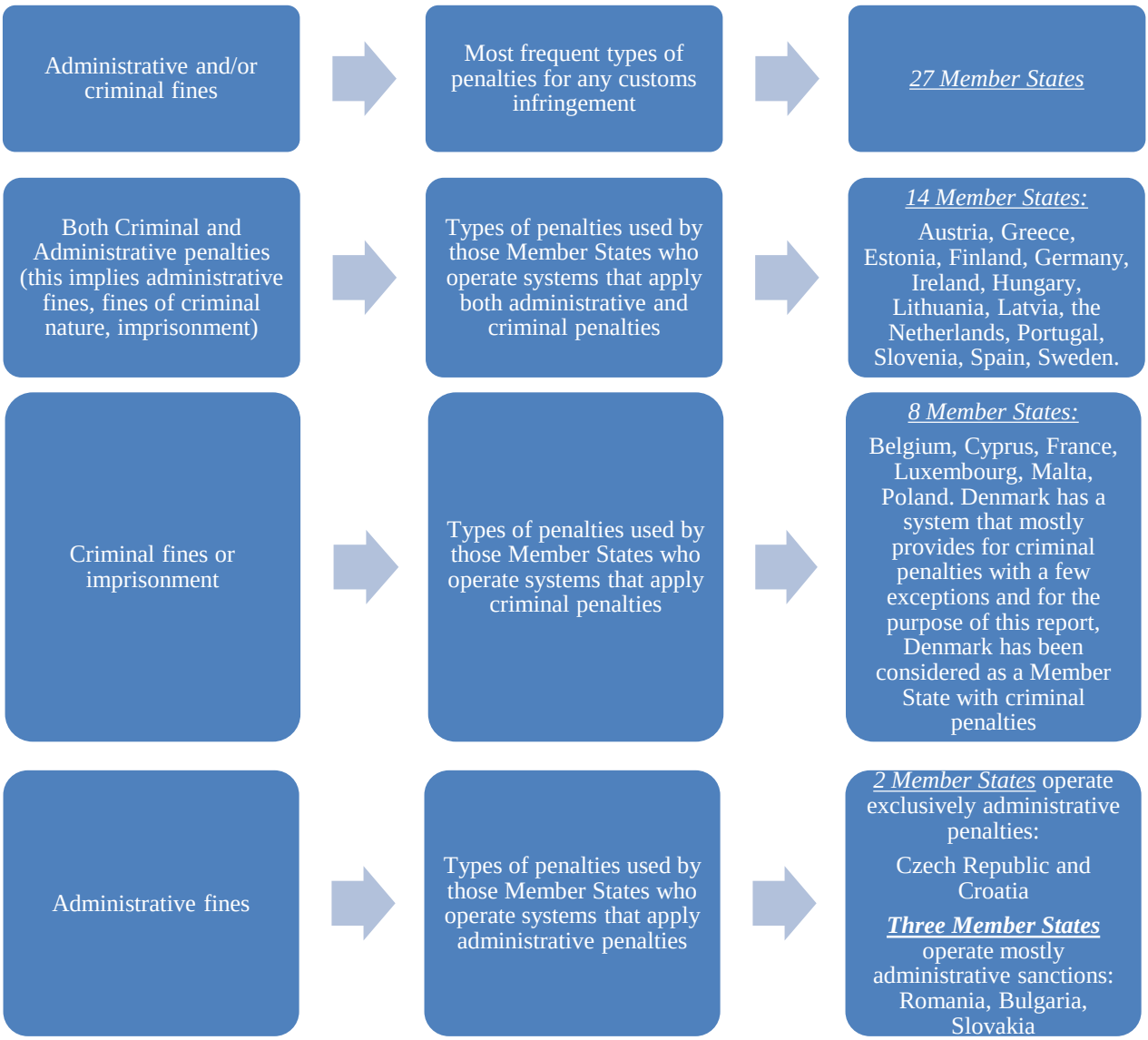
The types of penalties are directly linked to their legal nature. The methodology used for the assessment of this criterion is identical to the one set out in point 2 of this report: *Nature of the penalties applied*.

