FREQUENTLY ASKED QUESTIONS AND ANSWERS ON EXIT SUMMARY DECLARATIONS (EXS)

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.

PART A

MARITIME CONTAINERISED TRAFFIC

PART B

AIR TRAFFIC

PART C

RAIL TRAFFIC

PART A
MARITIME CONTAINERISED TRAFFIC

1. BASIC PRINCIPLES

Q1.1 – Why are exit summary declarations required?

EU legislation requires, as a general principle, that **all** goods brought out of the customs territory of the Community, regardless of their final destination, shall be risk assessed and subject to customs control before departure or – in the case of deep sea containerized maritime shipments – before commencement of vessel loading. All such goods must therefore be covered by a declaration of some kind - either a customs declaration, e.g. for export (i.e. the Customs treatment of Community goods that are taken out of the customs territory), re-export (i.e. the Customs treatment of non-Community goods that are taken out of the customs territory), transit etc. or, wherever any of the former is not required, an exit summary declaration (EXS).

Q1.2 – When are exit summary declarations required?

Most goods leaving the EU will be covered by either a customs declaration for export, re-export, outward processing or transit. EXS are only required, under Articles 842a-842e CCIP, for other goods -- that is all goods, with certain specified exemptions, which are to be brought out of the EU but for which a customs declaration is not required.

It should be noted that where goods under temporary storage or in a control type I free zone are re-exported but where neither a customs declaration nor an EXS is required, re-exportation of such goods must be notified to the customs office of exit prior to the exit of the goods. *Re-export notifications* (or, as they are also referred to, requests for release from temporary storage) are an existing requirement that the industry is already complying with pursuant to national rules and requirements. Such re-export notifications shall be lodged in the form prescribed by the Customs authorities. They shall be lodged by the carrier or its representative; other parties may, with the carrier's knowledge and consent, lodge the re-export notification instead of the carrier; however the customs office of exit is not required to notify the carrier that it has accepted the re-export notification lodged by another party (Article 841a CCIP). Today, re-export notifications (or requests for release from temporary storage) are typically lodged by the ocean carrier or – as its representative – by the marine terminal operator.

EU legislation does not include a provision listing all the instances where an EXS would be required. Instead, instances where an EXS would be required are identified below[1]:

[1] An EXS shall not be required in cases provided for in international agreements concluded by the EU with a third country in the area of security. Such agreements currently exist with Norway and Switzerland (including Liechtenstein).

1. Non-Community goods in temporary storage or in a control type I free zone at an EU port loaded for re-export from the EU

Non-Community goods being exported from temporary storage or from a control type I free zone do not require a customs re-export declaration. Therefore, in principle, an EXS must be lodged for such goods prior to commencement of vessel loading (Article 842a (1) CCIP).

However, non-Community goods in temporary storage or free zone that are loaded for re-export may be exempted from the EXS requirement in the following two situations.

- **Transhipment**

No EXS is required for non-Community goods in temporary storage or a control type I free zone loaded for re-export provided that:

→ The goods are transhipped from a means of transport to a vessel or aircraft or rail wagon that will carry them from that temporary storage facility or control type I free zone directly out of the customs territory of the Community;

→ The transhipment is done at the same place where the goods were first placed into the temporary storage facility or free zone;

→ The transhipment is done within 14 calendar days from when the goods were presented for temporary storage[2]; and

→ The destination and the consignee for the goods have, to the knowledge of the carrier, not changed (Article 842a (4) (e) CCIP).

All four conditions must be met in order to qualify for the EXS exemption, e.g. a change of destination of the goods would require lodgement of an EXS even when the goods are to be loaded for re-export within 14 days from when they were presented for temporary storage. If the goods qualify for the EXS exemption, they can be taken out of temporary storage or free zone for loading upon lodgement of a re-export notification (request for release from temporary storage) (see Part D).

2. Transit declaration with security data

Non-Community goods being trucked to the temporary storage facility or free zone for loading on to a ship for re-export may be exempted from the EXS requirement provided that the transit declaration, lodged for bringing the goods to the facility or free zone, contains the data elements required for an EXS, and provided that the office of destination for the transit operation is also the customs office of exit for the purpose of lodging EXS or the office of destination is outside the customs territory of the Community (Article 842a (3) CCIP). If both requirements are fulfilled, then the goods can be taken out of temporary storage or free zone for loading upon lodgement of a re-export notification (request for release from temporary storage) irrespective of how long the goods are in temporary storage or in the free zone and whether or not the destination and consignee of the goods change during that time.

3. Community export goods loaded as transhipment goods following carriage from another EU port

Community export goods loaded as transhipment goods to an outbound main haul vessel following carriage from another EU port on a non-authorized regular shipping service vessel

[2] In exceptional circumstances, the customs authorities may prolong this time period.

are technically deemed to be non-Community goods in temporary storage in the EU transhipment port.

Consequently, such Community transhipment goods are to be treated the same way as non-Community goods in temporary storage transhipped for re-export described in 1. A above, i.e. an EXS is required *unless* the Community transhipment goods are loaded onto the outbound main haul vessel at the same place where they were brought to the storage facility; the transhipment is done within 14 calendar days from when the goods where presented for temporary storage in the transhipment port; and the destination and consignee for the goods have not during that time, to the knowledge of the carrier, changed (Article 842a (4) (e)).

Comment regarding # 1 and # 3: As mentioned earlier (Q1.2), where transhipped goods are exempted from the requirement that an EXS be lodged with Customs in the EU transhipment port, a re-export notification must be lodged instead before the exit of such goods. The bill of lading issuing carrier is legally responsible that re-export notifications, where required, are lodged.

4. Goods to be moved between Member States via transhipment in a country outside of the EU

Goods to be moved between EU Member States via transhipment in a country outside the EU are not exports (or re-exports) and no customs declaration is therefore required. An EXS must therefore be lodged for such goods at the EU port of loading (Article 842a (4)(b)).

For example, Community goods moved on a vessel from Spain to the U.K. will not require EXS filings as long as the goods remain on board the vessel during any non-EU intermediary port calls. However, if the goods leave Spain on a vessel bound for Agadir, Morocco, where the goods are to be unloaded for transhipment on to another vessel for discharge in Felixstowe, UK, an EXS would need to be filed with Spanish customs before vessel departure from the Spanish port. In both scenarios, an ENS would need to be filed with U.K. customs two (2) hours before arrival at Felixstowe.

5. Shipper owned empty containers

Shipper-owned empty containers that are being transported, against payment, pursuant to a contract of carriage are to be treated in the same way as other cargo and must be covered by an EXS (Article 842a (1)).

Carrier repositioned empty containers do not, pursuant to Article 842a (4) (a) CCIP, need to be covered by an EXS; they should instead continue to be reported to Customs as is done today at departure. (See Q.1.13)

In all of the instances listed in 1-4 above, where an EXS is required, the bill of lading issuing ocean carrier is legally responsible for ensuring that the EXS is lodged and is lodged within the deadline (See Q. 1.7). A representative may lodge the EXS on behalf of the ocean carrier. Alternatively, the ocean carrier could consent to the lodgement of the EXS by another party as part of the contractual arrangement for the carriage of the shipment. In such instances, the other party would file the EXS instead of the ocean carrier, and it, not the carrier, would be responsible for the EXS filing's accuracy and completeness. (See also Q. 1.5). However, the ocean carrier is not under the EU legislation – and contrary to what is the case for entry summary declarations – entitled to receive confirmation from the customs office of exit that an EXS has been lodged by another party, and will thus not have independent proof that its legal requirement to lodge an EXS, where required, has been met (Article 842a (5) CCIP).

Q1.3 – Are there any exemptions to the requirement for an exit summary declaration?

Yes. EU legislation lists several types of goods/traffic for which an EXS is not required. In addition to the exemptions already discussed in Q.1.2 above for transhipped goods, important exemptions for the liner shipping industry pertain to carrier repositioned empty containers, intra-EU cargo movements ('feeder' movements)[3]; and cargo remaining on board the vessel (FROB). The exemption for FROB cargo applies both to cargo already on board the (inbound) vessel when it first comes into the customs territory of the Community, and to export cargo once loaded on to the (outbound) vessel in previous EU ports.

Q1.4 - Where must the exit summary declaration be lodged?

The exit summary declaration must be lodged at the customs office of exit. For maritime traffic, and for the purpose of lodging EXS, where required, this is the EU port where the goods are loaded on to the vessel that will be carrying them to a destination outside the customs territory of the Community even if the vessel is to call at subsequent EU ports before finally leaving the customs territory of the Community.

