

ANNEX II

FREQUENTLY ASKED QUESTIONS on ENS

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1 BASIC PRINCIPLES

Q1.1 - When is an ENS required?

The Community legislation requires, as a general principle, that all goods brought into the customs territory of the Community, regardless of their final destination, shall be covered by an Entry Summary Declaration (ENS), which should be lodged at the customs office of first entry, i.e. the first intended port of call within the customs territory of the Community. This means that all cargo, whether or not consigned to the EU, must be declared, including freight remaining on board (FROB). The ENS shall be lodged at the customs office before the goods are brought into the customs territory of the Community.

Q1.2 - Who must lodge the ENS?

The Community legislation requires that the ENS ‘...shall be lodged by the person who brings the goods, or who assumes responsibility for the carriage of the goods into the customs territory of the Community’. This means the operator of the active means of transport on or in which the goods are brought into the customs territory of the Community is responsible for the filing of an ENS. In the deep sea container context, this is held to be the ocean carrier that issues bill of lading for the carriage of the goods into the Community.

However, in the case of vessel sharing (VSA) or similar contracting arrangements, the obligation to file an ENS lies with that carrier who has contracted, and issued a bill of lading or an air waybill, for the carriage of the goods into the Community on the vessel or aircraft subject to the arrangement. So, each party which issues bill of lading for carriage of goods on the vessel is deemed to be the ocean carrier and must file the ENS for the containers it is having carried on the vessel.

For short sea shipping, the same rules normally apply, but in the case of “combined transport” (e.g. a truck carried on a ferry) where the means of transport entering the customs territory of the Community (the ferry) is only transporting another means of transport which, after entry into the customs territory of the Community, will move by itself as an active means of transport (the truck), the obligation to file an ENS lies with the operator of that other active means of transport (the trucking company). The vessel operator must always, however, provide the Arrival Notification (see Q 1.13 below).

Q1.3 - Can other persons lodge the ENSs instead of the carrier?

Yes, but this does not relieve the carrier of the responsibility. In the end it is the carrier that must ensure that an ENS is lodged, and within the time limits. Therefore, the ENS may be lodged by a person other than the carrier only with the carrier’s knowledge and consent. [See Section 3 - Alternative 3rd party ENS filings- below]

Q1.4 - Must the person lodging the ENS have status as an Authorized Economic Operator (AEO)?

There is absolutely no requirement that an ENS declarant must be an AEO.

However, the person lodging the ENS ("the declarant") must have an Economic Operator Registration and Identification (EORI) number (See Section 8 below) that must be included in the ENS. Similarly, if a 3rd party – with its knowledge and consent – files an ENS instead of the ocean carrier, the 3rd party must in its ENS include both its own EORI number and that of the ocean carrier.

Q1.5 - When must the ENS be lodged?

The legislation requires that the ENS for deep-sea containerized shipments, i.e, for voyages to the EU whose duration is over 24 hours, must be lodged at least 24 hours before commencement of loading in the foreign load port. Other deadlines apply for other shipping services and other modes of transport (see Part B, title 5 "Time limits").

Q1.6 - Why must ENS be lodged at the first port of entry?

The Community legislation applies the principle that the customs office of first entry shall undertake the cargo risk assessment for all shipments, including FROB, carried on a conveyance due to arrive in the Community and initiate any preventive action against identified risk. Action will be based upon three separate categories of risk:

In deep sea containerised shipments (where the ENS must be submitted at least 24 hours before loading, Article 184a (1) (a) CCIP) where a very serious threat to security and safety is identified, a "Do Not Load" message will be issued to the declarant and, if different, the carrier (Article 184d (2) (2) CCIP);

In cases not covered by Article 184a (1) (a) CCIP, where a serious risk is identified, the customs office of first entry will take action against the goods upon arrival at the first port of entry and also inform the customs offices in subsequent ports of the risks identified;

In other cases, the customs office of first entry will inform the customs offices in subsequent ports of the risks identified so that the results can be considered along with the national risk analysis undertaken where the goods are discharged.

Q1.7 - Can ENSs be lodged at a customs office different from the first port of entry?

Yes, provided that the customs authorities at that office, the customs office of entry, and the customs authorities of the office of first entry permit this. The customs office of entry must immediately forward the data to the office of first entry.

However, this may not be an attractive proposition for ocean carriers for the following reasons:

- not all Member States allow the customs office of entry filing,
- the customs office of first entry would still be responsible for the risk assessment, including the issuance of any "Do Not Load" messages, so an ocean carrier would want to be connected to that office in any case and
- the ocean carrier will for other reasons already have a close relationship with customs office of first entry (manifest filing etc.), so establishing a connection to a customs office of entry (perhaps in a landlocked country in the EU) solely for the purpose of filing an ENS may not be a resource effective decision.

Q1.8 - Which is the foreign load port when goods are transhipped before loading?

The ENS filing requirements apply to the main haul vessel, i.e. the vessel that on its itinerary has ports of call in the EU and thus brings goods into the Community. Goods feedered between, for example, a port in Indonesia to Hong Kong to be loaded on to the main haul vessel destined for the EU would not need to be declared to EU customs by the feeder company before loading at the Indonesian port – the reporting requirement applies when the goods are to be loaded on to the main haul vessel. The obligation to file the ENS lies with the ocean carrier issuing Bill of Lading for goods to be loaded on to the main haul vessel.

