

## Curmi Kenneth at Parlament-MT

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**From:** Micallef Glenn at MEAIM [glenn.micallef@gov.mt]  
**Sent:** 08 July 2014 14:55  
**To:** Curmi Kenneth at Parlament-MT  
**Cc:** Borg Glorianne at MEAIM; Psaila Fabian at MEAIM  
**Subject:** COM (2013) 884 - Proposal for a DIRECTIVE of the European Parliament and of the Council on the Union legal framework for customs infringements and sanctions

Dear Kenneth,

The following is the consolidated position of the Maltese Government with regard to the Proposal for a Directive of the European Parliament and of the Council of the Union on the legal framework for Customs Infringements and Sanctions.

Although this draft Directive concerns the customs union, an EU exclusive competence, and therefore the principle of subsidiarity is not called into question, the current form of the proposal is highly prescriptive and goes further than is necessary to achieve the stated objectives.

On the positive side, if implemented and enforced properly, the proposal would have level playing field benefits — the Commission suggests that the proposal would reduce the risk of challenges of unfair treatment by World Trade Organisation members and would also facilitate negotiations with Trade Facilitation Agreement members, which include the issue of customs penalties.

On the negative side, the proposed harmonised penalties regime provides no scope for administrative or judicial discretion in terms of how to respond to customs infringement which could disproportionately affect smaller Member States which would be obliged to instigate proceedings irrespective of their cost-effectiveness. It also provides limited scope for judicial or administrative discretion as to the penalty to be applied which in particular could have a disproportionate effect in weaker economies, since the penalty to be applied is determined with reference solely to the customs value of the goods.

The stated objective of harmonisation is unlikely to be achieved to any significant degree in the absence of an EU-wide definition of legal concepts such as negligence or strict liability. Moreover, the latter concept is not recognized within the jurisdiction of number of Member States.

Where the penalty proposed for infringements is a percentage - it is a percentage of the value of the goods involved while it would be both more appropriate and more in line with the approach used in Malta for the penalty base to be the amount of duty endangered.

In view of the above the Maltese Government feels that this legislative proposal is not the right way forward, since although a single penalty regime is a legitimate aspiration, the proposal would set up a scheme that would be disproportionate, due to its inflexibility. Moreover it is difficult to see how the proposed scheme would either promote customs cooperation or improve the functioning of the single market.

Kindly note that the objective is that the Government Memorandum on this will be presented during the next IMC meeting.

Glenn

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**From:** Borg Glorianne at MEAIM  
**Sent:** 08 July 2014 13:32  
**To:** Psaila Fabian at MEAIM; Bason Stephanie at MEAIM  
**Subject:** Fwd: COM (2013) 884 - Proposal for a DIRECTIVE of the European Parliament and of the Council on the Union legal framework for customs infringements and sanctions