This definition of the customs office of exit for maritime traffic means that no EXS shall be required for goods loaded on to a vessel carrying goods between EU ports as long as the goods are not transhipped via a country outside the EU.[4]

Q1.5 - Who must lodge the exit summary declaration?

The EU rules prescribe that the EXS, where required, shall be lodged *'...by the carrier or its representative*' (Article 842a (5) CCIP). In deep sea maritime traffic, this is held to be the ocean carrier that issues the bill of lading for the carriage of the goods out of the EU. In the case of vessel sharing (VSA) or similar arrangements, the obligation to file an EXS, where required, lies with that ocean carrier who has contracted with a shipper and issued a bill of lading for the carriage of the goods out of the EU on the vessel subject to the arrangement. [5]

Another person may lodge the EXS instead of the carrier, but this does not relieve the carrier of the responsibility to ensure that an EXS, where required, is lodged and within the deadline. Therefore the EXS may be lodged by a person other than the carrier only with the carrier's knowledge and consent pursuant to contractual agreement.

A carrier entering into such an agreement with a third party is advised to exercise care and ensure that its agreement with that other party is well understood and documented by both parties. There are several reasons for this:

- An omission by the third party to file the EXS 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 obliged that the EXS is lodged before the deadline.
- If an EXS is required but has not been lodged, then the customs authorities will not release the goods for exit (loading). This implies, as is also currently the case that ocean carriers must ensure that goods are not loaded or removed without proper release by the relevant customs authority.

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[3] Provided the carrier, upon request, can make available to the Customs office of exit evidence, e.g. in the form of a manifest or loading list, regarding the intended place of unloading.

[4] The same condition mentioned in footnote 2 applies.

[5] 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 leaving the customs territory of the Community (the ferry) is only transporting another means of transport which, after arrival at its destination, will move by itself as an active means of transport (the truck), the obligation to file an EXS lies with operator of that other active means of transport (the trucking company).

- Arrangements for the control, release and loading of outward goods will be governed, as now, by national, rather than EU, legislation. The requirement for export manifests practised in many Member States is an example of this. As it is the ocean carrier, who is primarily affected by those national rules, it may find it in its interest to have full control over compliance with the customs requirements at EU ports of loading.
- This controlling interest is further compounded by the carrier's need to be notified directly by Customs that it has accepted the EXS. The carrier needs this notification as proof that its legal responsibility that an EXS, where required, has been lodged has been met. However, the EXS (contrary to the ENS) is not required to include a data element for the identification of the carrier, e.g. by inclusion of the carrier's EORI number. Such lack of identification in the EXS of the carrier that should be notified of the third party's EXS lodgement may make it difficult for Customs to always identify, and notify, the carrier in a timely fashion (see also Q 1.7 regarding the EXS filing deadlines). Furthermore, the customs office of exit is – contrary to what is the case for ENS - not required by EU legislation to notify the carrier that it has accepted an EXS lodged by another party (Article 842a (5)CCIP)

Q1.6 - Must the person lodging the EXS have status as an Authorized Economic Operator (AEO)?

There is no requirement that an EXS declarant must be an AEO.

However, the person lodging the EXS ("the declarant") must have an Economic Operator Registration and Identification (EORI) number that must be included in the EXS. If the EORI number is not included, then the EXS is not complete, and it will be rejected.

Q1.7 - When must the EXS be lodged?

EU legislation requires that the EXS, for deep-sea containerized shipments, must be lodged at least 24 hours **before commencement of loading** in the EU load port. Other deadlines apply for other shipping services and other modes of transport, e.g. 4 hours before departure for non-containerized deep sea shipments; for all short sea shipping sectors, the deadline is 2 hours before departure from the EU load port. The various deadlines and the geographical definition of the short sea shipping area can be found at [provide a link to the Commission Guidelines document, currently section 9 in Part C].

Q1.8 – What must be declared in the EXS?

Annex 30A Table 1 CCIP sets out the data elements to be included in the EXS. The filing must be completed in accordance with the Explanatory Notes in Annex 30A CCIP

Whoever lodges the EXS, this person ("the declarant") is responsible for its content, accuracy and completeness. However, the declarant is only obligated to provide the information known to it at the time of the lodgement of the EXS and would not have to ascertain the accuracy of the data provided to it by its trading or contracting partners. An ocean carrier would thus be able to rely on the information in its bill of lading to populate the data fields in the EXS.

Q1.9 - Can exit summary declarations be lodged at a Customs office different from the office of exit?

Yes, provided that the Customs authorities at that office, the office of lodgement, and the customs authorities of the office of exit have bilaterally agreed to permit this. In any event, there seems to be little benefit for the ocean carrier in this. The Customs office of exit would still be responsible for the risk assessment and for release (or not) of the cargo for

loading/exit, so an ocean carrier would want to be connected to that office in any case. The ocean carrier will for other reasons already have a close relationship with the Customs office of exit (manifest filing etc.), so establishing a connection to an office of lodgement (perhaps in an landlocked country in the EU) solely for the purpose of filing an EXS may not be a resource effective decision.

Q1.10 - Is the last EU port of call always the office of exit to which the EXS, where required, must be lodged?

No. The last EU port of call is the office of exit only for goods loaded to the vessel in that port.

For the purpose of lodging an EXS, where required, the office of exit is the EU port of loading of the goods on to the vessel that is to carry them to a destination outside the EU, even if the vessel is to call at subsequent EU ports before finally leaving the customs territory of the Community**.**

Q1.11 - **Must FREIGHT REMAINING ON BOARD (FROB) for carriage to other ports, inside or outside of the EU, be included in an EXS?**

No. The requirement for EXS lodgement applies only to cargo loaded at that EU port. FROB brought into the EU, and cargo loaded at previous EU ports, need not be declared on departure from any subsequent EU port or from the final EU port of call**.** (See the previous Q. 1.4 and Q1.10).

Q1.12 - Is an EXS required at the last EU port of call if no containers will be loaded there, e.g. a vessel calls only to unload containers?

No. The office of exit is the EU port at which the containers were loaded aboard the vessel. See previous Q1.10 & 1.11.

Q1.13 - Do EMPTY CONTAINERS have to be declared in an EXS?

Shipper-owned empty containers that are being transported, against payment, pursuant to a contract of carriage shall be covered by an EXS.

Carrier reposition empty containers may continue to be reported to Customs as is done today at loading and are not to be covered by an EXS.

Q1.14 - How will CONTAINER EQUIPMENT, e.g. power packs, and CONTAINER FIXING EQUIPMENT be handled? Do such equipment types need to be included in the EXS?

Container equipment such as power packs does not need to be included in the EXS.

The EU rules require the risk assessment of “goods” before they are brought in to the EU. 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 EXS. Such equipment types will still be subject to the (re-)export rules for means of transport.

The above also applies to cargo fixing equipment, e.g. belts, brackets and other cargo securing parts. Such cargo fixing equipment is considered to be part of the packing, and thus part of the shipment declared in the EXS, and is not be declared separately in the EXS.

Q1.15 – How are container seals (either mechanical or electronic seals) to be handled?

Container seals – whether mechanical or electronic – are not to be declared separately in the EXS, but the seal number, if available, is a required data element in the EXS.

Q1.16 - Will shipment of EMPTY TRAILERS be considered the same as empty containers, i.e. only to be covered by an EXS if transported, against payment, under a contract of carriage?

Yes. Empty trailers would fall under the category "means of road, rail, air, sea and inland waterway transport". Such means of transport will need to be covered by an EXS only if they are to be carried, against payment, under a transport contract.

Q1.17 - How is TRANSHIPMENT CARGO to be handled?

Two types of transhipped goods exist according to the EU legislation:

The first type consists of *inward non-Community goods* that will have been covered by an entry summary declaration (ENS) prior to entry (prior to vessel loading for deep sea containerized maritime shipments) in to the customs territory of the Community; the goods will be in temporary storage in the EU transhipment port.

The second type of transhipped goods consists of *outward goods*, i.e. Community goods previously covered by an export declaration at the original EU load port from which they have been carried and are unloaded at another EU port for transhipment; these goods will also be in temporary storage in the EU transhipment port.

Both types of transhipped goods are to be handled the same way regarding EXS (see also Q. 1.2):

i. Where such goods are loaded to a vessel, *for carriage to a destination outside of the customs territory of the Community, i.e. are to be re-exported from the EU,* no EXS is required provided the following conditions are met: The loading is done at the same place where the goods were brought to the storage facility on another vessel; is done within 14 calendar days from when the goods where presented for temporary storage in the transhipment port; and the destination and consignee for the goods have not during that time, to the knowledge of the carrier, changed. Where an EXS is not required, the re-exportation of the goods must be notified to the customs office of exit prior to the exit (loading) of the goods.