Q1.9 - Must an ENS be lodged for each port of loading?

Yes. The reporting requirements apply to each foreign load port, not just the last foreign port of call before entering the Community. So, in the example above, if the main haul vessel is also to load cargo in e.g. Singapore, then an ENS must be lodged to customs in the intended first port of entry in the EU no later than 24 hours before commencement of loading in Singapore for the containerized shipments that will be brought in to the Community on the main haul vessel.

Q1.10 - What is the definition of first port of entry and subsequent port for entry?

The first port of entry is the first port in the Community at which the vessel is scheduled to call when coming from a port outside the Community. Subsequent port(s) mean any port in the Community on the vessel's itinerary that the vessel will call at after its call at the first port in the Community without an intervening call at any port outside the Community.

If the vessel calls at any port outside the Community in between Community ports then the vessel has left the Community and a subsequent arrival at a Community port makes that port the first port of entry, not a subsequent port; a new ENS must be lodged prior to arrival, within the prescribed time limits, for all of the cargo carried.

Q1.11 - What happens if the vessel calls at a different Community port first?

The ENS must always be lodged at the intended first port of call in the Community within the prescribed deadline. Provided that has been done, the vessel may be diverted to a different first port of call. The automatic passing on of risk information (See Q1.6 above) to all declared subsequent ports of call within the Community allows that a vessel may divert to any other declared subsequent port of call (or a non declared port of call in the same Member State as a declared subsequent port of call) without advice to customs. However, if the actual first port of entry is in a Member State that was not included among the declared ports of call in the Community, the vessel operator must advise the intended first port of call of the diversion as soon as diversion is planned, by use of a "diversion request" message. The intended port of first entry will advise the actual port of first entry of any risk information (See also Section 4 on Diversion below).

Q1.12 - Is a first Community port of call the first port of entry even if no containers will be discharged there, e.g. a vessel calls only to load containers, or is the first port of entry the first Community port at which containers are to be unloaded?

Even though it would seem highly unlikely, the ENS must be sent to the customs office of first port of entry whether or not containers are to be discharged in that port. All containers to be loaded on board the vessel for carriage to the Community must be included in the ENS that must be submitted to the customs office in the first port of entry in the Community no later than 24 hours before commencement of loading at each load port, regardless of to where they are consigned.

Q1.13 - What happens when the vessel arrives at the first port of entry?

Prior to or upon arrival in the first port of entry, the vessel operator must submit, for all shipments carried on the arriving vessel, a so-called Arrival Notification, allowing customs to identify all the ENS that were previously lodged for the shipments. For the containers to be discharged in the first port – as hitherto – a manifest must be submitted and the party presenting the goods for temporary storage must lodge also a summary declaration for temporary storage. This summary declaration can be merged with the manifest and also the Arrival Notification if customs authorities in the individual EU Member States allow for this.

Q1.14 - Must ENSs be lodged at subsequent ports?

No. An ENS, for all of the cargo carried, only needs to be lodged with the customs office of the first port of entry. However, prior to or upon arrival at each Community port in turn, a manifest – as has always been the case – must be lodged for all of the containers to be unloaded at that port and, if the ocean carrier is the party presenting the goods to for temporary

storage, also the summary declaration for temporary storage for those containers.

Q1.15 - Will ENS replace the manifest filing? If not, what about the relationship between ENS and manifest?

The ENS will not replace the traditional manifest filing in each discharge port. The ENS is for cargo risk assessment purposes, and even though the manifest may include the same information as the ENS, manifests must in addition include data elements prescribed by transport legislation in each EU Member State that the vessel is calling at. Customs authorities may require that the manifest includes a reference to an ENS, where applicable, in order to establish the relationship between the manifest and the ENS. Also, according to Community legislation, the summary declaration for temporary storage must include a reference to the ENS; a summary declaration for temporary storage may take the form of the manifest provided that it contains the particulars of a summary declaration including a reference to any ENS for the goods concerned.

Q1.16 - Must CARGO REMAINING ON BOARD for carriage to other ports (FROB) be included in the ENS, in the Arrival Notification and in the manifest?

FROB must be included in the ENS and the Arrival Notification to the customs office of first entry. Whether FROB must also be included in the manifest is up to the transport legislation of the individual EU Member States. (At least some Member States require at least some information for FROB to be provided in the manifest).

Q1.17 - Do EMPTY CONTAINERS have to be declared in the ENS and the arrival notification?

Shipper-owned empties that are being transported pursuant to a contract of carriage shall be treated in the same way as other cargo and thus be included in the ENS and the Arrival Notification. Carrier reposition empties may continue to be reported to customs as is done today at arrival and are not to be included in the ENS.

Q1.18 - Will shipment of EMPTY ROLL TRAILERS be considered the same as empty containers, i.e. only to be included in the ENS if transported under a contract of carriage?

Yes. Roll trailers would fall under the category "means of road, rail, air, sea and inland waterway transport"; such means of transport will need to be included in the ENS if they are carried under a transport contract.

Q1.19 - How is TRANSHIPMENT CARGO to be handled?

Containers to be transhipped in a port in the EU must be included in the ENS to the customs office of first entry even if the containers are to be transhipped in another (subsequent) port. At the actual transhipment port, the existing procedures will continue as hitherto, i.e. lodgement of manifest and presentation to the local customs office for temporary

storage. If the transhipped containers “sit” for more than 14 working days in the transshipment port and they are destined for a location outside the EU, an exit summary declaration (EXS) must be lodged for those containers prior to loading in the transshipment port.

