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European Court of Justice: Information to be provided by applicants for authorised economic status under the Union Customs Code

In its judgement of 16 January 2019, the European Court of Justice (ECJ) held that the information required by the customs authorities from legal persons applying for authorised economic status (AEO) under the Union Customs Code - in particular the tax identification numbers and the name of the responsible tax offices of certain employees of the applicant – was lawful within the ambit of Directive 95/46/EC and Regulation (EU) 2016/679 governing the protection of individuals with regard to the processing of personal data and on the free movement of such data.

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The gathering of information was limited, however, to information on individuals who were in charge of the applicant, or who exercised control over its management and to those who were in charge of the applicant's customs matters.

Background

The Union Customs Code provides for certain simplified customs procedures for persons with AEO status. Such persons, depending upon the type of authorisation granted, enjoy a more favourable treatment than other economic operators in respect of customs controls, including fewer physical and document-based controls. One of the criteria for granting such status is the absence of serious or repeated infringements of customs legislation or taxation rules and the absence of a record of serious criminal offences relating to the economic activity of the applicant.

In relation to a change of conditions regarding certain customs authorisations, the German central customs authorities asked Deutsche Post to identify in detail the members of its advisory and supervisory boards, its principal managers (managing directors, divisional heads, accounting managers, those in charge of customs matters, etc.) and the persons in charge of managing customs matters or those responsible for dealing with such matters, by sending, inter alia, the tax identification numbers of all those individuals as well as the details of the tax offices responsible for their taxation.

Deutsche Post challenged this request, claiming, inter alia, that the group of individuals affected was larger than the group of persons required by the regulations. The Düsseldorf Tax Court referred a number of questions to the ECJ. The referring court wanted to know if the transmission of such data was lawful, particularly because the data was originally collected for the purposes of levying income tax.

Judgment

The Court first took issue with the wide list of individuals for whom the central customs authorities had requested information. This was far wider than the circle of individuals required in the relevant provision itself. That provision set out an exhaustive list, namely the applicant, the person in charge of the applicant or exercising control over its management and the employee in charge of the applicant's customs matters. The list did not include the advisory boards or supervisory boards of the applicant, its divisional heads, (except those in charge of customs matters), accounting managers or persons whose duties involve dealing with customs matters.

Next the Court reviewed the issue of whether the processing of the data was lawful under the terms of Directive 95/46/EC and Regulation (EU) 2016/679. The Court confirmed that tax data constituted personal data and emphasised that - to comply with the legislation – the data may only be collected for specified, explicit and legitimate purposes and must be adequate, relevant and not excessive in relation to those purposes. Furthermore, the requirement that processing of personal data be fair entailed an obligation to inform the data subjects of the transfer of that data by customs authorities for the purposes of its subsequent processing.

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On the issue as to whether the measure itself was adequate and relevant, the Court drew upon the Advocate General's opinion, where he noted that the fact of the customs authorities granting AEO status to an operator is the equivalent, in reality, of delegating to that operator some of the customs legislation control functions. Consequently, so the ECJ, it was important that, before AEO status is granted, the authorities were in a position to obtain information on the reliability of the applicant with regard to compliance with the customs legislation and on the reliability of the specified individuals with regard to their compliance with the customs legislation and the tax rules applicable to them.

Finally, the Court ruled that the information required in the regulations did not go over and above what was necessary. The personal data collected by those authorities appeared to be limited to what was necessary for achieving the specified objective, as the data requested was restricted and did not, per se, reveal to the customs authorities sensitive information on personal circumstances, such as marital status or religious affiliation, or the income of the individuals concerned.

Whilst the collection of the tax identification numbers of the individuals and details of their responsible tax offices might, in principle, enable the customs authorities to have access to personal data that had no connection with the economic activity of the applicant for AEO status, it was clear to the Court that the rule regarding the existence of previous infringements did not restrict the test to the economic activity of the applicant.

Considering that the customs authorities were delegating certain of their own functions to the applicant, the ECJ considered that it was clear that the examination of the applicant's compliance with the customs legislation must be seen as necessary. Equally clear to the Court was, having regard to their level of responsibility within that applicant's organisation, that an examination of whether, the specified individuals themselves had committed any serious infringement or repeated infringements of that legislation or of the tax rules must also be seen as essential. This was the case whether or not those infringements had any connection to the economic activity of that applicant.

Source: European Court of Justice judgment of 16 January 2019 (C-496/17 – Deutsche Post –v- German Central Customs Authorities.)

Keywords

Authorised Economic Operator, Customs simplifications, Data processing, Personal data, Union Customs Code