   If, however, the transhipped cargo for re-export "sits" for more than 14 calendar days in the transhipment port or the destination and consignee for the goods have, to the knowledge of the carrier, changed, an exit summary declaration (EXS) must be lodged for that cargo prior to loading.

ii. Where such goods are loaded to a vessel, *for carriage to another EU port, including where the goods remain on board the vessel during any intervening call at a non-EU port*, no EXS is required, whatever the length of time in temporary storage[6] and whether or not the destination and consignee for the goods change. Once again, re-exportation of the goods must be notified to the customs office of exit prior to the exit of the goods.

[6] Maritime goods can sit in temporary storage up to a maximum of 45 days at which time they must either be declared for a customs procedure, brought out of the Community as re-export goods or destroyed.

Q1.18 – What happens if the vessel is to call at a control type I free zone within the EU to load cargo? Do the same rules apply?

Yes. The requirements for entry summary declarations and exit summary declarations will apply to cargo brought directly into/out of free zones from/to ports outside of the customs territory of the Community. The same deadlines for lodging the EXS also apply.

As in other cases, goods leaving the customs territory of the Community covered by a customs declaration (full or simplified), via a free zone will not require an EXS. An EXS will, in principle, be required when goods not covered by a customs declaration are brought out of a free zone. However, the 14 calendar day threshold for when an EXS is required for transhipped goods described in Q. 1.17 above also applies to goods transhipped in a free zone. So does the requirement that the destination and consignee for the goods have not, to the knowledge of the carrier, changed.

Q1.19 - Will EXS replace the export manifest filing? If not, what about the relationship between EXS and export manifest?

The EXS will not replace the traditional export manifest filing in each load port common to many EU Member States.

However, a national Customs administration may waive the requirement to lodge an EXS, provided that the export manifest for those shipments contains the relevant EXS data. Such a waiver would be pursuant to national Customs legislation.

A national Customs administration could instead, again pursuant to national legislation**,** require that the export manifest includes a reference to an EXS, where applicable, in order to establish the relationship between the manifest and the EXS. Such a reference could be the container number, but could also be Customs' registration number of the EXS or (in the case of non-Community goods transhipped within 14 working days) the registration number (the so-called MRN) of the ENS or (in the case of Community export goods transhipped within 14 working days) the MRN of the export Customs declaration.

Q1.20 - Are exit summary declarations and export manifests to be lodged electronically?

EXS must be submitted electronically.[7] How, i.e. to what national Customs IT system, EXS are to be lodged in each Member State is a matter for the individual customs authorities themselves. (See Q 1.21 below).

It is, as noted above, possible that some Member States may allow EXS to be lodged as part of an electronic export manifest, e.g. via port inventory systems. Export manifests are outside EU legislation and are instead regulated by national legislation.

Q1.21 - How is the ocean carrier's computer system to be connected to the Customs office of exit -- through the internet or any other special connection? Is it necessary for the carrier's system to be connected to all Customs offices of exit in EU ports? Or will there be a single receiver for all EU EXS filings?

[7] Alternatively, the EXS may be replaced by a notification to the customs authorities and access to the declarant's computer system, provided that the necessary information is included.

A single pan-European repository for the lodging of EXS does not exist. Instead, the EXS must be lodged electronically to the Customs office of exit, via whatever system is established by the individual EU Member States.

There is a widely held – but incorrect - belief that the Export Control System (ECS) must be used for EXS. It is highly probable that Member States with existing, well established declaration capture and processing systems will simply require EXS to be lodged to those systems, in accordance with national technical specifications, formats, connections, etc. It is immaterial to ocean carriers – for the purposes of lodging EXS - whether those national systems are part of the wider ECS system or are simply just national communication channels.

Consequently, ocean carriers should establish the necessary IT interfaces with those national Customs administrations that will be acting as Customs offices of exit for the purpose of lodging EXS on their vessel rotations, i.e. the customs offices responsible for the port where the goods are loaded on to the vessel that will be carrying them to a destination outside the customs territory. The interfaces with those systems will be laid down in national technical specifications, including the MIGs (Message Implementation Guides), setting forth how lodgement of EXS must be done in each Member State.

Q1.22 – Does the EXS system cover the act of presenting the goods to Customs and Customs' release of the goods?

Presentation of goods for export and the release of goods for exit are not covered by the electronic EXS filing requirements that. Nor is the lodging of export manifests, which will also be pursuant to national Customs legislation. (See Q1.19 & 1.20 above)

Q1.23 - If the ocean carrier – for whatever reason - failed to lodge an EXS in time, what will the consequences be?

The consequence would normally be that release for exit (loading) would simply not be granted.

Article 842d (3) CCIP prescribes that the customs authorities may, in cases where goods for which an EXS is required are presented for loading without an EXS having been lodged, require the ocean carrier to lodge one immediately.

Article 842d (3) CCIP also provides that: "*If the person lodges an exit summary declaration after the deadlines specified in Articles 592b and 592c, 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 acting as the Customs office of exit.

Q1.24 – What happens if both the ocean carrier and a third party, e.g. the exporter or a freight forwarder, lodge an EXS for the same goods?

In cases where dual filings for the same shipment occur, i.e. the carrier and a 3rd party both file an EXS 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 EXS lodged by the carrier is the valid one as the ocean carrier is legally responsible that an EXS filing is made.

Dual filings would in any case not affect compliance with the legal requirement that an EXS filing is made, and within the specified time limits.

Q1.25 – As an ocean carrier, we prefer clear, simple and predictable regulatory filing requirements without exception handling. May we simply file EXS for all shipments we load in an EU port for carriage to a destination outside the EU?

EU legislation does not prohibit such a "file all" approach. The Customs Code (Article 182a) sets forth the requirement that "Goods leaving the customs territory of the Community with the exception of goods carried on means of transport only passing through the territorial waters of the customs territory without a stop within this territory, shall be covered **either** by a customs declaration **or**, where a customs declaration is not required, [an EXS]". In other words, the Customs Code *requires* a declaration for each (export or re-export) shipment, and does not foresee two declarations for the same shipment, but does not prohibit it.

2. LODGING OF EXS: DIFFERENT SCENARIOS

Q2.1 – EU legislation requires that the EXS should be submitted at the office of exit. What happens if the vessel calls at more than one EU port? Do we need to submit an EXS twice, to the port of loading and then a second time to the last port in the EU before the vessel heads foreign?

No. For maritime traffic, the office of exit for the purpose of lodging EXS is the EU port of loading of the goods to the vessel that is to carry them to a destination outside the customs territory of the Community *even if* the vessel is to call at subsequent EU ports. The last port of call in the EU is the office of exit only for goods loaded to the vessel there. (See Q1.10 &1.11 above).

The above also applies if the vessel calls at non-EU ports before calling at the subsequent EU ports. (See Q.2.2 below).

Q2.2. What if a vessel loads at a EU port (e.g. Stockholm), then calls at a non-EU port (e.g. St. Petersburg, Russia) and then calls to load again at another EU port (e.g. Rotterdam)? Do we need to submit a new EXS in Rotterdam for the cargo loaded in Stockholm and/or St. Petersburg?

No. Cargo remaining on board the vessel (FROB) need not be covered by an EXS when the vessel leaves Rotterdam (See Q1.10 above). Any EXS need only be lodged for cargo to be loaded at Rotterdam that requires an EXS (See Q. 1.2 and Q 1.17)

Note: All the cargo on board the vessel must be covered by an entry summary declaration (ENS) lodged to Dutch customs no later than 2 hours prior to arrival in Rotterdam, as the voyage from St. Petersburg will constitute a new arrival in the customs territory of the Community. This ENS must include all the cargo loaded in both Stockholm and in St. Petersburg irrespective of whether the cargo is to be discharged in Rotterdam or remains on board as FROB.

Q2.3 Must cargo, e.g., from Russia transported on a feeder vessel to Hamburg to be transhipped onto a vessel destined for Singapore, be covered by an EXS lodged with Hamburg Customs?

In principle, yes, but the transhipment waiver facility (see Q.1.17) may apply.