Q1.20 - Is it possible to describe all of the documents to be submitted by the ocean carrier from the time of 24 hour before commencement of loading to cargo release at destination?

- ENS: first, the bill of lading issuing ocean carrier must in each foreign load port, and no later than 24 hours before commencement of loading to the main haul vessel bound for an EU port, submit an ENS for all shipments to be loaded onboard that vessel even if the shipments are to be discharged in a port outside the EU (= FROB) after the vessel has called and EU port.
- Arrival Notification (AN): next, before arrival at the customs office of first entry (= the first port of call in the EU), the vessel operator must submit an Arrival Notification (AN) covering all shipments on board the arriving vessel regardless of whether the shipments are to be discharged at the first port, at subsequent EU ports on the vessel’s itinerary or at a port outside the EU (FROB). The AN must either include the MRNs for all the shipments carried on the vessel or include the so-called “Entry Key” data elements (i.e. mode of transport at the border, IMO vessel number, and date of expected arrival at the expected customs office of first entry). The vessel operator will have discretion in choosing between inclusion of the MRNs or of the “Entry Key”; the latter will likely be the prevalent method in the liner shipping industry as the vessel operator would not necessarily have all the MRNs for all the shipments carried on its vessel.
- Manifest: finally, the bill of lading issuing carrier must - in each EU port where it discharges shipments – submit a manifest according to nationally prescribed rules for the shipments discharged in that particular port. Individual EU Member States may require that the manifest includes the MRNs, where available, for the shipments discharged in the individual ports. The manifest can take the form of the summary declaration for temporary storage if the ocean carrier is the party presenting the goods to customs. The summary declaration for temporary storage must include the “particulars” necessary to identify the relevant ENS; this could either be the MRNs or the “Entry Key”, but here the party presenting the goods would not necessarily have discretion to choose between the two options as each Member State may prescribe which of the two options (or both) must be used in the summary declaration for temporary storage.

The documentation for customs clearance of import cargo is the responsibility of the importer or its agent, not the ocean carrier.

Q1.21 - Are all of these documents to be lodged electronically?

ENS must be submitted electronically. Manifests and summary declarations for temporary storage are outside the Community legislation and are instead regulated by national legislation. Today, manifests are filed in paper in the following Member States: Finland, France, Greece, Latvia, Lithuania, Poland, Portugal and Romania, and maybe more Member States. These Member States may at some point introduce legislation requiring the submission of manifests electronically.

Q1.22 - If the ocean carrier – for whatever reason - failed to lodge an ENS in time, what will the consequences be?

Article 184c paragraph 2 of Commission Regulation 1875/2006 provides that: "If an economic operator lodges the [ENS] after the deadlines provided for in Article 184a, this shall not preclude the application of the penalties laid down in the national legislation". Any such penalties would be imposed according to the national customs legislation of the Member State in which the customs office of first entry is located.

2 DIFFERENT SCENARIOS

Q2.1 - The Community legislation requires that the ENS should be submitted at the first port of entry in EU. What if a vessel calls an EU port, then a non-EU port (e.g. Izmir, Turkey) and then again an EU port?

Is it necessary to submit an ENS twice; to the first EU port before Turkey and then a second time to the first EU port after Turkey?

Yes. The vessel has left the Community and a subsequent arrival at a Community port makes that port the first port of entry, not a subsequent port; an ENS must be lodged prior to arrival, within the prescribed time limits, for all of the cargo carried. Because in the example the vessel is engaged in short sea shipping, the ENS must be filed at least 2 hours before arrival in the (second) EU port after the port of call in Izmir.

What would be the difference between the two ENSs?

The latter ENS must include cargo that has been loaded on board the vessel in Turkey, and at the previous Community port, but would not include cargo that was discharged in Turkey or at the previous Community port.

Q2.2 - Assume the following port rotation: Felixstowe – Le Havre – Port Said – Constanza – Limassol – Piraeus. Is it correct that the only ENS that needs to be lodged is with the customs office in Constanza?

Yes. No ENS is required for goods being transported by vessels sailing between EU ports. However, if a vessel makes an intervening call at one or more non-EU ports (Port Said) an ENS must be lodged at the customs

office of first entry, in this case Constanza, when the vessel returns to the Community. All cargo carried from Port Said to Constanza must be declared, no matter where it was loaded (i.e. including that loaded at previous EU ports) or where it is to be unloaded. Because in the example the vessel is engaged in short sea shipping, the ENS must be filed at least 2 hours before arrival in Constanza.

Q2.3 - To which countries must the ENS data be sent to in case there are multiple European countries involved? (Example: For vessel port calls New York > Felixstowe (UK) > Rotterdam (NL))

Is it necessary to send ENS data to both UK and NL?

No. The ENS must be sent to the customs office in the first port of entry, so if Felixstowe is the first port of entry/call then the ENS covering all shipments on the vessel, including all cargo intended for Rotterdam (FROB), must be sent to UK customs, 24 hours before loading in New York. There is no requirement also to send an ENS to Dutch customs.

If final discharge port is NL and Place of Delivery is DE is it necessary to send ENS data to DE as well?

