

ENTRY SUMMARY DECLARATIONS (ENS):

CONSOLIDATED FAQs

Frequently asked questions and answers

LEGAL NOTICE

This document contains questions and answers explaining the obligations on advance cargo information resulting from the implementation of Regulation (EC) No 648/2005 and how to fulfill them. However, users are reminded that the Customs Code and the Customs Code Implementing Provisions are the only authentic legal basis.

MARITIME CONTAINERISED TRAFFIC

1 General questions

1.1 When is an ENS required?

The EU 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; in the case of deep sea containerised traffic the ENS is to be lodged before loading in the foreign load port.

1.2 Who must lodge the ENS?

The EU 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 – “the carrier” - 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 EU.

However, in the case of vessel sharing (VSA) or similar contracting arrangements, e.g. slot or space charters, the obligation to file an ENS lies with that carrier who has contracted, and issued a bill of lading, for the carriage of the goods into the EU on the vessel 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 1.14 and Q. 1.17 below) and where appropriate, the "Diversion Request" (see Section 6 - Diversion below).

1.3 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 prescribed deadlines. Therefore, the ENS may be lodged by a person other than the carrier only with the carrier's knowledge and consent. [See Section 4 - Alternative 3rd party ENS filings- below]

1.4 Must the person lodging the ENS have status as an Authorized Economic Operator (AEO)? Or must it have registered otherwise?

There is no requirement that the person lodging the ENS must be an AEO. However, the person lodging the ENS ("the declarant") must have an Economic Operator Registration and Identification (EORI) number (see Section 9 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.

1.5 When must the ENS be lodged?

The legislation requires that the ENS for deep-sea containerized shipments must be lodged at least 24 hours before commencement of loading in each foreign load port. Other deadlines apply for other shipping services and other modes of transport (see Part B, Title 5 "Deadlines" of the Guidelines on Import/Entry).

1.6 Why must the ENS be lodged at the first port of entry?

The EU 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 EU and initiate any preventive action against identified risk. If the customs office of first entry identifies any risks, it transmits the risk information, to all customs offices in subsequent EU ports declared in the ENS. This transmission of the risk information allows for customs control to take place upon scheduled discharge of goods deemed to be a risk, thus ensuring that legitimate cargo flow can continue uninterrupted (Risk Type C). Exceptionally, the customs office of first entry may take prohibitive action where goods are deemed to cause such a serious threat that immediate intervention is required (Risk Type B). For deep-sea containerized traffic, such immediate, prohibitive action takes the form of a message to the carrier that the goods are not to be loaded on to the vessel for carriage to the customs territory of the Community (Do Not Load or Risk Type A).

1.7 Will the customs office of first entry send the risk results of the risk assessment for FROB cargo to other customs offices?

The ENS must cover all shipments carried on the arriving vessel, including shipments that are to be discharged in subsequent EU ports or remain on board the vessel for carriage out of the EU (FROB cargo). The customs office of first entry must send all “positive risk results” (i.e. information about all shipments that have been identified as constituting a risk) to all subsequent EU ports listed in the ENS.

The data element “*subsequent ports*” is included in Annex 30A CCIP that contains all the data elements that must be included in the ENS. Consequently, all EU ports on a vessel’s itinerary before the vessel heads foreign again must be included in the ENS and, based on that information, the customs office of first entry will be able to forward any positive risk results, including for FROB, to the customs offices in any such subsequent ports.

1.8 Can ENSs be lodged at a customs office different from the first port of entry?

Yes, provided that the customs authorities at that office (so-called customs office of lodgement) and the customs authorities of the office of first entry permit this. The customs office of lodgement 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 lodgement 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 the customs office of first entry (manifest filing etc.), so establishing a connection to a customs office of lodgement (perhaps in a landlocked country in the EU) solely for the purpose of filing an ENS may not be a resource effective decision.

The list of countries that have implemented the office of lodgement can be found at:
ECIP weblink to be created (as also indicated in footnote 5 of the ENS Guidelines)

1.9 Which is the foreign load port when goods are transshipped before being loaded on the vessel that is arriving in the EU?

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 is carrying cargo into the EU. 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 in Hong Kong. The obligation to file the ENS lies with the ocean carrier issuing the bills of lading for the goods carried on the main haul vessel.

1.10 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 EU. 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 into the EU on the main haul vessel, including FROB cargo.

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

If the vessel calls at any port outside the EU in between EU ports, then the vessel has left the EU and a subsequent arrival at a EU 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 deadlines, for all of the cargo carried on that vessel.

1.12 What happens if the vessel calls at a different EU port first?

The ENS must always be lodged at the intended first port of call in the EU 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 and 1.7 above) to all declared subsequent ports of call within the EU 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 sending a diversion message to customs to the intended first port of call. However, if the actual first port of entry is in a Member State that was not included among the declared subsequent ports of call in the EU, 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 6 on Diversion below).

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

The ENS must be sent to the customs office of first port of entry whether or not goods are to be discharged in that port. All containers to be loaded on board the vessel for carriage to the EU must be included in the ENS that must be submitted to the customs office in the first port of entry in the EU no later than 24 hours before commencement of loading at each load port, regardless of to where they are consigned, including cargo that will remain on board the vessel (FROB).

- 1.14** How to handle the situation where the vessel arrives at a first EU port of entry without any goods and without any shipper owned empty containers moved under a transport contract?

If the vessel arrives at a first EU port of entry without any goods and without any shipper owned empty containers moved under a transport contract, it is considered to be an empty means of transport. In such circumstance, no ENS is required (there is no cargo, and no ENS is required for the means of transport itself, in accordance with Article 181c CCIP). Similarly, because carrier reposition empties are not cargo, no ENS would be required for a vessel arriving at an EU port that only transports carrier reposition empties (see Q.1.26 for the difference between shipper-owned and carrier reposition empties).

No Arrival Notification as referred to in Art.184g CCIP is required in such cases (see Q.1.17 and 1.20 below).

- 1.15** What happens when the vessel arrives at the first port of entry?

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 a summary declaration for temporary storage must be lodged by or on behalf of the person presenting the goods to customs. The customs authorities may allow summary declaration for temporary storage to take the form of a manifest and may allow the summary declaration for temporary storage to be merged with the arrival notification

- 1.16** Must ENSs be lodged at subsequent ports?

No. An ENS, for all of the cargo carried, including cargo remaining on board (FROB), only needs to be lodged with the customs office of the first port of entry.

1.17 Will the ENS replace the manifest filing? If not, what about the relationship between ENS and manifest?

The ENS will not replace the traditional manifest filing, lodged pursuant to nationally prescribed rules, in each discharge port. In addition, it should be noted that according to EU 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 such summary declaration, including a reference to any ENS for the goods concerned.

1.18 Is it possible to describe all of the messages and or documents to be submitted by the ocean carrier from the time of 24 hours before commencement of loading until cargo arrival 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 an EU port.

– **Arrival Notification (AN):** next, upon 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) (see Q. 1.20 below) 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 subsequent port outside the EU (FROB). The AN must either include the MRNs¹ for all the shipments carried on the vessel or include the so-called "Entry Key" data elements.² The vessel operator will have full 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/summary declaration for temporary storage:** 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. An EU Member State 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

¹ See Q. 1.34 for MRN. The following data elements must be provided together with the MRNs: mode of transport at the border; declared first place of arrival code; and actual first place of arrival code.

² These data elements are: Mode of transport at the border; identification of the means of transport crossing the border, i.e. the IMO vessel identification number; expected date of arrival at first place of arrival in the customs territory of the Community (as declared in the original ENS); declared first place of arrival code; and actual first place of arrival code.

have discretion to choose between the two options as Member States 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.

1.19 Are all of these declarations or documents to be lodged electronically?

ENS must be submitted electronically. The content of manifests and summary declarations for temporary storage, and the way they are to be lodged, are regulated by national legislation.

1.20 For the arrival notification and the diversion request, the vessel operator must provide either the “Entry Key” data elements or the list of MRNs for all the shipments carried on the vessel. Does the vessel operator have discretion in choosing between the two types of reporting?

Yes, this is left to the vessel operator’s discretion. Every Member State must accept that the Arrival Notification and/or the diversion request provide either the “Entry Key” data elements³ or the list of MRNs for all shipments carried on the arriving/diverting vessel.⁴ As the vessel operator may not have all the MRNs of its vessel sharing partners and the MRNs for any ENS that they may have consented to be lodged by 3rd parties, the vessel operator or its representative quite likely would choose to include the Entry Key information in its Arrival Notification.

1.21 Who must lodge the Arrival Notification – the vessel operator or the bill of lading issuing carrier? And when exactly must the Arrival Notification be lodged?

The Arrival Notification must be lodged by the vessel operator to the customs office of first entry in the customs territory of the Community.

As to when the Arrival Notification must be lodged, the relevant provision (Article 184g CCIP) only requires that the vessel operator “*shall notify the customs authorities of the first customs office of entry of the arrival of the means of transport*”.

However, guidance can be had from the following sentence in the same Article 184g CCIP: “Wherever possible, available methods of notification of arrival shall be used”.

Thus, if acceptable to the local customs authority, the normal arrival manifest or the normal notification to the harbour master that the ship is arriving could be used, in

³ See footnote 2 for the “Entry Key” data elements.

⁴ See footnote 1 for the data elements to be provided together with the MRNs.

particular if the vessel operator elects in the Arrival Notification to provide the “Entry Key” data elements instead of including the MRNs for all the ENS for all the shipments carried.⁵

As a reminder (see Q. 1.19 above): The choice between providing the “Entry Key” data elements or the list of MRNs is left to the vessel operator, not to the Member State.

Carriers are encouraged to approach the customs offices of first entry on all their vessel rotations to ascertain whether a combined manifest/Arrival Notification would be acceptable to them.

1.22 At which level are ENSs to be lodged?

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.

1.23 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.

1.24 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 can base its ENS filing on data provided by its trading or contracting parties, unless the declarant has reasons to believe that the data provided is untrue. Consequently, an ocean carrier would be able to populate the data fields in the ENS on the basis of the information in its master Bill of Lading, even if this means that a freight forwarder is identified as both the consignor and the consignee.

