

For constructions near the customs line a case-by-case verification

The Customs must carry out an inspection and apply certain general criteria to determine whether or not the specific authorization is required.

Through memorandum no. 24499 of 6 April 2018, published yesterday, the Customs Agency has expressed its view with regard to a question on which it has been asked to provide an unambiguous interpretation, to apply throughout the national territory, about the exact identification of the “area of customs oversight”.

This interpretation would allow operators to know in advance whether or not, on the basis of the precise location of the buildings to be built and / or modified, the authorization pursuant to art. 19 paragraph 1 of the Legislative Decree. n. 374/90 is necessary.

Let us recall that under such law, which applies to buildings in proximity to the customs border and in the territorial sea, “it is prohibited to realize constructions and other works of any kind, whether temporary or permanent, or establish floating structures near the customs border and in the territorial sea, as well as to move or modify existing works, without the permission of the head of the customs district “.

The aforementioned authorization, the provision continues, “affects the issuance of any other authorization, in which such customs authorization must be mentioned”.

A breach of the prohibition triggers the application, by the head of the customs district in charge of the territory, of an administrative penalty in an amount equal to one-tenth of the entire value of the building.

Furthermore, “the head of the customs district, after ascertaining the existence of a significant risk to tax interests, not otherwise remediable under the offender’s responsibility and at his expense, orders, after consulting with the technical finance office of the customs and indirect taxes department, competent for the territory, the demolition of the building to the offender’s detriment and at his expense”.

On this topic, the Agency, after addressing the notion of the customs border (Article 1 of Presidential Decree 43/73), notes that, as regards the concept of “proximity of the customs line”, referred to in the first paragraph art. 19 of the cited Legislative Decree no. 374/90, the

lawmakers have not provided specific parameters to which reference may be made for the correct application of the law.

For these reasons, the Agency recalls, among other things, court order no. 31 issued by the Constitutional Court n. 31 of 21 February 2008, which stated that "... the identification and specification of the notion of" proximity "to the customs border entail a plethora of solutions depending on both the different geographic characteristics of the customs border itself and the multiple public interests which the contested provision is meant to protect, and therefore there exists no constitutionally mandatory solution capable of rigorously predetermining the concept of "proximity" ".

Consequently, taking into account the principles established in the Constitutional Court's order, the Agency points out, it is necessary for a case-by-case verification to be carried out by the competent Customs Offices, by means of a specific inspection and applying specific criteria, such as:

- the particular orographic configuration of the coastal stretch affected by the works;
- the presence of roadways;
- the transitability, observability and controllability of each section of the border.

For example, the construction of works located in the "valley" of the first roadway for public use (that is, between the customs border and the nearest public road) is to be considered, in principle, subject to the prior authorization of the competent Customs Office.

For "ordinary" maintenance works, no authorization is required

For the sake of thoroughness, the Customs Office adds that where the interventions referred to in art. 19 paragraph 1 of the Legislative Decree. 374/90 consist of "ordinary" maintenance works, that is, of mere interior renovation works (e.g. aesthetic works or reconstruction of the floorings), the prior authorization of the Customs Office is not required.

On the other hand, where "extraordinary" maintenance interventions are carried out that alter, modify or obstruct the controllability of the customs line, the achievement of prior authorization must always be considered necessary.