

Customs Update

Cancun 17/10/2016

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Topics

- **Cooperation between ship agents and customs** : just a buzzword or can it come with real mutual benefits?
- **Ship agent as a customs representative** : position of DG TAXUD
- **Liability of carriers and agents for customs entries** : link with art 124.7 UCC (position of DG TAXUD)
- **Various Topics**
 - PIF-directive
 - ICS 2
 - Guarantee waiver / reduction for temporary storage facilities

Cooperation ship agents - customs

WCO - SAFE Framework of Standards to secure and facilitate Global Trade – version 2018

“opportunities for customs, relevant government agencies and economic operators to work towards a **common goal of enhancing supply chain security** and efficiency, based on mutual trust and transparency”

“each customs administration will establish a partnership with the private sector in order to involve it in **ensuring the safety and security of the international trade supply chain**”

Cooperation ship agents - customs

WCO - Customs- business partnership guidance – 2015

“The role of **Trade/Business Associations** in customs-business partnership

- Play a key role in the development and implementation of customs policies and processes
- Enhance the transparency of the consultative process
- Communicate with the trade sectors
- Linkages between national and international associations
- Potential to mobilize private sector support and political engagement
-”

Cooperation ship agents - customs

WCO – memorandum of Agreement between WCO
and FONASBA– 27/05/2014

+100 WCO agreements...
(WSC, FIATA,...)

= Generic agreements
= Purely theoretical



Cooperation ship agents - customs

Cooperation agreement between customs and the Antwerp private port sector dd. 26/4/2018

Mix of 5 associations of intermediaries and service providers in maritime transport:

1. **ship agents,**
2. freight forwarders,
3. container terminals,
4. logistics providers,
5. warehouses,
6. conventional terminals,
7. ship owners.



Cooperation ship agents - customs

Differences: more practical →

- 1) Inspired by /linked to benefits for private sector
- 2) Important and continued role for the professional associations

“Framework agreement” to be elaborated at two sublevels:



- 1) Sub-agreement with professional associations
- 2) Tailormade one-on-one agreements with individual companies

Cooperation ship agents - customs

(1) Inspired by/linked to benefits for private sector:

- 1) Attracting customs competence centres in Belgium
- 2) Applying article 124.7 UCC (see further)
- 3) Placing focus of control on malafide operators
- 4) Including the principle of good faith in customs law
- 5) Revising the prosecution and sanctioning procedures (also administrative)
- 6) Cataloguing of fines
- 7) Avoiding infringements by improvement plans rather than by punishing them

- = the return

Cooperation ship agents - customs

(2) Important and continued role for the professional associations

- 1) Problem solving both inside and outside consultative bodies
- 2) Organising information events and training for members AND customs
- 3) Facilitating and encouraging members to become AEO-certified
- 4) Enhancing awareness and compliance)
- 5) Contributing to the implementation of correct customs procedures (incoming and outcoming)
- 6) Transferring all useful information both upwards/downwards
- 7) Organising compliance courses for members
- 8) Intervening personally with individual members in particular cases

= the investment

Liability of carriers and agents for customs entries

Misdeclaration in ENS/TSD

Strict liability for **carrier**

Became law in UCC

coordinated action Maersk / CMA / MSC

→ No reaction by Commission



Liability for **agent** “who was /should have been aware”

→ Letter of Susanne Aigner

Liability of carriers and agents for customs entries

Letter of Susanne Aigner /DG TAXUD head of unit 'customs legislation' dd. 15/4/2018

- 1) the agent is a **customs representative** when performing the customs related tasks under their responsibility (art 18/19 UCCC)
- 2) The person primarily responsible for the accuracy of a declaration , notification or application is the **declarant** (art 15(2) UCC)
- 3) These general responsibilities are **applicable to the customs representative**

Liability of carriers and agents for customs entries

4) Anyone who **represents** the person obliged to fulfill an obligation, can be considered the debtor of a customs debt, if this person **“was aware - or should reasonably have been aware”** (article 79(3)(b) UCC)

5) The circumstances in which a ship agent could be deemed to be aware, or reasonably ought to have been aware are **not further specified....**

However:

→ **good faith** is a guiding principle for the customs in the MS

→ **Article 124(7) UCC allows for the possibility of extinguishing the customs debt incurred pursuant to article 79 UCC** (customs debt incurred due to a non-compliance)

Liability of carriers and agents for customs entries

Mail from Fredrik Mogren / DG TAXUD legislative officer “customs legislation” dd. 27/9/2018 with regard to the application of article 124.7 UCC

2 conditions

- A person's behaviour did not involve any attempt at deception
- That person contributed in the fight against fraud

Ex: If the ship agent (...) contributed with information to customs that both showed that the ship agent had handled the goods in a non-deceptive way and that the **information also could help customs to find the person who attempted at deception** the part of the debt incurred relating to the ship agent could be extinguished.