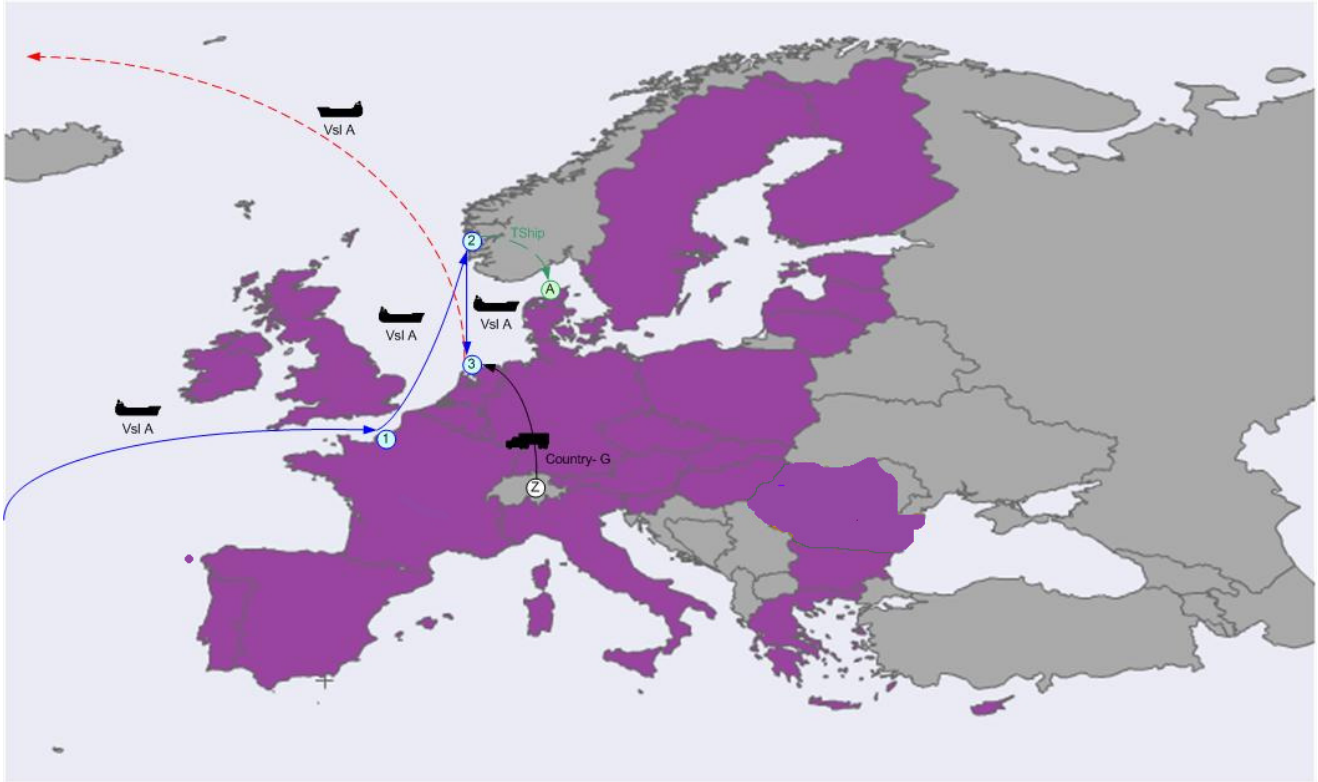
The basic rule is that all cargo loaded in EU ports, including control type I free zones, to be brought out of the customs territory of the Community must, for risk analysis purposes be

covered by a Customs declaration or, where no customs declaration is required, an EXS. As this cargo is not EU export, a customs declaration is not required. An EXS will therefore be required instead that must be lodged with Hamburg customs no later than 24 hours before commencement of loading of the cargo to the Singapore bound vessel. If, however, the goods are to be transhipped within 14 working days of their arrival in Hamburg and the destination and consignee for the goods have not, to the knowledge of the carrier, changed, the requirement for an EXS is waived. If the EXS requirement is waived, then a re-export notification (request for release from temporary storage) must still be lodged with Hamburg customs prior to the exit of the goods.

Q2.4 Please indicate for the scenarios illustrated below when and where entry summary declarations (ENS), exit summary declarations (EXS) and Arrival Notifications (ANs) must be lodged

Legend:

- Vessel A calls Port 1 (Le Havre), Port 2 (Bergen) and Port 3 (Rotterdam) in sequence. Last port of loading prior to the first arrival in the EU was in the U.S.
- Le Havre: Vessel discharges U.S. origin cargo and loads cargo for Bergen and Rotterdam
- Bergen: Vessel discharges U.S. origin cargo to be transshipped to Port A (a Danish port); loads cargo for Rotterdam and the U.S.
- Rotterdam: Vessel discharges U.S. origin cargo, cargo from Bergen and cargo from Le Havre; loads cargo for the U.S. including intermodal cargo originating from Switzerland
- All cargo consists of containerized shipments



Port 1 (Le Havre)

ENS:

- ENSs are required to be lodged with Customs in Le Havre by the bill of lading issuing ocean carrier no later than 24 hours before commencement of loading in the foreign (U.S.) load port for all containerized shipments on the vessel that will enter the EU, including FROB cargo to be discharged in non-EU Member State of Port 2.

EXS:

- No EXS is required for the FROB cargo.

- An EXS, where required, must be lodged with customs in Le Havre for cargo loaded on to the vessel if that cargo is to be transshipped in a non-EU member state.[8] If the cargo loaded on to the vessel in Le Havre and to be transshipped in a non-EU member state was not subject to either a customs declaration or an EXS, then a re-export notification must be lodged with customs in Le Havre prior to the exit of the goods. If the cargo loaded on to the vessel in Le Havre remains on board the vessel during the port of call in the non-EU member state, no EXS would be required; however, a re-export notification would still be required.

- The bill of lading issuing ocean carrier is legally responsible that an EXS, where required, or a re-export notification is lodged prior to the departure of the vessel.

Arrival Notification (AN):

- An AN must be sent to French customs by the vessel operator no later than at arrival of the vessel in Le Havre. The AN must either include all the MRNs for all the ENS or, alternatively, the "Entry Key" data, i.e. mode of transport at the border; the IMO vessel number; and the expected date of arrival at the first place of arrival in the EU as declared in the ENS; and declared first place of arrival code. The vessel operator has full discretion in choosing between these two options.

Port 2 (Bergen)

[8] An EXS shall not be required in cases provided for in international agreements concluded by the EU with a third country in the area of security. Such agreements currently exist with Norway and Switzerland (including Liechtenstein).

- No ENS will be required to be lodged with Norwegian customs because the vessel comes from an EU port.
- Norwegian Customs' advance cargo security requirements for goods exported or re-exported from Norway will mirror those of the EU.

Port 3 (Rotterdam)

ENS:

- No ENS will be required to be lodged with Customs in Rotterdam because the vessel comes from a Norwegian port.
- Had the vessel instead come from e.g. Iceland, ENSs would be required to be lodged by the bill of lading issuing ocean carrier no later than 2 hours before arrival in Rotterdam. The ENSs must cover all goods carried on the vessel irrespective of whether the goods will remain on board the vessel or will be discharged in Rotterdam; the ENSs must also include the cargo that was carried on the vessel when it first called at an EU port (Le Havre) and was risk assessed then; the cargo loaded in Port 1 (Le Havre) that was not discharged in the Icelandic port, and the cargo loaded in that latter port.

ENS for cargo originating from country G:

- In this example, the intermodal cargo originates from Switzerland that has an agreement with the EU similar to the one Norway has. Consequently, no ENS will need to be lodged with customs in the relevant EU Member State for the intermodal cargo entering the EU from Switzerland.
- In any event, the lodgement of ENS for such intermodal cargo carried either by truck or rail is the responsibility of the intermodal carriers -- not that of the ocean carrier.

Arrival Notification (AN):

- An AN is not required to be lodged by the vessel operator with Dutch customs because the vessel comes from Port 2 (Bergen).

- Had the vessel come in from an Icelandic port, an AN would be required to be lodged with Dutch customs at the latest at arrival in Rotterdam. The AN must either include all the MRNs for all the ENS or, alternatively, the "Entry Key" data, i.e. mode of transport at the border; the IMO vessel number; the expected date of arrival at the first place of arrival in the EU as declared in the ENS; and declared first place of arrival code. The vessel operator has full discretion in choosing between these two options.

EXS:

- Where required, an EXS must be lodged with Customs in Rotterdam for cargo loaded on to the vessel in that port. If the cargo loaded on to the vessel in Rotterdam is not subject to either a customs declaration or an EXS, then a re-export notification must be lodged.
- No EXS is required to be lodged for the FROB cargo on the vessel.
- The bill of lading issuing ocean carrier is legally responsible that an EXS, where required, lodged prior to the loading of the goods. If no EXS is required, then a re-export notification must be lodged prior to the exit of the goods.