No. The ENS is only required to be lodged with the customs office of first entry. The existing customs procedures for presentation and clearance will continue as hitherto.

Q2.4 - For containerized shipments that first are transported by feeder to a foreign hub load port (e.g. Jakarta to Singapore), where the containers then are to be loaded on to the main haul vessel that is to arrive in one or more EU ports, when must the ENS be lodged – no later than 24 hours before commencement of loading on to the feeder vessel in Jakarta or no later than 24 hours before commencement of loading on to the main haul vessel in Singapore?

The ENS must be filed no later than 24 hours before commencement of loading on to the main haul vessel in Singapore – see Q1.8 above

Q2.5 - Intended vessel schedule: Shanghai - Singapore - Agadir (Morocco) - Fos – Genoa. However, en route the vessel schedule changes to: Shanghai - Singapore - Genoa - Agadir - Fos.

Does this mean that there will be two customs offices of first entry in the Community?

Yes. There are now two voyages into the Community – Shanghai/Singapore to Genoa and Agadir to Fos. The first voyage is covered by the 24 hour before loading rule but the second, “short sea”, is not, i.e., ENSs are lodged prior to arrival, not prior to loading

The vessel is already en route so the ENS to Genoa cannot be filed within the 24 hour time line to Genoa?

The ocean carrier will already have submitted an ENS to Fos, within the time limit (except for the Agadir bound cargo which did not need to be included as the vessel was to call at Agadir before entering the Community – see below). No ENS was required to be lodged in Genoa as it was not the (scheduled) first port of arrival in the Community.

Customs in Fos will have done the risk assessment for all the cargo carried (except the Agadir cargo – see below) and, as Genoa was declared as a subsequent port, will already have informed Genoa of any risk identified.

What about the cargo arriving in Fos from Agadir?

This is now, for security and safety purposes, a separate voyage into the Community, albeit now covered by 'short sea' rules. 2 hours before arrival in Fos, the ocean carrier must submit an entirely new ENS to customs in Fos for all of the cargo carried, no matter where it was loaded (i.e.including that loaded at previous ports, including Community ports) or where it is to be unloaded, including any cargo loaded in Agadir. Where goods already covered by previous ESN have remained on board in Agadir, reference to the previous MRN may be included.

Q2.6 - Intended Vessel schedule: Shanghai - Singapore - Genoa - Fos - Agadir (Morocco) - Barcelona- Le Havre.

Is it necessary to send both an ENS from Shanghai to Genoa for all cargo, and an ENS to Barcelona for cargo to be discharged there and in Le Havre as we have two first ports of entry in the Community?

The answer to the previous question applies. All of the cargo carried on a vessel when it first enters the Community must be covered by an ENS, whatever its destination or port of actual unloading. All cargo loaded in Shanghai and Singapore must be declared to Genoa 24 hours before loading in each of those ports, including the cargo to be discharged in Fos, Agadir, Barcelona and Le Havre. Once the vessel has left the Community to call at Agadir, a new voyage into the Community has begun and all cargo, not just that to be unloaded in Barcelona and Le Havre, carried from Agadir to Barcelona must be declared to Barcelona 2 hours before arrival, no matter where it was loaded or where it is to be unloaded.

En route, the vessel schedule changes as follows: Shanghai - Singapore - Genoa - Fos - Barcelona - Agadir (Morocco) - Le Havre. Is it necessary to continue sending the ENS's as per original sending (Genoa for all cargo and to Barcelona for Barcelona and Le Havre cargo) ?

The fact that in the changed vessel schedule scenario Barcelona now comes before Agadir must be reported in an amendment to the originally filed ENS with customs in Genoa. No new ENS would be required. customs in Barcelona would already have received any positive risk results from customs in Genoa. Further, this would not constitute a so-called "international diversion" so no Diversion Request would be required.

After the call in Agadir, a new ENS must be lodged with customs in Le Havre no later than 2 hours before arrival covering all cargo on the vessel, including any cargo loaded in Agadir.

Q2.7 - Must cargo e.g. from Russia to be transhipped in Hamburg destined for Singapore and being transported on a feeder vessel with first port of entry in Sweden be covered by an ENS lodged with Swedish customs?

Yes. All cargo - when it first arrives in the EU - must be risk assessed, so an ENS covering the goods to be transhipped in Hamburg must be lodged with Swedish customs no later than 2 hours before arrival at the Swedish port by the operator of the feeder vessel. The feeder vessel operator may, however, agree that another party files the ENS instead of it.

3 Alternative 3rd party ENS filing

Q3.1 - Can parties (other than a freight forwarder) that issue their own (house) bills of lading (referred to in the international liner shipping industry as NVOCC) file an ENS instead of the ocean carrier?

Yes, provided that it is with the knowledge and consent of the ocean carrier. Firstly, European law does not distinguish between "NVOCCs" and forwarders that merely act as agents. Second, the European security legislation explicitly allows any 3rd party to file – with its knowledge and consent – the ENS instead of the carrier. This follows from Article 36b (3) and (4) CC. Para (3) makes the party that brings the goods in to the Community (i.e. the carrier) ultimately responsible that an ENS is filed. Para (4), however, states that "Notwithstanding the obligation [in para 3], the [ENS] may be lodged instead by: (a) the person in whose name the person referred to in paragraph 3 acts; or (b) any person who is able to present the goods in question or to have them presented to the competent customs authority; or (c) a representative of one of the persons referred to in paragraph 3 or points (a) or (b)".