- To be applied by the national Customs administration

Liability of carriers and agents for customs entries

Suggestion DG TAXUD

“If it can be shown that the ship agent handled **according to the Fonasba Code of Conduct and Quality Standard**, it would probably show that the ship agent did not act in a deceptive way.”

➔ have the FCoC and FQS accepted by the customs administration of the member states as a positive pro-active action in the cooperation between customs and trade in the fight against fraud

Further suggestion:

have your members keep a **“cooperation file”** with evidence of every piece of help or assistance that was rendered to the customs in the fight against fraud

PIF directive



- *Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law*

<https://eur-lex.europa.eu/eli/dir/2017/1371/oj>

Protection of the Union's Financial Interests (PIF) directive,
designed to protect the financial interests of the EU by common rules
for prosecution & sanctioning of crimes against EU finances (including
VAT fraud)

Not UK and Denmark – **to be implemented by MS April 2019**

Good faith / distinction between criminal and administrative offences
(categories of offences / infringements)









making it easier to recover misused EU funds → to be applied cross border
by a future European public prosecutor's office (EPPO)

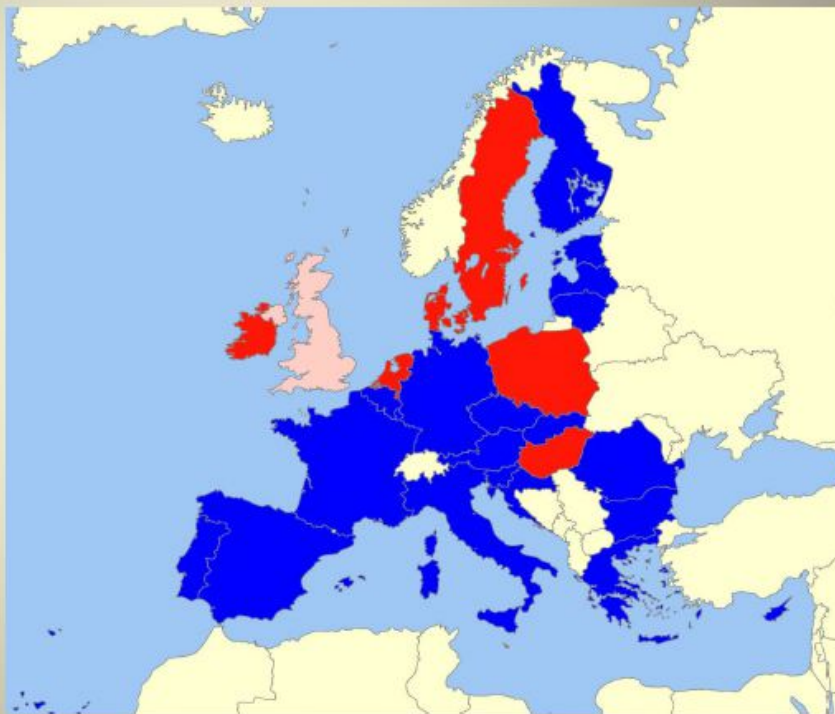
EPPO - Territory

Participating MSs

 AT	 BE	 BG
 CY	 CZ	 DE
 EE	 EL	 ES
 FI	 FR	 HR
 IT	 LT	 LU
 LV	 PT	 RO
 SI	 SV	

Non-Participating MSs

 DK	 HU	 IE
 MT	 NL	 PL
 SE	 UK	

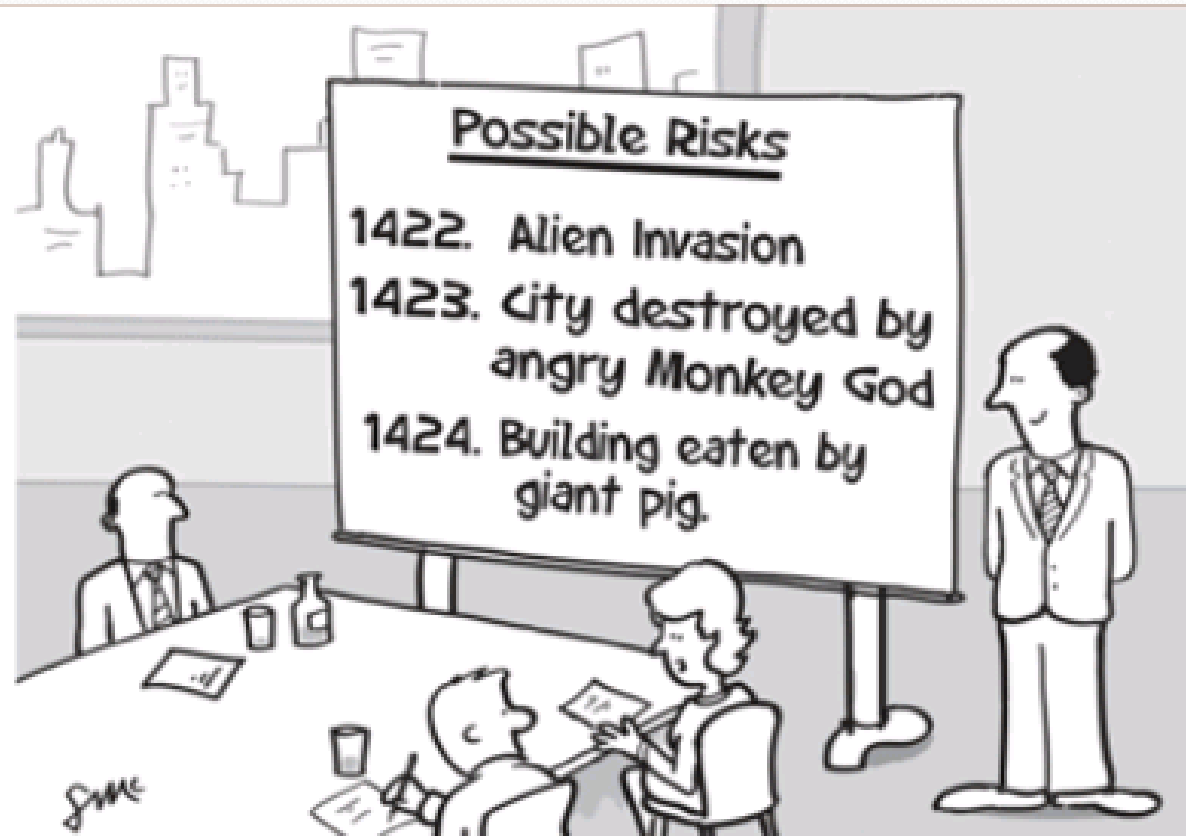


ICS 2

*Import **C**ontrol **S**ystem for advance cargo security risk assessment (ICS 2).*

- Political approval on 7/7/2018 by the EU Customs Policy Group (all Director Generals of the EU Member State customs administrations) and the European Commission
- **new EU Cargo Security Filing System**
 - applicable in all MS
 - applicable on all maritime cargoes brought into the EU as from **1/3/2024**