⁵ See footnote 2 for the “Entry Key” data elements.

- 1.25** 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.

The ocean carrier, can therefore indicate 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 unless the ocean carrier knows the actual consignee.

- 1.26** 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).

- 1.27** Do EMPTY CONTAINERS have to be declared in the ENS and the arrival notification?

Shipper-owned empties that are being transported against payment 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 required to be included in the ENS.

- 1.28** Will shipment of EMPTY 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 against payment under a transport contract.

- 1.29** How will CONTAINER EQUIPMENT (e.g. power packs) be handled?
Does such container equipment need to be included in the ENS?

No, container equipment such as power packs does not need to be included in the ENS. The EU rules require the risk assessment of “goods” before they are brought into the customs territory of the Community. This means that goods transported against payment pursuant to a transport contract would need to be included in the ENS. Equipment and

spare parts used for the purpose of operating the ship and/or for the handling of the cargo loaded on to the ship is not “cargo” and would thus not need to be included in the ENS. Such equipment types will still be subject to “normal” customs rules for entry for temporary admission once the equipment is taken off the ship, but there is no requirement for it to be included in the ENS.

It is noted that cargo fixing equipment, e.g. belts, brackets and other cargo securing parts, are not to be declared in the ENS either. Such cargo fixing equipment is considered to be part of the packing and thus part of the shipment declared in the ENS or exempted from the ENS.

1.30 Is an ENS required for ship stores?

No, ships stores are not to be included in the ENS. Such goods, when they are not transported for others, against payment, under a transport contract, may be declared in e.g. the IMO FAL 3 form or in other reporting formalities prescribed by the Member States at arrival of the vessel.

1.31 How will FLAT RACKS⁶ for the carriage of break bulk cargo be handled? Do the equipment numbers of the flat racks have to be included in the ENS for the break bulk cargo?

If the break bulk cargo is only loaded/placed on to the flat racks already on the ship at the port of loading and will be unloaded/removed from the flat racks in the port of discharge, then the equipment numbers of the flat racks do not need to be included in the ENS.

If, however, the break bulk cargo is delivered to the carrier already placed on the flat racks, and the cargo “combined” with the flat racks are loaded on to the ship in the port of loading and are unloaded “combined” with the flat racks in the port of discharge for “combined” delivery to the consignee indicated in the bill of lading, then the equipment numbers of the flat racks should be included in the ENS for the break bulk cargo. In such a “combined” transport, where the break bulk cargo stay on the flat racks through the entire transportation from the place where the carrier takes custody of the cargo to the place of delivery as specified in the B/L, the goods would also be presented and declared to customs together with, not separate from, the flat racks.

1.32 How is TRANSHIPMENT CARGO to be handled?

⁶ A flat rack container ('flat rack' in the industry jargon) is a container with no sides but with metal frames at the front and rear end. The end frames can be fixed or collapsible. Flat racks are typically used for carriage of heavy lift, over-weight and/or over-width cargo. Commodities commonly shipped in flat rack containers include machinery, industrial boilers, tractors, parts packed in cases, steel tubes, steel pipes, steel bars and cables.

Containers to be transhipped in an EU port 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 transshipment port, the existing procedures will continue as hitherto, i.e. lodgement of a summary declaration for temporary storage and presentation to the local customs office for temporary storage. An exit summary declaration (EXS) may be required for those containers prior to loading in the transshipment port. If the transshipment is done within 14 calendar days a waiver is applicable under certain conditions (cf. Guidelines on Export/Exit: *link*).

- 1.33** If a ship only calls at an EU port for bunkering, is there an obligation to file ENSs for the cargo on board, even though no cargo is destined for any EU port (i.e. FROB only to be discharged in non-EU ports)?

Yes. Whenever a vessel is calling at an EU port, even if none of the cargo on board is destined for an EU port, the ENS reporting requirements apply.

- 1.34** If the legislation provides for an exemption from the requirement to lodge an ENS, does it mean that an ENS cannot be lodged?

No. The exemption does not prevent a carrier from lodging an ENS should it choose to do so. In other words, the exemption in the EU legislation does not *require an ENS* in certain situations, but it does not prohibit it.

- 1.35** Is it necessary to provide the customs authorities with vessel schedules?

No. There is no such requirement in the EU cargo security rules.

- 1.36** Is an ENS required when locations such as the Azores, Madeira, the Canary Islands, Guadeloupe or Martinique are called during a vessel voyage?

The French overseas departments⁷, the Azores, Madeira and the Canary Islands are all part of the customs territory of the Community and therefore are to be treated as any other EU port of call. This means that an ENS must be lodged whenever a vessel that comes from a non-EU jurisdiction (except for Norway) is to call at a port in these locations. It also means that an ENS is not required if the vessel is coming from, or is going to, another EU port of call without any intervening call in a non-EU port.

⁷ The French overseas departments include Guadeloupe, Guyana, Martinique and Réunion. They should not be confused with the French overseas territories in the Pacific that are not covered by the EU cargo security rules.

1.37 Is an ENS required when the British overseas territories, including Gibraltar, are called during a vessel voyage?

The British overseas territories and Gibraltar are not part of the customs territory of the Community and therefore are to be treated as any other non-EU port of call. This is of particular relevance if for instance Gibraltar is called between two EU ports. The ENS requirement will not apply at the port in Gibraltar. But an ENS will be required if the vessel is to call at an EU port after Gibraltar.

1.38 What is a MRN?

The MRN – Movement Reference Number – is a unique number that is automatically generated, upon validation, by the customs office that receives the ENS. The MRN must be issued immediately to the person lodging the ENS and, where different, also to the carrier.

The MRN contains 18 alpha-numeric characters.⁸

1.39 If the customs system is not functioning and if no MRN is received by the carrier 24 hours after the ENS has been lodged, what action is expected or required of the ocean carrier?

In this scenario (where the national customs system cannot return a MRN to the person who lodged the ENS) the 24 hour “window” from the filing of the initial ENS still applies. This means that, if the problem is not resolved at the latest 24 hours after the initial ENS was lodged, then the ocean carrier may go ahead and load.

1.40 Upon receipt of the ENS, a MRN will be automatically allocated and sent by customs to the bill of lading issuing carrier as confirmation of receipt and registration of the ENS. When a vessel leaves the EU for a non-EU port and then returns to an EU port, a new, second ENS must be lodged, covering all shipments carried on the vessel (including shipments that already were covered by the first ENS). This may mean that some, perhaps all, of the cargo covered by the first ENS will be covered by a second ENS, and consequently by a second MRN. Should the carrier keep the first MRN in its system?

⁸ See Section B.4 in these Guidelines

Yes. It is recommended to store or keep records of all previously lodged ENSs, including the MRNs, for a minimum of 200 days after the date and time the original ENS was lodged.

1.41 What will be the implementation plan of the ENS filing requirement?
Will there be a transitional phase?

The EU legislation does not provide for an “informed compliance” period similar, for example, to the one used in the U.S. for the 24 Hour Rule. So, in principle, the lack of compliance after December 31, 2010, when the ENS and EXS filing requirements become mandatory, could trigger sanctions pursuant to national customs legislation.

A brief transitional phase is arranged for deep-sea containerized traffic: the ENS filing requirement will take effect for voyages that begin after January 1, 2010 at 0:00. For example, consider a scheduled voyage itinerary of Singapore-Colombo-Algeciras. If the ship begins the voyage (i.e. departs) from Singapore before December 31, it would not need to file ENS prior to loading in any of the load ports. The fact that the vessel loads in Colombo after January 1 would not trigger an ENS filing requirement prior to loading in Colombo. If the vessel departs from Singapore after midnight on December 31, 2010, then ENS filings would be required for each of the foreign load ports. Under this approach, all vessel voyages that begin with a port departure after midnight December 31, 2010 would be required to have ENS filings for all cargo loaded aboard prior to arrival in the first European port of call.

2 Different scenarios

2.1 The EU legislation requires that the ENS should be submitted at the first port of entry in the 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 EU and a subsequent arrival at an EU port makes that port the first port of entry, not a subsequent port; an ENS must be lodged prior to arrival, within the prescribed deadlines, 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.

2.2 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 EU port, but would not include cargo that was discharged in Turkey or at the previous EU port.

- 2.3 In a rotation New York – Lisbon – Tunis– Tangiers – Fos – Genoa, where do the ENSs have to be lodged?

This rotation involves two calls at non-EU ports in short sea traffic before calling an EU port again. For cargo loaded in New York, a first ENS must be lodged with the customs office in Lisbon as this is the first customs office of entry in the customs territory of the Community. For the cargo previously loaded in New York **and** for the cargo loaded in Lisbon, Tunis and Tangiers, a second ENS must be lodged with the customs office in Fos after the vessel left Tangiers and at the latest 2 hours prior to arrival at Fos. All goods on the vessel arriving in Fos need to be covered by an ENS lodged with customs in Fos, even if some of those goods already were included in the first ENS lodged with customs in Lisbon when the vessel came into the EU the first time. No ENS is required in Genoa as this is only a subsequent port in the EU, preceded by the entry into the EU at Fos.

- 2.4 If final discharge port is Genoa and place of delivery is Slovenia, is it necessary to send ENS data to Slovenia as well?

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

- 2.5 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 Q. 1.9 above

- 2.6 In a rotation Shanghai – Singapore – Le Havre – Rotterdam – New York, goods are loaded in Shanghai to be unloaded in Rotterdam. The cargo loaded in Singapore will be unloaded only in New York. Where does the ENS have to be sent? Will Le Havre be considered as first customs office of entry, even though the cargo is not meant to be unloaded there?

The ENS must be sent to the customs office of first port of entry in the EU whether or not containers are to be discharged in that port. In the above example, the ENS will have to be sent to the scheduled first customs office of entry, i.e. Le Havre, prior to loading in

Shanghai and in Singapore irrespective of whether the containerized shipments are to be discharged in Le Havre, Rotterdam or New York.

- 2.7** Intended vessel schedule: Singapore - Agadir (Morocco) - Fos – Genoa. However, between Singapore and Agadir the vessel schedule changes so that the vessel will in fact call Genoa before Agadir and Fos (i.e. new schedule: Singapore - Genoa - Agadir – Fos). Does this mean that there will be two customs offices of first entry in the EU?

