Commission Delegated Regulation (EU) 2018/1118 of 7 June 2018 amending Delegated Regulation (EU) 2015/2446 as regards the conditions for a reduction of the level of the comprehensive guarantee and the guarantee waiver

COMMISSION DELEGATED REGULATION (EU) 2018/1118

of 7 June 2018

amending Delegated Regulation (EU) 2015/2446 as regards the conditions for a reduction of the level of the comprehensive guarantee and the guarantee waiver

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code[(1)], and in particular Article 99 (c) thereof,

Whereas:

(1) Article 95(1) of the Regulation (EU) No 952/2013 lays down the conditions that must be satisfied by an economic operator to be authorised to provide a comprehensive guarantee to secure the payment of the customs debt and of other charges. Article 95(2) of the Regulation (EU) No 952/2013 lays down further criteria, which the economic operators must fulfil in order to be authorised to provide such a comprehensive guarantee with a reduced amount or to have a guarantee waiver in relation to customs debts and other charges which may be incurred. One of those criteria is the criterion of financial solvency[(2)]. This criterion is deemed to be proven where the applicant has good financial standing, which enables him to fulfil his commitments with due regard to the characteristics of the type of business activity concerned.

(2) In the context of an application for the reduction of the comprehensive guarantee or for a guarantee waiver, customs administrations need to assess if the applicant has the capacity of paying the amount of the customs debt and of other charges should this become necessary.

(3) Article 84 of Commission Delegated Regulation (EU) 2015/2446[(3)] lays down the conditions to be fulfilled by an economic operator in order to be authorised to use a comprehensive guarantee with a reduced amount or a guarantee waiver. In addition to the other conditions established on the basis of the criterion on financial solvency, it requires the applicant to demonstrate that he has sufficient financial resources to meet his obligations in relation to the amount of the customs debt and of other charges which may be incurred and which are not covered by the guarantee. However, practical experience from the implementation of Regulation (EU) No 952/2013 and of Delegated Regulation (EU) 2015/2446 shows that this condition is too restrictive as it is interpreted as limited to having the necessary liquidity available. Liquidity does not always represent the sole capacity of an economic operator to pay the amount of customs

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2018/1118. (See end of Document for details)*

debt or other charges which is not covered by the guarantee. Other elements such as assets easily convertible could also be taken into account. Therefore it is necessary to take the liquidity element out as a stand-alone condition and provide for clarification so that the assessment of the capacity of the operator to meet his obligations to pay the amount of the customs debt and of other charges not covered by the guarantee is integrated in the assessment of the financial standing of the applicant.

(4) At the same time and in order to ensure uniform application of these rules, it is necessary to clarify that the assessment of the condition on 'sufficient financial standing' in relation to the capacity of the economic operator to pay the amount of the customs debt and of other charges that may be incurred and that are not covered by the guarantee is specific to the evaluation of the applications for a comprehensive guarantee with a reduced amount or a guarantee waiver (simplification). This is necessary to define the limits of this assessment in the framework of the comprehensive guarantees with all levels of reduction.

(5) In situations where the reference amount established in accordance with Article 155 of the Commission Implementing Regulation (EU) 2015/2447[(4)] would be disproportionate in relation to the amounts of the potential customs debts which are likely to be incurred, it is necessary to foresee the possibility for the customs authorities to take into account the risk of incurrence of the customs debt, at their discretion, in order to decide on the level of reduction.

(6) It is necessary to clarify as well that AEOs should not be subject to duplication of assessment procedures in accordance with Article 38(5) of Regulation (EU) No 952/2013 while it remains possible for customs authorities, before granting specific simplifications AEOs may wish to benefit from, to check compliance with the specific requirements for that simplification,

HAS ADOPTED THIS REGULATION:

Article 1

Article 84 of Delegated Regulation (EU) 2015/2446 is amended as follows:

(1) in paragraph 1, point (f) is deleted;

(2) in paragraph 2, point (g) is deleted;

(3) in paragraph 3, point (l) is deleted;

(4) the following paragraphs 3a and 3b are inserted:

3a. When verifying if the applicant has sufficient financial standing for the purpose of granting of an authorisation to use a comprehensive guarantee with a reduced amount or a guarantee waiver as required by paragraphs 1(e), 2(f) and 3(k), the customs authorities shall take into account the ability of the applicant to fulfil his obligations of paying his customs debts and other charges which may be incurred, not covered by that guarantee.

If justified, the customs authorities may take into account the risk of incurrence of those customs debts and of other charges having regard to the type and volume of the