Port A (a Danish port)

ENS and Arrival Notification (AN):

- In this example, the vessel that originally came in from a U.S. port discharges U.S. origin cargo in Port 2 (Bergen) for transhipment to Port A (a Danish port). The carriage of the transhipped cargo to the Danish port will – for the purpose of lodging ENS and ANs – be similar to the situation described above for Port 3 (Rotterdam) except that the responsibility for lodging ENS (e.g. if the goods had been transhipped in Iceland) typically will lie with the *feeder vessel operator*.

3. Amendments to EXS

Q3.1 - What changes in the shipment data require amendments to the EXS?

The legal requirement is that the EXS must be complete and accurate.

Some national customs systems for lodgement of EXS may not allow for amendments to be made to a previously lodged EXS; in these Member States, a new EXS should be lodged instead.

For those Member States, whose systems do allow amendments to be made, the following principles apply:

- The particulars concerning the person lodging the EXS, the representative and the customs office of exit should not be amended in order to avoid technical (systems) problems. In these situations, a new EXS should be filed instead.
- The time limits for the lodging of the EXS do not start again after the amendment since it is the initial declaration that sets them.
- Risk assessment is performed on the basis of the exit summary declaration. Where an amendment is made, risk assessment 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 departure (or – in the case of deep sea

containerized maritime shipments – the commencement of loading) of the goods, that the customs authorities need additional time for their risk assessment.

Additionally, and still for those Member States whose systems do allow amendments to be made, an amendment request cannot be accepted by Customs if one of the following conditions is met:

- The person lodging the original EXS has been informed that the Office of Exit intend to examine the goods;
- The Customs authorities have established that the particulars in question are incorrect;
- The Office of Exit has allowed their removal.

Amendments may be lodged by the same person that lodged the original EXS or its representative. However, amendments cannot be lodged with an 'office of lodgement', only with the customs office of exit so the declarant – or its representative – would need to be IT connected to that office.

4. Release messages

Q4.1 - How will Customs communicate that the cargo can be loaded / is released?

This will be up to each individual Customs administration to arrange pursuant to national legislation. However, nothing is likely to change from existing practice, where Customs – based on export control mechanisms, load lists etc. – may target a shipment for inspection at exit and then, after inspection, release it for exit from the EU whereas all other shipments that have not expressly been targeted for Customs inspection are released.

Q4.2 - Are there DO NOT LOAD messages for maritime containerised cargo covered by EXS?

EU legislation only explicitly provides for the issuance of Do Not Load (DNL) messages for deep sea containerized cargo to be brought into the customs territory of the Community. If risk is identified by analysis of an EXS, then the customs authorities will advise the person who lodged the EXS and, where different, the ocean carrier, that the goods are not to be released. How this is done will be a matter for each individual customs administration. In reality, a message that a containerized shipment cannot be released amounts to a DNL message. As such, the message should be communicated by the Customs office of exit as soon as possible and in no case later than 24 hours after the lodgement of the EXS.

If no EXS is required, the customs office of exit's risk analysis shall be carried out upon presentation of the goods, where required, and on the basis of documentation or other information covering the goods, e.g. re-export notification, load lists etc. Risk analysis, where no pre-loading EXS is required, will be done prior to the exit of the goods.

5. Export Control System (ECS)

Q5.1 - What is the Export Control system (ECS?)

The ECS is a systems architecture developed by the EU for the exchange of messages and data relating to the export procedure between national Customs administrations and between them and economic operators and with the European Commission; it is the primary means for certification of export from the EU, for VAT and other purposes.

ECS is made up of three "domains":

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

(b) The "national domain" made up of the national Customs computer systems and the associated risk management processes; and

(c) The "external domain" being the interface between economic operators and the national Customs administrations for the lodging of export Customs declarations, issuance of Movement Reference Numbers (MRNS) as registration of the export declaration filing, and for subsequent confirmation to the economic operator of the actual exit of the goods from the EU. It is through this latter "domain" that the export Customs declarations must be filed according to nationally determined technical specifications, message formats and structures etc.

As explained in Q1.21 above and generally speaking, there would seem to be little interest in ECS for the carrier (unless it is involved in the export procedure acting on behalf of the exporter, as the latter's representative).

There are, however, roles and functions within the ECS of relevance to the ocean carrier:

- The 'Trader at Exit' is the person responsible for informing the customs office of exit that the goods have arrived there, in accordance with Articles 793(1) and 796c CCIP. The obligation to do this, or to ensure that this is done, clearly lies with the holder of the procedure, i.e. the person who lodges the export Customs declaration, i.e. the exporter. Usually, however, he will delegate this responsibility to the person he contracts to carry the goods. This *may* be the ocean carrier, but, in the case of loading for onward maritime transport, may also be the person who brings the goods to the port, e.g. the haulier, river carrier, or a forwarder, or the operator of the storage/loading facility, i.e. the marine terminal operator or stevedoring company, particularly where port systems are used for export manifesting and control. EU legislation, however, places no responsibility on the carrier in this matter.
- Importantly, the EU legislation holds the carrier legally responsible for notifying the customs office of exit of the exit of the goods from the EU. In fact, the carrier may not load goods for carriage out of the EU unless it has received certain information about EU export goods, including the MRN of the export declaration from the holder of the goods, e.g. the operator of the storage facility. (This requirement is commonly referred to as "the handshake principle"). The notification of the exit of the goods shall, wherever possible, form part of existing manifest or other transport reporting requirements and should be made using existing commercial, port or transport information systems or processes (Article 796d (1) CCIP).

PART B

AIR TRAFFIC

1. BASIC PRINCIPLES

Q1.1 – Why are exit summary declarations required?

The EU legislation requires, as a general principle, that **all** goods brought out of the customs territory of the Community, regardless of their final destination, shall be risk assessed and subject to customs control before departure. All such goods must therefore be covered by a declaration of some kind -- either a customs declaration, e.g. for export (i.e. the Customs treatment of Community goods that are taken out of the customs territory), re-export (i.e. the Customs treatment of non-Community goods that are taken out of the customs territory), transit etc. or, wherever any of the former is not required, an exit summary declaration (EXS).

Q1.2 – When are exit summary declarations required?

Most goods leaving the EU will be covered by either a customs declaration for export, re-export, outward processing or transit. EXS are only required, under Articles 842a-842e CCIP, for other goods -- that is all goods, with certain specified exemptions, which are to be brought out of the EU but for which a customs declaration is not required.

It should be noted that where goods under temporary storage or in a control type I free zone are re-exported but where neither a customs declaration nor an EXS is required, re-exportation of such goods must be notified to the customs office of exit prior to the exit of the goods. *Re-export notifications* (or, as they are also referred to, requests for release from temporary storage) are an existing requirement that the industry is already complying with pursuant to national rules and requirements. Such re-export notifications shall be lodged in the form prescribed by the Customs authorities. They shall be lodged by the carrier or its representative; other parties may, with the carrier's knowledge and consent, lodge the re-export notification instead of the carrier; however the customs office of exit is not required to notify the carrier that it has accepted the re-export notification lodged by another party (Article 841a CCIP). Today, re-export notifications (or requests for release from temporary storage) are typically lodged by the air carrier or its appointed representative.

The EU legislation does not include a provision listing all the instances where an EXS would be required. Instead, instances where an EXS would be required are identified below[9]:

1. ***Non-Community goods in temporary storage or in a control type I free zone at an EU airport loaded for re-export from the customs territory of the Community***

   Non-Community goods being exported from temporary storage or from a control type I free zone do not require a re-export declaration. Therefore, in principle, an EXS must be lodged for such goods prior to loading the aircraft that will carry then from the temporary

[9] An EXS shall not be required in cases provided for in international agreements concluded by the EU with a third country in the area of security. Such agreements currently exist with Norway and Switzerland (including Liechtenstein).

storage facility of control type 1 free zone out of the customs territory of the Community (Article 842a (1) CCIP).

However, non-Community goods in temporary storage or free zone that are loaded for re-export may be exempted from the EXS requirement in the following two situations:

A. <u>Transhipment</u>

No EXS is required for non-Community goods in temporary storage or a control type I free zone loaded for re-export provided that:

(a) The goods are transhipped, under the supervision of the same customs office, from the means of transport that brought them to that temporary storage facility or free zone onto the means of transport that will carry them from that temporary storage facility or free zone out of customs territory of the Community and

(b) The transhipment is done within 14 calendar days from when the goods were presented for temporary storage[10]; and

(c) The destination and the consignee for the goods have, to the knowledge of the carrier, not changed. (Article 842a (4) (e) CCIP).