- **instrument for EU-wide risk analysis**





"Well he certainly does a very thorough risk analysis."

ICS 2

- characterised by a **multiple filing system** → ENS filing by:
 - **carrier** (master B/L level)
 - **NVOCC** (house bill of lading level)
 - **consignee**: ‘buyer’ / ‘seller’ information to be added when not in carriers or NVOCCs files)
- Storage of ENS data in a “**Common Repository**”(CR) (centrally operated) → merging ENS filings for the purpose of risk assessment + exchanging information between MS
- Submission of ENS data by economic operators via one single entry point for the whole EU via a “**Shared Trader Interface (STI)**” (centrally operated)

ICS 2

- to be built according to detailed system, message, functional and technical specifications

Available documents:

- ICS2 Design Blueprint: overall description of the system architecture.
- Interface Control Document (ICD): defining Trader Interfaces technical specifications.
- ICS2 STI Service Specifications Documents (SSD) Trade Package: specifications for IT service operations.
- ICS2 STI Technical Service Contracts (TSC) Trade Package: specifications for IT services implementation

TAXUD-ICS2-PROJECT-TEAM@ec.europa.eu

- transition from current ENS to ICS 2 will require **timely planning, IT development and process changes by carriers and some agents** ➔

WSC / ECSA and EC joint ICS 2 workshop in Brussels on 11-12/10/2018

Guarantee waivers/reductions for TSO

- UCC requires financial guarantees for all goods in TS facilities
- Guarantee waiver or reduction to be reassessed (at expiry or ultimately June 2018)
- New criterium “financial standing” - how to apply?
➔ Risk of negative impact on the **cost of TS** for maritime carriers....

Pragmatic approach ➔ approval of **AEO-C certificate holder** - without reassessment or additional requirements – as financial standing was already assessed under its AEO-C application. 

- corresponding **amendment to article 84** UCC DA

Thank you for your attention



Hilde Bruggeman