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

- 2.8** Same scenario as in Q. 2.7 above with intended vessel schedule: Singapore – Agadir (Morocco) – Fos – Genoa; the vessel schedule changes between Singapore and Agadir so that the vessel will in fact call Genoa before Agadir and Fos (i.e. new schedule: Singapore – Genoa – Agadir – Fos). How is this addressed?

Before loading in Singapore, the ocean carrier has submitted an ENS to Fos, within the deadline (except for the Agadir bound cargo which did not need to be included as the vessel was to call at Agadir before entering the EU). No ENS was required to be lodged in Genoa as it was not the (scheduled) first port of arrival in the EU.

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

Moreover, as a result of the changed vessel itinerary, the Agadir bound cargo will now be brought into the EU and must be covered by an ENS and risk assessed. The Agadir bound cargo should therefore be declared in a new ENS that should be lodged with customs in Genoa as the new customs office of first entry (amendments to previously lodged ENSs cannot be made in situations where the customs office of first entry changes). Customs in Genoa will risk assess the Agadir bound cargo and will, as discussed above, already have received any positive risk results from customs in Fos for the cargo covered by the ENS lodged before loading in Singapore.

As the new ENS for the Agadir bound cargo are lodged after loading in Singapore, the possibility exists that the actual customs office of first entry (Genoa) could approach the carrier, claiming that the carrier is not in conformance with the 24 hours before loading filing deadline. The carrier would therefore want to be able, upon request, to document the original vessel schedule and when the decision was made to change the vessel schedule. The ENS lodged with customs in Fos will also serve proof that the non-Agadir bound goods were covered by an ENS lodged in conformance with the 24 hours before loading filing deadline, and that the carrier thus is acting in good faith.

Finally, the cargo carried from Agadir to Fos is now subject, for security and safety purposes, to a separate voyage into the EU, 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, including any cargo loaded in Agadir, or where it is to be unloaded.

- 2.9** 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 EU?

The answer to the previous question applies. All of the cargo carried on a vessel when it first enters the EU 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 Agadir, a new voyage into the EU 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.

- 2.10** 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)?

No new ENS would be required. Further, this would not constitute a so-called "international diversion" so no Diversion Request would be required. Neither would an amendment to the original ENS (filed in Genoa) be required, as the vessel itinerary change only adds an EU port of call *before* the vessel goes foreign, so no new security risks can have materialized before the call in Barcelona.

- 2.11** 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. The initially declared itinerary is: Dubai – Istanbul – Barcelona – Le Havre – Hamburg. However, the call in Le Havre is skipped after the call at Barcelona. What information will the carrier have to provide to either French or German customs?

No additional information is required to be provided by the carrier to either French or German customs. This is a vessel diversion situation that occurs *after* the first port of arrival in the EU (Barcelona); customs in Hamburg will have received positive risk results, if any, from customs in Barcelona and will thus be in a position to act also in

case of any identified Risk Type C situations for cargo originally scheduled to have been unloaded in Le Havre.

- 2.12** In an originally declared itinerary Miami - Le Havre – Antwerp - Hamburg, an additional call in Felixstowe is added between Antwerp and Hamburg. As no diversion request is required, how will the customs office in Felixstowe obtain the results of the risk analysis done by Le Havre?

It is correct that no diversion request is required in the above scenario. Customs in Felixstowe will not have received any positive risk results from customs in Le Havre because Felixstowe was not on the originally declared vessel itinerary. However, at arrival in Felixstowe, an arrival manifest must be lodged that will show where the vessel comes from; goods discharged in Felixstowe must also be presented customs there and declared for temporary storage. Customs in Felixstowe can use this information to query ICS and obtain any positive risk results that customs in Le Havre may have identified. This is a customs-to-customs query/reply process that does not involve the carrier.

- 2.13** In a rotation Hong Kong – Le Havre – Hamburg, goods are loaded in Hong Kong to be unloaded in Hamburg, with transshipment in Le Havre. What has to be transmitted to Le Havre, respectively Hamburg?

The bill of lading issuing ocean carrier is responsible that ENSs are lodged with the customs office of first entry in the EU, i.e. Le Havre, for all cargo to be loaded on to the vessel in Hong Kong.

No ENS is required to be lodged for intra-EU traffic provided that the vessel does not call at an intermediate port outside the EU; if the vessel does call at an intermediate non-EU port (which is not the case in this example), an ENS covering all the goods carried on the vessel must be lodged anew to the customs office of first entry in the EU when the vessel re-enters the EU even if the goods were already covered by the original ENS.

In this example, the vessel operator of the main haul vessel operating from Hong Kong to Le Havre must lodge an Arrival Notification to customs in Le Havre (see also Q. 1.14). No Arrival Notification is required to be lodged by the vessel operator of the ship going from Le Havre to Hamburg so long as the vessel does not call at an intermediate non-EU port between Le Havre and Hamburg.

Prior to or upon arrival at each EU port, a manifest must be lodged for all containers to be unloaded at that port. In the example, such manifests will have to be lodged in Le Havre and in Hamburg; the content of the manifest is prescribed by the legislation of each EU Member State, not by EU customs legislation.

If the ocean carrier is the party presenting the goods for temporary storage, it must also lodge the summary declaration for temporary storage for goods that are discharged and presented to customs in Le Havre and in Hamburg.

- 2.14** 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.

- 2.15** The intended vessel schedule is Shanghai – Singapore – Southampton – Hamburg. For the cargo loaded in Shanghai, all ENSs were lodged with the first port of entry in the EU, i.e. Southampton. However, the vessel goes out of service in Singapore and is replaced by a different vessel which will be declared in the ENSs for the goods loaded in Singapore and in the later Arrival Notification. Does the carrier need to send an amendment for each ENS lodged for the goods loaded in Shanghai?

Provided all the cargo covered by the ENSs, which was loaded in Shanghai, is loaded on to the new vessel in Singapore, the carrier may lodge an amendment to the ENS with the new vessel information.

Another option available to the carrier is to lodge new ENSs for the goods originally loaded in Shanghai. As such new ENSs would be lodged after loading and vessel departure from Shanghai, the possibility exists that the customs office of first entry (Southampton in this example) could approach the carrier, claiming that the carrier is not in conformance with the 24 hours before loading filing deadline. In order to be able to demonstrate that it did file within the deadline, carriers are advised to store or keep records of their previously lodged ENS, including the MRNs, for a minimum of 200 days after the date and time the original ENS was lodged.

- 2.16** Roll-over scenario: New York – Le Havre – Antwerp – Rotterdam vessel rotation. Vessel A calls at Antwerp where it will be completely discharged as it will be phased-out of service. All cargo from Vessel A will then be loaded onto Vessel B which will be phased-in into the service rotation. Does such scenario require a second ENS to be lodged with customs in Rotterdam?

No, this scenario does not require the lodgement of a second ENS. The EU's advance cargo security rule is based on the principle that the customs office of first entry (here Le Havre) performs the risk assessment for all EU Member States; once it has done its risk assessment, and the vessel has arrived at the customs office of first entry, the process has ended, and no amendments need subsequently to be made to the original ENS. Nor

is any subsequent ENS required to be lodged with Antwerp and Rotterdam even if the vessel changes – ENSs are not required for intra-EU traffic provided the vessel does not call at a non-EU port between calls at EU ports.

However, the carrier will still need to lodge the normal arrival manifest with Antwerp (and Rotterdam) and - because the goods are unloaded and have status as non-Community goods - they will need to be declared for temporary storage in Antwerp and then taken out of temporary storage before the goods can be loaded on to Vessel B. An arrival manifest must also be lodged with Rotterdam where the goods may also need to be declared for temporary storage again.

2.17 A shipment is loaded in Singapore for Le Havre. The ENS is sent to Le Havre 24 hours prior to loading in Singapore. Before reaching Le Havre, it is decided that the shipment should, instead of being unloaded in Le Havre, return to Singapore. How is this addressed?

The filing of an ENS for a shipment does not entail an obligation to actually discharge the shipment in an EU port -- as long as it has been included in the ENS and been risk assessed, the shipment can simply stay on board the vessel as FROB during the vessel's calls at EU ports and remain on board as FROB when the vessel heads back foreign again.

If, however, the shipment is unloaded in Le Havre to be loaded on to another vessel for return to Singapore, it must upon discharge be presented by the carrier to customs in Le Havre and be declared for temporary storage.

2.18 Vessel routing is Singapore - Le Havre – Morocco – Rotterdam - Antwerp. After the vessel has departed Le Havre, the routing changes to Morocco – Felixstowe - Antwerp. With the routing change, what will the ENS filings include and when/where will the filings be done?

The answer follows the same format as in Q. 2.2:

For the cargo loaded in Singapore, a first ENS must be lodged with the customs office in Le Havre as this is the customs office of first entry. For the cargo previously loaded in Singapore and for the cargo loaded in Le Havre that is not unloaded in Morocco **and** for the cargo loaded in Morocco, a second ENS must be lodged with the customs office in Felixstowe at the latest 2 hours prior to arrival at Felixstowe. All containers arriving in Felixstowe need to be covered by an ENS lodged with customs in Felixstowe, even if some of those containers already were included in the first ENS lodged with customs in Le Havre when the vessel came into the EU the first time. Because Rotterdam is no longer on the vessel's itinerary, the ENS lodged with customs in Felixstowe must indicate where the cargo originally destined for Rotterdam will now be unloaded, i.e. either in Felixstowe or in Antwerp (or remaining as FROB for return to Singapore).

3 Deadlines

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

Article 184c (2) CCIP 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.

- 3.2 Is it correct that no vessel departure time from the foreign load port must be included in the ENS? If so, how will it be determined that the ENS was filed no later than 24 hours before loading?

It is correct that the vessel departure time from the foreign load port is not a required data element in the ENS. It is also correct that the customs office of first entry might not be able, solely based on the information provided in the ENS, to determine proper in-time filing. Essentially, compliance with the “no later than 24 hours before commencement of loading” filing deadline is a matter of trust. Should it subsequently be determined that a filing occurred after the deadline, the EU legislation explicitly provides that penalties may be imposed (pursuant to national legislation, see Q. 3.1 above).