All three conditions must be met in order to qualify for the EXS exemption, e.g. a change of destination of the goods would require lodgement of an EXS even when the goods are to be loaded for re-export within 14 days from when they were presented for temporary storage.

B. Transit declaration with security data

In the case of 'through transit', where both the customs office of departure and the customs of destination are outside of the custom territory of the Community, an EXS will not be required provided that the goods remain on the same means of transport that brought them into the EU or the conditions of Article 842a (3) are met. Otherwise, if transhipment takes place, under the transit rules, at or before the place of exit, an EXS will be required. The goods will not be placed under temporary storage at the place of exit and Article 842a (4) (e) cannot therefore apply.

2. Community export goods moving under Articles 445 CCIP simplified procedure.

No EXS is required at the place of exit from the EU for Community goods under the export procedure moved to the place of transhipment / exit under Article 445 CCIP simplified procedure.

Such goods are, by definition in these Articles, not under the transit procedure. They remain, therefore, technically under the export procedure, retain their Community status and are not placed under temporary storage; their physical exit is supervised by the office of exit under Article 793b (3) CCIP.

3. *Community export goods moving under the terms of Article 793(2) (b)CCIP*

No EXS is required at the place of exit for Community goods under the export procedure moved to the place of transhipment/ exit under a single transport contract

[10] In exceptional circumstances, the customs authorities may prolong this time period.

(Article 793(2) (b) CCIP). Such goods also remain technically under the export procedure, retain their Community status and are not placed under temporary storage; their physical exit is supervised by the office of actual exit under Articles 793(3) and 796 CCIP.

4. Goods to be moved between Member States via transhipment in a country outside of the EU

Goods to be moved between EU Member States via transhipment in a country outside the EU are not exports (or re-exports) and no customs declaration is therefore required. An EXS must therefore be lodged for such goods at the EU port of loading

It should be noted that the call at an airport outside the EU means that Community goods lose their Community status even if the goods are not unloaded in the non-EU airport. These goods must therefore, together with all other goods carried on the aircraft arriving in the customs territory of the Community, be covered by an ENS when re-imported into the EU; their Community status will also need to be proven, i.e. by the Customs document typically referred to as "T2L" or other appropriate means.

For example, Community goods moved on an aircraft from Spain to the U.K. will not require EXS filings as long as the goods remain on board the aircraft during any non-EU intermediary airport calls. Evidence in the form of a commercial, airport or transport manifest of loading list, regarding the intended place of unloading may, however, be required by the customs office of exit from Spain. However, if the goods leave Spain on an aircraft bound for Agadir, Morocco, where the goods are to be unloaded for transhipment on to another aircraft for offloading in the UK, an EXS would need to be filed with Spanish customs before the aircraft departure from the Spanish airport. In both scenarios, an ENS would need to be filed with U.K. customs prior to arrival, before the deadline applicable to the means of transport.

5. Shipper owned empty containers

Shipper-owned empties that are being transported, against payment, pursuant to a contract of carriage are to be treated in the same way as other cargo and must be covered by an EXS (Article 842a (1)).

Carrier repositioned empty containers do not, pursuant to Article 842a (4) (a) CCIP, need to be covered by an EXS; they should instead continue to be reported to Customs as is done today at departure. (See Q.1.13)

In all of the instances listed in 1-4 above, where an EXS is required, the air carrier that issues the air waybill is legally responsible for ensuring that the EXS is lodged and is lodged within the deadline (See Q. 1.7).

A representative may lodge the EXS on behalf of the air carrier. Alternatively, the air carrier could consent to the lodgement of the EXS by another party as part of the contractual arrangement for the carriage of the shipment. In such instances, the other party would file the EXS instead of the air carrier, and it, not the carrier, would be responsible for the EXS filing's accuracy and completeness. (See also Q. 1.5). However, the air carrier is not under the EU legislation – and contrary to what is the case for entry summary declarations – entitled to receive confirmation from the customs office of exit that an EXS has been lodged by another party, and will thus not have independent proof that its legal requirement to lodge an EXS, where required, has been met (Article 842a (5) CCIP).

Q1.3 – Are there any exemptions to the requirement for an exit summary declaration?

Yes. The EU legislation lists several types of goods/traffic for which an EXS is not required. In addition to the exemptions already discussed in Q.1.2 above for transhipped goods, important exemptions for the airfreight industry pertain to carrier repositioned empty containers, and cargo remaining on board the aircraft (FROB). The exemption for FROB cargo applies both to cargo already on board the inbound aircraft when it first comes into the customs territory of the Community, and to export cargo once loaded on to the outbound aircraft in previous EU airports.

Q1.4 - Where must the exit summary declaration be lodged?

The exit summary declaration must be lodged at the customs office of exit. For air traffic, and for the purpose of lodging EXS, where required, this is the EU airport where the goods are loaded on to the aircraft I that will be carrying them to a destination outside the customs territory of the Community even if the aircraft is to call at subsequent EU airports before finally leaving the customs territory of the Community.

This definition of the customs office of exit for air traffic means that no EXS shall be required for goods loaded on to an aircraft carrying goods between EU airports.[11]

Q1.5 - Who must lodge the exit summary declaration?

The EU rules prescribe that the EXS, where required, shall be lodged *'...by the carrier or its representative*' (Article 842a (5) CCIP). For air traffic, the carrier is defined as the person who brings the goods, or who assumes responsibility for the carriage of the goods, out of the customs territory of the Community.

In the air environment, the carrier is usually the airline, which issues an air waybill for the carriage of the goods out of the EU. In the case of a contracting arrangement, carrier means a person other than the airline who has concluded a contract, and issued an air waybill, for the carriage of the goods out of the customs territory of the Community.

Another person may lodge the EXS instead of the carrier, but this does not relieve the carrier of the responsibility to ensure that an EXS, where required, is lodged and within the deadline. The EXS may be lodged by a person other than the carrier only with the carrier's knowledge and consent.

A carrier entering into such an agreement with a third party is advised to exercise care and ensure that its agreement with that other party is well understood and documented by both parties. There are several reasons for this:

- An omission by the third party to file the EXS when it has agreed to do so may result in delays for the aircraft operator and/or the cargo and possible penalties for the carrier, because the carrier is still legally obliged to ensure that the EXS is lodged before the deadline.

- If an EXS is required but has not been lodged, then the customs authorities will not release the goods for exit (loading). This implies, as is also currently the case that air carriers must ensure that goods are not loaded or removed without proper release by the competent customs authority.

- Arrangements for the control, release and loading of outward goods will be governed, as now, by national, rather than EU, legislation. The requirement for export manifests practised in many Member States is an example of this.

[11] The same condition mentioned in footnote 2 applies.

- This controlling interest is further compounded by the carrier's need to be notified directly by Customs that it has accepted the EXS. The carrier needs this notification as proof that its legal responsibility that an EXS, where required, has been lodged has been met. However, the EXS (contrary to the ENS) is not required to include a data element for the identification of the carrier, e.g. by inclusion of the carrier's EORI number. Such lack of identification in the EXS of the carrier that should be notified of the third party's EXS lodgement may make it difficult for Customs to always identify, and notify, the carrier in a timely fashion (see also Q 1.7 regarding the EXS lodgement deadlines). Furthermore, the customs office of exit is – contrary to what is the case for ENS - not required by EU legislation to notify the carrier that it has accepted an EXS lodged by another party (Article 842a (5)CCIP).

Q1.6 - Must the person lodging the EXS have status as an Authorized Economic Operator (AEO)?

There is no requirement that an EXS declarant must be an AEO.

However, the person lodging the EXS ("the declarant") must have an Economic Operator Registration and Identification (EORI) number that must be included in the EXS. If the EORI number is not included, then the EXS is not complete, and it will be rejected.

Q1.7 - When must the EXS be lodged?

The EU legislation requires that the EXS must be lodged prior to departure and before specific deadlines related to the mode of transport in which the goods are to be taken out of the EU. For air traffic, the deadline is at least 30 minutes before the aircraft is to leave the airport at which the goods are loaded for a destination outside of the EU, .

Q1.8 – What must be declared in the EXS?

Annex 30A Tables 1, 2, 4 and 5 of the CCIP set out the data elements to be included in the EXS. The EXS declaration must be completed in accordance with the Explanatory Notes in Annex 30A CCIP.