The assessment of the data provided shows that two main types of penalties are used in all Member States (as a general principle): fines (whether administrative or criminal) and imprisonment. Figure 2 gives a clearer picture of the types of penalties used in Member States:

[30] This is represented in the general comparative table, Part I of the SWD, section "Liability"

[31] A comparison with the past reports shows that, in this precise domain, the situation has evolved. In 2010 data showed that only 15 Member States provided penalties for legal persons.

Figure 2: Types of fines



In addition to these two main types of penalties, various other penalties (ancillary penalties) are used. According to the overall analysis, an ancillary penalty can be defined as a sanction which, most commonly, cannot stand alone but is applied together with a main sanction.

The most common ancillary penalty is the confiscation of the goods and/or measures relating to the authorisations. These are concepts also included in the UCC. Under Article 198 of the UCC, Member States are empowered to confiscate goods and are able to take measures with regard to the authorisations where the requirements of those provisions have been breached.

Analysis of the data provided has shown that 17 Member States apply ancillary penalties along with main penalties. Figure 3 illustrates the four types of ancillary penalties used. The analysis in figure 3 uses a common methodology, taking into account only the number of Member States using the same type of penalty.

Figure 3: Ancillary penalties

6. SETTLEMENT

Article 42 (2) of the UCC provides that "where administrative penalties are applied, they may take, inter alia, one or both of the following forms: (a) a pecuniary charge by the customs authorities, including, where appropriate, a settlement applied in place of and in lieu of a criminal penalty".

Although, the settlement is an important tool as it allows for the possibility of avoiding criminal proceedings or long and costly legal procedures, etc, only 17 Member States[32] use this tool in respect of penalties in the customs field.

The possibility to settle a case mainly concerns infringements where criminal proceedings can be avoided and the possibility to settle implies admission of guilt and payment of a penalty.

7. AMOUNT OF FINANCIAL PENALTIES AND IMPRISONMENT

Based on the data assessed, the amount of the financial fine, whether administrative or criminal, and the years of imprisonment which may be imposed, is one of the areas where significant divergences emerge across Member States in terms of severity.

The assessment uses a common methodology. The tables represented in the SWD allow for a detailed overview of the fines and years of imprisonment. The overall assessment takes into account the minimum and maximum applied when imposing a penalty, whether through a fine or imprisonment.

- Fixed: from 200 euros to 600.000 euros (in Spain),
- Calculated against a percentage of the evaded duties or of the value of goods (highest percentage is up to 600% in Spain) or
- Per day fines (a day fine is a unit of fine payment that, above a minimum fine, is based on the offender's daily personal income.): 7[33],[34] MS use a system of day fines; the maximum

[32] Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Germany, Greece, Estonia, France, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Slovakia, Spain,.

[33] In Lithuania the fine is related to the amount of money approved by the state as a minimum standard of living (which is 50 EUR). This approved standard is applied for all persons disregard their income.

level of fines for natural persons is up to 6,000 minimum standard of living (50 EUR)in Lithuania. The maximum level of fines for legal persons is up to 100.000 minimum standard of living (50 EUR), also in Lithuania.

In terms of imprisonment, the time varies from a minimum of 1 to 30 days (in Estonia) to 10 years (in Romania).

8. MITIGATING OR AGGRAVATING CIRCUMSTANCES

When determining whether and to what extent a sanction must be imposed, the authorities may have to take into consideration the circumstances surrounding the cases. There may be elements for which more severe penalties are considered appropriate, i.e. aggravating factors. In contrast, authorities may also need to take into account mitigating factors to reduce the penalties. Both of these considerations are widely applied in the Member States, as they all take aggravating and mitigating factors into account when determining the level of the penalty.

The overall analysis uses a common methodology by taking into account the Member States using the same aggravating or mitigating factors.

The differences between the Member States are substantial. The analysis shows that there are 17 different aggravating factors and 19 different mitigating factors, which may be considered when imposing penalties.

The most widely used aggravating factors are organised crime (19 Member States)[35], recidivism (24 Member States)[36], fraudulent intent (17 Member States)[37], amount of evaded duties (17 Member States)[38], status of the offender (10 Member States)[39] and use of violence (10 Member States)[40].

