

Tax & Legal Weekly Alert

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Order no. 96/2016 for the approval of the performance criteria for the establishment, appointment and equipping of the voluntary and private services for emergency situations

Order no. 96/2016 for the approval of the performance criteria for the establishment, appointment and equipping of the voluntary and private services for emergency situations has replaced the following orders, which have been repealed as of the date of entering into force of the present order. The repealed orders are: **Order no. 158/2007** for the approval of the performance criteria for the establishment, appointment and equipping of the private services for emergency situations, **Order no. 718/2005** for the approval of the performance criteria regarding the organizational structure and the equipping of the voluntary services for emergency situations and **Order no. 250/2010** regarding the organization and conduct of the training schedules of the prevention specialists part of the voluntary services for emergency situations.

The European Court of Justice ruled that repayment of import duties entail the payment of interest

The European Court of Justice ruled in a decision of January 18, 2017 (Case C-365/15) that the repayment of import duties that have been imposed by a void regulation and unduly paid by an importer, entail the obligation for the customs authorities to pay late payment interest.

Order no. 96/2016 for the approval of the performance criteria for the establishment, appointment and equipping of the voluntary and private services for emergency situations

The new order regulates the performance criteria for the establishment, appointment and equipping of the voluntary and private services for emergency situations

Order no. 96/2016 for the approval of the performance criteria for the establishment, appointment and equipping of the voluntary and private services for emergency situations (the "Order") was published in the Official Gazette no. 496 dated 23rd of June 2016 and entered into force on 23rd of July 2016.

Applicability

The performance criteria stipulated in the present Order are not applicable to certain fields expressly provided therein, namely in the nuclear field, in relation to railways, subways, airports, seaports, river ports and underground mining exploitations. Likewise, with respect to the management of the underground parking, the present Order shall be supplemented by the specific legislation in force.

The authorities of the local public administrations and the leaders of the economic operators/ institutions with attributions in this field shall be responsible for verifying the fulfillment of the obligations stipulated in the present Order.

The voluntary and private services for emergency situations constituted prior to the entering into force of the present Order have the obligation to comply with the performance criteria provided therein within a 12-month period starting with the effective date of the Order. To this end, the issuance of an incorporation approval and of an approval for the competency areas must be requested.

The obligation to establish own voluntary or private services

The Order regulates two different categories of voluntary and private services, namely:

- **category C1** – services which are constituted by a head of service, a compartment for prevention or prevention specialists and at least one specialized team;
- **category C2** - services which are constituted by a head of service, a prevention department, one or more intervention teams which shall be formed out of at least two intervention groups which contain fire trucks with water and foam and specialized teams;

Considering the above-mentioned categories, the obligation to constitute **category C1** services is incumbent for the economic operators and institutions, which have under their management the following:

- buildings or assembly of buildings and ancillary premises used for commerce having a gross area exceeding 1,500 sq. m.;
- high or very high buildings, except for residential buildings;
- buildings or assembly of buildings used for production and/or as warehousing with a gross area between 10,000 and 50,000 sq. m., having high and very high fire risk;
- buildings or assembly of buildings used for tourism with more than 200 number of accommodations;
- building used for sport activities and shows with over 600 seats;
- university-level educational buildings or assembly of buildings, including the accommodation area associated thereto having at least 1,000 students, with full-time learning;
- buildings or assembly of buildings used for health with a number of beds equal or higher than 100;
- buildings or assembly of buildings used for culture, with a number of seats higher than 600.

The **C1 category** of services is also mandatory for any economic operator which is subject to the legislation regarding the control of major accidents in which dangerous substances are involved and which perform all of its activities within

buildings (and installations) protected with automatic fire extinguishing equipment according to the fire safety plans and/or safety report.

The obligation to constitute **C2 category of services** is incumbent to economic operators subject to the legislation regarding the control of major accidents in which dangerous substances are involved as well as for those managing buildings or assembly of buildings with a gross area exceeding 50,000 sq. m. with high or very high fire risk.

