Notice to Shippers

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Subject:
EU Customs Advanced Manifest Rule
Frequently Asked Questions

Frequently Asked Questions on ENS[1]

General Questions

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.

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 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

[1] Apart from some DAL related comments this is mainly an extract of the most relevant questions from the ENS FAQ document published on the Homepage of the European Customs Information Portal:
http://ec.europa.eu/ecip/security_amendment/procedures/index_en.htm

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.

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).

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.

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.

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 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. 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.

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.

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.

Is an ENS required when locations such as the Canary Islands or Reunion are called during a vessel voyage?
The French overseas departments (e.g. Reunion), 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.

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.

Deadlines

If the ocean carrier – for whatever reason - failed to lodge an ENS in time, what will the consequences be?
The EU regulation provides that: "If an economic operator lodges the [ENS] after the deadlines, 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.

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.

Diffferent Scenarios

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.

Same scenario as above with intended vessel schedule: Singapore – Agadir (Morocco) – Fos – Genoa; the vessel schedule changes between Singapore and Agadir so tha 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.

Is DAL obliged to send an ENS to Reunion in the Indian Ocean trade?
As per agreement with MSC the ENS reporting for all DAL cargo will be made by MSC. Generally there is an obligation to submit an ENS to Reunion, because it's part of the EU Customs territory. Consequently all import cargoes into Reunion need to be covered by an ENS. In the IOI Service the itinerary is Italy – Reunion – Mauritius, so the leg from Italy to Reunion is intra-EU traffic and no ENS needs to be send. However if the schedule rotation changes and Mauritius is called before Reunion an ENS must be send the French Customs authorities for all Reunion import cargoes. As the sailing time is only about 10 hours it falls under short sea rules, so the ENS needs to be send by MSC two hours before arrival at Reunion. To be well prepared for such late schedule changes all agents in EU load ports need to make sure that all required ENS data are submitted by the shipper.

Feeder traffic and VSA arrangements

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 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

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 EU regulation 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.

Diversions

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, not as a diversion request provided that the discharge takes place at a port in a Member State on the ship's original itinerary.

Amendments to ENS

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.

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.

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. This code is inserted by MAP automatically if the consignee reads "To Order".
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.

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.

Do Not Load (DNL) messages

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.

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.
It must be added that any costs which might result from DNL messages or other Customs measures will not be taken over from the Carrier. The shipper/customer is responsible for the information provided to the Carrier and must take over any extra costs caused by expenditures required by Customs.

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).

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.

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.
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.

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.

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.

Kind Regards,
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