- 3.3 If bulk cargo is loaded on to a flat rack, which deadline (24 hours before loading for containerized shipment, or 4 hours before arrival for bulk cargo) would apply?

There are no definitions in the EU legislation of either containerized shipments or other types of cargo. However, the legislation is based on the assumption that any cargo that is not loaded (“stuffed”) in to a standard ISO container may be treated as non-containerized cargo and thus be subject to the no later than 4 hours before arrival ENS filing requirement. This would include bulk cargoes loaded on to a flat rack. However, the carrier may – in order to avoid having to file according to different deadlines – include these bulk cargoes in its pre-vessel loading ENS.

- 3.4 What ENS filing deadlines apply to vessels carrying bulk under deck and containers on deck?

The deadline depends on the type of cargo:
For the bulk cargo, the ENS must be lodged at least 4 hours before arrival at the first port in the customs territory of the Community (2 hours before arrival at the first port of arrival in case of a short-sea movement);

For the containerized cargo, the ENS must be lodged 24 hours before loading at the port of departure (2 hours before arrival at the first port of arrival in case of a short-sea movement).

However, the carrier does not need to arrange for two ENS filings; the carrier may include the bulk cargo in its ENS filings for the containerized shipments.

4 Alternative 3rd party filing

4.1 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 is 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.

4.2 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 into the customs territory of 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 ("cut-off" time) before commencement of loading, the shipments involved, and the duration of the filing arrangement, are subject to contractual agreement between the commercial parties.

4.3 How will the carrier coordinate with the forwarder in case of 3rd party filing?

If a forwarder is to file the ENS, the forwarder filing must always be with the carrier's "knowledge and consent" and pursuant to contractual agreements, including for which shipments the forwarder will file; at which point of time ("cut-off time") before commencement of loading the forwarder filing must be made; duration of the alternative filing arrangement, etc. A carrier entering into such an agreement with a forwarder is advised to exercise care and ensure that its agreement with the forwarder is well understood and documented by both parties.

The carrier would also want to consider including in its agreement with the forwarder an indemnification clause because an omission by the forwarder to file the ENS when it has agreed to do so may result in delays for the vessel and/or the cargo and possible penalties for the carrier, because the carrier is still legally obligated that the filing be made.

The carrier would also want to ensure in any such agreement with a forwarder that the forwarder agrees to include the carrier's EORI number, master bill of lading number, and container number(-s) in its filing in order that the carrier, upon receipt of the MRN for the forwarder filing (which the carrier will receive provided it is IT connected to the customs office of first entry), may make an annotation in its system that a filing has been made for those shipments and that, therefore, its legal obligation to ensure that a filing has been made has been met.

The detailed steps involved in arranging for an alternative forwarder filing can be found in item B.5 – filing by a third party

4.4 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, is it the ocean carrier's responsibility 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.

4.5 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 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. Otherwise, they will consider that the ENS lodged by the carrier is the valid one. Dual filings would in any case not affect compliance with the legal requirement that an ENS is lodged, and within the specified deadlines.

- 4.6** 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.

- 4.7** 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 "person lodging the summary declaration" 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).

- 4.8** 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 first entry, then the carrier would get the MRN directly from the customs office of first entry and would not need to be connected to the office of lodgement for this purpose.

4.9 If a forwarder files the ENS, can the ocean carrier file an amendment to it?

An amendment to an ENS can only be made by the person who lodged the original ENS or its representative. Therefore, only in the unlikely event that the forwarder in its ENS designates the carrier as its representative would the carrier be able to amend the ENS on behalf of the forwarder.

Note: As explained in Q. 4.3 above, the carrier would want to ensure that the conditions and terms for the alternative forwarder filing are made part of a contractual agreement between the carrier and the forwarder. It would also be advisable in that agreement to explicitly set out that the forwarder will be responsible for lodging any amendments to the originally filed ENS.

4.10 If a forwarder files an ENS with the carrier's knowledge and consent and this carrier receives the corresponding MRN, will the carrier be notified of amendments to the ENS?

Not automatically. As the carrier is not responsible for the accuracy and completeness of the forwarder filing, it would not need to be informed of changes to the ENS made by the forwarder. If a carrier wishes to receive such notifications, it may request the customs authorities to send it electronically copies of the amendment notifications. (The carrier cannot select which notifications for which forwarder ENS filings it wants to receive -- a request to receive amendment notifications would apply to all forwarder ENS filings that the carrier consents to).

4.11 A forwarder files an ENS for a consolidated container with the knowledge and consent of the carrier. The carrier receives the MRN for the forwarder's ENS filing. Subsequently, the forwarder decides to lodge two ENSs for the same consolidated container. Must the carrier be notified of the new MRNs?

No, the ocean carrier is not expected or required to "police" whether the forwarder has lodged an ENS covering all the shipments in a consolidated container. As long as the carrier receives a single MRN for a forwarder ENS filing, the ocean carrier may regard that single MRN as confirmation that an ENS filing has been made and consequently that the ocean carrier's legal obligation to ensure that ENS are filed for all the shipments it is having carried into the EU has been met.

In the above example, presumably the consolidated box would continue to be tied to a single master bill of lading even if the forwarder amends its original ENS or lodges two new ENSs (the forwarder will have both options). This may result in the issuance of one more MRN for the forwarder filing (the original one plus a new MRN) or in two new MRNs, but both MRNs would in any event be related to the same master bill of lading (which the forwarder must include in its ENS amendment or new filing). The carrier would not need to have all these MRNs for the forwarder's (amended) ENS filing in order to meet its legal obligation to ensure that an ENS filing has been made; one MRN would suffice.

- 4.12** In a Singapore – Karachi – Rotterdam service, the portion Singapore – Karachi is undertaken by a feeder vessel and the portion Karachi – Rotterdam is undertaken by a main haul vessel. A forwarder has goods loaded in Singapore and issues from Singapore a house bill of lading for those goods (the master bill of lading is made by the carrier); the cargo is relayed at Karachi. According to the contract between the forwarder and the carrier, the forwarder is responsible for lodging ENS for all its shipments being carried by the ocean carrier. Can the forwarder meet its filing obligation by lodging the ENS prior to loading on to the feeder vessel in Singapore?

The EU advance cargo security rules apply to goods entering the EU; they do not apply to goods moved between foreign jurisdictions. The ENS filing requirement therefore applies to the shipments to be loaded onto the main haul vessel in Karachi because it is that vessel that will arrive in the EU. However, this does not prevent the forwarder from lodging the ENS much earlier, e.g. at the time the shipments will be loaded on to the feeder vessel, **provided** that the forwarder has all the information necessary to populate the ENS, including information from the ocean carrier about the time of the commencement of loading on to the main haul vessel and the IMO vessel number and itinerary of that main haul vessel.⁹

- 4.13** Can “beneficiary cargo owners” also file ENS?

The EU legislation does not limit the so-called alternative 3rd party filing to forwarders/NVOCCs. As long as it is done with the ocean carrier's prior knowledge and consent, other parties may lodge the ENS instead of the carrier.

- 4.14** How can an ocean carrier check if a 3rd party in its ENS filing has included all shipments in a container controlled by that 3rd party?

⁹ There are other data elements that the carrier will need to provide to the forwarder in order to make it possible for the latter to lodge a correct ENS. These data elements are listed in these Guidelines (See also Q. 4.3)

It can't, and it doesn't have to. Once a 3rd party – with the carrier's prior knowledge and consent – lodges the ENS instead of the carrier, that 3rd party, not the carrier, becomes responsible for the completeness and accuracy of the ENS. The carrier can use the MRN received for the 3rd party ENS filing as proof that the carrier's legal obligation that an ENS is lodged has been met. The carrier is not required or expected to "police" the completeness and accuracy of the 3rd party filing.

In short sea shipping, the carrier would have no verification via MRN receipt that an ENS had been filed by a third party. In such cases, if, at discharge, customs determines that a 3rd party controlled containerized shipment has not been covered by an ENS lodged by that party, then the EU rules prescribe that the carrier, not the 3rd party, must immediately lodge an ENS. Pursuant to national law of the Member State, a penalty may also be imposed on the party that brings the shipment to the EU, i.e. the carrier. How a carrier would address its potential liability for a 3rd party's failure to lodge the ENS is a matter for the carrier and 3rd party to address in the carrier's provision of consent.

5 Feeder traffic and VSA arrangements

- 5.1 When is the feeder vessel operator responsible for filing the ENS and when is the ocean carrier responsible for the ENS filing for short sea shipments that are being brought into the EU?

The answer depends on how and on which type of vessel the short sea shipment is being brought to the EU:

For short sea shipments brought to the EU on a feeder vessel, the feeder vessel operator is, as a general rule, responsible for the filing of ENS for all shipments carried on the feeder vessel, including for those shipments it is carrying for the ocean carrier. However, if the ocean carrier has a contractual relationship with the feeder vessel operator that can be characterized as a Vessel Sharing Agreement (VSA) or space or slot charter arrangement establishing the ocean carrier as having a regular, scheduled service, then the ocean carrier would be the responsible party. However, in this case, the feeder vessel operator may file as a representative on the ocean carrier's behalf.

For short sea shipments brought to the EU on a main haul vessel, the bill of lading issuing carrier will always be responsible for filing the ENS for the shipments it is having carried on the main haul vessel.

For both (1) and (2), no ENS would be required for sailings between EU ports; an ENS is only required to be lodged at the customs office of first entry in the EU after the vessel comes in from foreign (with the exception of vessels that originate from a Norwegian port). This means that no ENS would ever be required for shipments on a vessel engaged in "pure" intra-EU traffic with no intervening calls at non-EU ports.

- 5.2 Goods are loaded in India and transshipped in Turkey to be unloaded in Bulgaria. The carriage from Turkey to Bulgaria is done by a 3rd party feeder. There is no vessel sharing or space or slot charter agreement between the ocean carrier and this 3rd party feeder. Who must lodge the ENS?

The ENS must be lodged by the feeder operator. However, the ocean carrier has the possibility of asking for the 3rd party feeder's consent that the ocean carrier itself lodges the ENS for the shipments it is having carried on the feeder vessel.

