

Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the state of the customs union’

COM(2012) 791 final

(2013/C 271/12)

Rapporteur: **Mr SIMONS**

On 21 December 2012, the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union (TFEU), on the

Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the state of the customs union

COM(2012) 791 final.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 29 April 2013.

At its 490th plenary session, held on 22 and 23 May 2013 (meeting of 22 May), the European Economic and Social Committee adopted the following opinion by 139 votes with 7 abstentions.

1. Conclusions and recommendations

1.1 The Committee concurs with the broad thrust of the Commission communication. The EESC supports a solid customs union that can make a useful contribution to competitiveness and the smooth operation of the internal market in the European Union.

1.2 The Committee calls on the Commission, when drawing up an action plan, to take full account of the research and the internal and external assessments of the workings of the customs union that have been carried out in the last three years.

1.3 The Committee attaches great value to a customs policy that is implemented on the basis of uniform, transparent, effective, efficient and simplified procedures, enabling the European Union to take on its global competitors and ensuring that the rights and security of industry and European consumers, as well as intellectual property, can be protected. This should not result in Member States’ hands being tied when it comes to implementing customs legislation, to ensure that they can continue to take into account the volume of their trade flows.

1.4 Given the considerable importance that the Commission communication attaches to facilitating trade, it is essential that customs services’ operating capacities can be tailored to national trade flows in particular with a view to improving efficiency in order to simplify business as much as possible; what would

therefore be beneficial for the future are a form of harmonisation based on ‘best practices’ and a systems-based approach to controls.

1.5 The Committee would have liked the communication to provide greater detail on practical short- and medium-term measures. It only sets out the priorities for 2013 and, for the following years, appropriately refers to the blueprint that is currently being prepared and is due to be published in 2014.

1.6 The Committee urges that particular attention be paid to the fact that investment is needed to enable customs services to tackle fraud and crime in a more cost-effective manner and also to reduce delays in trade flows.

2. Introduction

2.1 Part Three of the Treaty on the Functioning of the European Union (one of the Lisbon treaties, abbreviated to TFEU) on Union policies and internal actions, contains two relatively short articles drafted in very general terms (Articles 26 and 27 TFEU) on the internal market, which is defined as ‘an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties’.

2.2 Only in 1986, with the Single European Act, was this area included in the European treaties (Article 8A of the Treaty establishing the European Economic Community (EEC Treaty)), in which the single market was due to be completed by 1 January 1993. This is - regrettably - yet to happen.

2.3 Fortunately, matters have moved much more quickly and quite differently with the customs union, which is a necessary precursor and essential component of an internal market: following on from the successful example of Benelux cooperation, this was included in the original 1958 EEC Treaty (Treaty of Rome).

2.4 In some twenty very detailed articles, the Treaty set out the course of action and the required timescale for the introduction within fifteen years - the maximum duration laid down for the transitional period (Article 8(5)) - of a 'prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect' applicable to 'all trade in goods' and 'the adoption of a common customs tariff in their relations with third countries'.

2.5 These provisions are stated not only in the Treaty of Rome (Article 9 EEC Treaty) but also, more than fifty years later, in the Lisbon Treaty (Article 28, TFEU). All these provisions had been implemented already - abolition of customs duties at national borders in 1968 and then a range of customs rules and rules on origin, culminating in the Community Customs Code of 1992 and the Common Customs Tariff of 1987. And so, instead of building on the twenty detailed articles contained in the Rome Treaty, the Lisbon Treaty made do with three short articles on customs union (Articles 30-32 TFEU).

2.6 In addition to the legal bases referred to above, legal instruments in specific areas, including regulations on the enforcement of intellectual property rights, drug precursors, cultural assets, cash controls, market surveillance, and legislation protecting individuals and the environment, enable customs services in the European Union to enforce these rules.

