



Newsflash

Decrees on direct and indirect customs representation published

The long expected Royal and Ministerial decrees on direct and indirect customs representation were published on 6 April 2016:

- Royal Decree of 13 March 2016 establishing the customs procedures and the modalities for which direct and indirect representation can be applied (O.J. 6.04.2016, 22724 – 22725);
- Royal Decree of 13 March 2016 establishing the requirements for managing the register for customs representatives, the proof of sufficient knowledge of customs, VAT and excise regulations and professional qualifications to act as a customs representative (O.J. 6.04.2016, 22726 - 22731);
- Royal Decree of 18 March 2016 establishing the conditions under which the enrolled persons in the register for customs representatives may be registered in said register (O.J. 6.04.2016, 22732 – 22733).

What does it mean for you?

Customs representation means that a person is appointed by another person to carry out acts and formalities required under customs legislation in dealings with customs authorities.

The European customs legislation (also the Union Customs Code, which becomes fully applicable as from 1 May 2016) foresees that a representation can be exercised in two ways:

- Direct - the customs representative would act in the name of and on behalf of another person;
- Indirect - the customs representative would act in his or her own name but on behalf of another person.

The two concepts differ from each other as the (potential) liabilities for an indirect representative are far bigger than the (potential) liabilities for direct representation.

For several years, customs representation in Belgium was only possible under the indirect method. As this was not in line with European customs legislation, Belgian legislation finally adapted the General Law on Customs and Excises (hereafter GLCE) with the law of 12 May 2014 (O.J. 20 June 2014, 4th Edition, 46883 – 46928).

These changes in the GLCE, however, remained a dead letter because decrees needed to be adopted to execute the adapted provisions in the GLCE.

The necessary decrees are now adopted, making it possible for Belgian customs representatives to practise direct representation. However, it remains to be seen whether the customs authorities will still apply a circular letter published in July 2012 (D.I. 530.9, D.D. 312.592) which erodes the limited liabilities for direct representatives.

The decree publications set out that direct and indirect customs representations are possible for all customs procedures, whether simplified or normal.

A customs representative must still be registered with the customs authorities in the Register of Customs Representatives (Art. 127 GLCE).

A customs representative must also prove that he/she has sufficient knowledge of customs and excise law through:

- A higher education diploma of at least 1 year, in which customs, excises and VAT law was substantially covered in the curriculum
- An evening or weekend education diploma of 2 years, in which customs, excises and VAT law was substantially covered in the curriculum
- A diploma of a specialised curriculum covering customs, excises and VAT law, as recognised by the customs authorities Administrator-general
- A statement of honour by which a person declares that he/she has lodged customs declarations for an uninterrupted period of 3 years

The new Union Customs Code foresees that Authorised Economic Operators should also prove their professional qualifications in customs law. It remains to be seen whether the Belgian customs authorities will equally apply the above mentioned proofs.

What to do?

Customs representatives must assess if they meet the new criteria to continue practising customs representation.

This is also an opportunity to revise existing agreements on customs representation in order to shift towards direct representation.

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