

ANNEX A

DEFINITION OF "EXPORTER"

ARTICLE 1 (19) UCC DA

REVISED

The update of Annex A to the UCC Export & Exit Guidance reflects the revised definition of exporter as provided for in **Commission Delegated Regulation (EU) 2018/1063** of 16 May 2018.

1. CASES

Article 1 (19) UCC DA defines two main possibilities for a person to qualify as an exporter.

In accordance with Article 1 (19) (a) UCC DA an exporter is a private individual who carries the goods to be taken out of the customs territory of the EU in his personal baggage.

In accordance with Article 1 (19) (b) (i) UCC DA, in case the exporter is not a private individual who carries the goods in his personal baggage, it is any person who is:

- established in the customs territory of the EU, and
- has the power to determine and has determined that the goods are to be taken out of the customs territory of the EU.

In accordance with Article 1 (19) (b) (ii) UCC DA, where the two paragraphs above do not apply, the exporter is a contracting party established in the customs territory of the EU pursuant to the contract under which the goods are to be taken out of the customs territory of the EU.

When a person qualifies to be an exporter, his EORI number has to be provided in Box 2 (D.E. 3/2 Exporter identification N°) of the customs export declaration. If the person does not have an EORI number (e.g. a private individual), his/her name and address has to be provided instead.

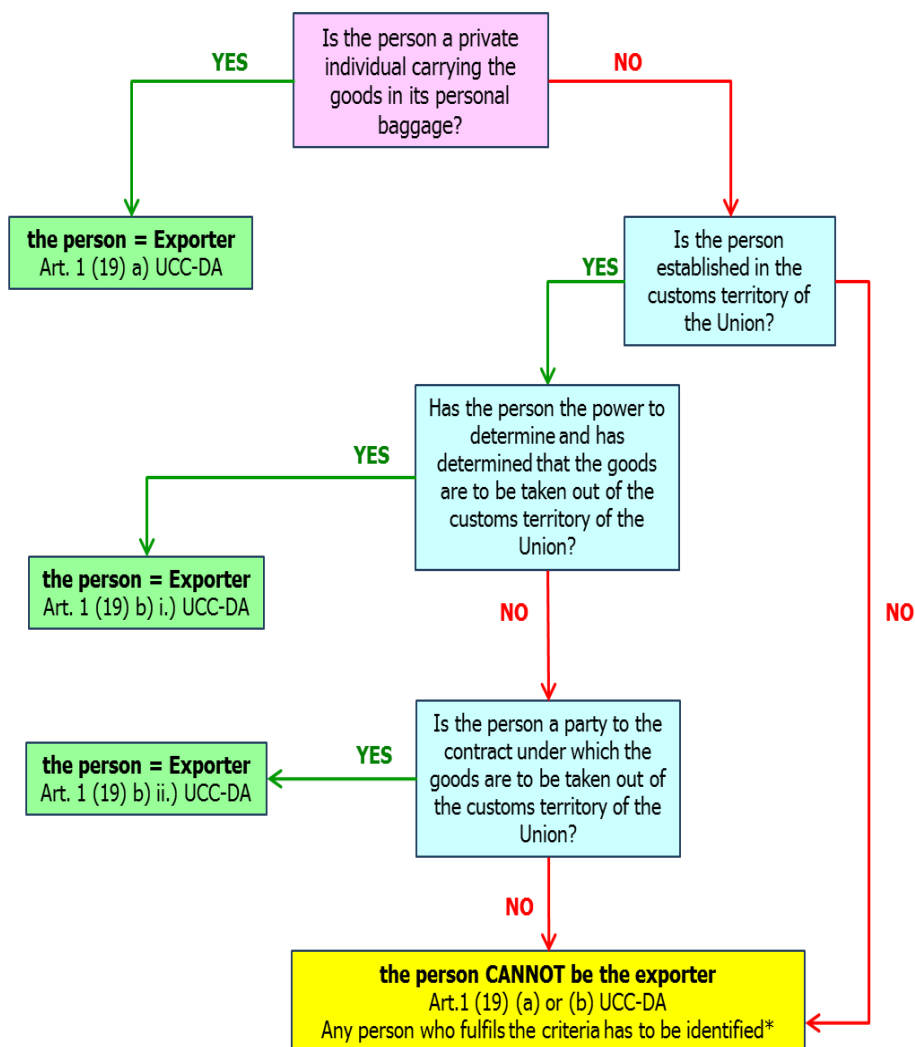
If a person does not qualify to be an exporter, the business partners concerned must make contractual or business arrangements in order to establish who is the person responsible for taking the goods out of the customs territory of the EU.