- 5.3 An ocean carrier has a vessel calling at a Russian port and the carrier's bill of lading is issued with a Point of Delivery (POD) in Russia but a Final Point of Delivery (FPD) in the EU. If the transportation from the POD to the FPD is done by barge, must the barge operator file the ENS with customs in the EU port? Alternatively, if the transportation from the Russian POD to the FPD in the EU is done by train or rail, is it the operator of this means of transport who must lodge the ENS?

According to the EU legislation, the person responsible for the lodgement of the ENS is the person who operates the means of transport on or in which the goods are brought into the customs territory of the Community.¹⁰ Therefore, in the example, the person responsible for lodging the ENS is the barge operator/rail company/truck company. The ocean carrier may, however, ask e.g. for the barge operator's consent that the ocean carrier lodges the ENS for those shipments it is having carried on the barge. The deadlines for the lodgement of the ENS will depend on the active means of transport, i.e. two (2) hours before arrival at the first EU port/customs office for the barge and rail, and one (1) hour before arrival at the border for the truck.

- 5.4 If goods are carried into the EU by a feeder operator, but the ocean carrier that has issued a through bill of lading to the shipper for the transportation of the goods into the EU has no vessel sharing or space/slot arrangement with this feeder operator and no bill of lading is issued by this feeder operator, who is responsible for lodging the ENS?

The "carrier" is responsible that the ENS, where required, is lodged and is lodged within the prescribed deadline. The term "*carrier*" is in the EU rules defined as "*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 that, as a general

¹⁰ In deep sea maritime traffic, this is held to be the ocean carrier that issues bill of lading for the carriage of the goods into the EU. Thus, 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, for the carriage of the goods into the EU on the vessel subject to the arrangement.

principle, the operator of the vessel bringing the goods in to the EU is responsible for the ENS filing.

This principle – that the operator of the vessel bringing the goods to the EU is responsible of the lodgement of the ENS – is modified in certain situations. One of these situations applies to maritime traffic "involving vessel sharing or similar contracting agreements between the involved carriers [where] the obligation to file an ENS lies with that carrier who has contracted, and issued a bill of lading ...for the carriage of the goods into the customs territory of the Community on the vessel ...subject to the agreement". In such situations, the VSA or similar arrangement is used by the bill of lading issuing carrier to operate a regular, scheduled service by sharing vessel space with another vessel operator on a regular basis.

In the above question, if there is no VSA or similar contracting arrangement that establishes the bill of lading carrier as having regular, scheduled service and the movement is an irregular, ad hoc arrangement in place between the feeder operator and the ocean carrier, the feeder operator is responsible for filing the ENS.

- 5.5 If an ENS was required but for whatever reason was not lodged within the deadline, the EU rules require that the "carrier" must immediately lodge an ENS after vessel arrival in the first EU port. In case of vessel sharing (VSA) arrangement, who is the "carrier" that must lodge this ENS after vessel arrival? The vessel operator or the bill of lading issuing carrier?

The "usual" rule regarding filings of ENS in VSA or similar contracting situations, e.g. space or slot charter arrangement, applies, i.e. the bill of lading issuing carrier must lodge the ENS for shipments it is having carried on the arriving vessel. If the bill of lading issuing carrier, for whatever reason, did not file an ENS, where required, within the deadline, it is responsible for lodging the ENS immediately after vessel arrival; it would also be responsible for any penalties that, pursuant to the legislation of the Member States concerned, may be imposed due to the late filing.

- 5.6 Is a space or slot charter arrangement considered in the same manner as a vessel sharing arrangement for the purpose of ascertaining the particular carrier responsible for filing an ENS?

Yes. The relevant Article 183c CCIP reads: "*In the case of maritime or air traffic where a vessel sharing or contracting arrangement is in place, the obligation to lodge the entry summary declaration shall lie with the person who has undertaken a contract, and issued a bill of lading or air waybill, for the actual carriage of the goods on the vessel or aircraft subject to the arrangement*" (emphasis added). When space or slot charters serve to allow the carrier to offer and provide regular, scheduled service to a Member State, they have a similar effect as vessel sharing arrangement.

6 Diversions

- 6.1** 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 EU 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 EU.

- 6.2** 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) EU port on the vessel’s itinerary, then an amendment (see Section 7 below) 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.

- 6.3** What about a change of destination when a shipment is originally consigned to a specific port of discharge but the shipper subsequently requests that the shipment be discharged in another port in the same Member State?

This should be treated as an amendment to the ENS (see Section 7 below), not as a diversion request provided that the discharge takes place at a port in a Member State on the ship's original itinerary.

- 6.4** Does the term “Diversion Request” mean that customs can overrule the master’s decision to divert the ship?

No. “Request” should 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.

- 6.5** Is there a deadline 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 at the new actual first port of entry.

6.6 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.

The choice between the Entry Key and the list of MRNs is left to the vessel operator, not to the customs administration (see Q 1.19).

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 liner shipping companies would typically use the first version of the diversion request.

6.7 In case of a vessel sharing arrangement, each bill of lading issuing carrier has to file the respective ENSs. But in case of vessel diversion, who has to send the diversion request? Is it the vessel operator on behalf of all carriers having shipments carried on the vessel, or must each individual bill of lading issuing carrier lodge a diversion request?

First, it must be noted that in cases of vessel diversion, two situations may occur:

(a) the vessel is arriving first at a port in a Member State already declared in the ENS (example: The initially declared itinerary Naples – Le Havre – Algeciras – Felixstowe becomes Le Havre – Algeciras – Felixstowe);

(b) the vessel is arriving first at a port in a Member State that was not declared in the ENS (Example: The initially declared itinerary Naples – Algeciras – Felixstowe becomes Le Havre – Algeciras – Felixstowe).

A diversion request is only required in the situation described under (b), i.e. when the first port of arrival in the EU is in a Member State that was not declared in the ENS.

Where required, the diversion request must be sent by the vessel operator to the originally declared customs office of first entry (Naples in the example in (b)). The vessel operator has full discretion to choose between providing the “Entry Key” data elements or the list of MRNs in its diversion request (See Q 6.6 for the data elements to be provided under either option).

- 6.8** If a 3rd party has transmitted an ENS to the first port in the EU and the vessel is diverted or the rotation changes, is the carrier required to inform the 3rd party of this change of first port of call so that the 3rd party can make amendments to its ENS?

If the diversion of the vessel/change of rotation results in the vessel first calling in the EU in a Member State that was not declared in the ENS, then the vessel operator must lodge a diversion request with the originally declared customs office of first entry. However, the customs legislation does not require the vessel operator to inform all the parties who filed ENSs for shipments on that vessel (whether these are 3rd parties or other bill of lading issuing carriers) as there is no requirement that these parties amend their ENS with the diversion information.

If the diversion of the vessel/change of rotation means that the vessel will first call in the EU in a Member State that was already declared in the ENS as a subsequent port, then no diversion request is required. Here also the customs regulation does not require the vessel operator to inform all the parties who lodged ENSs for shipments on that vessel of the diversion as there is no requirement that these parties amend their ENS with the diversion information.

Communication of such vessel diversions to other parties would be left to carrier’s commercial practice.

- 6.9** An ENS was sent to the intended first port in the EU (e.g. Rotterdam) but due to “force majeure”, the vessel is diverted to a port in another Member State (e.g. Antwerp) which was not included in the ENS and that now becomes the first port of entry. How is this to be addressed?

Because the actual (Belgian) customs office of first entry was not included in the original ENS, a so-called “Diversion Request” must be lodged by the vessel operator with the declared (Dutch) customs office of first entry. The “Diversion Request” can take the same format as the Arrival Notification, i.e. it can either include the “Entry Key” data or include the MRNs for all the ENS lodged for all the shipments carried on the vessel (the choice between the Entry Key and the list of MRNs is left to the vessel operator, not to the Customs administration (see Q 1.19). Based on the “Diversion Request”, the declared (Dutch) customs office of first entry will be able to identify in ICS the risk assessments it made based on the ENS, and if the risk assessments resulted in identifying any risks (“positive risk results”), then these positive risk results (not the entire ENS information) will be transmitted to the actual (Belgian) customs office of first entry.

- 6.10** Same question as above 6.9, but the actual first port of entry (Antwerp) was included as a subsequent port in the ENS sent to the declared first EU port in the EU (Rotterdam). How is this to be addressed?

This is not a case of diversion requiring the lodgement of a “Diversion Request” because Antwerp was listed as a subsequent port in the original ENS. The carrier does not have to re-transmit the ENS to the (Belgian) customs office of first entry. The (Belgian) customs office of first entry will already have received any positive risk results from the declared (Dutch) customs office of first entry in the EU.

In this example, because Antwerp is now the port of first entry in the EU, the vessel operator must lodge an Arrival Notification with Belgian customs. This Arrival Notification will allow Belgian customs – in case it has not already heard from Dutch customs – to query Dutch customs via ICS about any positive risk results.

- 6.11** What happens in the case of a cargo diversion if the decision to divert the cargo was made after the first port of call has already been passed? What will customs in the actual discharge port do regarding any risks identified for the diverted cargo?

If the cargo diversion takes place after the first EU port of call, the risk assessment will already have been done. There is no obligation to amend the ENS that is now closed.

The diverted cargo must, upon discharge, be presented to customs (quite often this is done by the bill of lading issuing carrier) and must, unless declared for a customs procedure, e.g. release for free circulation, be declared for temporary storage. The summary declaration for temporary storage must include a reference to the previously lodged ENS, where applicable (see Q. 1.16). Customs in the actual discharge port can use this reference “to look up” the previously lodged ENS in the ICS and determine if the customs office of first entry has identified the goods as being of risk.

- 6.12** How should amendments to the ENS after a vessel diversion be addressed?

The answer depends on whether the vessel diversion requires the lodgement of a Diversion Request:

The vessel is diverted to a new customs office of first entry in a Member State not declared in the ENS.

In this situation, a diversion request should be submitted to the originally declared customs office of first entry. This office must ensure that any identified positive risks are forwarded to the actual customs office of first entry.

Once a diversion request has been made, no amendments to the ENS are allowed.