However, as noted, the filing of an ENS by any party other than the ocean carrier always requires the ocean carrier's knowledge and consent. How the ocean carrier's consent to a 3rd party ENS filing is to be evidenced and under which conditions and terms, e.g. time for submission of the ENS, the shipments involved, and the duration of the filing arrangement, are subject to contractual agreement between the commercial parties.

Q3.2 - If Carrier A contractually agrees with NVOCC B that B is to lodge the ENS for the shipments B controls, does that mean that then B must always file ENS for all shipments B controls instead of Carrier A? Or is B free to file only ENS for certain shipments B controls? Or should this be part of the contractual arrangement between A and B where it is specified when B can or must file?

Issues such as the time of the alternative ENS filing, which shipments to be covered by the alternative filing etc. are to be contractually agreed between the ocean carrier and the 3rd party.

Q3.3 - Are freight forwarders obligated to file ENS for those shipments for which they have issued (house) bills of lading?

The EU cargo security legislation is based on the premise that only one ENS may be lodged for each shipment. The ocean carrier is responsible that an ENS filing is made, but may give its consent that a 3rd party, e.g. a freight forwarder, files instead. In that case, the ocean carrier may not make an ENS for the shipment covered by the 3rd party's alternative ENS filing. This may mean that the customs office of first entry will get advance cargo security information for a particular shipment either at the "master" Bill of Lading level (ocean carrier) or at the "house" Bill of Lading level (freight forwarder), not both.

Q3.4 - Please confirm that the ocean carrier in the case of a freight forwarder ENS filing is not responsible for the content or correctness of what is filed by the forwarder? In such cases, the ocean carrier's responsibility is to ensure that it gets from the competent customs authority the MRN associated with the freight forwarder's ENS filing.

Correct. Whoever lodges the ENS, this person ("the declarant") is responsible for its content, accuracy and completeness. Therefore, once a 3rd party, e.g. a freight forwarder, with the carrier's knowledge and consent, undertakes the responsibility of making the ENS filing and thus becomes the declarant, the content, accuracy and completeness of the ENS filing is the third party's responsibility.

Notification to the ocean carrier of the MRN for the freight forwarder filing will provide evidence for the carrier that an ENS has been lodged and that the carrier's obligation that an ENS filing is made has been met.

Q3.5 - What will happen if both the ocean carrier and a freight forwarder file ENS for the same shipment?

In cases where dual filings for the same shipment nonetheless occur, i.e. the carrier and a 3rd party both file an ENS for the same shipment, customs authorities may decide to use both filings for their safety and security risk analysis.

Dual filings would in any case not affect compliance with the legal requirement that an ENS is lodged, and within the specified time limits, but should, nevertheless, be avoided.

Q3.6 - Can the ocean carrier rely on the information in the master Bill of Lading to populate the data fields in the ENS? What if a freight forwarder is identified both as

the shipper and the consignee in the master Bill of Lading?

Whoever lodges the ENS, this person ("the declarant") is responsible for its content, accuracy and completeness. However, the declarant is only obliged to provide the information known to it at the time of lodgement of the ENS. Thus, the declarant is entitled to base its ENS filing on data provided by its trading or contracting parties. Consequently, an ocean carrier would be able to rely on the information in its master Bill of Lading to populate the data fields in the ENS even if this means that a freight forwarder is identified as both the consignor and the consignee.

Q3.7 - An ocean carrier may not know the ultimate customer/consignee as it may have no contractual relationship with that party. What must then be reported in the ENS?

The ocean carrier is required to provide the information "known" to it at the time of filing the ENS, meaning that the carrier can rely on the information in the master Bill of Lading to fill out the data fields in the ENS. To the ocean carrier, the "ultimate" customer/consignee is the party named in the master Bill of Lading as the consignee, i.e. the party to which the carrier has contractually agreed to deliver the goods.

Q3.8 - How would the ocean carrier know that a "Do Not Load" message has been issued for a shipment for which a freight forwarder has made the ENS filing?

First, the freight forwarder may only file the ENS with the ocean carrier's knowledge and consent. Next, in its ENS filing, the freight forwarder must identify the ocean carrier with the ocean carrier's EORI number. The freight forwarder must also include both the container number and the ocean carrier's (master) bill of lading number in addition to its own (house) bill of lading number in its ENS filing.

Provided these data elements are included in the ENS, and provided that the ocean carrier is IT-connected to the customs office of first entry that is the only customs office that may issue an DNL message, the ocean carrier would automatically be notified not only of the MRN for the forwarder filing (which will serve as proof that the carrier's obligation that an ENS is filed has been met) but also of any DNL messages. Based on the container and transportation document numbers included in the DNL message, the ocean carrier would be able to identify the containerized shipment that may not be loaded. Moreover it is not unrealistic to expect that if a Customs Administration believe that a consignment poses such a serious threat that a DNL is appropriate that they will not simply rely on the sending of an electronic message to interested parties.

Q3.9 - Annex 30A CCIP lists in Table 1 the data elements that are required in an ENS for containerized shipments. If a freight forwarder – with its knowledge and consent – files the ENS instead of the ocean carrier, where in the

ENS must the forwarder provide the ocean carrier's EORI number, its own EORI number, and the master and house bill of lading numbers?