The new definition of 'exporter' provides for greater flexibility in choosing the person who may act as exporter for customs purposes.

The diagram below illustrates the sequence in which these criteria should be examined.

Definition of the exporter – Article 1 (19) UCC-DA

Who can be the exporter?



* Due to the economic interests related to export, there is at least one person who meets the criteria provided for in Article 1(19) UCC-DA and assumes the role of exporter.

2. THE CONCEPT OF BEING "ESTABLISHED IN THE CUSTOMS TERRITORY OF THE UNION"

The concept "established in the customs territory of the Union" is defined in Article 5 (31).

In case of private individuals (natural persons), the person must have his or her habitual residence in the customs territory of the EU.

In the case of a legal person or an association of persons, the definition should be read together with Article 5 (32) UCC. Based on this, the exporter must have in the customs territory of the EU:

- its registered office, or
- its central headquarters, or
- a permanent business establishment, *i.e.* a fixed place of business where:
 - the necessary human and technical resources are permanently present, and
 - through which person's customs related operations are wholly or partly carried out.

A person who is not established in the customs territory of the EU cannot be an exporter and his EORI number or name and address cannot appear in Box 2 (D.E. 3/2 or 3/1 respectively) of the export declaration. Other contractual or business arrangements are needed in order to establish who is the exporter.

During the transitional period (until the deployment of the AES) Box 2 may provide data about the consignor/exporter. That means that if a customs representation is used, the EORI number (in case of private persons, the name and address) of the exporter should be put in Box 2 (as consignor/exporter) and the EORI number of his customs representative should be put in Box 14.

3. THE CONCEPT OF "POWER TO DETERMINE AND HAVE DETERMINED THAT THE GOODS ARE TO BE TAKEN OUT OF THE CUSTOMS TERRITORY OF THE UNION"

The power to determine that the goods are to be taken out of the customs territory of the EU must follow unequivocally from the acts of the parties to the transaction on the basis of which the goods leave the customs territory of the EU.

The phrase "and has determined that the goods are to be taken out of the customs territory of the Union" refers to a factual element that the power has been exercised: e.g. by assuming the role of exporter, the person has also assumed to take his or her right to determine the export of the goods. The agreement between the parties to assign to one of them the power to determine that the goods are to be exported may take any form provided for in the civil law of the Member State concerned.

Examples:

- where there is a direct sale from a company established in the customs territory of the EU to a buyer established outside the customs territory of the EU, or

- where the price of an export sale is payable only upon exchange of the bill of lading drawn by the seller for carriage outside the customs territory of the EU, or
- contracts with incoterm 'ex works' or similar, where the power for determining that the goods are to be brought to a destination outside the customs territory of the EU lies with a person established outside the Union pursuant to the contract on which the export is based (e.g. buyer), but this person decides to empower a person established in the EU to determine that the goods are to be taken to a destination outside the Union. This means that a person other than the seller may act as exporter under the condition that, for instance, the buyer has empowered that person to do so. The business partners involved have the flexibility to designate the person who has to act as exporter, as long as that person complies with the definition of 'exporter', or

4. THE CONCEPT OF "PARTY TO THE CONTRACT UNDER WHICH THE GOODS ARE TO BE TAKEN OUT OF THE CUSTOMS TERRITORY OF THE UNION"

In cases of exports where Article 1(19)(b)(i) does not apply, the business partners concerned must make contractual or business arrangements in order to designate who will act as exporter, provided the person designated is established in the customs territory of the EU.

A carrier, a freight forwarder or any other party may act as exporter as long as that person complies with the definition of 'exporter' and agrees to take on this role.