



European
Commission

GUARANTEES

UCC Provisions

UCC
SIMPLICITY SERVICE SPEED

A MODERN FRAMEWORK
FOR CUSTOMS AND TRADE

Taxation and
Customs Union

This presentation is of an explanatory and illustrative nature. This document does not constitute a legally binding act nor does it reflect a formal Commission position. Legal provisions of customs legislation take precedence over the contents of this document and should always be consulted. The authentic texts of the EU legal instruments are those published in the Official Journal of the European Union. There may also exist national instructions or explanatory notes in addition to this document.

Introduction

- Under UCC – more situations where provision of guarantee is mandatory
- All provided for in the relevant legal provisions: for instance:
 - deferred payment (Art. 110 UCC)
 - release of goods (Art. 195 UCC)
 - most special procedures (Art. 211 UCC)
 - operation of temporary storage facilities (Art. 148 UCC)

General principles

- Default = individual guarantee (guarantee covering a single operation : definition in Article 148 IA)
- Simplification = upon application: comprehensive guarantee to cover the amount corresponding to the customs debt in respect of two or more operations, declarations or customs procedures

General principles

- Provision of a guarantee (Form):
 - ✓ By cash deposit
 - ✓ By an undertaking given by a guarantor
 - ✓ By another form of guarantee which provides equivalent assurance

General principles

- Free choice of form of guarantee
- Customs authorities may refuse where form is incompatible with proper functioning of the customs procedure concerned

Guarantor

- If form = undertaking by a guarantor
- Guarantor = third person established in customs territory of the Union
- Approval of guarantor by customs authorities = required, except: credit institution, financial institution or insurance company accredited in the Union in accordance with Union provisions in force (Directive 2013/36/EU of the European Parliament and of the Council, on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms).

Comprehensive guarantee

- Conditions to authorise provision of comprehensive guarantee (Art. 95 UCC):
 1. Established in customs territory of the Union
 2. Fulfilment of criteria "**absence of any serious infringement or repeated infringements of customs legislation and taxation rules, including no record of serious criminal offences relating to the economic activity of the applicant**" (Article 39 (a) UCC)
 3. Regular user of customs procedures involved or operators of temporary storage facilities or fulfilment of criteria "**practical standards of competence or professional qualifications directly related to the activity**" (Article 39 (d) UCC)

Establishing reference amount

- If amount can be established with certainty at the time when guarantee is required: reference amount = amount of debt payable
- If amount cannot be established with certainty at the time when guarantee is required
 - A) incurred customs debt: reference amount = (future) amount payable
 - B) Potential customs debt – reference amount will vary according to the time necessary to discharge the procedure

Levels of reduction

- Potential debts: reduction to 30%, 50% or 100% of reference amount – no need to be AEO to apply for these reductions
- Incurred debts: reduction to 30% of reference amount – only for AEO

Waivers

- Legal waivers vs waiver in framework of comprehensive guarantee for potential customs debt

Legal waivers

- Article 89 (7) and (8) UCC
- No guarantee required
 - States, regional and local government authorities
 - Goods carried on the Rhine, Rhine waterways, Danube or Danube waterways
 - Carried by fixed transport installation
 - Specific cases temporary admission procedure
 - Union transit procedure using simplification and carriage by sea or air between Union ports or Union airports
- Article 89 (9) UCC: possibility for customs authorities not to require guarantee – statistical value threshold (1000 €)

Comprehensive guarantee - waiver

- Waiver is always linked to a reference amount – no blanc check + need to calculate reference amount remains
- In order to facilitate the management of the guarantee and taking into account that the liability of an operator has to be evaluated within the limits of a specific amount, the notion of reference amount is introduced for the comprehensive guarantee
- Waiver then means: reduction to 0% of the reference amount

AEO and comprehensive guarantee

- For incurred debts: only AEO can apply for reduction – only one level of reduction: 30% of reference amount

Monitoring of comprehensive guarantee

- By operator: no mandatory method – no exceeding reference amount (Art. 156 IA)
- By customs authorities (Art. 157 IA):
 - Transactional based
 - Audit based

Revocation and cancellation

- Shall take effect on the 16th day following the date on which it is notified:

Customs decision on the revocation by the Customs Office of Guarantee (guarantor and/or guarantee) notified to the guarantor.

Cancellation of the undertaking by the guarantor notified to the customs office where the guarantee was provided.

Transition

- **Reassessment of authorisations granted under the conditions of the Regulation 2913/1992**

Article 251 DA - old authorisations valid until date of expiry/reassessment.

Article 254 DA - usage under UCC (Annex 90 DA).

- **Replacement/Update of currently used guarantee undertakings**

Annexes 32-01 to 32-03 IA – update of legal references

New Application for Comprehensive Guarantee

- **Data required**
 - ✓ **Amount of duty and other charges** (highest)
 - ✓ **Average period** between the placing of goods under the special procedure and the discharge of the procedure
 - ✓ **Level of guarantee** (100% or 30% - existing customs debts; 100%, 50%, 30% or 0% - potential customs debts)
 - ✓ **Form of the guarantee** (For undertaking: full name and address details of the guarantor and of the representatives of the guarantor in the other Member State)
 - ✓ **Reference amount** (global - Article 89(5) UCC)
 - ✓ **Time-limit for payment** (normal or deferred)

New Application for Comprehensive Guarantee

- **Where?**

- The applicant needs to address the competent customs authorities of the place where he holds his main accounts for customs purposes or where they are accessible, and where at least part of the activities to be covered by the decision are to be carried out.