When a freight forwarder files an ENS instead of the ocean carrier, it becomes "the declarant" and must include its EORI in the "declarant" data field in ENS. The EORI number of the ocean carrier with which the forwarder has contractually agreed to file the ENS must be included in the "carrier" data field. Both the ocean carrier's (master) Bill of Lading number and the forwarder's (house) B/L number must be included in the "transportation document number" data field. ICS explicitly allows for more than one transportation document number to be included in the ENS message (IE 315).

Q3.10 - If a 3rd party – with its knowledge and consent - files the ENS instead of the ocean carrier and the ENS filing is done to a customs office of lodgement, how will the ocean carrier know that the 3rd party has actually made the filing?

If the 3rd party in its ENS filing has identified the carrier and included the carrier's EORI number and the carrier is IT-connected to the customs office of entry, then the carrier would get the MRN directly from the customs office of entry.

Notification to the carrier of the MRN, which also includes a reference to its transportation document number, will provide evidence for the carrier that an ENS has been lodged and that the carrier's obligation under the Community legislation to ensure that an ENS filing is made has been met.

4 Diversion

Q4.1 - If, after the lodging of the ENS, the vessel is diverted to a non-EU country, what will happen?

If the ship diverts to a non-EU country, there would not be a requirement pursuant to Community legislation to inform that non-EU country. If the ship after the diversion is to call at an EU port (whether the originally foreseen first port of arrival in the EU or another EU port), a new ENS must be lodged with the customs office in the new, actual first port of entry in the Community.

Q4.2 - In case of change of discharge location for FROB, does the carrier need to submit a "Diversion Request"?

If, for example, the FROB during transport is being sold to an EU-based importer and thus will be discharged in the first (or subsequent) Community port on the vessel's itinerary, then an amendment should be made to the originally lodged ENS.

"Diversion Requests" only apply in cases where the conveyance (e.g. the ship), not the goods, change destination, and then only if the actual first

port of entry is located in a Member State that was not declared in the ENS.

Q4.3 - What about a change of destination when a shipment is originally consigned to a specific port of discharge but the shipper subsequently – as happens quite often – requests that the shipment be discharged in another port in the same MS?

This should be treated as an amendment to the ENS, not as a diversion request provided that the discharge takes place at a port in a MS on the ship's original itinerary.

Q4.4 - Does the term "Diversion Request" mean that customs can overrule the master's decision to divert the ship?

No. Request could be read as notification, but a "Diversion Request" must include a number of specified data elements and may, therefore, be rejected if not properly complete. If rejected, a new, complete request must be lodged, but this does not mean the vessel cannot divert.

Q4.5 - Is there a time limit to submit a diversion request?

No, but it should be submitted as soon as a decision to divert has been made and before the vessel has arrived in the new first office of entry.

Q4.6 - Which data elements must be included in a diversion request?

There are two versions of the diversion request:

- the first version makes use of the so-called "Entry Key" data elements: Mode of transport at the border; identification of the means of transport crossing the border, i.e. the IMO vessel identification number (or the ENI number for inland waterways); expected date of arrival at first place of arrival in the customs territory of the Community (as declared in the original ENS); country code of the declared first office of entry; declared first place of arrival code; and actual first place of arrival code,
- in the second version of the diversion request, a complete list of the MRNs for all the ENS for all shipments carried must be lodged together with the following data elements:
 - mode of transport at the border;
 - country code of declared first office of entry;
 - declared first place of arrival code and
 - actual first place of arrival code.

In vessel sharing (VSA) or similar contracting arrangements, the vessel operator – who (or its representative) must make the diversion request – would typically not have the MRNs for its VSA partners' ENS filings (including the MRNs for any 3rd party filings the VSA partners may have

agreed to), so the assumption is that liner shipping companies would typically use the first version of the diversion request.

5 Amendments to ENS

Q5.1 - What information change in the shipment requires a re-submission of the ENS data to the customs office of first entry?

The legal requirement is that the ENS is complete and accurate.

There are a number of principles regarding what can be amended in the ENS and when the amendment can take place:

From a legal point of view, there is no restriction in the CC or the CCIP. However, the particulars concerning the person lodging the ENS, the representative and the customs office of first entry should not be amended in order to avoid technical problems.

The time limits for the lodging of the ENS do not start again after the amendment since it is the initial declaration that sets them.

Risk analysis is performed on the basis of the ENS. Where an amendment is made, risk analysis is performed again with regard to the amended particulars. This will have an impact on the release of the goods only where the amendment is made so shortly before the arrival of the goods, that the customs authorities need additional time for their risk analysis.

Additionally, an amendment request cannot be accepted by customs if one of the following conditions is met:

- the person lodging the original ENS has been informed that the customs office of first entry intend to examine the goods;
- the customs authorities have established that the particulars in question are incorrect;
- the customs office of first entry, upon presentation of the goods, has allowed their removal;
- After a diversion notification has been acknowledged by the originally declared customs office of first entry.

Amendments may be lodged by the same person that lodged the original ENS or its representative. However, amendments can only be lodged at the customs office of first entry so the filer – or its representative – would need to be IT connected to that office.

6 Do Not Load (DNL) messages

Q6.1 - How will customs communicate that a "Do Not Load" ("hold") is removed and that the cargo can be safely loaded / released?

This will be up to each individual customs administration to arrange.