In terms of mitigating factors, the most widely used are cooperation with customs (10 Member States)[41], negligence (no fraudulent intent) (13 Member States)[42], immediate

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[34] In Denmark day fines range from 1.000 DKK to 100.000 DKK, regardless of income.

[35] Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, the Netherlands, Poland, Portugal, Romania, Slovenia, Slovakia.

[36] Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovenia, Slovakia, Spain.

[37] Austria, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Luxembourg, the Netherland, Poland, Portugal, Slovenia, Slovakia.

[38] Austria, Belgium, Cyprus, Czech Republic, Denmark, Germany, Greece, Finland, Hungary, Italy, Luxembourg, The Netherlands, Poland, Portugal, Slovenia, Spain.

[39] Cyprus, Denmark, Estonia, Germany, Czech Republic, Hungary, Malta, Portugal, Slovakia.

[40] Austria, Germany, Estonia, Italy, Czech Republic, Poland, Portugal, Romania, Lithuania, Latvia.

[41] Austria, Cyprus, Estonia, Czech Republic, Finland, Germany, Latvia, Lithuania, Romania.

[42] Cyprus, Denmark, Greece, Czech Republic, Luxembourg, the Netherlands, Bulgaria, Finland, Germany, Portugal, Slovenia and Hungary, Malta.

payment (9 Member States)[43], severity of the infringement (9 Member States)[44] and good faith (9 Member States)[45].

9. TIME LIMITS

Analysis of the data provided shows that time limits remain one of the most divergent elements across Member States, thereby leading to divergences. Time limits are an important aspect of customs penalties regimes. Clearly defined time limits help to increase legal certainty and to ensure fair procedures.

The assessment of time limits uses a common methodology by analysing three categories to which time limits may apply: time limit for initiating a procedure, time limit for imposing a sanction and time limit for executing a sanction.

The data assessed shows that virtually all Member States apply time limits in their customs sanctioning systems. However, the situation is more complicated when it analyses the method used when imposing time limits. Time limits for initiating a procedure and time limits for imposing penalties seem to follow the same principles and limitations in time or, in any case, they appear to be interlinked.

The description below shows that some Member States will apply the same limitations for both categories of time limit (for example, if a procedure has to be initiated within 5 years, the sanction will have to be imposed at the end of these five years). Other Member States will grant a certain period for the procedure itself and the imposition of the penalties will benefit from a different period which commences at the end of the previous period. Data shows also that the calculation of time limits starts from the moment in time when the infringement took place.

The time limit for initiating a procedureprevents the customs authorities or the judicial authorities from commencing, after a certain period, a procedure for imposing a penalty on an economic operator for a customs infringement. Such a time limit is in effect in all Member States except Cyprus[46].
However, the time limit variations across Member States are quite significant:

- Up to 5 years in Austria, Belgium, Greece, Finland, France, Croatia, Hungary, Latvia (where the lowest time limit applies - 3 days[47]), the Netherlands, Poland, Portugal and Slovakia
- Between 5 and 10 years in Czech Republic, Denmark[48], Ireland, Italy, Luxembourg, Malta, Romania, Spain[49] and Slovenia

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43 Austria, Bulgaria, Cyprus, Czech Republic, Estonia, Germany, Hungary, Latvia, Lithuania, Romania and Slovenia.

44 Bulgaria, Cyprus, Czech Republic, Germany, Hungary, Romania, the Netherlands, Slovenia.

45 Cyprus, Finland, Czech Republic, Germany, Hungary, Italy, Latvia Slovenia.

46 Cyprus does not have specific time limits in the law; they act according to case law and general practice.

47 The administrative offence proceedings must be initiated within three working days from the day of obtaining the relevant information, but the proceedings may be initiated not later than within one year from the day of committing the offence (in case of a continuous offence - from the day of termination of the offence). (I.e.within 3 days after the information on the infringement has become available to the customs administration and no later than one year after the infringement has been committed/terminated).