Whoever lodges the EXS, this person ("the declarant") is responsible for its content, accuracy and completeness. However, the declarant can base his filing on the data provided by his trading or contracting parties and the declarant would not have to ascertain the accuracy of the data provided to it by its trading or contracting partners. An air carrier would thus be able to rely on the information in its airway bill to populate the data fields in the EXS,[12] if there are no reasons for him doubting the accuracy of the data..

Q1.9 - Can exit summary declarations be lodged at a Customs office different from the office of exit?

[12] The carrier, as declarant, may still be held liable for the accuracy of the information under national regulations, to which offence action is largely delegated, particularly where there is any evidence that the carrier was aware, or should reasonably have been aware, that the information was false. In some Member States, the lodging of an untrue declaration, whether or not knowingly or recklessly, constitutes a prosecutable offence, although, in practice, normally only offences committed knowingly (was aware) or recklessly (should reasonably have been aware) are pursued.

Yes, provided that the Customs authorities at that office, the office of lodgement, and the customs authorities of the office of exit have bilaterally agreed to permit this.

Q1.10 - Is the last EU airport of call always the office of exit to which the EXS, where required, must be lodged?

No. The last EU airport at which an aircraft lands is the office of exit only for goods loaded to the aircraft at that airport.

For the purpose of lodging an EXS, where required, the office of exit is the EU airport of loading of the goods on to the aircraft that is to carry them to a destination outside the EU, *even if* the aircraft is to call at subsequent EU airports before finally leaving the customs territory of the Community**.**

Q1.11 - **Must FREIGHT REMAINING ON BOARD (FROB) for carriage to other airports, inside or outside of the EU, be included in an EXS?**

No. The requirement for EXS lodgement applies only to cargo loaded at that EU airport FROB brought into the EU, and cargo loaded at previous EU airports, need not be declared on departure from any subsequent EU airport or from the final EU airport of call**.** (See the previous Q. 1.4 and Q1.10).

Q1.12 - Is an EXS required at the last EU airport if no other cargo will be loaded there, e.g. an aircraft lands only to unload containers or other cargo?

No. The office of exit is the EU airport at which the containers were loaded aboard the aircraft. See previous Q1.10 & 1.11.

Q1.13 - Do EMPTY CONTAINERS have to be declared in an EXS?

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 covered by an EXS.

Carrier reposition empties may continue to be reported to Customs as is done today at loading and are not to be covered by an EXS.

Q1.14 – How are container seals (either mechanical or electronic seals) to be handled?

Container seals – whether mechanical or electronic – are not to be declared separately in the EXS, but the seal number, if available, is a required data element in the EXS.

Q1.15 - Will shipment of EMPTY TRAILERS be considered the same as empty containers, i.e. only to be covered by an EXS if transported, against payment, under a contract of carriage?

Yes. Empty trailers would fall under the category “means of road, rail, air, sea and inland waterway transport”**.** Such means of transport will need to be covered by an EXS only if they are to be carried, against payment, under a transport contract.

Q1.16 - How is TRANSHIPMENT CARGO to be handled where goods are brought into and out of the same airport?

A number of types of transhipped goods exist according to the EU legislation.[13] As examples of these:

- *inward non-Community goods* that will have been covered by an entry summary declaration (ENS) prior to entry in to the customs territory of the Community; the goods will be in temporary storage in the EU transhipment airport.

- *outward goods*, i.e. Community goods previously covered by an export declaration at the original EU airport from which they have been carried on an aircraft which has called at an airport outside of the customs territory of the Community, and are then unloaded at another EU airport for transhipment; these goods will also be in temporary storage at the EU transhipment airport.

Community goods previously covered by an export declaration at the original EU airport of loading from which they have been carried directly between EU airports and are unloaded at another EU rt or airport for transhipment remain technically under the export procedure, are not placed under temporary storage and no EXS is required; the exit of these goods is supervised by the office of actual exit under Articles 793(3) and 796 CCIP. (See Q 1.2 above).

Both types of transhipped goods placed under temporary storage are to be handled the same way regarding EXS (see also Q. 1.2):

iii. Where such goods are loaded on an aircraft , *for carriage to a destination outside of the customs territory of the Community, i.e. are to be re-exported from the EU,* no EXS is required provided the following conditions are met:

1. The loading is done under the supervision of the same customs office where the goods were brought to the storage facility on another means of transport;
2. is done within 14 calendar days from when the goods where presented for temporary storage in the transhipment port or airport; and
3. the destination and consignee for the goods have not during that time, to the knowledge of the carrier, changed.

Where an EXS is not required, the re-exportation of the goods must be notified to the customs office of exit prior to the exit (loading) of the goods.

If, however, the transhipped cargo for re-export “sits” for more than 14 calendar days in the transhipment airport or the destination and consignee for the goods have, to the knowledge of the carrier, changed, an exit summary declaration (EXS) must be lodged for that cargo prior to loading.

iv. Where such goods are loaded to an aircraft, *for carriage to another EU airport, including where the goods remain on board the aircraft during any intervening call at a non-EU airport*, no EXS is required, whatever the length of time in temporary storage[14] and whether or not the destination and consignee for the goods change. Once again, re-exportation of the goods must be notified to the customs office of exit prior to the exit of the goods.

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[13] Goods carried by regular service vessels, or between EU airports, or under Article 445/448 manifests, or under STC, remain technically under the export procedure and are not placed into temporary storage. Such goods are, nevertheless, transhipped

[14] Airline goods can sit in temporary storage up to a maximum of 20 days at which time they must either be declared for a customs procedure, brought out of the customs territory of the Community as re-export goods or destroyed.

Q1.17 - Will EXS replace the export manifest filing? If not, what about the relationship between EXS and export manifest?

The EXS will not replace the traditional export manifest filing in each airport of loading common to many EU Member States.

However, a national Customs administration may waive the requirement to lodge an EXS, provided that the export manifest for those shipments contains the relevant EXS data. The national administration may also allow, instead of lodging and EXS, the lodging of a notification and access to the relevant data in the carrier's computer system.

A national Customs administration could also require that the export manifest includes, for all goods to be loaded, a reference that allows identification of the EXS, where applicable, or in the case of transhipment goods, the ENS, or in the case of Community goods, the export Customs declaration, in order to establish the relationship between the manifest and the relevant declaration.

Such a reference could be the container number, (the so called MRN) of the EXS, the export declaration or the ENS, but could also be another unique reference contained in both the manifest and the declaration, e.g. the container number, local inventory reference number or air waybill number..

Q1.18 - Are exit summary declarations and export manifests to be lodged electronically?

EXS must be submitted electronically.[15] How, i.e. to what national Customs IT system, EXS are to be lodged in each Member State is a matter for the individual customs authorities themselves. (See Q 1.21 below).

It is, as noted above, possible that some Member States may allow EXS to be lodged as part of an electronic export manifest, e.g. via airport or other authorised inventory systems.

Q1.19 - How is the carrier's computer system to be connected to the Customs office of exit -- through the internet or any other special connection? Is it necessary for the carrier's system to be connected to all Customs offices of exit in EU airports? Or will there be a single receiver for all EU EXS lodgement?

A single pan-European repository for the lodging of EXS does not exist. Instead, the EXS must be lodged electronically to the Customs office of exit, via whatever system is established by the individual EU Member States.

There is a widely held – but incorrect - belief that the Export Control System (ECS) must be used for EXS. It is highly probable that Member States with existing, well established declaration capture and processing systems will simply require EXS to be lodged to those systems, in accordance with national technical specifications, formats, connections, etc. It is immaterial to carriers – for the purposes of lodging EXS - whether those national systems are part of the wider ECS system or are simply just national communication channels.

Consequently, carriers should establish the necessary IT interfaces with those national Customs administrations that will be acting as Customs offices of exit for the purpose of

[15] Alternatively, the EXS may be replaced by a notification to the customs authorities and access to the declarant's computer system, provided that the necessary information is included and both parties agree to this..

lodging EXS for their flights, i.e. the customs offices responsible for the airport where the goods are loaded on to the aircraft that will be carrying them to a destination outside the customs territory of the Community. The interfaces with those systems will be laid down in national technical specifications, including the MIGs (Message Implementation Guides), setting forth how lodgement of EXS must be done in each Member State.

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Q1.20 – Does the EXS system cover the act of presenting the goods to Customs and the release of the goods?

Presentation of goods for export and the release of goods for exit are national Customs matters pursuant to national Customs legislation. These activities are not covered by the electronic EXS lodgement requirements.