This also means that if a shipper - after the Diversion Request has been made - informs the carrier of a change in the shipping instructions that otherwise would have resulted in an amendment to the ENS (e.g. different cargo description or consignee), no amendment to the ENS is possible.

The vessel is diverted to a new customs office of first entry in a Member State already declared in the ENS.

In this second situation, a diversion request is not required as the Member State responsible for the new actual customs office of first entry will have already received any positive risk results from the originally declared customs office of first entry. Nor will the ENS need to be amended to reflect the new actual customs office of first entry.

However, if a shipper - after the decision to divert the vessel has been made – informs the carrier of a change in the shipping instructions (e.g. different cargo description or consignee), then an amendment to the ENS should be made. The amendment to the ENS should be lodged with the originally declared customs office of first entry (that also received the original ENS).

- 6.13** Upon a decision to divert the vessel that requires a diversion request to be made, one or more shippers decide to have their cargo unloaded in the port where the vessel is being diverted to rather than in the port of unloading declared in the original ENS. How is this addressed? How will customs in the actual discharge port know if goods have been identified as constituting a risk?

This scenario is similar to situation (1) in Question 6.12 above:

If the shipper - after a Diversion Request has been made - decides that the cargo originally bound for the declared customs office of first entry now is to be unloaded at the actual customs office of first entry, then an amendment to the ENS is not possible.

As to how customs in the actual discharge port will know if goods originally scheduled to be discharged in the declared port of first entry have been identified as constituting a risk, the response falls in three parts:

1. Upon receipt of the Diversion Request, the declared customs office of first entry will be able to identify the actual customs office of first entry and send to it any positive risk results and the associated ENS information from the declared customs office of first entry's risk assessment.
2. The vessel operator must at arrival at the actual customs office of first entry lodge an Arrival Notification that will allow customs there – if it has not received any positive risk results from the declared customs office of first entry - to “call up” in ICS the originally lodged ENS and any positive risks that the originally declared customs office of first entry may have identified.
3. The goods originally scheduled for discharge in the declared first port entry but now discharged in the actual first port entry must be included in the arrival manifest; they must also be presented to customs.

These processes will assist customs to tie the discharged and presented goods with any positive risk results even if the port of discharge is now different from the one declared in the ENS.

7 Amendments to ENS

7.1 What information change in the shipment requires a resubmission 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 on the ENS particulars that can be amended. 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 deadlines for the lodging of the ENS do not start again after the amendment since it is the initial declaration that sets them. If, at the time of amendment, the ship in deep sea container traffic has left the foreign load port, a “do not load” message cannot be issued anymore.

Risk analysis is performed on the basis of the ENS. Where an amendment is made, risk analysis is performed again to accommodate 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 intends 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, consequently the filer – or its representative – would need to be IT connected to that office.

7.2 What happens if an ENS has been filed but the container is not loaded onto the intended vessel? Will an amendment to the ENS be required?

The answer depends on the specifics of the situation:

If the customs office of first entry will be the same for the “new” vessel on to which the short shipped cargo is loaded and all the short shipped cargo was covered by the same ENS (e.g. two containers covered by one ENS and both containers are “rolled”) then there are two options – either file an amendment to the original ENS or lodge a new ENS.

If, however, the short shipped cargo only formed part of the original ENS (e.g. only one of the two containers covered by one ENS is “rolled”) or the actual customs office of first entry is different from the originally declared, then a new ENS must be lodged for the short shipped goods.

NB: Where a new ENS is lodged, the lodgement must be done no later than 24 hours before commencement of loading, starting a new 24 hour clock (or “window”) for customs risk assessment where Do Not Load (DNL) messages may be issued.

7.3 How to address shipments covered by a “To Order” bill of lading?

The EU legislation (data elements in Annex 30A CCIP) explicitly recognizes “To Order” bills of lading. It clarifies that for such bills of lading no consignee needs to be identified in the ENS. Instead a special code – 10600 – shall be used for the consignee.

If the goods are sold in transit and the carrier is informed by its shipper customer who the (new) consignee is, an amendment to the originally lodged ENS should be filed. The sale of the goods may also result in a new place of unloading; this should also be included in the amendment to the ENS.

NB: The lodgement of an amendment to an ENS will not re-start the 24 hour clock (or “window”) where DNL messages can be issued; if the amendment is made after vessel departure it can, by definition, not result in a DNL.

7.4 Two containers were covered by the same bill of lading and an ENS was lodged for that bill of lading (= two containers). While en route, the port of unloading and/or the consignee changes for either or both of the containers. How is this to be addressed?

The changed information regarding port of unloading and/or the consignee will presumably result in the carrier issuing two new bills of lading, one for each container reflecting the new port of unloading and/or new consignee. These changes should be reported to the customs office of first entry either by submitting amendments to the original ENS or by lodging two new ENSs (one for each new bill of lading). The carrier would have discretion in choosing which of these two options it would want to pursue; if the former option is chosen then the amendments must include also the MRN for the originally lodged ENS. Because an original ENS was lodged within the pre-vessel loading deadline, and the changes resulting in amending the original ENS or lodging new ENSs were made after vessel departure, the ocean carrier cannot be held to have filed late. However, as discussed in Q. 7.6, the ocean carrier is advised to keep records of its previously lodged ENS, including the MRNs, for a minimum of 200 days after the date and time the original ENS was lodged.

- 7.5 In cases where the carrier decides to send a new ENS instead of filing an amendment to the existing ENS, will the new ENS result in a new acknowledgement, i.e. a new MRN number?

Yes, because there is a new ENS, a new MRN will be issued. The previously issued MRN number will not be overwritten by the new MRN number, but will automatically be purged from ICS after 200 days. The new ENS is not required to include the MRN for the previously lodged ENS (only amendments to a previously lodged ENS must include the MRN for that ENS).

- 7.6 If the carrier decides to send a new ENS instead of filing an amendment to the existing ENS, does this new ENS have to be lodged no later than 24 hours before commencement of loading? Will there be consequences for the carrier if it decides to file a new ENS instead of filing an amendment at a point in time later than 24 hours prior to loading?

Instead of amending an ENS, an ocean carrier always has the option of lodging a new ENS.

Lodgement of amendments to an ENS never results in a re-start of the 24 hour “window” for customs’ risk assessment and the possible issuance of a Do Not Load message because it is the initial declaration that sets the deadlines.

Lodgement of a new ENS – if done before vessel departure from the foreign load port - will start a new 24 hour clock (or “window”) for customs risk assessment where DNL messages may be issued. If the new ENS is lodged after vessel departure, there will not be a re-start of the 24 hour clock (or “window”), and no DNL messages can be issued.

The originally lodged ENS will remain in ICS for 200 days before it is purged from the system. Therefore, if upon filing of the new ENS after vessel departure from the foreign load port, the customs office of first entry comes back to the carrier and claims that the carrier is not in compliance with the filing deadline, the carrier – as long as it is able to produce the MRN for the originally lodged ENS – can use that MRN to demonstrate that it did file within the deadline.

Carriers are therefore advised to keep records of their previously lodged ENS, including the MRNs, for a minimum of 200 days after the date and time the original ENS was lodged.

- 7.7 If an ENS has been submitted and an MRN received for a shipment that is then transferred to another vessel, a new ENS (with a new MRN) may be lodged instead of amending the first ENS. If then the shipment is transferred back to the first vessel, can any of the existing MRNs be used? Or should the carrier lodge a new, third, ENS?

First, it should be noted that the lodgement of an ENS does not “trigger” an obligation to actually bring the declared shipment to the EU. An ENS will be stored by customs for 200 days. If the goods, covered by that ENS, have not within those 200 days been covered by an Arrival Notification or presented to customs, the ENS will automatically be purged from ICS.

Based on the above, and provided that (a) all the cargo covered by the original ENS is loaded back onto the first vessel; (b) the declarant is the same; and (c) that the customs office of first entry stays the same [d)and the date of arrival in the EU stays the same, then the ocean carrier does not need to file a third ENS. The first ENS would still be applicable.

- 7.8** For a shipment New York – Lisbon – Tunis – Tangiers – Genoa, the shipment from New York to Genoa will be declared twice (in Lisbon and in Genoa) and two MRNs will have been issued. If after the reception of the two MRNs an amendment for the cargo loaded in New York and destined to Genoa is necessary, is it sufficient to amend only the ENS to Genoa?

Yes. This is because there are two voyages into the EU (cf. Q. 2.5): one voyage is New York to Lisbon; the second voyage is Tangiers to Genoa. The first voyage ends when the ship leaves Lisbon, which also means that the ENS and associated MRNs lodged no later than 24 hours before loading in New York no longer are of relevance from a safety and security perspective. However, a new risk assessment begins once the ship leaves Tangiers bound for Genoa and the ENS for the goods carried on the ship is lodged no later than 2 hours before arrival in Genoa (resulting in the issuance of a MRN).

If an amendment to the Genoa-bound cargo that was loaded in New York becomes necessary after the ship has left Lisbon and before it arrives in Genoa, only the second ENS for that cargo (lodged with customs in Genoa) can and should be amended. The amendment must include a reference (the MRN) to the ENS previously lodged with customs in Genoa.

8 Do Not Load (DNL) messages

- 8.1** 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 customs “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.

- 8.2** 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 is no 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.

- 8.3** 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).

- 8.4** 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. If, upon presentation of the goods, customs does not inform the person presenting the goods that they cannot be released, the assumption can and should be 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.

- 8.5** Is there a penalty if a container is loaded despite a DNL message?

The EU legislation does not include any penalty provisions for situations where the carrier – irrespective of a DNL message – loads the container and brings it to the EU. However, penalties could be applied pursuant to national legislation applicable at the customs office of first entry that issued the DNL message. In any event, the carrier should expect that the container, subject to the DNL message, will be targeted for customs inspection and control either in the customs office of first entry or, at the latest, at discharge and presentation in the EU discharge port with the possibility, if not likelihood, that the container will be denied discharge in the EU and the carrier ordered to bring it back to origin. Any container subject to a DNL message should consequently not be loaded in the first place.

- 8.6** In cases where the risk analysis results in a DNL message, will the declarant receive first a unique MRN as acknowledgement of receipt of the ENS, and then, as a second step, receive the DNL message?