The Order provides an **alternative** for the economic operators and institutions, which are covered by the mandatory provisions of the service categories described above. Hence, in case the economic operators or the institutions do not want to establish their own services, they have the possibility to enter into agreements (as per the applicable law) with voluntary services, economic operators or institutions having their own service, or with service providers companies.

Approval of the private or voluntary service

The incorporation approval of the voluntary or private service is issued by the county inspectorate under whose jurisdiction the headquarters/ premises of the public local administrative authority/ the economic operator/ the institution is located.

The approval for the competency areas is issued by the county inspectorate under whose jurisdiction the private service requests to perform its activity. The approval shall be requested separately for each area of competence.

Any extension or downturn of the activity performed as well any winding-up of the private or voluntary service shall be performed following the issuance of an approval in this respect in accordance with the competency areas described above.

Special provisions regarding the private services

An economic operator or an institution cannot simultaneously operate a private service and employ a service provider company. As regards the service provider company, such company has to ensure that, in its area of competence, it covers with its intervention group the interventions necessary for all types of identified risks.

The competency area of a private service comprises the gross area of a building or assembly of buildings, including the corresponding land, managed by the economic operator or by the institution that established it or, as the case may be, with whom an agreement was concluded in relation thereto.

The prevention department must be formed of at least 3 specialists. The interventions must be ensured 24 hours a day, thus, the intervention group and the team specialized in extinguishing fires have to be organized in shifts. For each approved competency area the presence of a specialized team for each identified risks must be ensured during the working hours.

Moreover, the service provider companies must own at least two fire trucks of medium or high capacity in working condition and must ensure that all the water and foam fire trucks have a valid use title.

Sanctions

The non-compliance with the criteria provided for in the Order triggers the annulment of the incorporation approval and of the approval for the competency areas as detailed below:

- the incorporation approval is annulled in the following situations:
 - in case of failure to ensure the category of private service in accordance with the services classification (i.e. category C1 services and category C2 services);
 - in case of not holding the water and foam fire trucks corresponding to the category of the private service and to the competency area;
 - in case the service provider company performs its activity in an area of competence for which it does not have an approval;

- the approval for the competency area is annulled in the following situations:
 - in case of not maintaining the efficiency and capacity of intervention set out by the Order;
 - in case of failure to observe the obligation to permanently maintain the owned fire trucks (in case of category C2 services) in the competency area.

Functioning without approval

For specific activities, such as sport competitions, cultural-artistic events, festivals and the like, the private and voluntary services can ensure the prevention and intervention activities without an approval for the competency area. However, these specific activities should not affect the intervention capacity and the layout of the intervention technical resources in the approved competency areas.

For further questions regarding the aspects mentioned in this alert, please contact us.

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The European Court of Justice ruled that repayment of import duties entail the payment of interest

Subsequent to the partial annulment by the (EU) Regulation No. 1472/2006 imposing a definitive anti-dumping duty on certain footwear originating in China and Vietnam, Wortmann, a German company (hereinafter "the Company"), claimed a repayment of the antidumping taxes paid on releasing into free circulation goods that have been affected by the aforementioned Regulation. The Company also claimed the late payment interest caused by the losses from the impossibility to dispose of these amounts.

German customs authority has repaid the amounts of anti-dumping duties, but rejected the request for payment of interest. Following this rejection, the Company has addressed to the national court, which, in turn, has addressed a question for a preliminary ruling to the European Court of Justice (hereinafter the "ECJ").

After the examination, ECJ ruled that the refusal of reimbursement is contrary to the principles of EU law and that the customs authorities' obligation to reimburse the amounts unduly paid by an importer, as anti-dumping duties imposed by a void regulation, extends to the interest on these amounts. The interest will be due upon payment of antidumping taxes by the importer.

What does this mean for you?

Companies receiving import taxes reimbursements due to the annulment of the regulation which imposed the import taxes aforementioned, have the opportunity to request interest on these amounts, claiming losses resulting from the inability to dispose of these amounts.

What to do?

If your company has undergone or will undergo such reimbursement of import duties, you can request the competent customs authorities for a late payment interest.

For further questions regarding the aspects mentioned in this alert, please contact us.

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