Regarding holds, nothing will change from existing practice, where customs – based on the manifest reporting – may have targeted a

shipment for inspection at discharge and then, upon inspection, lift the hold.

Q6.2 - Are there "Do Not Load" messages for types of maritime cargo other than containerized cargo covered by the 24hrs prior to loading rule for filing of an ENS?

No. The DNL functionality applies only to deep sea containerized cargo; there will not be a DNL message functionality for break bulk cargo, where the carrier only needs to lodge the ENS no later than 4 hours prior to arrival in the first port of entry in the EU., or for short sea cargo, where the deadline is 2 hours before arrival.

What actions does the carrier have to take if risk is identified for these other cargoes?

Customs must perform its risk assessment for security purposes within the time from the filing of the ENS and the arrival of the ship, i.e. within either four hours (for vessels not deployed in short sea shipping) or two hours (for vessels deployed in short sea shipping). Before arrival, customs may – but is not obliged to – inform the ocean carrier that it wants to inspect suspect cargo at the first port of arrival (= Risk Type B) or, alternatively, at the actual port of discharge (= Risk Type C). (See Q1.6 above).

What will happen if cargo has already been released to the consignee by the time the results of customs' risk assessment is received?

The results of customs' risk assessment for security purposes should be finalized at the time the vessel arrives and discharge of the cargo commences (before vessel loading in the case of deep sea containerized shipments), i.e. before the cargo is actually presented to customs (that can be for transit, release for free circulation, customs warehousing, Community status goods or – if no other customs procedure is declared – temporary storage). If, upon presentation of the goods, customs does not inform the presenter that the goods cannot be released, the assumption can and should be there that the shipment does not represent a security risk. However, where a customs declaration has been lodged, the goods can be removed only once they have been released for that procedure.

7 Import Control System (ICS)

Q7.1 - What is the ICS?

The ICS is systems architecture developed by the Community for the lodging and processing of ENS, and for the exchange of messages between national customs administrations and between them and economic operators and with the European Commission. In certain circumstances in accordance with Article 183a CCIP the NCTS can be used instead for lodging the ENS.

ICS is made up of three "domains":

The "common domain" for exchanges between the EU Member States and the European Commission;

The "national domain" made up of the national customs computer systems and the associated risk management processes; and

The "external domain" being the interface between economic operators and the national customs administrations for the lodging of ENS, issuance of MRNs as receipt for the ENS filing, any Do Not Load (DNL) messages etc. It is through this latter "domain" that the ENS must be filed according to nationally determined technical specifications, message formats and structures etc.

Q7.2 - Is there a web site available where carriers can find latest news, updates, etc. from national customs administrations regarding ICS or do we have to contact every customs administration separately for information?

A web site per se has not been created. However, the European Commission has provided the Trade Contact Group (TCG) with a summary of the individual Member States' message formats and structures, communication protocols, connections etc. to be used in their external and national domains.

Also, the European Commission has made available to the TCG a list of the Internet addresses where the national customs administrations will provide the national technical specifications, message implementation guides (MIGs) etc. for their national computer systems, and other updates and news of relevance for ICS and the advance cargo security requirements.

A list of the national ICS project managers has also been made available to the TCG.

The European Commission has a webpage regarding the Safety and Security Amendment of the Community Customs Code; it can be accessed at:

http://ec.europa.eu/taxation_customs/customs/security_amendment/general_overview/index_en.htm

Q7.3 - Is there any kind of pilot project planned with one or more Member States?

No. Each EU Member State is responsible for establishing a test period for the connections in their national computer systems to the economic operators' computer systems for the lodging of ENS, receipt of MRNs, and any DNL messages etc.

Q7.4 - Is it possible to have further information on the various message formats in ICS?

See reply to Q7.2 above.

Q7.5 - How is the ocean carrier's computer system to be connected to the customs system - through the internet or any other special connection? Is it necessary for the carrier's system to be connected to all customs offices in EU ports? Or will there be a single receiver for all EU ENS filings?

A single pan-European repository for the lodging of ENS does not exist. Instead, the ENS must be lodged electronically to the customs office of first entry in accordance with the national technical specifications, formats, connections etc. established by the individual EU Member States. Consequently, ocean carriers would need to establish the necessary IT interfaces with those national customs administrations that will be acting as the customs office of first port of entry on their vessel rotations to which the ENS must be sent no later than 24 hours before vessel loading (deep sea containerized shipments) or 4 hours before arrival for other deep sea maritime sectors; for all short sea shipping sectors the time limit is 2 hours before arrival.

Q7.6 - Does ICS cover the act of presenting the goods to customs and customs' release of the goods?

Presentation of goods and the release of goods are national customs matters pursuant to national customs legislation. These activities are not covered by ICS-Phase 1. Nor are lodging of manifests and arrival notifications covered by ICS-Phase 1; also these activities will be pursuant to national customs legislation.

8 Economic Operator Registration and Identification (EORI) number in ENS

Q8.1 - We are a foreign owned and established ocean carrier. Can we obtain an EORI number and, if so, where? Do we need to have a VAT number to obtain an EORI number?

The EORI Regulation prescribes that for an economic operator not established in the Community, it "shall be registered by the customs authority or the designated authority of the Member State where [the economic operator] first performs one of the following: (a) he lodges in the Community a summary or customs declaration...; (b) he lodges in the Community an exit or ENS; (c) he operates a temporary storage facility...; (d) he applies for [simplified customs procedures]; (e) he applies for [AEO status]".