Yes, there will be two separate messages: a MRN number (accompanied by the bill of lading number and the container number) and, if applicable, a DNL (with the same two additional data elements).

- 8.7** If a shipment has been cleared for load, but a subsequent filed ENS amendment results in a DNL, will the original assigned MRN be cancelled and replaced by another MRN?

The original MRN will stay the same upon filing of the amendments. It will not be replaced by another MRN.

It should be added that a DNL message can only be issued within the 24 hour clock (or “window”) from the date and time of lodgement of the original ENS. Therefore, if the amendment is lodged after the expiration of the 24 hour “window”, it cannot result in the issuance of a DNL message.

- 8.8** What information will be included in the DNL?

In addition to the MRN for the ENS, the DNL will include the bill of lading number and the container number(-s) as indicated in the ENS.

If the carrier has given its consent that a 3rd party, e.g. a forwarder, lodges the ENS, then the forwarder must in its ENS filing include both its own (house) bill of lading number and the carrier’s (master) bill of lading number, so that the latter number can be included in the DNL in order to allow the carrier to know which shipment is subject to the DNL message and therefore should not be loaded onto the vessel.

Since the reasons for the issuance of the DNL message may be based on simple mistakes in the ENS data that can easily be corrected (such as an incorrect address for the consignee, etc.), the reasons for the DNL should whenever possible be communicated to the ocean carrier so that corrections may be made if appropriate, potentially leading to a lifting of the DNL message in time for the shipment to be loaded on the intended vessel.

- 8.9** In case an ENS has been lodged on the bill of lading level or even includes multiple bills of lading, how will the DNL messages be sent: on ENS, bill of lading or container level?

This is not regulated by EU legislation. It is possible that a national customs authority could issue a DNL message at the ENS level, thus perhaps covering multiple bills of lading and containers, even if the risk that triggered the DNL applied to only one of the containers.

Lodgement of ENS at the container level would eliminate the risk that multiple low-risk containers might be covered by a DNL, although issuance of DNL messages is expected to be rare.

- 8.10** In case a DNL has been issued, which processes should be used to have the DNL lifted and the container cleared for loading?

The ICS does not describe the processes to be performed in case of a DNL message in order to have the shipment cleared for loading. This means that it will up to each individual Member State to prescribe. As these situations are expected to be rare, the carrier will want to coordinate a response to any DNL with the Member State customs authority that issued the DNL message.

- 8.11** Is it up to each Member State to determine the content of a DNL message?

The Commission's functional specifications for ICS include a DNL message, but as these specifications are only recommendations to the Member States, individual Member States may in their national specifications lay down specific DNL message structures.

- 8.12** Will a DNL message be issued if a mandatory data element field is not completed?

No. In case one or more required data element fields are left blank in the ENS, it will be rejected. A DNL message may only be issued upon risk assessment of a complete and registered ENS (the registration of an ENS is confirmed by the issuance of an MRN).

- 8.13** By what methods would DNL messages be generated by (e.g. EDI) and will there be supporting or contingency methods (e.g. e-mails)?

The answers to these questions should be provided in the national technical specifications as well as any contingency (or "business continuity") plans that the national customs administration may have developed in accordance with Commission guidelines. Carriers should contact the customs administrations of the Member States that will act as customs offices of first entry on the Member companies' vessel rotations for clarification of these matters, including arrangements for responding to any DNL messages.

9 EORI

- 9.1** 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?

Article 4I (3) CCIP prescribes that for an economic operator not established in the customs territory of 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 EU a summary or customs declaration....; (b) he lodges in the Community an entry summary declaration; (c) he operates a temporary storage facility...; (d) he applies for authorised consignors status or other transit facilitations; (e) he applies for [AEO status]”.

So, if the parent company will be filing all the ENS for cargo it is having 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 EU Member States have promulgated 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.

More information on the EORI Regulation, including its implementation at national level, can be found at:

http://ec.europa.eu/ecip/security_amendment/who_is_concerned/index_en.htm#N100DC

- 9.2** Our company will be using a central computer and data centre located outside the EU 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).

- 9.3** 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 EU?

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.

9.4 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 legal person or a permanent business establishment 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.

9.5 How will we as an ocean carrier know the EORI number of each customer? Is there an official list published?

An official list is available at: http://ec.europa.eu/taxation_customs/dds/eorihome_en.htm

This list only enables a check of the validity of any EORI number (the name and address are not displayed). It should be noted that the official list may not include all issued EORI numbers as economic operators may not have given their consent to the publication of their EORI numbers.

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.

9.6 Which EORI numbers must be indicated in the ENS?

If the ocean carrier lodges the ENS, it must always include its own EORI number.

If a 3rd party lodges the ENS instead of the ocean carrier, the 3rd party, in addition to its own EORI number, also must include the ocean carrier’s EORI number.

The consignor must always be identified in the ENS irrespective of who lodges the ENS. It shall be identified with its EORI number “*whenever this number is available to the person lodging the [ENS]*” (Explanatory Notes to Annex 30A), i.e. the consignor’s EORI number is to be included only when it is known to the ENS filer. (In an ENS situation, the consignor quite likely is domiciled outside the EU and will therefore most likely not have an EORI number).

The consignee must be identified in the ENS when different from the person lodging the ENS. However, if the goods are carried under a “To Order B/L” and the consignee is unknown, the consignee field in the ENS shall include “Code 10600” and the notify party must always be identified instead. The consignee (and notify party) shall be identified with its EORI number “*whenever this number is available to the person lodging the [ENS]*”, i.e. the EORI number is not mandatory. A shipper customer (importer), if it is an AEO, may ask that an ocean carrier include its EORI number in the ENS in order that customs can factor the AEO status of the importer into the risk assessment. However, that is an issue for the shipper customer to decide.

10 ENS data

10.1 Will the risk assessment be based on a comparison between the ENS data and the stow plan or manifest data?

There is no EU rule requiring ocean carriers to submit their stow information to customs authorities. Nor is there any EU rule regarding comparison of the ENS with the manifest lodged at arrival.

Submission of, and the content of, arrival manifests is – with the exception of acceptable proofs for Community status of goods - currently exclusively regulated by national legislation, not by EU rules. It is possible that national legislation requires that the manifest includes the MRNs, where applicable, for shipments to be discharged in the individual ports. If acceptable to the customs authorities, the manifest may 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” to identify the ENS, where applicable; this could pursuant to national customs legislation be required to be the MRN (see Q.1.17).

- 10.2** An ENS must be lodged for each foreign load port, which means that a MRN will be issued for each ENS lodged from that foreign load port. Earlier loaded shipments which remain on board the vessel in that particular port will not get a new MRN. Then how will customs in the first port of entry be able to tie all the ENSs together that have been lodged from different foreign load ports and at different filing days and time?

As discussed in Q. 1.14 and Q. 1.17, the vessel operator must lodge an Arrival Notification to the customs office of first entry. Irrespective of whether this Arrival Notification provides the “Entry Key” information or includes all the MRNs for all the shipments on the arriving vessel, customs in the first port of entry would be able to tie all the ENS together and access any positive risk results for those shipments.

- 10.3** If both the carrier and the forwarder are lodging an ENS for the same shipment, is the customs IT system able to reconcile both information and trace the forwarder’s data on the basis of the carrier’s bill of lading?

This is not part of the functional specifications for ICS for the simple reason that EU legislation only contemplates one ENS per shipment to be lodged -- either by the carrier or, with its knowledge and consent, a third party, e.g. a forwarder. However, in cases where dual filings nonetheless occur, customs authorities may decide to use both filings for their risk analysis. Otherwise, they will consider the ENS lodged by the carrier to be the valid one.

- 10.4** If a vessel is not operated by the bill of lading issuing ocean carrier, which voyage number must be indicated in the ENS: the ocean carrier’s voyage number or the vessel operator’s voyage number?

The voyage number to be indicated in the ENS should be that of the bill of lading issuing ocean carrier.

- 10.5** If a new vessel enters a service, is there a requirement for the ocean carrier to provide all the details of the new vessel prior to transmitting the ENS?

There is no such requirement in the EU legislation. The ENS must include the “identity and nationality of the active means of transport crossing the border”. For ocean going vessels, this equates to provision of the IMO vessel number.

- 10.6** When a vessel leaves the EU for a non-EU port and then returns to a EU port, a new ENS must be lodged. Does this ENS have to include the MRN from the original transmission?

No. The new ENS will result in a new MRN. (The only time when a reference to the original MRN is needed is when an ENS is amended).

- 10.7** The ENS data require information on the first and subsequent customs offices of entry. Annex 30A CCIP indicates that the first customs office of entry (“*first place of arrival*”) must “*adhere to the following pattern: UN/LOCODE (an...5) + national code (an...6)*”, i.e. up to 11 digits. The same Annex 30A CCIP indicates that the subsequent customs offices must “*adhere to the pattern provided in Annex 38 for SAD Box 29 for the Customs office of entry*”. The code for this pattern is currently composed of up to 8 digits.

Issue # 1: How and where will the information be available for each EU customs office?

Ocean carriers are advised – both for customs offices of first entry and for subsequent customs offices - to always use the codes provided in the list of all EU customs offices and their attendant codes (up to 8 digits) on the TAXUD website at the following address: http://ec.europa.eu/taxation_customs/dds/csrdquer_en.htm.

The list is currently incomplete as many Member States yet have to register their customs offices of entry. However, the Commission has undertaken to ensure that the list of codes for all customs offices of entry for all Member States, organized by transportation mode, will be available in the above electronic list before the ENS filing becomes mandatory on January 1, 2011.

Issue # 2: If certain Member States do not use the UN codes for places and ports (UN/LOCODE), are they obliged to accept ENS transmissions that include such UN codes?

No, the Member States are not obliged to accept the UN codes, and an ENS that includes such codes may therefore be rejected.

Ocean carriers are advised to always use the codes provided in the list, maintained by the Commission, discussed in Issue # 1 above.

- 10.8** Ocean carriers are expected to provide the “*routing*” in the ENS filing. Is “*routing*” meant for the routing of the vessel calling Europe or the routing of the container?

It is important to distinguish between the itinerary of the vessel and the routing of the goods.

