

European Commission adopts new regulation regarding stricter Authorized Economic Operator compliance record criterion

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Executive summary

The European Commission (the Commission) published Implementing Regulation (EU) 2020/1727 (the regulation) on 18 November 2020.¹ This regulation amended the Union Customs Code (UCC) Implementing Regulation² with regard to certain rules on the Authorized Economic Operator (AEO) provisions.

These changes were made to ensure uniform implementation of the criterion of article 39(a) of the UCC³ regarding infringements and criminal offenses made by the applicant or by persons linked to the applicant of an AEO authorization.

Prior to this amendment, the compliance criterion was met when no serious infringement or repeated infringements of customs legislation and taxation rules were committed and there was no record of serious criminal offenses relating to their economic activity. The revised article states that a decision taken by an administrative or judicial authority concluding serious infringements or serious criminal offenses is sufficient to no longer meet the compliance record criterion.

Detailed discussion

Background

To ensure uniform implementation of the criterion set forth in article 39(a) of the UCC on the absence of any serious or repeated infringements of customs legislation and taxation rules, certain provisions of article 24 Implementing Regulation UCC need to be clarified according to the Commission.

The Commission stated its reasoning for the amendment through three concepts requiring determination:

1. The criterion set forth in article 39(a) of the UCC is met where no administrative or judicial authority has taken a decision concluding that one of the persons described in the new article 24(1)(b) has committed such infringements over the previous three years. The Commission emphasized that the infringements themselves must have occurred in the last three years even though authorities may conclude on those facts after the three years have passed.
2. The relevant infringements are those related to the person as described in the new article 24(1)(b)'s economic activity.
3. Which persons, other than the applicant, need to be assessed with respect to the criterion set forth in article 39(a) of the UCC.

The regulation came into force on 9 December 2020.

Amendments

The first paragraph of article 24 Implementing Regulation UCC is replaced by the following:

1. The criterion laid down in Article 39(a) of the Code shall be fulfilled if,
 - a) *there is no **decision taken by an administrative or judicial authority** concluding that one of the persons described in point (b) has committed, over the last three years, a serious or repeated infringements of customs legislation or taxation rules in relation to his-her economic activity; and*

b) *none of the following persons has a record of serious criminal offence in relation to his/her economic activity including the applicant's economic activity, where applicable:*

- i) *the applicant,*
- ii) *the employee(s) in charge of the applicant's customs matters, and*
- iii) *the person(s) in charge of the applicant or exercising control over its management.*

In addition to the amendment that a decision is taken by an administrative or judicial authority, the explicit distinction between natural and non-natural persons has been removed.

Impact on businesses

With these amendments, the Commission seems to tighten its criteria with regards to the fulfillment of the compliance record criterion. A decision taken by an administrative or judicial authority concluding serious or repeated infringements or a record of serious criminal offense, would lead to not meeting the compliance record criterion. Under this amended legislation it seems that an additional assessment including a penalty could result in non-fulfillment, while the AEO has not been convicted or found guilty yet as the decision of an administrative or judicial authority is still revocable.

The amendments may have a significant impact on businesses during the application process, and for AEO authorized companies as such a decision may lead to revocation, withdrawal or suspension of the AEO authorization and potentially the revocation, withdrawal or suspension of other customs licenses linked with the AEO authorization. Revocation, withdrawal or suspension of the AEO license results moreover in the situation that companies are no longer entitled to enjoy the AEO benefits, make use of customs simplifications and apply mutual recognition.

Finally, it is our experience that in practice business partners regularly request the AEO status from their partners in the supply chain as it serves as a quality mark from the customs authorities. Revocation, withdrawal or suspension of the AEO license could therefore jeopardize the relationship with those partners. If an AEO authorization is permanently lost (i.e., by revocation or withdrawal), a three-year period will need to elapse after this fact before a new application for an AEO authorization can be submitted.

Endnotes

1. Commission Implementing Regulation (EU) 2020/1727 of 18 November 2020 amending Implementing Regulation (EU) 2015/2447 as regards certain rules on Authorised Economic Operators.
2. Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code.
3. Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, *OJ L 269*, 10.10.2013, p. 1-101.

For additional information with respect to this Alert, please contact the following:

EY Global Trade

▶ Jeroen Scholten	jeroen.scholten@nl.ey.com
▶ Walter de Wit	walter.de.wit@nl.ey.com
▶ Aron Nagy	aron.nagy@hu.ey.com
▶ Robert Böhm	robert.boehm@de.ey.com
▶ Pedro Gonzalez-Gaggero	pedro.gonzalez-gaggero@es.ey.com
▶ Marc Bunch	mbunch@uk.ey.com
▶ Sally Jones	sally.jones@uk.ey.com
▶ Neil Byrne	neil.byrne@ie.ey.com
▶ Franky De Pril	franky.de.pril@be.ey.com

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