48 The time limit in Denmark varies from 2 years to 10 years

- More than 10 years in Germany, Lithuania[50] and Sweden

As regards the time limit for imposing a penalty after the procedure has been initiated, all Member States except Cyprus, Malta and the Netherlands use such atime limit.. In these cases, the proceedings have been initiated, but a penalty has not yet been imposed. Generally, this time limit is the same as the time limit for initiating a procedure and, as such, the penalty needs to be implemented within the time limit for initiating the procedure. There are also Member States where there is no time limit for imposing a penalty after the procedure has been initiated.

Concerning theTime limit for the execution of a sanction, the principle governing the initial time limit is that, once the decision of a penalty is adopted, the sanction should be enforced without delay. Ireland, Malta[51], and Latvia, do not use such time limits. In Member States like Belgium, Estonia[52], Finland, Germany, Hungary, Lithuania, Greece, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Spain[53], the time limit may vary between 1 to 20 or 25 years. For the other Member States, the time limit may vary between 6 months (Czech Republic) to 15 years (Estonia).

The description above shows that some Member States apply the same limitations for both categories of time limit (for example, if a procedure has to be initiated within 5 years, the sanction will have to be imposed at the end of these five years), while other Member States grant a certain period for the procedure itself and the imposition of the penalties benefits from a different period which commences at the end of the previous period. Data shows also that the calculation of time limits starts from the moment in time when the infringement took place.

TITLE V : CONCLUSIONS

The present report gives an updated overview of the situation of the customs systems of penalties in Member States. The assessment is based on the information provided by the

[49] The limitation period applicable to the crime offences is 5 years or, in case of the application of certain aggravating factors, 10 years. The limitation period applicable to administrative offences is 4 years. So, in Spain the time limit is between 4 and 10 years.

[50] It should be noted that time limit of 10 years is in case of criminal infringement. In case of administrative procedure, the time limit is 2 years in Lithuania. So, in Lithuania the time limit is between 2 and more than 10 years.

[51] In Malta, penalties are executed immediately once a decision is taken. Since there are only criminal penalties (or out of court settlements instead of criminal proceedings), the penalty is executed as soon as the court pronounces its judgement (or the out of court settlement is reached), (the penalty is immediately paid together with the settlement).

[52] A judgment shall not be executed if the following terms have expired after the entry into force of the judgment: 1) three years from entry into force of a court judgment made in a matter concerning a criminal offence; 2) one year from entry into force of a judgment or decision made with regard to a misdemeanour.

[53] The limitation period applicable to the penalties imposed for the comission of crime offences is 5 years or, in case of the application of certain aggravating factors, 15 years. The limitation period applicable to administrative penalties is 4 years. So, in Spain the time limit is between 4 and 15 years.

Member States in their individual country sheets and gathered in the general comparative table.

The main conclusions which can be drawn are the following:

1. Member States have widely used their power to apply penalties in respect of UCC Articles which provide for an infringement, whether these are specific measures for the purposes of the infringement under the UCC or drawn from national administrative or criminal legislation.

2. When imposing penalties Member States use systems, which allow them to apply either administrative or criminal penalties, according to the severity of the infringement.

3. The differences of approach and methodology applied when choosing a sanction, in terms of nature, severity, times limitations, etc, appear to be extremely significant. The assessment shows very few points of convergence from this perspective. In addition, a brief comparison with previous past assessments shows that, although national legislation has evolved across Member States, significant divergences between Member States still exist. Even where convergence points can be identified amongst a high number of Member States (for instance those applying both criminal and administrative penalties) the differences are still significant in terms of severity of the penalties, amounts of the fines or years of imprisonment.

4. As already pointed out in the Communication "Taking the Customs Union to the Next Level: a Plan for Action", which was adopted in September 2020, the lack of a common system of infringements and penalties may create legal uncertainty for businesses and possible distortions of competition within the internal market, resulting in vulnerabilities in revenue collection and weaknesses in policy enforcement. Fraudsters may be inclined to pick and choose the perceived weakest system,to the detriment of the entire Customs Union.

5. Establishing a mechanism which would make it possible to progress towards better convergence of the penalty systems of the Member States is being considered. The follow up to this report will be outlined in the upcoming reform of the EU Customs Union.