Q1.21 - If the carrier – for whatever reason - failed to lodge an EXS in time, what will the consequences be?

The consequence would normally be that release for exit (loading) would simply not be granted.

Article 842d (3) CCIP prescribes that the customs authorities may, in cases where goods for which an EXS is required are presented for loading (or exit) without an EXS having been lodged, require the carrier to lodge one immediately.

Article 842d (3) CCIP also provides that: "*If the person lodges an exit summary declaration after the deadlines specified in Articles 592b and 592c, 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 acting as the Customs office of exit.

Q1.22 – What happens if both the carrier and a third party, e.g. the exporter or a freight forwarder, lodge an EXS for the same goods?

In cases where dual lodgements for the same shipment occur, i.e. the carrier and a 3rd party both file an EXS 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 EXS lodged by the carrier is the valid one as the carrier is legally responsible that an EXS filing is made.

Dual lodgements would in any case not affect compliance with the legal requirement that an EXS is made, and within the specified time limits.

Q1.23 – As an international carrier, we prefer clear, simple and predictable regulatory lodgement requirements without exception handling. May we simply lodge EXS for all shipments we load in an EU port for carriage to a destination outside the EU?

The EU legislation does not prohibit such a "file all" approach. The Customs Code (Article 182a) sets forth the requirement that "Goods leaving the customs territory of the Community with the exception of goods carried on means of transport only passing through the territorial waters of the customs territory without a stop within this territory, shall be covered **either** by a customs declaration **or**, where a customs declaration is not required, [an EXS]". In other

words, the Customs Code *requires* a declaration for each (export or re-export) shipment, and does not foresee two declarations for the same shipment, but does not prohibit it. [16]

2. LODGING OF EXS: DIFFERENT SCENARIOS

Q2.1 - The EU legislation requires that the EXS should be submitted at the office of exit. What happens if the aircraft calls at more than one EU port? Do we need to submit an EXS twice, to the airport of loading and then a second time to the last airport in the EU before the aircraft leaves the Customs Territory of the Community.?

No. For air traffic, the office of exit for the purpose of lodging EXS is the EU airport of loading of the goods to the aircraft that is to carry them to a destination outside the customs territory of the Community *even if* the aircraft is to call at subsequent EU airports. The last airport of call in the EU is the office of exit only for goods loaded to the aircraft there. (See Q1.10 &1.11 above).

The above also applies if the aircraft calls at non-EU airports before calling at the subsequent EU airports.

Q2.2 Must cargo, e.g., from Russia transported on an aircraft to Hamburg to be transhipped onto an aircraft destined for Singapore, be covered by an EXS lodged with Hamburg Customs?

In principle, yes, but the transhipment waiver facility (see Q.1.17) may apply.

The basic rule is that all cargo loaded at EU airports including control type I free zones, to be brought out of the customs territory of the Community must, for risk analysis purposes, be covered by a Customs declaration or, where no customs declaration is required, an EXS. As this cargo is not EU export, a customs declaration is not required. An EXS will therefore be required instead that must be lodged with Hamburg customs within the deadline set for the mode of transport. However, if the goods are to be transhipped within 14 working days of their arrival in Hamburg and the destination and consignee for the goods have not, to the knowledge of the carrier, changed, the requirement for an EXS is waived. If the EXS requirement is waived, then a re-export notification (request for release from temporary storage) must still be lodged with Hamburg customs prior to the exit of the goods.

3. Amendments to EXS

Q3.1 - What changes in the shipment data require amendments to the EXS?

[16] Whilst the Customs Code does not prohibit two declarations for a single shipment, part of the responsibility of the office of exit is to ensure that all goods are covered by the relevant declaration. An EXS should not be lodged on a "just in case" basis; if goods which require the lodgement of a customs declaration are released without such declaration against an EXS lodged by the Carrier, then the carrier might be seen to be complicit in unlawfully bringing goods out of the Community.

The legal requirement is that the EXS must be complete and accurate.

Some national customs systems for lodgement of EXS may not allow for amendments to be made to a previously lodged EXS; in these Member States, a new EXS should be lodged instead.

For those Member States, whose systems do allow amendments to be made, the following principles apply:

- The particulars concerning the person lodging the EXS, the representative and the customs office of exit should not be amended in order to avoid technical (systems) problems.
- The deadlines for the lodging of the EXS do not start again after the amendment since it is the initial declaration that sets them.
- Risk assessment is performed on the basis of the exit summary declaration. Where an amendment is made, risk assessment 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 departure of the goods, that the customs authorities need additional time for their risk assessment.

Additionally, and still for those Member States whose systems do allow amendments to be made, an amendment request cannot be accepted by Customs if one of the following conditions is met:

- The person lodging the original EXS has been informed that the customs office of Exit intend to examine the goods;
- The Customs authorities have established that the particulars in question are incorrect;
- The Office of Exit has allowed their removal.

Amendments may be lodged by the same person that lodged the original EXS or its representative. However, amendments cannot be lodged with an 'office of lodgement', only with the customs office of exit so the declarant – or its representative – would need to be IT connected to that office.

4. Release messages

Q4.1 - How will Customs communicate that the cargo can be loaded / is released?

This will be up to each individual Customs administration to arrange pursuant to national legislation. However, nothing is likely to change from existing practice, where Customs – based on export control mechanisms, load lists etc. – may target a shipment for inspection at exit and then, after inspection, release it for exit from the EU whereas all other shipments that have not expressly been targeted for Customs control are released.

5. Export Control System (ECS)

Q5.1 - What is the Export Control system (ECS?)

The ECS is a systems architecture developed by the EU for the exchange of messages and data relating to the export procedure between national Customs administrations and between them and economic operators and with the European Commission; it is the primary means for certification of export from the EU, for VAT and other purposes.

ECS is made up of three "domains":

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

(e) The "national domain" made up of the national Customs computer systems and the associated risk management processes; and

(f) The "external domain" being the interface between economic operators and the national Customs administrations for the lodging of export Customs declarations, issuance of Movement Reference Numbers (MRNS) as registration of the export declaration lodgement, and for subsequent confirmation to the economic operator of the actual exit of the goods from the EU. It is through this latter "domain" that the export Customs declarations must be lodged according to nationally determined technical specifications, message formats and structures etc.

As explained in Q1.21 above and generally speaking, there would seem to be little interest in ECS for the carrier (unless it is involved in the export procedure acting on behalf of the exporter, as the latter's representative).

There are, however, roles and functions within the ECS of relevance to the air carrier:

- The 'Trader at Exit' is the person responsible for informing the customs office of exit that the goods have arrived there, in accordance with Articles 793(1) and 796c CCIP. The obligation to do this, or to ensure that this is done, clearly lies with the holder of the procedure, i.e. the person who lodges the export Customs declaration, i.e. the exporter. Usually, however, he will delegate this responsibility to the person he contracts to carry the goods. This *may* be the air carrier, but, in the case of loading for onward air transport, may more usually be the person who brings the goods to the airport, e.g. the haulier, or a forwarder, or the operator of the storage/loading facility, i.e. the airport handling company, particularly where airport systems are used for export manifesting and control. The EU legislation, however, places no responsibility on the carrier in this matter.
- Importantly, the EU legislation holds the carrier legally responsible for notifying the customs office of exit of the exit of the goods from the EU. In fact, the carrier may not load goods for carriage out of the EU unless it has received certain information about EU export goods, including the MRN of the export declaration from the holder of the goods, e.g. the operator of the storage facility. (This requirement is commonly referred to as "the handshake principle"). The notification of the exit of the goods shall, wherever possible, form part of existing manifest or other transport reporting requirements and may be made using existing commercial, port or transport information systems or processes (Article 796d (1) CCIP).

PART C
RAIL TRAFFIC

Q. 1.1 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 EXS and 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.

Q. 1.2 Considering non Community goods transported from Hamburg to Croatia under the paper-based simplified transit procedure for rail and covered by a single transport document: Has an EXS to be lodged? If it is the case, where?

In this case an EXS has to be lodged at the customs office of exit which is the customs office competent for the place from where the goods will leave the customs territory of the Community given that a paper based transit declaration cannot be used for the purposes of the EXS.

Q 1.3 Are empty railway wagons be declared in an EXS?

Empty railway wagons would fall under the category "means of road, rail, air, sea and inland waterway transport"**.** Such means of transport will need to be covered by an EXS only if they are to be carried, against payment, under a transport contract. In the case of railways, this contract takes the form of CIM or CIM/SMGS or SAT consignment note.