So, if the parent company will be filing all the ENS for cargo transported on ships arriving in the EU, the parent company would need to get an EORI number from that Member State where the parent company expects to file its first ENS. The individual EU Member States shall promulgate national rules for where to apply to for an EORI number which may be either the national customs authority and/or another designated national authority.

VAT numbers would only need to be included in the EORI Registration for third country operators where such a VAT number has been assigned by Member State.

Q8.2 - Our company will be using a central computer and data centre located outside the Community to file our ENS. Does this data centre also need to obtain an EORI number?

No. The central computer and data centre would not need to register for an EORI number as it is merely an extension ("a secretary") of the filer (the ocean carrier).

Q8.3 - As the foreign based parent company, do we have to obtain an EORI number or can we instead file our ENS through one or more of our local agents established in the Community?

It depends how the company wishes to organize itself.

If the parent company wants to arrange that all its ENS filings are done by it, using its global corporate name, the parent company would need to obtain its own EORI number. The parent company then becomes "the declarant" and as such it will receive the MRNs for its own ENS filings and any Do Not Load messages.

The ENS filings may instead be done by local agents. Where the agent is merely acting in the name of and behalf of the parent carrier, and is not incorporated as a separate legal entity, the parent company's EORI number should be used as "the declarant". Where the agent is acting in its own name but on behalf of the parent company, and is incorporated as a separate legal entity, the agent would as "the declarant" need to have its own EORI number; the parent company will be identified as "the carrier" in the ENS with its own EORI number. In either case, MRNs for the ENS filings and any DNL messages would be communicated both to the agent (as a "representative" or "the declarant") and to the parent company (as "the declarant" or "the carrier").

This distinction may be of importance in cases where a 3rd party – with its knowledge and consent – files the ENS instead of the ocean carrier:

If the ocean carrier wants the MRNs for the 3rd party filings and any associated DNL messages to be communicated directly to the parent company (e.g. its global computer and data centre), then the parent company's EORI number should be provided to the 3rd party for inclusion in its ENS filing in the "carrier" data field in the ENS.

If the ocean carrier instead wants the MRNs and any associated DNL messages to be communicated to the agent that issued the ocean carrier bill of lading in its own name but on behalf of the parent company, then the agent's EORI number should be provided to the 3rd party for inclusion in its ENS filing in the "carrier" data field.

Q8.4 - We are a foreign owned and established ocean carrier with a European head office. Should the parent company or the European head office obtain an EORI number?

Again, this depends how the company wishes to organize itself. As discussed above, the parent company can choose to do all ENS filings itself and would thus need to obtain an EORI number. The ENS filings could instead be done by the European head office (if this office is a person in accordance with Art. 4 (1) CC) that then would need to obtain its own EORI number.

The decision on which approach to follow may to a large degree depend on who within the company structure should receive the MRNs and act on any DNL messages, including where a 3rd party – with its knowledge and consent – files the ENS instead of the ocean carrier:

If the MRNs and any DNL messages should always go to the parent company (e.g. its global computer and data centre), then the parent company may wish to file all the ocean carrier's own ENS and have its EORI provided to any 3rd party ENS filers for inclusion in their ENS filings.

If instead the European head office should receive the MRNs and any DNL messages, then it may wish to file all the ocean carrier's own ENS and have its EORI provided to any 3rd party ENS filers for inclusion in their ENS filings.

Q8.5 - Our company already has a so-called Trader Identification Number (TIN). Do we need to apply for an EORI number to replace the TIN number in our customs filings?

The changes for existing economic operators will be limited when the Economic Operator Registration and Identification (EORI) Regulation takes effect as of July 1, 2009. Today, economic operators must – in order to do customs business – have a TIN number. So must any of their agents that are separate legal entities and do customs business. The economic operator and, if applicable, its agents may continue to use their TINs after July 1, 2009. However, the structure of this number must include the country code of the Member State that assigned the TIN number. Moreover, since few Member States may introduce specific rules implementing the EORI system, they should inform you which identification number you should use as your EORI number.

Q8.6 - How will we as an ocean carrier know the EORI number of each customer? Will there be an official list published?

The EORI Regulation includes a provision empowering the Commission to publish the names and addresses of economic operators together with their EORI numbers of those economic operators that have given their written consent, so the list – when published – may not be complete. It

will be also possible to check the validity of any EORI number with the same service, although in this case the name and address will not be displayed.

However, the EORI numbers of consignors and consignees are only to be provided in the ENS "where available" to the declarant. Consequently, an ENS filing would not be rejected if it does not include those EORI numbers.

9 Miscellaneous ENS matters

Q9.1 - At which level are ENS to be lodged?

This will be up to each ocean carrier to decide.

The overwhelming majority of the WSC Member companies have indicated that they will follow a "one Bill of Lading (B/L) – one ENS" approach.

Ocean carriers have absolute discretion in choosing at which level they want to file their ENS. They may choose to follow a "one Bill of Lading (B/L) – one ENS" approach. They may opt instead for a "one container – one ENS" approach. Or they could choose to include multiple B/Ls in one ENS.

Q9.2 - If an ocean carrier follows the "one B/L - one ENS" approach, what about the relationship between ENS and MRN? Is it "one ENS - one MRN" also?

Yes.