The itinerary of the vessel in the EU shall always be provided in the ENS (even if it is lodged, with its prior knowledge and consent, by a 3rd party instead of the carrier).¹¹ The itinerary of the vessel is required so that the customs office of first entry will know to which subsequent customs offices to send any “positive” risks that have been identified. (See also Q. 1.6 above).

Routing of the goods is “*to be provided to the extent known*”. Therefore, if the carrier, pursuant to the transport contract, takes custody of the goods in the port of loading and is to deliver the goods to the consignee in the port of discharge, the carrier is not obligated or expected to provide information in the ENS about the routing of the goods prior to the port of loading or the routing of the goods after delivery to the consignee in the port of discharge. The carrier is only expected in the ENS to provide the information “known” to it e.g. in the bill of lading.

If the carrier has contracted to carry the goods to an inland destination, then it should provide that information.

- 10.9** Carriers seem to be expected to provide the “*date and time of arrival at first place of arrival in the customs territory*”, including hours and minutes of the expected arrival. What exactly is expected from ocean carriers, for whom an arrival time by the hour and minute makes little sense and could result in a tsunami of seemingly useless amendments to ENS?

Ocean carriers cannot in the ENS provide an arrival time with precise hours and minutes. Consequently, for ocean going vessels, only the scheduled date of arrival would need to be provided in the ENS.

In order for the ENS not to be rejected, ocean carriers in their ENS should follow the prescribed format “YYYY/MM/DD/HH/MM” but use the characters “00’ for hours and minutes, respectively (e.g. “2010/04/15/00/00”).

This also means that an amendment to the previously lodged ENS is only required when, en route, the date of arrival changes from what was reported in the ENS.

- 10.10** Can the ENS data be filed either at house bill of lading or master bill of lading level?

The bill of lading issuing ocean carrier is responsible that an ENS filing is made. For its ENS filing, the carrier may use the information “known” to it e.g. in its master bill of lading. (for details see point 7, PART B of the Guidelines)

A carrier may also consent that another party, e.g. a forwarder, files the ENS instead of the carrier. In this case, the forwarder would use its house bill of lading information to populate the ENS, and would become responsible for the accuracy and completeness of the ENS filing (see Q. 4.4).

¹¹ Specifically, the ENS must include information about the first port of call in the Community and any subsequent ports of call in the EU before the vessel heads foreign again.

10.11 If a forwarder provides to the carrier only a general cargo description of the shipments in a consolidated container, will this be sufficient for the carrier when it lodges the ENS?

Yes, a carrier can only include in its ENS the information “known to it”, i.e. available in the shipping instructions as reflected in the master bill of lading. Therefore, if the forwarder has provided a plain language general cargo description, then the carrier can use that description for inclusion in the carrier’s ENS filing. However, it should be noted that certain plain language cargo descriptions are unacceptable; these are set out in the Commission’s cargo description guidelines that can be accessed at: http://ec.europa.eu/taxation_customs/resources/documents/customs/policy_issues/customs_security/acceptable_goods_description_guidelines_en.pdf

10.12 Should the ENS contain both the HS code and the cargo description, or is only one of the two cargo information data elements required?

Either the HS code or a plain language cargo description is required to be provided in the ENS, but not both.

The exact language in the Explanatory Notes in Annex 30A reads:

“Goods description: [ENS]: It is a plain language description that is precise enough for customs services to be able to identify the goods. General terms (i.e. consolidated’, ‘general cargo’ or ‘parts’) cannot be accepted. A list of such general terms will be published by the Commission. [Note: This has been done at: http://ec.europa.eu/taxation_customs/resources/documents/customs/policy_issues/customs_security/acceptable_goods_description_guidelines_en.pdf].

It is not necessary to provide this information where the commodity code is provided’.

10.13 If the HS code is used in the ENS, how many digits must be provided?

The Explanatory Notes to Annex 30A clarify that, if a commodity code is provided instead of a plain language cargo description, then only the first four digits of the CN (HS) code are required. The exact language reads: *“Commodity code: [ENS]: First four digits of the CN code; it is not necessary to provide this information where the goods description is provided’.*

10.14 In case a container is stuffed with several cases and inside each case are four cartons each containing a different commodity, e.g. one carton of shirts, one of shoes, one of trousers and one of jackets, what must be submitted to customs:

- 4 HS codes assigned to 1 case and showing the gross weight of the case, or

- 4 x (times) 1 HS code assigned to 1 carton and showing the gross weight of each carton?

The ocean carrier is only obligated to provide in its ENS filing the information that is “known” to the carrier, e.g., from the bill of lading. This also applies to the provision of HS codes and at what level (e.g. cases or cartons).

The carrier is not responsible for policing the correctness and completeness of the information provided to the carrier by its shipper customer. Of course, the carrier should not accept a cargo description from its shipper customer for inclusion in the ENS that is deemed “unacceptable” in the Commission list of acceptable/non-acceptable plain cargo descriptions (see Q. 10.11 and 10.12 above for the link to the Commission’s list). Conversely, the carrier may use an “acceptable” cargo description as provided by its shipper customer for inclusion in the ENS or EXS.

Similarly, if the carrier prefers to provide commodity codes in its ENS, it may either use the codes provided by its shipper customer or “translate” the plain language cargo description received from the shipper customer into commodity codes (at the currently required 4 digit level).

Specifically regarding “cases” and “cartons”: The required ENS data element is “*number of packages*”, which in the Explanatory Notes is clarified to mean: “*Number of individual items packaged in such a way that they cannot be divided without undoing the packing, or number of pieces, if unpackaged. This information shall not be provided where goods are in bulk*”. This data element (together with the related data elements “*gross mass (kg)*” and “*net mass (kg)*” are – just like the HS codes discussed at the outset of this question - to be provided in the ENS in accordance with what is made available to the carrier by its shipper customer as reflected in the bill of lading.

10.15 What is the level of detail that is required for break-bulk cargo? If a carrier loads pallets containing x number of boxes, is the carrier then allowed to declare just the pallet or does the carrier need to go down to the box level instead?

The Explanatory Notes to Annex 30A provide guidance for how to address this issue:

First, the type of packages must be provided in the ENS using – according to the Explanatory Notes – a “*code specifying the type of package as provided in Annex 38 for SAD Box 31*”. The description of the codes to be used for types of packages can be found here:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1993R2454:20090701:EN:PDF>

Next, the number of packages must also be provided in the ENS “in such a way that they cannot be divided without first undoing the packing, or number of pieces if unpackaged”. Considering that the first data element (type of packages) allows a declarant to indicate e.g., a pallet type code, the second data element (number of packages) should be the numbers of the different types of packages for which the declarant has indicated a specific code.

Based on the above, a carrier would not need to indicate the number of boxes on each pallet as long as the carrier has indicated the code for the type of pallet used and the number of pallets the carrier is carrying with that particular code.¹²

10.16 'Location of Goods' - is this the origin as per certificate of origin?

"Location of goods" is only a required data element in the exit summary declaration (EXS), not in the ENS.

10.17 'Unique consignment reference number' - is this the same as the MRN?

No. The MRN or Movement Reference Number is a number issued by the customs office of first entry as acknowledgement of receipt of a complete ENS. A unique consignment reference number is a number assigned (typically by the exporter or shipper or seller) to a consignment for transport and customs purposes. The unique consignment number does not need to be provided where a transport document number (e.g. an ocean carrier's B/L number) is provided instead.

10.18 'Transport document number' - does this refer to documents such as "T1's"?

This is the carrier's (master) bill of lading number. The Explanatory Notes to Annex 30A include the following clarification of this data element: *"Reference of the transport document that covers the transport of goods into or out of the customs territory [of the Community]. Where the person lodging the entry summary declaration is different from the carrier, the transport document number of the carrier shall also be provided."*

10.19 'Conveyance Reference Number' – what does this refer to?

This is the voyage number.

In a VSA situation, the voyage number to be included in the ENS is the voyage number assigned by the bill of lading issuing ocean carrier that lodges the ENS, not the vessel operator's voyage number.

¹² The carrier always has the option to provide the box level information *if* that information is available to the carrier.

10.20 Can English be systematically used for the ENS sent to the first port of entry, or will only the local language be accepted?

The Member States are under no legal obligation to accept ENS in English; each Member State is entitled to request that the ENS be lodged in any of the 23 official EU languages that are “acceptable” to it (which, of course, could mean that a Member State determines that only one language – its own – is “acceptable”).

Under current practice, most, if not all, maritime EU Member States accept arrival manifests in English; if they have a problem understanding one or more elements in the manifest, they will require that only these elements be translated into their, or one of their, national language(s).

Carriers are encouraged to confirm the continuation of this current practice with each of the Member States to which they expect to lodge ENS.

11 Import Control System (ICS)

11.1 What is the ICS?

The ICS is systems architecture developed by the EU 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 data with a transit declaration.

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, structures, etc.

11.2 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 deadline is 2 hours before arrival.

11.3 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 are pursuant to national customs legislation.

11.4 Why do some national technical specifications for the lodgment of ENS differ from the Commission's Functional and Technical Specifications for the Import Control System (ICS)?

The reason for possible divergences is that the Commission's Functional and Technical Specifications for the ICS are not binding on the Member States insofar as the aforementioned "external domain" is concerned. (See Q. 11.1). For example, whereas the Commission's Functional and Technical Specifications do not include a deletion functionality for ENS, certain Member States' national technical specifications include such a functionality; where they do, the ENS deletion functionality should be used.

RAIL

12 Rail traffic

12.1 Considering a rail transport from an EU country to another EU country via a third country (e.g. from Austria to Greece via Hungary, Serbia and Bulgaria) under the paper-based simplified transit procedure for rail: where and by whom must the ENS be lodged?

An EXS must be lodged by the carrier or by a third party with the carrier's knowledge and consent at the customs office of exit that is the customs office competent for the place from where the goods leave the customs territory of the Community in Hungary,

given that a paper-based transit declaration cannot be used for the purposes of the EXS. An ENS must be lodged by the carrier or by a third party with the carrier's knowledge and consent at the customs office of entry in Bulgaria, given that a paper-based transit declaration cannot be used for the purposes of the ENS.