2.7 As stated in Article 3 TFEU, customs union falls within the exclusive competence of the European Union, as defined in Article 2(1) TFEU. Responsibility for implementing customs legislation falls to the Member States (N.B. the single market is a competence shared between the European Union and its Member States, as stated in Article 2(2) TFEU).

2.8 The added value of customs union is illustrated in particular by the following figures from the European Commission: 17 % of world trade is handled by the European customs services, with a value of EUR 3 300 billion annually.

3. The Commission communication

3.1 On 21 December 2012, the Commission published its communication on the state of the customs union because, half-way through its term of office, the Commission wishes to

evaluate the current situation, which of its objectives have been achieved and what are the challenges for the future.

More specifically, the Commission states that the aim of issuing this communication is to:

- highlight the value added and fundamental importance of the services that the customs union provides as a foundation for growth, competitiveness and security of the Single Market and the European Union;
- acknowledge that the customs union is facing challenges that require a European response; and
- outline a course of action to counter these challenges and provide a more performing, robust and unified customs union by 2020.

3.2 Within these objectives, the Commission regards the communication as a starting point for a discussion on three important points:

- completing the modernisation started in 2003 by finalising and adopting the new Community customs code and the relevant delegated and implementing measures and by ensuring the targeted implementation thereof by the Member States;
- completing the gap analyses and identifying the priorities to be tackled. The Commission carried out an internal self-assessment in this area a few years ago and an external assessment will soon be published on the workings of the customs union;
- making changes to the governance structure, with a view to making the customs union more efficient and effective. The Commission plans to publish a blueprint for reform in this area by 2014.

3.3 The Commission calls on the Council and the European Parliament to:

- complete the modernisation of the customs union without delay;
- engage in dialogue with relevant stakeholders, taking account of the results of recent internal and external evaluations and gap analyses, to establish the priorities for the customs union;

— governance; reform the roles and responsibilities of Member States and the Commission regarding the overall operational management of the customs union. The next steps should involve a blueprint for the reform by 2014.

3.4 In its communication, the Commission observes that Member States are on their own no longer able to effectively address the challenges of increasing globalisation. It considers that globalisation calls for more European unity, which makes more integration essential.

4. General comments

4.1 The Committee welcomes the Commission's mid-term publication of this communication on the current state of the customs union. The Committee also stresses the great importance of this customs union for the EU, in particular for growth, competitiveness and the security of the internal market.

4.2 The EESC notes that the European Union faces both external and internal challenges, which it must address.

4.2.1 The external challenges include increasing trade flows, new and complex supply chains, changes in competitive pressure, a rise in crime, including fraud and terrorism, and the expectations of other enforcement agencies for which the customs services carry out tasks.

4.2.2 As regards internal challenges, the Committee notes the inefficiencies and shortcomings arising from differences in implementation by the 27 Member States, with each Member State for example developing its own IT systems, using different working methods and the considerable differences in levels of training, which prevents Member States from applying European legislation in a uniform manner. This situation is made worse by the ongoing economic crisis.

4.3 The Committee deems it essential that customs policy be implemented on the basis of uniform, transparent, effective, efficient and streamlined procedures, enabling the European Union to take on its global competitors and ensuring that the rights and security of European businesses and consumers and intellectual property can be protected.

4.4 The EESC has in a recent opinion⁽¹⁾ already made a recommendation on this matter and, given its importance, repeats this forcefully above.

4.5 The Committee also points out, just as emphatically, that this should not result in Member States' hands being tied when it comes to implementing customs policy, so that they can continue to take into account the volume of the relevant trade flows. In this connection, the Committee underlines that the Member States have stepped up measures to facilitate trade, moving to paperless formalities, simplifying procedures and implementing authorised operator status.

4.6 Harmonisation should therefore be based on 'best practices' and not on an average European level.

4.7 The Committee also deems it desirable, if the aim is to work in a cost-efficient, results-oriented manner (in financial terms too, with regard to revenues) and to make genuine progress, for controls to be carried out not on a transaction-by-transaction basis but under a systems-based approach underpinned by risk assessment.

