



Brexit Alert for Legal Counsel Changes to Customs Legislation

Without knowing when (or whether) Brexit will take place, the Belgian authorities are aiming to fully prepare for a potential “no-deal” scenario. In addition to operational preparations, the authorities are approving draft legislation at different levels to govern a transition in case a “no-deal” Brexit occurs.

The draft bill regarding the United Kingdom’s withdrawal from the European Union, which was approved in the Federal Chamber on 27 March 2019, includes relevant changes for economic operators in the field of customs and trade.

Extension of the customs range

Currently, the customs range covers 5 kilometres inland from the Belgian coastline, the customs seaports and airports, including a 250 metre radius around each of the two infrastructures.

After the Brexit law’s implementation at federal level, the customs range will extend to a 10 kilometre radius around the customs ports and airports. This will allow holders of an authorisation for extended controls by customs officers to operate in that area 24/7. The conditions to grant such an authorisation are yet to be determined.

Good faith in customs

With violations of customs legislation, the economic operator’s good faith is currently not taken into account in the violation’s assessment. Unless a settlement is reached, all punishable infringements on customs and excise laws will be brought

before the criminal courts in Belgium, in accordance with Article 281 of the General Law on Customs and Excise.

If a “no-deal” Brexit occurs, a new provision will be activated to cover Authorised Economic Operators (AEOs) when a violation of customs legislation is a result of actions completed in good faith. If an economic operator can prove that it acted in good faith, the customs officer will waive the penalty. Actions where there was no intention to evade taxes or avoid prohibition, control and/or restrictive measures are considered as completed in good faith.

It should be noted that economic operators must hold AEO authorisation and appropriately prove to customs officers that they acted in good faith. Furthermore, this burden of proof may bring difficulties in practice, and the new provision will only apply for one year after its entry into force.

Laga can help

The customs and trade team has proven expertise in managing controversies with customs authorities and between trade partners. It represents clients before national and international courts and other dispute settlement bodies. The team is readily available to assist with any customs and trade related dispute queries.

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