4.8 Furthermore, in its conclusions, the Competitiveness Council of 10 and 11 December 2012 stressed the need 'to further promote uniform application of customs legislation and modern and harmonised approaches to customs controls while allowing, where appropriate and bearing in mind the implications for the operators and for Member States, flexibility for national solutions' ⁽²⁾.

4.9 The Council also stresses the need 'to enhance cooperation with other agencies both at the national and EU level in the areas of security, health, safety and the environment, as well as with international partners whilst respecting the division of competence between the EU and Member States in this area' ⁽³⁾.

4.10 The Committee also shares the Commission's view that the customs union can only progress if a mechanism is put in place to measure and assess its performance.

4.11 The Committee points out, however, that in addition to the stringent customs procedures, there may be other barriers, such as inadequate infrastructure at the EU's external borders, which prevents the smooth flow of goods. Because this issue also involves third countries, joint solutions should be sought initially.

⁽²⁾ Conclusions on the Progress on the Strategy for the Evolution of the Customs Union, 3208th Competitiveness Council meeting, Brussels, 10 and 11 December 2012.

⁽³⁾ Idem.

⁽¹⁾ OJ C 229, 31.7.2012, pp. 68-71.

5. Specific comments

5.1 The Committee is concerned to note the growing disparity between the constantly increasing workload and the continuous fall in the number of customs staff. Despite the fact that many tasks are now automated, the workload for customs officials is greater than ever. Much greater attention should be paid to this issue, in which basic and ongoing training also has an important role to play.

5.2 Ultimately, the Committee would envisage the creation of a European customs training college, to bring customs officers from the Member States up to the necessary and desired level.

5.3 The EESC considers supply chain security and risk management to be of key importance to the customs union. A Committee opinion will also soon be available on the relevant Commission communication, which was published recently (COM(2012) 793 final; INT/681, rapporteur: Mr Pezzini).

5.4 Similarly, the Committee looks forward to seeing the Commission's proposals for tackling the problems arising from the different approaches to infringement of EU customs legislation and the application of sanctions, even if only on the grounds of equal treatment. It should be borne in mind that for Member States, amending national sanction arrangements within their own customs and criminal law is a sensitive matter.

5.5 As a first step, the Committee suggests the closer approximation of types of offences, as already applies to road transport ⁽⁴⁾.

5.6 The Committee welcomes the Commission proposal for a set of standard procedures to be included in future laws to facilitate the enforcement by customs of laws imposing prohibitions and restrictions on imported and exported goods.

5.7 The Committee would have liked the Commission communication to be more specific about the impact of its proposals in terms of the regulatory and administrative burden.

5.8 Better performance of customs tasks is crucial. Cooperation between customs administrations should therefore be stepped up, staff given greater powers and genuine European strategies designed to combat fraud. Some situations can be envisaged in which it might also be desirable for certain tasks and activities to shift from each individual Member State to common institutions, either linked to the Commission or run by the Member States jointly, if, for example, major financial savings can thereby be made and/or if customs tasks can be made easier to carry out.

5.9 The Committee would also have expected to see more background information in the communication. Regrettably no such information is provided, which makes it difficult to evaluate the communication properly. Fortunately, as stated explicitly by the Commission representatives, the upcoming legislative proposals will be accompanied by an impact assessment.

5.10 The Committee shares the Commission's concern that the limits of efficiency and effectiveness have been reached with the current governance of the customs union, specifically the common processes. It believes that customs services must have a modern and efficient governance system if their work is to remain effective and cost-efficient.

5.11 The Committee notes, furthermore, that even in the current economic crisis, customs services must be provided with sufficient financial resources, to upgrade IT systems, for example, to enable them to combat fraud and crime effectively.

Brussels, 22 May 2013.

The President
of the European Economic and Social Committee
Henri MALOSSE

⁽⁴⁾ Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC.