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Guarantees for potential or existing customs debts –Title III UCC

Revision 4 EN

Guidance for Member States and Trade

Disclaimer: "It must be stressed that this document does not constitute a legally binding act and is of an explanatory nature. 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."

Contents

I. ABBREVIATIONS, EXPRESSIONS AND DEFINITIONS

I.1. Abbreviations

AEOC	Authorised economic operator – customs simplifications
CA	Customs authorities
CCC	Community Customs Code (Council Regulation (EEC) 2913/92)
CCIP	Customs Code Implementing Provisions (Commission Regulation (EEC) 2454/93)
CD	Customs declaration
CDS	Customs Decision System
CGU authorisation	Authorisation for the provision of a comprehensive guarantee including a possible reduction or waiver
COG	Customs office of guarantee
DE	Data Element
EIDR	Entry into the declarant's records
GRN	Guarantee reference number
GUM	Guarantee management system
IP	Inward processing
MS	Member State
NCTS	New Computerised Transit System: IT application for transit
RA	Reference amount
SPE	Special procedures
TS	Temporary storage
TORO	Transfer of rights and obligations
UCC	Union Customs Code, Regulation (EU) No 952/2013
UCC DA	Union Customs Code, Delegated Act (Commission Delegated Regulation (EU) 2015/2446)
UCC IA	Union Customs Code, Implementing Act (Commission Implementing Regulation (EU) 2015/2447)
UCC TDA	Union Customs Code, Transitional Delegated Act (Commission Delegated Regulation (EU) 2016/341)

I.2. Expressions and definitions

Comprehensive guarantee	A guarantee to cover the amount of import or export duty corresponding to the existing and/or potential customs debt and other charges, if applicable, in connection with two or more operations, declarations or customs procedures.
Customs office of guarantee	The customs office where the guarantee has to be/is provided (Article 151(1) UCC IA).
Customs declaration	The act whereby a person indicates, in the prescribed form and manner, a wish to place goods under a given customs procedure, with an indication, where appropriate, of any specific arrangements to be applied (Article 5(12) UCC).
Individual guarantee	A guarantee covering a single operation for an existing or potential customs debt and, if applicable, for other charges (Article 148 UCC IA).
Guarantee	A commitment provided through financial means in order to secure the payment of import or export customs duties and, if applicable, of other charges.
Guarantee Waiver (in the context of a CGU)	Full reduction of the actual guarantee amount (a guarantee is required by the legal provisions, but its actual amount is zero).
Master Reference Number	The registration number allocated by the competent customs authorities to declarations or notifications referred to in Article 5(9) to (14) UCC, to TIR operations or to proof of the customs status of Union goods.
Reference amount	The amount equal to the precise amount of import or export duty corresponding to the customs debt and other charges which have been incurred. The amount equal to the amount of import or export duty corresponding to the customs debt and other charges which may become payable, calculated on the basis of the highest rates of import or export duty applicable to goods of the same type and of the highest rates of other charges due in connection with the import or export of goods of the same type in the Member State of the COG.
Temporary storage declaration	The act whereby a person indicates, in the prescribed form and manner, that goods are placed in temporary storage.

II. GENERAL LEGAL PROVISIONS GOVERNING GUARANTEES

II.1. Situations where no guarantee needs to be provided

No guarantees shall be required by the customs authorities (CA) for the situations outlined in Articles 89(7) and (8) UCC.

These include:

- in connection with activities in which states, regional and local government authorities or other bodies governed by public law are engaged as public authorities;
- goods carried on the Rhine, the Rhine waterways, the Danube or the Danube waterways;
- goods carried by a fixed transport installation;
- in specific cases where goods are placed under the temporary admission procedure (Article 81 UCC DA);
- goods placed under the Union transit procedure using the electronic transport document as a customs declaration (CD) (simplification referred to in point (e) of Article 233(4)) and carried by sea or air between Union ports or between Union airports.

Article 153 UCC DA stipulates that 'before the release of goods which are the subject of a request for the granting of a tariff quota, the tariff quota in question is not considered critical, the release of the goods shall not be conditional upon the provision of a guarantee in respect of those goods.'

II.2. Optional guarantee

The provision of a guarantee is optional in every case where the legislation (national or EU) provides for the option of the customs authorities to require a guarantee. Under Article 91 UCC, an optional guarantee must be required by the CAs, if they consider that the amount of import or export duty corresponding to a customs debt and other charges are not certain to be paid within the prescribed period of time. Examples of optional guarantees are included in the specific Annex to this document[1].

II.3. General provisions applicable in cases where a guarantee is required

The guarantee must cover customs debts that have been incurred (existing debts), customs debts that may be incurred (potential debts) and other charges, where applicable.

The guarantee is the fall-back option within the process of collection of the customs duties and of other charges, if applicable. The CA should first address the debtor for the payment of the customs debts and of other charges, if applicable, via the notification of the customs debt (Article 102 UCC). According to Article 113 UCC, the CA should secure the payment of customs duties not paid within the prescribed period (Article 108 UCC) by all means available to them, in accordance with the national legislation of the Member State concerned, including the enforcement of the guarantee.

II.3.1. Geographical validity of the guarantee

As a general rule, when a guarantee is provided for a customs debt it has to be valid in all the MSs where the debt will/may incur.

By "a guarantee which may be used in more than one MS" it has to be understood a guarantee that can be called upon by two or more MS, depending on the MS where the debt in question is incurred.

[1] See example provided in Annex A2.8 Examples of Optional guarantee

When a debt is incurred in a certain MS that debt has to be recovered by the customs authorities of that MS.

If the guarantee is valid only in one MS, it can only be called upon by the customs authorities of that MS for debts incurred in that MS (the guarantee can only be used in one MS).

If the guarantee is valid in more than one MS, for instance in MS A and MS B, it means that the customs authorities of MS A can call upon that guarantee, for the debts incurred in MS A, and the customs authorities of MS B can call upon that guarantee for the recovery of debts incurred in MS B. In this case, the guarantee can be used in more than one MS.

A guarantee that may be used in more than one Member State must cover the amount of customs duties and other charges due in connection with the import/export of goods (VAT and/or excise duties)2.

A guarantee that is valid in only one Member State covers at least the amount of customs duties.

Existing customs debts*:*

In case the guarantee is provided to cover the debt incurred as a result of release for free circulation (including centralised clearance), the guarantee has to be valid at least in the MS where the said declaration is lodged (Article 87(1)UCC). A guarantee which is valid only for the declarations lodged in a single Member State shall cover at least the amount of the customs duties. However, it is up to the MS where the declaration is lodged to decide if the guarantee has to cover also the "other charges" or not. In case of centralised clearance, the COG (MS where the customs declaration for release for free circulation is lodged) may consult the other MS (where the goods are imported) to decide if the other charges will be included in the reference amount.

Potential customs debts:

Where the authorisation for the special procedure/TS concerns only one MS (the placement under the procedure, processing or storing of the goods and discharging of the procedure take place in one MS, so that the goods cannot be moved under cover of the special procedure outside of the said MS) the guarantee should be valid only in that MS.

When a guarantee is provided for a special procedure or TS and the goods can be moved under cover of the authorisation for that special procedure/TS across the territory of several MSs, it is possible that the goods are unlawfully removed from that procedure in any of the MSs involved. Therefore, a debt in relation of the said goods can be incurred in any MS where the goods may be moved under cover of the special procedure/TS. Because it is not possible to stipulate in the authorisation for the said special procedure/TS through the territory of which MSs the goods may be moved, it is possible that the goods are moved under cover of the procedure in any EU Member State. Therefore, a debt arising from non-compliance with the obligations from the procedure could incur in every MS and consequently, the guarantee should be EU-wide valid. In case of centralised clearance for special procedures/TS, the geographical validity of the guarantee is similar.

II.3.2. Customs office of guarantee (COG)

In accordance with the definition in Article 151(1) UCC IA, the COG is the customs office where the guarantee is provided. Where a guarantee is provided in the form of an undertaking or in other form (Article 92(1)(c) UCC), the COG must approve that guarantee.

If the guarantee is provided in the form of cash deposit as an individual guarantee required for a SPE or TS – the COG is situated in the place (MS) where the operations are carried out (Article 150 UCC IA).

[2] Article 89(2) UCC

In case of a comprehensive guarantee – the COG is from the same place as the competent authority for the granting of the CGU authorisation. However, where the comprehensive guarantee is in the form of cash deposit or other means of payment, the guarantee should be provided in accordance with the provisions in force in the MSs where it is required. Therefore, in this specific case, there will be one COG for each MS concerned.

II.3.3. Scope of the guarantee

According to Article 89(4) UCC, the Customs authorities are only allowed to require one guarantee in connection with specific goods or a specific declaration. However, this does not preclude the possibility that MS ask for additional guarantee or for the replacement of the guarantee, in accordance with Article 97 UCC.

The guarantee that was provided in connection with a specific declaration must secure the payment of customs duties and other charges, where applicable, corresponding to all goods covered by or released against that declaration, whether the declaration was correct or not. The basic principle behind this legal provision is as follows: if a customs declaration is lodged, all goods at stake have to be correctly declared and all the obligations in relation to the respective operation have to be fulfilled, which includes:

- the accuracy and completeness of the information provided and
- the compliance with all the obligations relating to the placing of the goods in question under the relevant procedure is presumed to be ensured.

In other words, the guarantee covers also the non-declared or wrongly declared goods included in a consignment or a declaration for which a guarantee is provided.

Where the guarantee is valid in only one Member State, that guarantee shall be used for the recovery at least of the customs debt. If the amount of the guarantee includes the amount of other charges, that guarantee must also be used for their recovery within the limits of the amount covered by the guarantee for their account.

Article 244 UCC IA stipulates:

“Where the CA consider that the verification of the CD may result in a higher amount of import or export duty or other charges to become payable than that resulting from the particulars of the CD, the release of the goods shall be conditional upon the provision of a guarantee sufficient to cover the difference between the amount according to the particulars of the CD and the amount which may finally be payable”.

Under Article 97 UCC, additional guarantee shall be required by the CA from any of the persons referred to in Article 89(3) either where it is established that the guarantee provided does not ensure, or is no longer certain or sufficient to ensure payment within the prescribed period of the amount of import or export duty corresponding to the customs debt and other charges, if applicable. The person required to provide the additional amount for the guarantee may choose to replace the original guarantee with a new one. It must be stressed that additional guarantee may be required by customs even in the situations where a guarantee reduction or waiver has been granted in accordance with Article 95 UCC.

In accordance with Article 89(4) UCC third subparagraph of the Code, if the guarantee has not been released, it can also be used, within the limits of the secured amount, for the recovery of the customs debts and of other charges, if applicable, which are payable following post release controls in line with Article 48 UCC. Recovery of the amounts, resulting from post release controls, should be possible within the limit of the amount secured by the guarantee as long as it is partially or fully available at the disposal of the CA and provided that the event that gave rise to the customs debt is

connected to the initial customs declaration, to the procedure or to the facilities for which the guarantee was required.

In practice, Article 89(4) third subparagraph UCC only extends the scope of a guarantee in order to secure the payment by the debtor of a customs debt arising following a post release control in respect to the goods included in a consignment or declaration for which the guarantee was initially provided. It is a residual possibility to recover the unpaid customs duties and it **cannot be understood as a requirement to increase the amount of the guarantee.** In case of the comprehensive guarantee in the form of cash deposit the CA should require the person who has provided the guarantee to re-establish its amount, if amounts not paid within the period prescribed by the CA were collected from that guarantee. Until the initial amount of the cash deposit is restored, the activity of the economic operator may be blocked for further transactions. However, the secured amount of the comprehensive guarantee in the form of an undertaking cannot be reduced by the amounts paid by the guarantor within the process of the recovery of customs debts and of other charges, if applicable, as it results from the legal text of the Annex 32-03 UCC IA: "*This amount may not be reduced by any sums already paid under the terms of this undertaking unless the undersigned is called upon to pay a debt incurred during a customs operation commenced before the preceding demand for payment was received or within 30 days thereafter"*.

II.3.4. Person to provide the guarantee

II.3.4.1. Debtor/potential debtor

According to Article 89(3) UCC, the guarantee is required from the debtor or from the potential debtor. The definition of the "debtor" is provided in Article 5(19) UCC (person liable for the customs debt). Articles 77 to 82 of the Code indicate who is to be considered as the debtor for each possible customs activity. For more information on the establishment of the debtor, please consult Chapter III, "Incurrence of a Customs Debt", of the Guidance on Customs Debt, published on EUROPA website[3].

If several persons are liable for payment of the amount of import or export duty corresponding to one customs debt, they are jointly and severally liable for payment of that amount, in accordance with Article 84 UCC.

II.3.4.2. Other person to provide a guarantee

For the cases where the debtor/potential debtor cannot/prefers not to provide the required guarantee, the second paragraph of Article 89(3) UCC applies. The customs authorities have the possibility in accordance with the specific national legal provisions in force, to authorise a person, other than the debtor or the potential debtor, to provide the required guarantee.

However, in principle, the UCC and its related acts do not hold the other person willing to provide the guarantee liable for the customs debt instead of the debtor or of the potential debtor. Moreover, the other person, who may be accepted by the CA to provide a guarantee under Article 89(3) UCC second paragraph, cannot be considered a debtor or a potential debtor within the meaning of the customs-specific legal provisions (Articles 77-79 and 81-82 UCC), on the sole basis of being permitted to provide such guarantee. He is to be considered as a person who only assumes the financial liability within the limits of the provided guarantee for the customs debt and the other charges, if applicable, if the debtor does not pay them within the deadline set and if the national law establishes such liability.

Article 89 3 UCC is applicable to individual guarantees and to comprehensive guarantees.

[3] https://ec.europa.eu/taxation_customs/sites/taxation/files/guidance-customs-debt_en.pdf

In the case of **individual guarantees** which are covering 100% of the precise amount of the customs debt and of other charges, if applicable, may be accepted to be provided by persons other than the debtor/potential debtor. Nevertheless, the customs office of guarantee should pay attention to the form of the undertaking and its legal effect (Article 151(7) and Annex 32-01 of UCC IA), if applicable.

II.3.5. Currency conversion for guarantees (Article 53 UCC)

Under Article 53(2) UCC, 'the value of the euro in national currencies to be applied within the framework of the customs legislation shall be fixed at least once a year.' The rates to be used for this conversion are fixed by the European Central Bank once a year on the first working day of October and are published in the Official Journal of the Union. This rate applies with effect from 1 January of the following year.

II.3.6. Release of the guarantee (Article 98 UCC)

Article 98 UCC provides for release of the guarantee when the customs debt or liability for other charges is extinguished or can no longer arise (be incurred).

II.3.6.1. Difference between release of the guarantee and blocking/deblocking of the reference amount of the guarantee

As regard to the comprehensive guarantee, the release of the guarantee must not be confused with blocking/deblocking of the reference amount of the guarantee. Indeed, the release of the guarantee is not an automatic de-blocking of each amount corresponding to one customs declaration/operation, making available for future transactions.

The operation of blocking/de-blocking of the reference amount may be an automatism without a request from the person who provided the guarantee or an action by the CA.

II.3.6.2. Meaning of release (Article 98(1) UCC)

The release of the guarantee should be an active doing of the customs authorities.

A guarantee in the form of an undertaking or in other form as provide for in Article 92(1)(c) UCC is considered totally released only when the guarantee has been effectively and actively returned to the to the guarantor or beneficiary.

Therefore, the release of a guarantee provided by an undertaking given by a guarantor does not correspond to:

- the decision of the customs authorities to revoke the approval of the undertaking;
- the decision of the guarantor to cancel his undertaking.

A comprehensive guarantee is a "continuous guarantee", set up for a longer period, meant to cover multiple transactions and/or customs procedures.

When a comprehensive guarantee is released, it is no longer available either for future transactions or for new payment requests addressed to the guarantor.

Moreover, the release of a comprehensive guarantee provided by an undertaking given by a guarantor does not correspond to the decision of the customs authorities to revoke/amend/suspend the authorisation for comprehensive guarantee.

The guarantee in the form of a cash deposit is considered to be released when it is repaid.

II.3.6.3 Moment of release

To release the guarantee, the customs authority has to perform the assessment of the conditions referred to in Article 98(1) UCC, namely to check if the customs debt is extinguished or can no longer arise.

This assessment includes the evaluation of the risk that a customs debt may be detected in the future following post-release control from the transactions covered by that guarantee, by taking into account all the elements/information available at the moment when the decision to release the guarantee has to be taken.

The legislation does not indicate the time limit to perform the assessment provided for in Article 98(1) UCC to release the guarantee.

Each Member State may estimate individually the time sufficient for them to perform this assessment correctly.

If the result of this assessment is positive, the customs authority should release the guarantee immediately and return it to the person who has provided it or to the guarantor.

As soon as the cancellation (by the guarantor) or the revocation (by the customs authority) of the undertaking produces effects, the customs authorities may proceed with the assessment of the conditions referred to in Article 98(1) UCC.

In case of Union Transit, specific legal provisions are applicable, e.g. Article 85 UCC DA.

In case of inward processing procedure or end-use, there is an obligation to provide a bill of discharge (Article 175(1) UCC DA). The bill of discharge, if required, has to be presented after discharge of the procedure in accordance with Article 215 UCC. In these cases, the guarantee can be released only after the control of the bill of discharge by the customs authorities, pursuant to Article 265 UCC IA.

An individual guarantee is provided in respect to one customs operation/declaration and it is mandatory to be returned/released once that operation has been properly discharged/the customs debt has been extinguished or it can no longer arise. In other words, when the CA has any information or if it estimates that a customs debt could be detected in respect to specific goods/specific customs operation/declaration, from a post release control, it may also keep the individual guarantee until the situation is clarified.

The release of a part of the amount of the guarantee has to be requested by the holder of the CGU authorisation/person who provided the guarantee and can be released if the amount involved does not justify such action (Article 98(2) UCC).

III. FORMS OF GUARANTEE

The person required to provide a guarantee may choose between the forms of guarantee laid down in Article 92(1) UCC:

- cash deposit in euro or in the national currency;
- undertaking given by a guarantor;
- other forms of guarantee.

However, Article 93 UCC stipulates that ‘the customs authorities may refuse to accept the form of guarantee chosen where it is incompatible with the proper functioning of the customs procedure concerned’ or ‘where either does not appear certain to ensure payment within the prescribed period of the amount of import or export duty.’

If CA accept a form of guarantee chosen by the person required to provide a guarantee, they may require it to be maintained for a specific period.

III.1. Cash deposit

Under Article 92(1)(a) UCC, a guarantee in the form of a cash deposit or by any other means of payment, recognised by the CA as being equivalent to a cash deposit, is made in euro or in the currency of the MS in which the guarantee is required, in accordance with the national legal provisions in force. This form of guarantee can be provided to cover existing and/or potential customs debt and other charges, if applicable.

In accordance with Article 150 UCC IA, a guarantee required for special procedures or temporary storage, which is provided as an individual guarantee in the form of a cash deposit, it must be provided to the customs authorities of the Member State where the goods are placed under the special procedure or in temporary storage. If released in accordance with Article 98 UCC, that guarantee must be repaid by the customs authority of the Member State where it was provided.

No interest is payable by the CA for this form of guarantee.

III.2. Undertaking by a guarantor

III.2.1. Models for Guarantor's undertaking

It is the responsibility of the COG (place where the guarantee is provided) to approve the guarantors undertaking. The COG notifies the approval to the person providing the guarantee, as referred to in Article 89(3) UCC. A negative decision (refusal to accept the undertaking) may concern any undertaking, irrespective of the guarantor (a credit institution, financial institution or insurance company accredited in the Union in accordance with Union provisions in force or any other guarantor who requires to be approved by the customs authority).

To accept the undertaking, the COG should be able to check if all parts of guarantors undertaking are completed correctly, including the signatures of the guarantor. For this purpose the guarantor should provide to the customs authority a list with the specimens of signatures of competent persons, if it cannot be verified in another way.

Annexes 32-01, 32-02 and 32-03 UCC IA provide for models of the guarantors undertakings specific to the individual guarantee, individual guarantee in the form of vouchers and comprehensive guarantee.

However, according to Article 151(7) UCC IA, 'each Member State may, in accordance with national law, allow an undertaking given by a guarantor to take a form different from the ones set out in Annexes 32-01, 32-02 and 32-03, provided that it has the same legal effect.'

The "legal effect" refers mainly to the legal terms of the undertaking concerning the guarantor's liability in respect to the payment of the customs debt and of other charges, if applicable, within the prescribed period of time but also to the common data requirements, in accordance with Annexes 32-01, 32-02 and 32-03 UCC DA.

An individual guarantee in the form of an undertaking may be provided by the guarantor within the context of the Union transit procedure, by issuing vouchers, in accordance with Article 160 UCC IA.

The proof of that undertaking is made out using the form set out in Annex 32-02 and the vouchers made out using the form set out in Annex 32-06. Each voucher covers an amount of EUR 10 000, for which the guarantor is financially liable. The person who is required to provide the guarantee submits a number of vouchers at the COG/departure. These correspond to the multiple of EUR 10 000 required to cover the sum of the amounts referred to in Article 148 UCC IA.

The UCC and its related Acts do not envisage a date for the end of validity of the comprehensive guarantee in the form of an undertaking (Annex 32-03 UCC IA).

A guarantee in the form of an undertaking by a guarantor can be:

- replaced with a new guarantee or amended in accordance with Article 97 UCC if it does not ensure or is no longer certain or sufficient to ensure the payment of the customs debt and of other charges, if applicable, within the prescribed period of time, according to the choice of the person who has provided that guarantee. If accepted by the CA, the undertaking can be replaced also upon request of the person who has provided it.
- released by CA if no longer required, in accordance with Article 98 UCC
- revoked by CA, in accordance with Article 151 UCC IA or
- cancelled by the guarantor, in accordance with Article 151 UCC IA.

The CA may revoke the approval of the undertaking by a guarantor at any time. It then notifies the guarantor and the person required to provide the guarantee about the revocation. Revocation of the approval takes effect on the 16th day following the date on which the decision on the revocation is received or is deemed to have been received by the guarantor.

A guarantor may cancel his undertaking at any time. The guarantor notifies the COG about the cancellation. The cancellation of the undertaking of the guarantor does not affect goods which, at the moment when the cancellation takes effect, have already been placed and are still under a customs procedure or in TS by virtue of the cancelled undertaking.

The cancellation of the undertaking of the guarantor takes effect on the 16th day following the date on which the guarantor notifies the COG about the cancellation.

The financial liability of the guarantor remains valid for customs debts and other charges incurred during the customs operations covered by an undertaking and started before its revocation or cancellation took effect.

The COG must inform the other CA of the MS in which the guarantee is valid of any decision on the revocation or cancellation of an undertaking and the date when it becomes effective.

III.2.2. The guarantor (Article 94 UCC)

Article 94(1) UCC establishes the basic conditions to be fulfilled by the guarantors providing an undertaking for customs purposes in EU:

- The guarantor is a third person established in the customs territory of the Union. Under Article 5(31) (b) UCC, the ‘person established in the customs territory of the Union’ needs to have its registered office, central headquarters or a permanent business establishment in the customs territory of the Union.
- The guarantor undertakes in writing to pay the secured amount of import or export duty corresponding to a customs debt and other charges.

Article 82(1) UCC DA stipulates that the guarantor ‘shall indicate an address for service or appoint an agent in each Member State in which the guarantee may be used.’ This information must be provided within the undertaking, in accordance with the conditions of the concerned authorisations (authorisations for customs procedures and, where applicable, CGU authorisation). If not provided the COG must not approve the undertaking from that guarantor.

Article 94 stipulates that ‘The guarantor shall be approved by the customs authorities requiring the guarantee.’ The guarantor will be approved in line with the national legal provisions of the Member State concerned.

The general rule is that the CAs requiring the guarantee shall approve the guarantor. However, an exception to this rule is envisaged if the guarantor 'is a credit institution, financial institution or insurance company accredited in the Union in accordance with Union provisions in force.' For those, approval by the CA is not required. However, these guarantors should fulfil as well the basic conditions mentioned above, which are applicable in all MS where the guarantee is valid.

III.2.2.1. The guarantor accredited in the Union

Guarantors may be accredited in the Union in accordance with specific European Directives on credit institutions and insurance companies, which should be taken into account as a general legal basis.

The rules on the accreditation of credit institutions (banks) are settled by the Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013, on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (Text with EEA relevance).

In the case of Insurance companies, the Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (Text with EEA relevance) is providing for the relevant rules.

Both of the above mentioned Directives set the principles of the accreditation for credit institutions or insurance companies, granted by the national bank under the national legislation, but based on common criteria set in relevant European legislation. Accreditation is valid also in other MSs within the exercise of the freedom to provide services and according to the legal framework established.

A list of regulated institutions and registered financial market entities is published on the websites of each national bank authority. This list contains the licences granted by the local national bank but also by the other European national authorities.

Based on Annexes of above mentioned Directives the public list also contains the data of Authorised activities. For the purposes of a guarantee for customs duty should be considered as accredited guarantor the entity which provides the following authorised activities:

Credit institutions (banks) – **Annex I** of Directive 2013/36/EU – for the guarantee purposes relevant only activity **6. Guarantees and commitments.**

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013L0036-20180113&qid=1520839532210&from=EN

Insurance institutions **– Annex I** of Directive 2009/138/EC – for the guarantee purposes relevant only activity **15. Suretyship:**

— suretyship (direct),

— suretyship (indirect).

https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02009L0138-20170112&qid=1520841951309&from=EN

To increase transparency within the European Single market, the European Banking Authority (EBA) publishes on a regular basis a list of credit institutions to which authorisation has been granted to operate within the European Union and European Economic Area countries (EEA). The list published by the EBA is set up solely on the basis of information provided by competent authorities, as foreseen in the EBA Decision establishing the Credit Institution Register.

As underlined in the Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, the so-called CRD, in connection

with Article 14 of Regulation (EU) No 1024/2013 of 15 October 2013, the granting of licences to credit institutions remains under the remit of the competent national authority/ECB.

III.2.2.1.1. Credit Institution register

The register only includes credit institutions classified in three different types:

- 'CRD credit institutions': legally defined as 'an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account';
- 'EEA branches' operating in each EEA country: branches of credit institutions authorised in another EEA country which have the right to passport their activities.
- Non EEA Branches, defined as branches of credit institutions having their Head Office in a third country.

For detailed information about credit institutions conducting business in EEA Member States please consult the EBA Credit Institution Register.

Disclaimer: The Register has been set up by the EBA solely on the basis of information provided by Member States. Therefore, unlike registers of credit institutions maintained at national level, this Register has no legal significance and confers no rights in law. If an unauthorised institution is inadvertently included in the Register, its legal status is in no way altered; similarly, if an institution has inadvertently been omitted from the Register, the validity of its authorisation will not be affected.

The European Banking Authority is responsible only for the accurate reproduction of the information received on individual credit institutions, while responsibility for the respective sections of the Register, and especially the spelling of the name and location of the institutions, their classification in a given group, trademarks held by the institution and in general the accuracy of its content, lies with the competent authorities at national level.

III.2.2.1.1.1. National registers of authorised credit institutions

Each national supervisory authority publishes on a regular basis a register of authorised credit institutions at national level. Information on national registers may be more detailed and/or more up-to-date.

- Austria (Finanzmarktaufsicht – FMA) - English version
- Belgium (NBB) - French version - Dutch version
- Bulgaria (Bulgarian National Bank) - English version
- Croatia (Croatian National Bank) (Croatian Financial Services Supervisory)
- Cyprus (Central Bank of Cyprus)
- Czech Republic (Czech National Bank – CNB) - English version
- Denmark (Finanstilsynet)
- Estonia (Estonian Financial Supervision Authority)
- Finland (Finanssivalvonta)
- France (ACPR "Autorité de contrôle prudentiel et de résolution")
- Germany (BaFin)
- Greece (Bank of Greece)

- Hungary (Central Bank of Hungary) - English version
- Ireland (Central Bank of Ireland)
- Italy (Banca d'Italia) - English version
- Latvia (Financial and Capital Market Commission)
- Lithuania (Central Bank of Lithuania)
- Luxembourg (CSSF) - English version
- Malta (Financial Services Authority)
- Netherlands (De Nederlandsche Bank NV) - English version
- Poland (Polish Financial Supervision Authority) - English version
- Portugal (Banco de Portugal)
- Romania (National Bank of Romania) - English version
- Slovak Republic (Central Bank of Slovakia) - English version
- Slovenia (Bank of Slovenia) - English version
- Spain (Banco de Espana) - English version
- Sweden (Finansinspektionen) - English version
- United Kingdom (Bank of England - Prudential Regulation Authority)

III.2.2.1.2. Other registers

- ESMA's register of investment firms
- EIOPA's register of insurance undertakings

To establish whether a credit institution, financial institution or insurance company is accredited in the Union in accordance with Union provisions in force, the CA are advised to contact their own national competent authority responsible for accreditation within their MS (usually the National Central Bank or equivalent).

III.2.2.2. Other guarantors

The CA may refuse to approve the guarantor if it appears that payment of the amount of import or export duty corresponding to the customs debt and of other charges cannot be ensured within the prescribed period.

The CA may revoke the decision on the approval of the guarantor. The decision on revocation takes effect on the 16th day following the date on which it is received or is deemed to have been received by the guarantor.

III.3. Other forms of guarantee providing equivalent assurance (Article 92(1)(c) UCC)

The other forms of guarantee that can be used according to Article 92(1)(c) UCC are listed under Article 83(1)(a)-(e) UCC DA.

The CA concerned should accept these forms of guarantee insofar as the latter forms are also accepted under national law. According to Article 83(2) UCC DA, these forms of guarantee are not accepted for placing goods under the transit procedure.

The MS in which the customs debt is incurred is responsible for the recovery of a customs debt. The MS responsible for accepting a guarantee valid in more than one MS, which was provided in one of the forms listed in Article 83(1) UCC DA, transfers the amount of the customs debt that was incurred in another MS within 1 month of receiving the request sent by the relevant MS. The request should be sent by the latter MS after expiry of the time limit for payment by the debtor, if the customs debt was not paid. Under Article 153 UCC IA, the amount transferred is limited by the corresponding amount of the guarantee covering the unpaid customs debt. In this case, the recovery of other charges is not subject to Article 153 UCC IA, but rather to the tax-specific legal framework.

IV. SPECIFIC PROVISIONS FOR THE CASES WHERE A GUARANTEE IS REQUIRED BY UCC

Within the framework of the UCC, the guarantee is by definition an instrument that should be provided by the debtor or the potential debtor to ensure the payment of existing or potential customs debt and of other charges, where applicable.

IV.1. Temporary storage

An authorisation for the operation of temporary storage (TS) facilities can only be granted on condition that the applicant provides a guarantee in accordance with Article 89 UCC, unless the operator of the TS facility is the CA itself. Under Article 148(2)(c) UCC, said guarantee should be lodged before granting the authorisation. Article 147(1) UCC states that goods in temporary storage shall may also be stored in other places than the temporary storage facilities approved by CA. In this case a guarantee is also required (see Article 115(2) a) UCC DA).

IV.2. Release for free circulation

Under Article 195(1) first subparagraph UCC, where the placing of goods under a customs procedure gives rise to a customs debt, the release of the goods is conditional upon the payment of the amount of import or export duty corresponding to the customs debt or the provision of a guarantee to cover that customs debt and, where applicable, other charges. The guarantee must be provided before the goods are released, if no payment is done.

IV.3. Special procedures other than transit[4]

IV.3.1. General provisions

According to Article 211(3)(c) UCC, a guarantee is required for the authorisations for any of the following SPE other than transit:

- inward processing/outward processing;
- specific use: temporary admission/end-use;
- storage: customs warehousing

[4] For specific provisions in case of guarantees provided in the context of Union transit, please see the Transit Manual: https://ec.europa.eu/taxation_customs/sites/taxation/files/transit_manual_en.pdf

Under Article 195(1) third subparagraph UCC, the goods cannot be released for the special procedure in question if a guarantee has not been provided to cover the amount of the potential customs debt and of the other charges, if applicable.

Under Article 211(3) (c) UCC, where a customs debt or other charges may be incurred for goods placed under a special procedure (SPE), the applicant for an authorisation for SPE should provide a guarantee in accordance with Article 89 UCC. Since the authorisation for SPE other than transit is granted for the purpose of releasing goods to that procedure on a regular basis for multiple transactions, it would be advisable for the applicant to provide a comprehensive guarantee that covers all the operations under the said authorisation.

The guarantee provided for a potential debt, should cover the risk that a debt is incurred due to the non-compliance with the obligations from the special procedure under which the goods are placed. Moreover, the guarantee covering potential customs debts ensures the recovery of those debts in the case where they would incur and are not paid by the debtor within the deadline set.

In respect to the discharge of the special procedure other than transit, which implies the deblocking of the underlying guarantee amount, in the case of inward processing procedure and end-use there is an obligation to provide a bill of discharge (Article 175(1) UCC DA). It concerns both cases when authorisation for these procedures is granted in a "full form" (for multiple transactions) or on the basis of a customs declaration (Article 163 UCC DA). The guarantee provided for a potential customs debt under the said authorisation should be blocked until it is clear that no customs debt may incur, therefore only after the control of the bill of discharge to be done by the customs authorities pursuant to Article 265 UCC-IA.

In practice:

1. *A guarantee for a potential debt is provided for the inward processing authorisation and it is referred in the customs declaration lodged for one of the operations.*
2. *The IP operation is discharged in accordance with Article 215(1) UCC within the time limits foreseen in Article 257 UCC.*
3. *However, the bill of discharge is not provided and as a consequence the customs debt is incurred, determined and notified by the customs authority to the debtor.*
4. *The guarantee for a potential debt, specified in the declaration as referred to in point 1, is deblocked only after the payment by the debtor of the customs debt and of other charges, if applicable.*

In many cases, the special procedure is discharged with a declaration for re-export and subsequent exit of goods. For the declaration for re-export, no separate guarantee is required. Until the actual discharge of the special procedure by the proper re-export (or other act that leads to the discharge of the procedure), the goods remain covered by the guarantee that is provided when placing the goods under the said special procedure.

IV.3.1.1. Temporary Admission and end-use

In case of Temporary Admission (TA) with partial relief of customs duty, the customs debt is incurred at the time of acceptance of the customs declaration art 77 UCC. At the moment of lodging the customs declaration it is not possible to establish the precise amount of the final customs debt. Therefore, the guarantee covering that debt must be fixed at the maximum amount (art 90 UCC), which is the amount that would be payable if the goods had been released for free circulation on the date on which they were place under the TA. Nevertheless, a customs debt may also be incurred in case where the obligations of the SPE authorisation will not be fulfilled. However, according to Article 89(4) UCC, the customs authorities shall require only one guarantee to be provided in respect

of specific goods or a specific declaration. Therefore, in practice, the customs authorities ask only for a guarantee to cover the incurred debts, which is the amount that would be payable if the goods had been released for free circulation on the date on which they were place under the TA.

In case of Temporary Admission with total relief of import duties, the comprehensive guarantee should cover only potential debts (see model in Annex 32-03 UCC IA).In case of the end-use procedure both types of customs debts are covered by one guarantee (incurred, which is established at the level of the reduced import duty rate) and potential, unless total exemption of customs duty has been granted.

IV.3.1.2. Application for special procedures based in a customs declaration

If the application for an authorisation for SPE is based on a customs declaration (CD) for a single transaction, e.g. warranty repair under an IP procedure or temporary admission for exhibition goods, an individual guarantee would be preferable. Under Article 262 UCC IA, 'The authorisation shall be granted by release of goods for the relevant customs procedure.' According to Article 195(1) UCC, the goods cannot be released if no guarantee has been provided. Therefore, a comprehensive guarantee may also be accepted if the CA ensures the proper monitoring of the reference amount by checking the existence, the validity and the amount of the provided guarantee each time when a customs declaration is lodged in accordance with Article 163 UCC DA. Applications for an authorisation that are made based on a customs declaration are stored in the national import and export CD processing systems. This is not applicable for TS and customs warehousing.

IV.3.1.3. Storage

In case of a customs warehousing procedure the holder of the customs warehousing authorisation has to provide a guarantee. The holder of the authorisation (the person required to provide a guarantee) is the holder of the storage facility. Regarding the use of customs warehousing procedure, a guarantee is not required for placing goods under the procedure since only the operation of the storage facility for customs warehousing of goods requires a guarantee. At some point in time the customs authority may conclude that the guarantee provided by the holder of the facility is not sufficient and additional guarantee should be required in accordance with Article 97 UCC.

In case of public customs warehouses, the person holding the authorisation and the person holding the procedure are different. Although the basic principle is that the holder of the authorisation must provide a guarantee, the customs authority can accept guarantee from the holder of the procedure since, according to Article 242 UCC, he may become a debtor as well (see Article 89(3) UCC).

Nevertheless, in the authorisation to establish a public customs warehouse, the liability may be limited only to the holder of the procedure (see Article 242(2) UCC).

This is especially useful in case of public customs warehouses of type II where the responsibilities lie with the holder of the procedure (former type B). For public customs warehouses of type I the responsibilities lie with both the holder of the authorisation and the holder of the procedure.

The additional guarantee may also be provided by the holder of the procedure. We recommend that the additional guarantee provided by the holder of the procedure in the form of an undertaking refers to the joint liability of both persons for the potential customs debts arising from that situation.

IV.3.2. Transfer of Rights and Obligations (TORO)

The transfer of rights and obligations is possible only for the rights and obligations of the holder of the procedure. The TORO does not require any use of a subsequent customs authorisation for a special procedure because the rights and obligations which may be transferred to another person have been established in accordance with the authorisation under which goods have been placed

under a special procedure. The transferee should nevertheless fulfil the conditions laid down for the procedure concerned. The rights and obligations transferred are always related to goods that have been placed under the special procedure. Some 'personal' rights and obligations cannot be transferred, such as 'AEOC status' or 'providing the necessary assurance of the proper conduct of the operations' (see Article 211(3)(b) UCC). This may have consequences on the required guarantee, if the transferee has to provide it.

Always TORO must be covered by authorisation and usually special form for TORO is used (see ANNEX III and ANNEX V of the Guidance for special procedures[5]). In addition, TORO does not require any subsequent customs declaration for the same procedure. Customs authorities involved (of the transferor and the transferee) have to be informed about the TORO and the terms of TORO and have to make sure that a guarantee is in place to cover the potential customs debt (Article 79 UCC). The Decision for TORO has to establish conditions under which the TORO takes place in accordance with Article 218[6] and Article 211(3) c)[7] UCC and has to indicate what are the rights transferred and the obligations that must be fulfilled by the transferee - no matter if the transfer of rights and obligations is “full” or “partial” (including the provision of a guarantee). The guarantee for the goods subject to TORO should be in place before the decision on TORO is taken and it is required from the person who may become the debtor, who, according to Article 79[8] UCC, is the person responsible for the fulfilment of the obligations in respect to the granted authorisation and to those goods.

Although the customs legal provisions do not limit the usage of TORO, this is, in principle, not necessary for goods placed under the special procedures other than transit or end-use. As an alternative to TORO with full transfer of rights and obligations, a new customs declaration can be lodged (e.g. in case of IP, CW). However, this practice is not applicable in case of the end-use procedure. As goods released for free circulation under end-use have obtained the Union status, such goods cannot be declared for a subsequent customs procedure. Moreover, in accordance with Article 269(2) b) UCC, goods declared for end-use procedure, for which the customs supervision has not ended (goods have not yet reached their end-use purpose), cannot be placed under the export procedure if taken out of the customs territory. If TORO were not in place, a practical solution would be the movement of goods to a location where another person who does not hold an end-use authorisation can assign those goods to the prescribed end-use. In this case, the holder of the end-use authorisation is responsible until the end-use procedure is discharged.

[5] https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/guidance_special_procedures_en.pdf

[6] Article 218 UCC Transfer of rights and obligations
The rights and obligations of the holder of a procedure with regard to goods which have been placed under a special procedure other than transit may be fully or partially transferred to another person who fulfils the conditions laid down for the procedure concerned.

[7] Article 211 UCC Authorisation
Customs authorities may grant an authorisation with retroactive effect also where the goods which were placed under a customs procedure are no longer available at the time when the application for such authorisation was accepted.
3. Except where otherwise provided, the authorisation referred to in paragraph 1 shall be granted only to persons who satisfy all of the following conditions:
(c)where a customs debt or other charges may be incurred for goods placed under a special procedure, they provide a guarantee in accordance with Article 89;

[8] Article 79 UCC Customs debt incurred through non-compliance(…)
3. In cases referred to under points (a) and (b) of paragraph 1, the debtor shall be any of the following:
(a) any person who was required to fulfil the obligations concerned;
(b) any person who was aware or should reasonably have been aware that an obligation under the customs legislation was not fulfilled and who acted on behalf of the person who was obliged to fulfil the obligation, or who participated in the act which led to the non-fulfilment of the obligation;
(c) any person who acquired or held the goods in question and who was aware or should reasonably have been aware at the time of acquiring or receiving the goods that an obligation under the customs legislation was not fulfilled.

In principle, two different procedures can be used for TORO:

(1) TORO from the holder of a SPE authorisation (who has also a TORO authorisation) to a transferee who does not have any authorisation; or

(2) TORO from the holder of a SPE authorisation (who has also a TORO authorisation) to a transferee who has a TORO authorisation.

In practice, the second type of TORO with full transfer of rights and obligations is mainly used and it concerns the goods placed under the end-use procedure.

IV.3.2.1. TORO from the holder of a SPE authorisation to a transferee who has a TORO authorisation:

Before TORO can take place, the transferee needs to be granted with a TORO authorisation.

Among other information, the decision on TORO (Article 266 UCC IA) has to indicate which guarantee is taken. The customs authority must make sure that at any moment in time, the goods subject to TORO are covered by a guarantee (of the transferee or of the transferor – depending on the conditions of TORO) until the bill of discharge has been checked and accepted by customs.

The obligations transferred under TORO include also the obligation to discharge the procedure within the period for discharge and the obligation to pay the customs duties.

In this case, the holder of the SPE authorisation needs to provide information on the TORO in his bill of discharge, if it is required, and/or in his records. He does not have to provide information on the actual discharge (of the procedure) to customs.

The transferee must provide information on the discharge of the procedure or on a subsequent TORO to his supervising customs office, which means that the transferee becomes the holder of the procedure and consequently the potential debtor, in accordance with Article 79 UCC.

The transferor's responsibility for the goods subject to TORO can cease completely at the time of transfer, based on the conditions of the transfer. Apart from the obligation to submit his bill of discharge concerning the full TORO, the holder of the SPE authorisation (the transferor) does not have any rights and obligations left after the transfer regarding the goods released for the special procedure under his authorisations for special procedure and for TORO. The corresponding amount of the guarantee submitted by the transferor in respect to the goods subject to TORO can be used for other customs operation/goods under his authorisation for special procedures only after the bill of discharge about the full TORO has been checked and accepted by customs and the goods are transferred.

Partial release of the guarantee lodged by the transferor within the framework of his authorisation for SPE is possible, in accordance with Article 98 UCC, but only in respect to the goods subject to TORO.

The above described practice(s) should be applied also in case of successive TOROs of the same type.

In case where the authorisations for SPE and the TORO concern more than one customs declaration, a comprehensive guarantee is required. An individual guarantee may be provided, if the TORO Decision concerns one transaction only (including the case under Article 163 UCC DA).

Where TORO involves more than one Member State a prior consultation of the Member States concerned is necessary.

If the goods are subject of TORO are moved through the territory of different MSs, an EU wide valid guarantee should be provided.

According to Article 89(2) UCC where the guarantee is valid in more than one MS, it shall also cover the other charges. The guarantee should cover the highest rate of other charges for goods of the same type in the MS, where the guarantee is provided.

For more details and updated information in respect to TORO please check the Guidance on SPE[9].

IV.4. Deferment of payments and other payment facilities

In accordance with Article 195 UCC, the release of goods shall be conditional upon the payment of the customs debt or the provision of a guarantee. That guarantee may cover the release for free circulation only or the release for free circulation with deferred payment (see Annexes 32-01 to 32-03 UCC IA), if requested by the economic operator.

Under Article 110 UCC, the CA authorises deferment of payment of the customs duty payable only upon provision of a guarantee.

Article 111 UCC provides that the period for which the payment is deferred shall be 30 days. According to the same provision, the time when the period for deferred payments begins is established in accordance with the type of deferment of payment being different for each case foreseen by Article 110 UCC. Thus:

i. In cases foreseen by Article 110(a) UCC, the period shall begin on the day following that on which the customs debt is notified to the debtor;

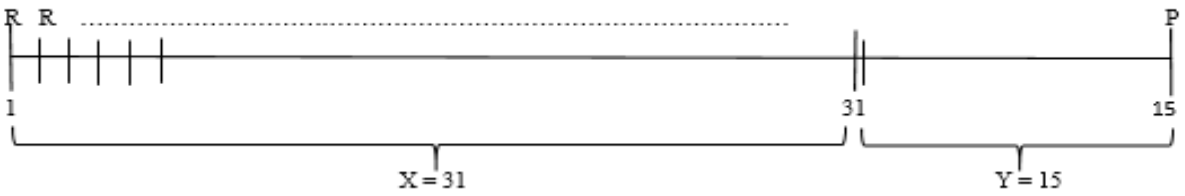
ii. Where payment is deferred in accordance with point (b) or (c) of Article 110 UCC, the period shall begin on the day following that on which the aggregation period ends. It shall be reduced by the number of days corresponding to half the number of days covered by the period concerned.

Other payment facilities that the CA may grant the debtor in accordance with Article 112 UCC also require the provision of a guarantee. Under Article 112(3) UCC, the CA 'may refrain from requiring a guarantee where it is established, on the basis of a documented assessment of the situation of the debtor, that this would create serious economic or social difficulties.'

The guarantee must be provided before granting the authorisation for deferred payments or for other payment facilities.

IV.4.1. Calculation of the period for which the payment may be deferred

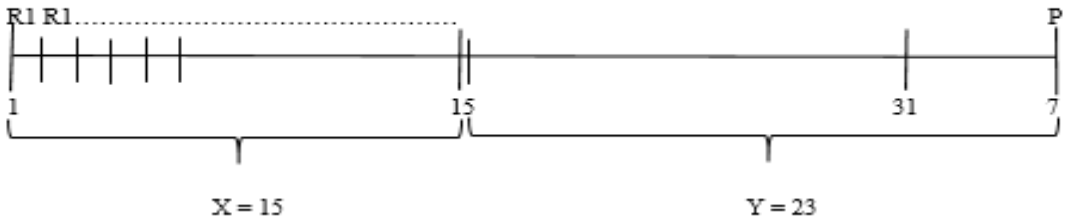
Diagram 1 – application of Article 110(b) in conjunction with Article 111(3) UCC



If the period fixed by the CA under Article 110(b) is of 31 days payment is due at the latest the 15th day following the end of that period (aggregation period) in accordance with Article 108(2) UCC. In practice, the amount that corresponds to the customs debt incurred for goods released for free circulation on 4 March 2019 will benefit from a longer period of deferment of payment than the amount corresponding to a customs debt for goods released for free circulation on the 25th of that month. Both amounts shall be paid at the latest on the 15th of April 2019.

[9] https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/guidance_special_procedures_en.pdf

Diagram 2 – application of Article 110(c) in conjunction with Article 111(4) UCC



This could be the case of an economic operator who has an authorisation for lodging customs declarations in the form of an entry of data in the declarant's records (Article 182 UCC) during a two-week period (e.g., between 1 and 15 of March).

The period for which payment is deferred (30 days) starts on the day that follows the one on which the aggregation period ends, which is the 16th of March. This period ends on April 7 (the period of 30 days is reduced by the number of days corresponding to half the number of days covered by the two-week period (30-7=23), according to Article 111(4) and (5) UCC).

The total period for which payment is deferred is of 23 days.

R - Date of release of the goods/ Deferment payment way: Article 110 (b) UCC

R1 - Date of release of the goods/ Deferment payment way: Article 110 (c) UCC

X – No of days in the aggregation period/ in the period fixed for the release of goods

Y - Period for which payment is deferred

P – Time-limit for payment [Article 108(2) UCC]

IV.5. Suspension of the implementation of a decision as a result of an appeal (Article 45 UCC)

If an appeal is submitted, implementation of the disputed decision taken by the CA is not suspended. However, if the disputed decision is inconsistent with the customs legislation or irreparable damage is to be feared for the person concerned, implementation of such a decision may be suspended conditional upon the provision of a guarantee to secure the payment of the potential customs debt.

The suspension of implementation of the disputed decision is not conditional upon the provision of a guarantee if this would cause serious economic or social difficulties to the person concerned. The assessment of the potential damage to the economic or social situation of the person concerned must be duly documented.

V. INDIVIDUAL AND COMPREHENSIVE GUARANTEES

Under Article 154 UCC IA, if an individual guarantee or comprehensive guarantee can be used in more than one MS, the COG communicates to the person who has provided the guarantee the following information:

- a guarantee reference number (GRN). For comprehensive guarantees a GRN should be assigned to each part of the reference amount according to the monitoring type, as specified in Article 157 UCC IA;
- an access code associated with the GRN.

Under Article 152(2) UCC IA, if an individual guarantee has been provided in the form of an undertaking, the holder of the procedure must not modify the access code associated with the GRN. No additional access codes are provided in case of an individual guarantee.

In case of an individual guarantee in the form of vouchers, the information above should be provided to the guarantor.

In case of a comprehensive guarantee, additional access codes may be assigned upon request of the person providing the guarantee. These codes can be also used by his representatives.

Under Article 154(3) UCC IA, whenever a person communicates to a CA a GRN and associated access codes, the CA verifies the existence and validity of the guarantee, which is required for ensuring the payment of a customs debt and other charges .

If reference is made to a guarantee reference number, it is recommended that the CA verifies the connection between the person providing the information on the GRN and the person incurring a customs debt (debtor or potential debtor).

In practice:

Once the guarantee is registered, the CA issues the guarantee reference number and the initial access code.

If for any reason an unauthorised person has access to the guarantee reference number and the initial access code, it is not possible to prevent them from using the guarantee in a malicious way. The CA should minimise such risks to business as much as possible. To avoid such situations, it is important to identify one person who performs all the activities linked to guarantees.

If a guarantee is only valid in one MS, national legal provisions may apply to authentication of the person concerned and the guarantee provided.

V.1. Individual guarantee

An individual guarantee covers a single operation/declaration and ensures payment of an existing or potential customs debt and other charges, if applicable. For each undertaking provided as an individual guarantee, it is recommended that the CA indicates the registration number of the corresponding CD (Master Reference Number) or TS declaration to be covered by that guarantee. This information is a required data element stipulated in Annex 32-01 UCC IA.

Under Article 148(1) UCC IA, an individual guarantee for a potential customs debt covers ‘the amount of import or export duty corresponding to the customs debt which may be incurred, calculated on the basis of the highest rates of duty applicable to goods of the same type.’ The calculation of other charges is based on ‘the highest rates applicable to goods of the same type in the Member State where the goods concerned are placed under the customs procedure or are in temporary storage.’

Under Article 152(1) UCC IA, 'Where an individual guarantee is provided in the form of an undertaking by a guarantor, the proof of that undertaking shall be kept by the COG for the period of validity of the guarantee.'.

The period of validity of an individual guarantee should be defined in accordance with the duration of the operation, from the moment when the goods are released to the customs procedure/TS, until the moment when the customs debt is extinguished or it can no longer arise and the CA releases it. It is provided on an individual basis corresponding to the customs debt and other charges, where applicable, that may be incurred or are incurred from one operation/customs declaration (transaction-based).

Under Article 89(6) UCC, the CA also monitor the individual guarantee.

V.2. Comprehensive guarantee

A comprehensive guarantee covers the amount of existing and potential customs debt and other charges, where applicable, corresponding to more than one customs operation/declaration/procedure of the economic operator.

Article 155 UCC IA states that the reference amount of a comprehensive guarantee is composed of different parts based on the necessary practical arrangements needed for appropriate management of the guarantees.

Primarily, the reference amount must be split if Article 8 UCC TDA is applicable. Then, according to the way of its monitoring, which is described in Article 157 UCC IA.

The reference amount might need to be split further to ensure proper monitoring, according to:

- The level of reduction of the corresponding guarantee (Article 158 UCC IA – different levels of reduction may be granted for different customs procedures).
- The customs procedure covered by the guarantee (the part of the reference amount corresponding to each given authorisation for a special procedure or for TS will be linked afterwards to that authorisation, the data element in Annex A of UCC DA, and then monitored). Where applicable, more than one regime can be covered by each part of the reference amount if monitoring of the reference amount will not be affected.

The above guidance on splitting the reference amount between different customs procedures and/or TS does not preclude the submission of one comprehensive guarantee (one undertaking by the guarantor) for all the regimes, including TS, if applicable (see the specimen of the guarantor's undertaking) or a single payment for the deposit account of customs.

V.2.1. Forms of comprehensive guarantee

V.2.1.1. Comprehensive guarantee in the form of an undertaking (Annex 32-03 UCC IA)

Under Articles 151(6) and 151(7) UCC IA, a comprehensive guarantee in the form of an undertaking can be provided using the form set out in Annex 32-03 UCC IA, or in a different form with the same legal effect, in accordance with national law.

In terms of the Union transit procedure, the comprehensive guarantee may only be provided in the form of an undertaking by a guarantor (Article 162 UCC IA), and, in principle, it should be valid in all MS.

If a comprehensive guarantee in the form of an undertaking is provided for release for free circulation, SPE other than transit or TS, it may be valid in only one MS or in several MS depending on whether the customs debt is/may be incurred in a different MS.

The economic operator can provide one or more undertakings as part of the same CGU authorisation. Each of the undertakings, which are provided as part of the same CGU authorisation, must correspond to the needs of geographical validity and to the reference amount established for the customs procedure or procedures for which it was provided.

V.2.1.2. Comprehensive guarantee in the form of a cash deposit/other forms (Article 83(1)(d) UCC DA)

If a comprehensive guarantee is provided in the form of a cash deposit in the currency of the MS where the COG is established, other than euro, in order to be valid as a comprehensive guarantee in other MS, it must be accepted by the CA of all the MS where it is required (where the customs debt has incurred or may be incurred) in so far as it is accepted under the national law of the relevant MS (Article 83(3) UCC DA). If the recovery procedure is launched, Article 153 UCC IA applies (mutual assistance).

Under Article 92(2) UCC, a comprehensive guarantee in the form of a cash deposit in euro may be used in more than one MS provided that it is given in accordance with the provisions in force in the MS in which the guarantee is required.

V.2.2. Authorisation for the provision of a comprehensive guarantee with a possible reduction or waiver (CGU authorisation)

Under Articles 89(5) and 95 UCC, upon application, the CA may ‘authorise the provision of a comprehensive guarantee to cover the amount of import and export duty corresponding to the customs debt in respect of two or more operations, declarations or customs procedures.’

V.2.2.1. Procedure for granting the CGU authorisation

The application for a CGU authorisation must be submitted to the competent CA as defined in Article 22(1) UCC. According to Article 11 UCC IA, the MS must communicate to the Commission a list with the CA designated to receive applications and any subsequent changes to that list.

V.2.2.1.1. Competent customs authority

In accordance with the third subparagraph of Article 22(1) UCC "Except where otherwise provided, the competent customs authority shall be that of the place where the applicant's main accounts for customs purposes are held or accessible, and where at least part of the activities to be covered by the decision are to be carried out." In this context, it is to be noted that "accessible" not only includes physical access, but also electronic access.

It stems from the above legal provision that, in principle, there are two criteria that need to be fulfilled for the designation of the competent customs authority which shall be the one of the place where:

i. the applicant's main accounts for customs purposes are held or accessible and

ii. at least part of the activities to be covered by the decision are to be carried out

These two criteria should be cumulatively met to conclude that a customs authority is the competent one. Practically, that means that in case the place where the applicant's accounts are held is different from the place(s) where the accounts are accessible, the decisive criterion would be the place where the activities to be covered by the decision are to be carried out.

Nevertheless, considering the modern trends in companies' organisational structures and business flows, as well as of the ongoing trend on outsourcing certain activities, the correct decision is not

always "at hand". Whenever it is not possible to determine clearly the Member State that should act as competent authority, based on the above mentioned general principle (in other words, if the accounts are neither held or accessible from the place where he carries out his customs activities), Articles 12 UCC DA applies. Following the empowerment of Article 24 (a) UCC and by derogation to Article 22(1) UCC, Article 12 UCC DA provides that:

> "Where it is not possible to determine the competent customs authority in accordance with the third subparagraph of Article 22(1) of the Code, the competent customs authority shall be that of the place where the applicant's records and documentation enabling the customs authority to take a decision (main accounts for customs purposes) are held or accessible."

The general principle is that the application should be submitted to the Member State that has the best knowledge of the applicant's customs related activities.

Both the third subparagraph of Article 22(1) and Article 12 DA use the wording "are *held or accessible*". The condition "*held*" and the condition "*accessible*" should be equally strict and not disregarded. The legislation gives the Customs Authority a choice on how to consider itself competent either should the records be held or accessible in a way that allows customs to take a decision, monitor the authorisation, be able to audit the holder and in other ways be able to take all necessary steps to collect duties.

The Customs authority considering themselves to be competent to grant the CGU authorisation should in each case assess if the records are accessible to the degree that would allow them to:

- Take those decisions (assessment of conditions for the granting of the guarantee reductions, especially of the financial solvency etc.)

- Fulfil their obligations in respect to those authorisations (such as: monitoring of the conditions to be fulfilled, monitoring of the reference amount, and recovery of amounts not covered by the guarantee where reductions/waiver have been granted etc.).

In practice:

Example 1:

An economic operator wants to apply for an authorisation for comprehensive guarantee. Its main accounts for customs purposes are held in Member State A and accessible in Member State B. The activities to be covered by the decision are carried out in Member State B. Therefore, the competent customs authority is the one of Member State B.

Example 2:

An economic operator wants to apply for an authorisation for inward processing. Its main accounts for customs purposes are held in Member State A and accessible in Member State B. The activities to be covered by the decision are carried out in Member State C. Therefore, the competent customs authority is the one of Member State A or B. It is the economic operator´s choice to submit the application either in Member State A or B.

Example 3:

An economic operator wants to apply for an authorisation for inward processing. Its main accounts for customs purposes are held in a third country and accessible in Member State A. The activities to be covered by the decision are carried out in Member State B. Therefore, the competent customs authority is the one of Member State A.

In practice, the accounts might be accessible from different places situated in different MS. The economic operator should apply for a CGU authorisation in the MS where at least part of his customs activities are to be carried out. For example, the MS granting the authorisation for the corresponding customs procedure may also be competent for granting the CGU authorisation. If the economic

operator has to be authorised by different MSs to perform his customs activities, all those MSs may, in principle, be competent for the underlying comprehensive guarantee, but only if his accounts are accessible or held in all those MSs. The term "activities to be covered by the decision" as stated in Article 22(1) UCC encompasses every action to be carried out by the economic operator regarding the authorisation to be granted, from placing the goods under the special procedure until its discharge. This entails, among others, storage, processing or movement of goods. The economic operator has to indicate which are the main accounts for the purposes of Article 22(1) UCC as there is only one "main accounts for customs purposes" related to the specific application submitted by the economic operator. The competent customs authority may accept or refuse the level to access the information concerning the main accounts for customs purposes in the application submitted by the economic operator, depending on being sufficient or not to perform its activities related to the granting and the monitoring of that authorisation. More information on the accessibility of customs related documentation is available in the section 3.I.2 of the AEO Guidelines (p66).[10]

In order to have a full picture of the economic situation of the applicant and of his customs activities including his financial standing and solvency, there should be only one Customs Authority competent for granting the CGU **authorisation to cover the potential customs debts and the other charges**, if applicable. To facilitate the assessment of the application in respect to the conditions provided in Article 84 UCC DA, it is recommended that the competent customs authority granting the CGU authorisation be the one who is also responsible for granting the AEOC authorisation.

This is also applicable for the case of CGU **authorisations covering incurred customs debts** and other charges, if applicable, granted to AEOCs. In this case, the customs authority should verify the date of the granting of the AEOC status including results of the monitoring of the AEOC status. In certain cases where fulfilment of the criterion on financial solvency might be doubtful, before granting the CGU authorisation, the customs may decide to reassess the AEOC status.

In case where the applicant is not authorised for customs simplifications, Member States have agreed that each MS where the economic operator carries out his release for free circulation activities should be competent for the granting of the CGU authorisation for deferred payments/incurred debts. If necessary, the competent MS may decide to consult other MS during the process of granting of the authorisation in respect to the fulfilment of specific conditions by the applicant. However, according to Article 14 UCC IA, the consultation on the fulfilment of specific conditions by the applicant is not mandatory.

Currently, applications and decisions for CGU authorisations are managed through the CDS, the specific IT tool for the management of the decisions.

10 ttps://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/customs/policy_issues/customs_security/aeo_guidelines_en.pdf

V.2.2.1.2. Application for an authorisation for comprehensive guarantee with possible reductions or waiver

The application must provide the specific data elements listed in Titles I and VI of Annex A UCC DA (Annex 1 of this document).

The application is accepted by the customs authority, if it complies with the general rules for applications and decisions[11].

An application that has been accepted is further processed in accordance with the general terms and conditions for decisions listed in Article 22 UCC and Articles 8, 9 and 13 UCC DA.

If an application is submitted for an authorisation that is meant to be valid in more than one MS, the competent CA may need to consult other CA concerned, to ensure that the conditions have been fulfilled before taking a decision (Article 22 UCC, Article 14 UCC IA). This includes establishment of the reference amount and the conditions referred to in Article 95 UCC.

V.2.2.1.3. Decisions by the customs authority

Decisions for granting the CGU authorisation must be taken in accordance with Articles 22 and 95 UCC and Article 14 UCC IA. Further guidance is provided in the general guidance for customs decisions[12].

For this purpose, data available on other valid guarantees lodged by the applicant and on CGU authorisations, should be available to the competent CA.

A consultation of all concerned CA of other MS, in accordance with Article 14(4) UCC IA, might be necessary in the following situations:

- For the monitoring and/or for the assessment of the conditions to be fulfilled to grant the CGU authorisation (e.g. if the applicant is established or he has other customs activities in other MSs);
- To establish the reference amount for the other charges, if applicable, even if the guarantee is valid in only one MS (e.g. centralised clearance).

Where the guarantee is valid in more than one MS and the split of the reference amount between different MSs is necessary, a consultation is mandatory during the transitional period, which runs from 1 May 2016 until the guarantee management system is in place. The consultation on the division of the reference amount does not concern the guarantees provided as part of the Union transit procedure, since for transit the MS who authorises the transit operation has all the elements at its disposal in relation to the transit procedure and the required guarantee. More details about the consultation procedure for splitting the reference amount are provided in section VI.3 (Consultation procedure) of this document.

The competent authority establishes the reference amount in accordance with Article 155 UCC IA, in cooperation with the economic operator.

If the applicant meets the conditions for granting the authorisation (laid down in Article 95 UCC, which are further complemented by the provisions of the UCC DA and UCC IA), the CGU authorisation, including possible reductions or a waiver in relation to the established reference amount, is granted (see section V.2.6). When accepting an application for the CGU authorisation, the customs authority verifies if the applicant fulfils the conditions in Article 95(1) UCC:

1) That person should be established in the customs territory of the Union

[11] Article 22(2) UCC, Article 12 UCC IA, and Article 11 UCC DA

[12] https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/customs/customs_code/guidance_general_cust_dec_en.pdf

Pursuant to Article 5(4) UCC “person” means:

- a natural person,
- a legal person,
- any association of persons which is not a legal person, but which is recognised under Union or national law as having the capacity to perform legal acts.

The national law of each Member State defines who is considered a natural person, a legal person or an association of persons recognised as having the capacity to perform legal acts but lacking the legal status of a legal person.

Pursuant to Article 5(31) UCC, a person is established in the customs territory of the Union, if:

- in the case of a natural person, any person who has his or her habitual residence in the customs territory of the Union;
- in the case of a legal person or an association of persons, any person having its registered office, central headquarters or a permanent business establishment in the customs territory of the Union.

Article 5(32) UCC defines "permanent business establishment" as a fixed place of business where both the necessary human and technical resources are permanently present and through which a person's customs-related operations are wholly or partly carried out.

2) That person fulfils the criteria laid down in point a) of Article 39 UCC (absence of serious infringements and no record of serious criminal offences)

   Article 39 (a) UCC requires the 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. Furthermore Article 24 UCC IA considers this criterion as fulfilled if over the last three years no serious infringements of customs legislation and taxation rules have been committed or repeated and the applicant have had no record of serious criminal offences relating to his or her economic activity.

3) That person is a regular user of the customs procedures involved or operators of TS facilities or they can prove practical standards of competence or professional qualifications directly related to the activities carried out.

   Applications for CGU authorisations may only be accepted from an economic operator who in the course of his or her business is involved in activities covered by the customs procedure or legislation. It should be made clear that Article 95 paragraph 1 c UCC requires that the person providing for the comprehensive guarantee is in fact “regularly using the customs procedure” and not only “involved in any kind of customs related activities”.

The authorisation must provide the specific data listed in Titles I and VI of Annex A UCC DA (Annex 1).

If the COG takes a favourable decision to grant the CGU authorisation (for the provision of a comprehensive guarantee, including a possible reduction or waiver of the established reference amount) valid in more than one MS, the competent CA must inform the CA concerned about such a decision in accordance with Article 14 IA.

If the reference amount established for the authorisation by the CA taking the decision is different than the one indicated in the application, the reasons for the difference must be justified.

Upon application, the competent CA may grant one or more CGU authorisations to the applicant, taking into account the following:

- the way the reference amount is monitored, in accordance with Article 157 UCC IA;
- the number of applications (In general the applicant should address to the same CA, if he already benefits from a CGU authorisation, to increase his reference amount by adding other customs procedures to be covered by the same guarantee. However, if he is not an AEOC he may be able to apply for the comprehensive guarantee for the deferment of payments in each MS where he carries out activities of release for free circulation);
- the geographical validity of CGU authorisation (data element 1/4, Title I, Annex A UCC DA). Annex A UCC IA provides for a cardinality of "1x" for the data element "geographical validity", meaning that one of the following codes may be used for each authorisation: all MS (EU-wide), certain MS, one MS. The guarantee provided for transit should be in principle EU-wide valid (code 'all'). For other customs procedures or for temporary storage, the guarantee can usually be valid in several MS or in only one MS (code 'certain' or code 'one'). It is therefore not possible to hold a CGU authorisation for the transit procedure, which needs to be EU wide valid and, at the same time, for other customs procedures or for TS, where the geographical validity might be limited to a single MS or to several MS;
- the time limit for payment of the customs debt (data element VI/6 Title VI Annex A UCC DA – normal or deferred. Annex A UCC IA provides for a cardinality of "1x" for the data element "the time limit for payment", meaning that one of the following codes may be used for each authorisation: 1 (normal payment), 2(deferred payment).

Under Article 23(5) UCC, the competent authority monitors the conditions and criteria to be fulfilled by the holder of the CGU authorisation(s). It also monitors compliance with the obligations resulting from that decision (e.g. conditions to be fulfilled for granting the reduction/waiver of the guarantee, monitoring the reference amount etc.).

The common conditions for AEOC status (Article 39 UCC) and CGU authorisations (Article 95(2) UCC and Article 84 UCC DA) should be re-assessed at the same time.

There could be different timeframes for the re-assessment of the different specific conditions. As some conditions might not necessarily be re-assessed annually, the financial standing of the holder of the CGU authorisation should be re-assess every 12 months, especially if a guarantee reduction or waiver was granted. In practice, some MS re-assess all conditions on an annual basis. Others are re-assessing the condition of sufficient financial standing annually and the other conditions every three years.

If the customs authorities receive information that the economic operator does not fulfil anymore any of the conditions or if there were changes in the activity or organisation of the economic operator, they should re-assess the CGU authorisation. When re-assessing the condition on sufficient financial standing, the customs authority should take into account the results of the monitoring of the reference amount.

The CGU authorisation may also be re-assessed at the request of the economic operator, within the framework of his obligation to monitor the guarantees and his authorisations, since he has a better knowledge of fulfilling the conditions for the granting of the authorisation and of his activities and organisation.

In the process of the reassessment of the CGU authorisation, the customs authorities should apply the general rules concerning the management of the decisions that are valid for the authorisations granted on the basis of Article 22(5) UCC.

According to the monitoring results, the proposals from the holder of authorisation, the proposals from CA of the MSs where the guarantee is valid and in view of other conditions that can have an

impact on the validity and/or content of an authorisation, the CA may take the following decisions in accordance with Article 23(3) UCC:

- annul the authorisation in accordance with Article 27 UCC;
- revoke or amend the authorisation in accordance with Article 28 UCC;
- suspend the authorisation in accordance with Articles 23(4)(b) UCC, Articles 16 to 18 UCC DA and Article 15 UCC IA.

If the guarantee is valid in more than one MS, the above-mentioned decisions can be taken by the competent CA only after consulting all concerned CA of other MS, in accordance with Article 14(4) UCC IA.

An authorisation for simplifications as part of an authorisation for special procedure, provided for in Article 210(b) to (d) UCC, cannot be granted before the authorisation for special procedure has been granted. Moreover, no additional guarantee is required for these cases apart from the comprehensive guarantee provided in the context of the authorisation for SPE. However, if a modification (amendment, suspension, annulment or revocation) of the authorisation for special procedure is envisaged as a result of the holder of that authorisation not fulfilling the obligation in terms of the guarantee provided, the related authorisation for simplification an for the comprehensive guarantee should be affected in the same way.

V.2.2.2. Temporary prohibition relating to the use of a comprehensive guarantee — Article 96 UCC

Under Article 96 UCC, the Commission may decide in specific cases (special procedures or temporary storage) to temporarily prohibit the use of a comprehensive guarantee or the use of a comprehensive guarantee for a reduced amount or a guarantee waiver for the goods identified as being subject to large-scale fraud.

The person concerned may apply for authorisation to use a temporarily prohibited comprehensive guarantee to the same CA that granted the CGU authorisation if he fulfils the conditions provided for in Article 96(2) (a) and (b) UCC and the criteria laid down in points (b) and (c) of Article 39 UCC. The consultation procedure, as provided for in Article 14 of UCC IA, may take place if the comprehensive guarantee is valid in more than one MS.

These decisions must be adopted by means of Implementing Acts in accordance with the specific procedures in place.

V.2.3. Establishment of the reference amount

V.2.3.1. Introduction

Under Article 155 UCC IA, the comprehensive guarantee may be used up to a reference amount.

To protect the financial interests of the Union’s budget and Member States’ budgets, the CA establishes a reference amount sufficient to cover at any time the corresponding amount of customs debt that has been incurred and that may be incurred and other charges, where applicable, for which the comprehensive guarantee will be provided. In accordance with Article 89(2) UCC, where the economic operator lodges an application for a comprehensive guarantee which is to be used in more than one Member State, the reference amount should cover import/export duties and other charges, including VAT due in connection with the import/export (Articles 90 UCC and 155 UCC IA).

To establish the reference amount, the following principles should be applied:

- The part of the reference amount that is to cover the customs debt that has been incurred must correspond to the amount of the import or export duty and other charges payable when the guarantee is required.
- The part of the reference amount that is to cover the customs debt that may be incurred must correspond to the amount of the import or export duty and other charges calculated on the basis of the highest rates applicable to goods of the same type in the MS of the COG[13]. These may become payable in the period between the placing of the goods under the relevant customs procedure and the moment when that procedure is discharged or the supervision of end-use goods is ended, or between the start and the correct date of ending of temporary storage. This amount must be established for each CD or TS declaration in respect of which the guarantee is provided.
- The reference amount must be sufficient to cover at all times the potential and existing customs debt and other charges, which may vary in amount over time.
- The CA establishes the reference amount in cooperation with the person required to provide the guarantee (Article 155(4) UCC IA).
- Under Article 155(4) UCC IA, the CA 'shall establish that amount on the basis of the information on goods placed under the relevant customs procedures or in temporary storage in the preceding 12 months and on an estimate of the volume of intended operations as shown, inter alia, by the commercial documentation and accounts of the person required to provide the guarantee.'
- Article 155(3) UCC IA creates a fall-back option for establishing the reference amount in cases where it cannot be established with certainty due to the lack of necessary information available to the CA. In this case, the amount is fixed at EUR 10 000 for each declaration.
- In this context, the term 'declaration' means a CD for placing goods under a customs procedure or a declaration for placing goods under TS. One declaration covers all goods that are placed under a certain customs procedure or under TS under the same Master Reference Number (MRN).
- Under the common transit procedure, Union goods are considered as non–Union goods when establishing the corresponding part of the reference amount.
- The reference amount is reviewed in accordance with Article 155(5) UCC IA and it must be adjusted when necessary. This also entails an adjustment of the amount of the guarantee and of the CGU authorisation.

V.2.3.2. Calculation of the reference amount

To establish the reference amount for the import or export duty and other charges that may be incurred, three key pieces of data are needed:

i) Value of goods placed under the relevant customs procedure or in TS

The person required to provide the guarantee must present this data by means of commercial documentation and accounts.

If no historic data is available (for example, an economic operator is granted an authorisation for a customs warehouse for the first time), the economic operator must estimate the total value of goods he wishes to place under the customs procedure concerned/TS over a 12-month period.

ii) Duty rate of goods

[13] The Customs Office where the guarantee is provided

The reference amount is calculated on the basis of the highest rates of import or export duty applicable to goods of the same type and, where applicable, of the highest rates of other charges due in connection with the import or export of goods of the same type in the MS of the COG.

Goods of the same type are goods that, although not alike in all respects, have similar characteristics to those of the goods for which a guarantee has to be provided, enabling them to perform the same functions. The reference to goods of the same type should facilitate the calculation of the reference amount if, due to a lack of information, it is not possible to accurately classify the goods under the customs tariff.

The calculation should therefore be made on the basis of the import duties and, where applicable, other charges that would be applicable to goods of the same type if released for free circulation or on the basis of the import duties and other charges applicable to goods of the same type released for free circulation in the past.

Information on the highest amount of duty and other charges applicable on any single consignment, relating to the recent 12-month period, or, if unavailable, information on the likely highest amount of duty and other charges applicable on any single consignment in the next 12-month-period, must be provided by the economic operator as part of the application for a CGU authorisation.

The goods concerned should be classified on the basis of the customs tariff. Any favourable tariff measures should not be considered when establishing the reference amount.

When establishing the reference amount, anti-dumping duty, countervailing duty or additional duty resulting from a suspension of concessions must be taken into account.

iii) Period of discharge

The period of discharge is when **goods placed under a special procedure**, except transit, **or processed products** must be placed under a subsequent customs procedure, be destroyed, have been taken out of the customs territory of the Union or be assigned to their prescribed end-use. In the case of outward processing, it is the time within which the goods temporarily exported must be re-imported in the form of processed products and released for free circulation in order to benefit from partial or total relief from import duties.

As part of the application for a CGU authorisation, the economic operator should provide information on the average period between the placing of goods under the procedure and the discharge of the procedure (see data element VI/2 of the CGU authorisation) relating to the recent 12-month period.

Nevertheless, if historical records are not available to the CA or documents have not been provided by the operator for the estimation of the period of discharge, the maximum time provided for that special procedure should be taken into consideration in order to ensure that the reference amount is not exceeded at any point in time (Article 174 UCC DA — the period of discharge established in the authorisation for a special procedure may be automatically extended or may be extended at the request of the economic operator, which may be done after the date when it has expired).

In the absence of historical data, the estimation of the reference amount should be based on the maximum time frame provided for that customs procedure/operation (see subsequent examples under point IV.2.3.4.).There is no time limit for the storage of goods in a customs warehouse. For TS facilities, the time frame should not exceed 90 days. In this case, the holder of the facility should provide an accurate estimation of the relevant timeframe based on commercial documentation and accounts.

If payments are deferred, information on the period between the **notification of customs debt** and the date when the payment was actually made for the operations carried out during the last 12 months should be taken into account when establishing the reference amount.

V.2.3.3. Methods of assessment or facilitation in calculating the reference amount

In essence, the reference amount must be calculated as accurately as possible based on the aforementioned key data.

If historical data is not available for the operations conducted during the last 12 months in the premises of the facility for which a guarantee is required, the reference amount may be established according to the data available for a comparable period of time or the estimated business volume of the economic operator for that facility.

In order to make an estimation, if the necessary data is either not available to the CA or has not been provided by the economic operator, the reference amount established by the economic operator in relation to his business volume estimation could be considered by the CA. In this case, to review the correctness of the establishment of the reference amount, an early audit of the monitoring of the reference amount is recommended (see section V.5.2.4.).

In the case of a public customs warehouse type I or II or TS facilities, the economic operators often do not have the necessary information to calculate the customs duties that may be incurred as goods are often stored on a consignment basis. In addition, while the holder of the authorisation for the customs warehouse or operator of the TS facility has to provide the guarantee, he is not the declarant of the respective goods. Any data related to similar facilities operated by the same person or other person and goods stored in them can be used as the basis for calculating the amount for the new facility.

V.2.3.4. Examples for calculation of the reference amount[14]

This section provides examples of possible calculation methods and does not describe a restrictive method for establishing the reference amount. The listed 'variants' serve only as examples. The list of examples is open. Other 'variants' not listed can be applied if they ensure that the reference amount is correctly determined.

In general, the examples are for each customs procedure or for temporary storage. However, it should be taken into account that the type of business activity also plays a role even for one and the same procedure.

Irrespective of the method used, it is important to emphasise that the reference amount should be set at a level that ensures the protection of EU financial interests in all possible cases.

a) Inward processing (IP)

According to the terms of the authorisation for the use of IP, the maximum period of discharge is 6 months. When estimating the value of goods placed under the procedure and discharge, the historical data should be taken into account, together with the business volume estimation.

Example of how the reference amount for the guarantee may be calculated:

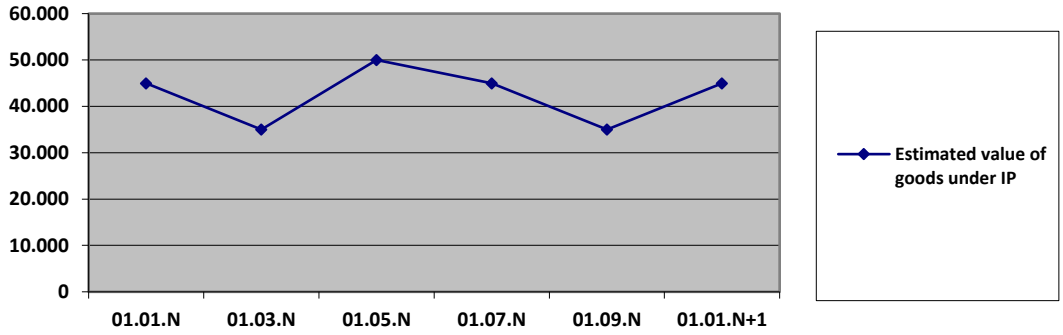
- Total value of goods that may be placed under IP during 5 years

(see data field 7 of the authorisation) EUR 600 000

- Duty rate 10 %[15]
- VAT rate 20 %[16]

Date	Value of goods placed under IP	Value of goods discharged under IP	Value of goods at stake under IP
1 Jan N	45 000	0	45 000
1 Feb N	10 000	15 000	40 000
1 March N	5 000	10 000	35 000
1 April N	12 000	5 000	42 000
1 May N	8 000	0	50 000
1 June N	5 000	8 000	47 000
1 July N	5 000	5 000	45 000
1 Aug N	0	5 000	40 000
1 Sept N	5 000	10 000	35 000
1 Oct N	15 000	10 000	40 000
1 Nov N	15 000	12 000	42 000
1 Dec N+1	8 000	5 000	45 000

[14] The reference amount for other charges is calculated in some examples, and not in others.
[15] Maximum duty rate, if the classification is unknown.
[16] Highest VAT rate of Member State of COG.



- Maximum value of goods that may be at stake under IP according to business activity volume[17] = EUR50 000

The part of the reference amount covering the import duty: EUR 50 000 x 10 % = EUR 5 000

The part of the reference amount covering the other charges: EUR 55 000 x 20 % = EUR 11 000

- Guarantee reference amount: EUR 16 000

The reference amount is the maximum amount at stake = EUR 16 000 — corresponding to the amount of customs debt and other charges for goods under IP that are not released to a subsequent customs procedure at a given moment. This amount could correspond to one or more CDs

The above example illustrates that the guarantee must be provided only for those goods that can actually be under the IP procedure and not for those that could be placed under the procedure in theory. In other words, the factual situation must be taken into account, i.e. the estimated value of goods corresponding to CDs for IP and the estimated value corresponding to the transactions by which the IP procedures are discharged (Article 215(1) UCC), together with their evolution during the period of reference, as shown by the commercial documentation and accounts of the person requested to provide the guarantee (Article 155(4) IA).

When establishing the value of goods at stake under IP, the historical data of the IP operations carried out during the previous 12 months should also be taken into account.

b) Customs warehousing

*Variant 1 — method of calculation where records and estimation data are available (**this method can only be applied if there is an uniform distribution of the value of goods placed under the customs warehousing procedure over the preceding 12 months period**)*

- Total value of goods to be placed under the customs warehousing procedure is estimated **in one year** to be: EUR 50 000 000
- Maximum duty rate applicable to goods stored in a customs warehouse: 10 %
- Maximum period of discharge: 2 weeks
- Annual duty exposure: EUR 50 000 000 x 10 % = EU 5 000 000
- Weekly duty exposure: EUR 5 000 000 / 52 weeks = EUR 96 150
- Reference amount: EUR 96 150 x 2 weeks = EUR 192 300

Variant 2 — no historical records available, but estimation data is available

[17] In this case, the calculation of the reference amount is not based on the period of validity of the authorisation or on the period of discharge.

The reference amount should be established on the basis of the value of goods that may be placed under the customs warehousing procedure according to the storage capacity of the facility and the business volume estimation for that specific facility.

- Total value of goods to be placed under the customs warehousing procedure is estimated **in one year** to be: EUR 5 000 000
- Maximum value of goods at stake, which may be placed under customs warehousing according to the storage capacity and business volume estimation: EUR 1 000 000
- Maximum duty rate applicable to goods stored in a customs warehouse: 10 %
- VAT rate (highest VAT rate of MS of COG): 20 %
- Calculation of the reference amount in respect of the import duty:
  - EUR 1 000 000 x 10 % = EUR 100 000
- Calculation of the reference amount corresponding to other charges:
  - EUR 1 100 000 x 20 % = EUR 220 000
- Reference amount = EUR 320 000

Variant 3 — container-based storage

Operators of customs warehouses where containers are stored could be allowed to use this method of assessment.

The number of containers stored in a customs warehouse may be determined according to the storage capacity or being calculated as maximum stock of that facility based on business volume estimations.

The value per container could be either a calculated average amount or the insurance value per container.

- Maximum number of containers at stake that can be stored in a customs warehouse: 1 000
- Value of goods (i.e. insurance amount) per container: EUR 10 000
- Maximum duty rate: 10 %
- Calculation of the reference amount: EUR 10 000 000 x 10 % = EUR 1 000 000

c) Temporary storage facilities

For the calculation of the reference amount for TS facilities, the same methods as for customs warehouses could be used.

V.2.4. Monitoring of the reference amount

V.2.4.1. Monitoring of the reference amount by the person required to provide a guarantee — Article 156 IA

The general principle is that the reference amount should be set at a sufficient level. This enables the total amount of customs debts and other charges to be covered at all times. This means that the operator cannot exceed the reference amount by opening transactions where the amount of customs debts or other charges would no longer be covered.

Article 156 UCC IA should be read as stating that in cases where the CGU authorisation hold by a person other than the debtor/potential debtor is:

- monitored by the customs authorities on an audit basis; and
- solely used by the holder of the special procedure to place goods under the procedure,

The person required to provide a guarantee (holder of the special procedure) has the obligation to monitor the reference amount and must inform the CA if the reference amount is no longer sufficient to cover the amount of the potential/existing customs debt. This communication, together with the provision of an additional guarantee or the replacement of the guarantee with a sufficient amount, must be done before the reference amount is exceeded.

In any case, there is an obligation resting on the holder of the CGU authorisation himself too to make sure that the reference amount is not exceeded. That obligation comes directly from art. 23(1) UCC.

Any form of monitoring is valid if it ensures that the reference amount is not exceeded.

The way of monitoring by the holder of the CGU authorisation may be described in the application/authorisation.

In this respect, the competent authorities may require in particular that the person required to monitor the reference amount at least keeps records of each declaration and, where applicable, of the corresponding amount of duties and other charges either calculated or estimated.

If the obligation to provide a sufficient guarantee was not fulfilled due to inappropriate monitoring, the CA that took a decision to grant an authorisation for a customs procedure covered by the guarantee at stake (Article 211(3)(c) UCC) may at any time amend, suspend, annul or revoke it (Articles 23(3), 27 and 28 UCC, Article 16 UCC DA, Article 15 UCC IA).

V.2.4.2. Monitoring of the reference amount by the CA — Article 157 UCC IA

The Implementing Regulation (UCC IA) describes three possible ways of monitoring of the reference amount by the customs authority, depending on the procedure:

- release for free circulation: for each CD at the time of placing of goods under the procedure (standard declaration) and for each supplementary declaration (simplified customs declaration/entry in the declarant's records);
- in transit: for each transaction, where the New Computerised Transit System (NCTS) is available;
- all other cases (including TS): audit.

V.2.4.2.1. Release for free circulation

Under Article 157(1) UCC IA, the monitoring of the reference amount must be ensured for each CD at the time of placing of goods under the procedure.

The monitoring for each CD at the time of placing of goods under the procedure — so-called transaction-based monitoring (applicable in the case of the standard declaration for the release for free circulation and transit) as referred to in Article 157 UCC IA — means checking, before the release of goods for the procedure, the existence of the guarantee and availability of the necessary amount (established for the declared goods) within the relevant part of the reference amount. This prevents the release of goods for the procedure in case the guarantee does not exist or the amount available is not sufficient.

If a simplification as referred to in Articles 166 (simplified declaration), 182 (entry in the declarant's records) and 185 (self-assessment) UCC is used and a comprehensive guarantee is provided, release of the goods is not conditional upon a monitoring of the guarantee by the CA (Article 195(3) UCC).

The monitoring for each supplementary declaration/particulars entered in the records (applicable in the case of simplified declarations and entry in the declarant's records in case of release for free circulation) as referred to in Article 157(1) UCC IA means checking, after the release of goods for

the procedure, the existence and the validity of the guarantee and the availability of the amount declared (as calculated for the declared goods) within the relevant part of the reference amount and launching an appropriate control/review of the reference amount/audit if the guarantee did not exist, it was not valid or the amount available was not sufficient. This is transaction-based monitoring that is specific in the case of simplified declarations and entry in the declarant's records.

V.2.4.2.2. New Computerised Transit System (NCTS)

For goods placed under the Union transit procedure, where the declaration is processed by the electronic system referred to in Article 273(1) UCC IA, NCTS is used to monitor the reference amount. NCTS should be updated as provided for in Commission Implementing Decision (EU) 2016/578, which established the Work Programme for the Union Customs Code. Annex 72-04 UCC IA contains information on the monitoring of the reference amount and the guarantee in the event of a temporary failure of the electronic transit system.

V.2.4.2.3. Audit approach

V.2.4.2.3.1 General

For cases other than those referred to in Points IV.2.4.2.1 and IV.2.4.2.2, the monitoring of the reference amount is ensured by regular and appropriate audit (Article 157(3) UCC IA).

This type of monitoring may concern:

- goods carried by rail, where the paper based simplification is used during the transitional period;
- goods placed under a special procedure other than transit or in TS.

Regular and appropriate audit

The audit referred to in Article 157(3) UCC IA in practice means a sort of periodical control aimed at checking, post-clearance, if the guarantee existed over the whole period in which it was required (at any point in time) and the reference amount was not exceeded (by the operator) at any time during usage of the guarantee. Apart from the documents and systems held by the operator, the guarantee reference data entered, if required, in the CDs and any relevant records available at the level of customs authority may serve as evidence in such controls.

The audit does not check if specific amounts involved in each operation are correctly established (in terms of customs valuation, origin, rates or other factors) or if the level of reduction of provided guarantee is still justified. However, if the result of this activity will show that the reference amount was not sufficient the economic operator should provide additional guarantee. In case of comprehensive guarantee with reduction/waiver, the CA might need to re-assess if the financial standing in accordance with Article 84 UCC DA is still sufficient and, consequently, if the economic operator would still benefit from a comprehensive guarantee with reduced level or of a guarantee waiver. The economic operator may also ask for the re-assessment in order to benefit from a higher level of a guarantee reduction, in case where the reference amount has proved to be in excess following the conclusion of the audit monitoring or he may ask for the "partial" release of the guarantee, in accordance with Article 98 UCC.

The audit of the reference amount by the CA is based on checking all the information provided by the economic operator and available to the CA. However, it could also include on-the-spot controls on the premises of the economic operator or where the goods are stored.

The COG must find a balance between ensuring legal compliance and limiting the financial exposure and time exposure of the CA as well as of the economic operator. On the one hand, the audit of the

reference amount therefore takes into account the results of other audits. On the other, it may be combined and coordinated with other specific audit activities (e.g. audit of specific authorisations for authorised economic operator for customs simplifications). This should be taken into consideration when planning the audit activities for the relevant economic operator. In this way, the CA could conduct a complete audit covering all operations of the economic operator.

Regular audit

The recommended time frame for planning the audit activities for the monitoring of the reference amount is 12 month (this time frame is recommended following the establishment of the reference amount exercise. Under Article 155(4) UCC IA, the data to be assessed in order to calculate the reference amount is collected over a 12-month period).

When a new economic operator is established or the authorisation for a special procedure is approved for the first time and the economic operator therefore has no data/experience (e.g. new customs warehouse has been authorised), it is recommended that an audit is carried out in a period shorter than 12 months, from granting the CGU authorisation.

If the economic operator expands its business (which may lead to more operations), this could be a signal for carrying out an audit (outside the current audit plan).

Appropriate audit

Appropriateness is the measure of the quality of audit in terms of relevance and reliability of the evidence collected in providing support for the conclusion that the reference amount was sufficient at any point in time to cover the amount of customs debt and other charges, where applicable, in connection with the operations that required that guarantee. The extent of the audit (the number of customs declarations checked) should include all the operations covered by the amount of the provided guarantee in terms of records related to the declarations lodged by the economic operator and the discharge/end of supervision of the procedure.

Article 157(3) UCC IA should be interpreted as indicating the minimum requirements for the ways in which the customs authorities monitor the reference amount in cases other than those referred to in paragraphs 1 and 2 of Article 157 UCC IA. Closer monitoring activities, including transaction-based monitoring, can be accepted if the national practice of MS allows it. This type of monitoring could then be considered to be appropriate and regular, as referred to in Article 157(3) UCC IA.

However, under Article 154(3) UCC IA the CA should check the existence and validity of the guarantee each time an economic operator provides a guarantee reference number in the customs declaration.

V.2.4.2.3.2 Monitoring of the RA by audit for guarantee valid in more than one MS, where Article 8 UCC TDA applies

In case of comprehensive guarantees valid in more than one MS, each MS has the obligation to monitor its part of the reference amount if it is divided among those MS, in accordance with Article 8 UCC TDA.

In this context, Member States to cooperate and should be able to share the relevant information concerning the guarantees valid in more than one MS. Member States concerned should therefore find a satisfactory period and a suitable way for the audit, commonly agreed.

Within the framework of Article 157(3) UCC IA, some Member States perform a transactional monitoring of the reference amount, others are including all the customs declarations in the audit while some Member States are doing a system based audit approach (a selection of customs declarations) which can be combined with the monitoring of the CGU authorisations. Some MS rely

on the obligation of the economic operator for the monitoring and on the information provided by the economic operator, via his accounting system, (e.g. when the CA has difficulties to know when the procedure is discharged or they do not know when goods are actually leaving the EU territory through another MS).

All practices are accepted, as long as the Member States are re-assuring themselves that the reference amount is sufficient to cover the amount of customs debts and of other charges, if applicable, at any point in time.

V.2.5. Review of the reference amount

Under Article 155(5) UCC IA, the COG reviews the reference amount on its own initiative or following a request from the person required to provide the guarantee, and adjusts the reference amount if necessary.

In this context, review of the reference amount means updating the value of the reference amount.

Whereas monitoring of the reference amount involves checking if the established reference amount is sufficient to cover the amount of import or export duty and other charges that have been or may be incurred at all times, the review of the reference amount can be seen as a consequence of the monitoring activity.

The review of the reference amount has consequences for the level of the guarantee provided to cover the amount of customs debt and other charges or for the given authorisations in respect to that reference amount.

V.2.6. Levels of reduction of the comprehensive guarantee

V.2.6.1. Customs debt and other charges which have been incurred

An existing customs debt is related to the following customs operations:

- release for free circulation under normal customs declaration without deferred payment;
- release for free circulation under normal customs declaration with deferred payment;
- release for free circulation under a customs declaration lodged in accordance with Article 166 UCC;
- release for free circulation under a customs declaration lodged in accordance with Article 182 UCC;
- temporary admission procedure with partial relief from import duty;
- end-use procedure;
- other kind of operation.

Under Article 95(3) UCC, the guarantee amount corresponding to the customs debts and other charges which have been incurred in connection with one or more customs operations, declarations or procedures (Annex 32-03(1b) UCC IA) can be reduced to 30 % of the part of the reference amount (Article 158(2) UCC IA).

This reduction is granted only to authorised economic operators for customs simplifications (AEOC), upon application. The legal provisions do not provide for other conditions to be fulfilled by AEOC in order to benefit from this level of reduction.

V.2.6.2. Customs debt and other charges which may be incurred

A potential customs debt is linked to the temporary storage of goods and to the following customs procedures:

- Union transit procedure/common transit procedure;
- Customs warehousing procedure;
- Temporary admission procedure with total relief from import duty;
- Inward processing procedure;
- End-use procedure;
- other kind of customs operations.

Under Article 158(1) UCC IA, the amount of the comprehensive guarantee covering customs debts and other charges which may be incurred (Article 95(2) UCC) when placing goods under one or more customs operations (TS and/or one or several customs procedures), which are listed in Annex 32-03(1a) UCC IA, can be reduced to:

- 50 % of the part of the reference amount: an applicant has to comply with the conditions laid down in Article 95 UCC and Article 84(1) UCC DA;
- 30 % of the part of the reference amount: an applicant has to comply with the conditions laid down in Article 95 UCC and Article 84(2) UCC DA;
- 0 % of the part of the reference amount (guarantee waiver): an applicant has to comply with the conditions laid down in Article 95 UCC and Article 84(3) UCC DA.

According to the specifications in Annex A UCC IA Title VI – CGU authorisation, the cardinality of the DE VI/3 (level of guarantee) is 99x. Therefore, by a single authorisation to use the comprehensive guarantee, the competent customs authority may grant different levels of reduction, in accordance with Article 158 UCC IA, to each part of the reference amount corresponding to an authorisation for SPE or TS. However, the spirit of the UCC is that a CGU authorisation is a facilitation intended to cover all the economic operator customs activities. Furthermore, Articles 95(2) UCC, 84(1) of the delegated act and 158 of the implementing act refer in their wording to the economic operator and his application for the comprehensive guarantee in a way that could be interpreted as being possible to grant only one level of reduction, but not being very specific in relation to this restriction. Moreover, the flexibility of the usage of the reference amount would decrease significantly each time when the customs decides to split it among different customs procedures/TS, in order to be able to grant different levels of reduction.

Nevertheless, in specific situations (e.g. TS facilities) the customs authority may decide in accordance with Article 84, second subparagraph of Paragraph 3a UCC DA that the risk of the incurrence of the customs debt is “zero” and they may grant a guarantee waiver. This might not be the case of the risk assessment in respect to the reference amount corresponding to transit activities of the same economic operator and the guarantee reduction that could be granted for that purpose might be to only 50% of the reference amount or even no reduction.

Any economic operator may apply for a reduction or waiver of the comprehensive guarantee covering the potential customs debts and other charges, where applicable, provided that he fulfils the conditions in Article 84 UCC DA.

For the assessment of the conditions to be fulfilled by the economic operators as provided for in Article 84(1)(a) to (d), Article 84(2)(a) to (d) and Article 84(3)(a) to (j) UCC DA, CA should rely on the guidelines for authorised economic operators[18] as these conditions are identical to the modalities for the application of the AEOC criteria, as provided for in Articles 25 and 26 UCC IA. Under Article 38(5) UCC, the assessment done when granting the status of authorised economic

[18] Ref. TAXUD/B2/047/2011 Rev.6

operator for customs simplifications should not be performed again. From this perspective, the authorised economic operator for customs simplifications (AEOC) is generally deemed to fulfil the conditions provided for in Article 84(1)(a) to (d), Article 84(2)(a) to (e) and Article 84(3)(a) to (j) UCC DA.

V.2.6.2.1 The assessment of the 'sufficient financial standing' (Articles 84(1)(e), 84(2)(f) 84(3)(k), 84(3a) and 84(3b) UCC DA)

Although the practical assessment of the conditions in Article 84 UCC DA did not change much compared to the past, some new elements need to be brought to the attention of the customs authorities stemming from the amended text of this Article:

- The assessment of the sufficient financial standing is not anymore limited to the financial resources assessment.

- The customs authorities may take into account the risk of incurrence of potential customs debts, when assessing the "sufficient financial standing", when it is justified by the customs authorities.

A) Practical application of the First subparagraph of Article 84(3a) UCC DA:

It is necessary to emphasise that in light of the current text the AEOs should not be subject to duplication of assessment procedures. According to Article 38(5) UCC, 'Customs authorities shall not re-examine those criteria which have already been examined when granting the status of authorised economic operator'. However, it should be clarified that the specific simplifications an AEOC may wish to benefit are subject of the authorisation by the competent customs authority and fulfilment of the specific requirements related to that type of simplification, provided for in the customs legislation.

The methodology for the assessment of the financial standing to grant the status of an AEOC, provided for in Article 26 UCC IA, as a modality for the application of the criterion on financial solvency - Article 39 c) UCC, has not changed with the latest amendment of Article 84 UCC DA.

To take a decision on the level of reduction of the guarantee amount or on the guarantee waiver in the case of an application by an AEOC, customs authorities evaluate the condition on 'sufficient financial standing' by taking into account the results of the assessment of the application for the AEOC status and of subsequent specific monitoring of this status. From this perspective, the amendment of Article 84 UCC DA not only facilitates the assessment of an AEOC application, but it also explains that the customs authorities should focus on the specific elements/requirements in relation to the sufficient financial standing.

In this context, for the assessment of the financial standing to grant a guarantee reduction or a guarantee waiver in accordance with Article 84 UCC DA, the customs authorities should first check if the economic operator is an AEOC. Following situations may arise:

1. If the applicant is not AEOC. In this case, the customs authorities should assess all conditions in Article 84 UCC DA, including the financial solvency in accordance with Article 84(1) c) – e), (2) d) – f) and (3) i) – k) UCC DA, Article 39 c) UCC and Article 26(1) a) - c) UCC IA. The relevant AEO-questionnaire can be used to assess the common conditions provided for in Article 84 UCC DA and in the modalities for the assessment of the criteria in Article 39 UCC, which are established in Articles 23-27 UCC IA.
2. The applicant has submitted an application for AEOC. The same customs authority should be competent for granting both authorisations. The common conditions for both authorisations, resulting from criteria in Article 39 UCC will be assessed only once. To

determine the level of the guarantee reduction to be granted, the customs authorities must apply the provisions in article 84(3a) and (3b) UCC DA, in respect to the assessment of the sufficient financial standing.

3. In case of applications from AEOC, the customs should evaluate whether monitoring of their status has been recently performed and what were the results.

The customs authority should further assess the sufficient financial standing of the applicant in relation to his capacity to pay the customs debts and the other charges, if applicable, which may be incurred and which will not be not covered by the guarantee and decide upon the level of the guarantee reduction, as provided for in Article 84 §3a UCC DA. When the economic operator has the AEOC status, the customs authority should assess only if the financial standing of the applicant justifies the granting of an authorisation to use a comprehensive guarantee with a reduced amount or a guarantee waiver in accordance with Article 84 §3b UCC DA. For this purpose the most recent financial statements/reports have to be presented (which should be available already for monitoring purposes in case of an application from AEOC). This will be compared with the part of the reference amount not covered by the guarantee (depending on the reduction/waiver requested).

Where appropriate, the customs authorities may take into account the following elements[19] to evaluate the sufficient financial standing for the purpose of the CGU authorisation, in accordance with Article 84 UCC DA:

- Net working capital (expressing the capacity to finance short term needs),
- Creation of available resources (expressing the capacity to finance long term needs),
- Own Capital,
- Total Assets,
- Easy convertible assets,
- Fixed assets
- Dynamical rating of the company
- Net profit/loss
- Total balance sheet
- Current liabilities
- Ration income/outcome
- Payment ratio
- Liquidity ratio
- Solvency ratio
- Probability of default (stability of the company);
- Equity ratio
- Return on Equity Ratio and Return on Investment Ratio (ability to make value with the capital and the investment you make with your activities);
- Other relevant elements.

[19] These elements are also considered when assessing the financial solvency criterion (Article 39 (c) UCC) for the applications for the AEO status. More information is included in the Guidelines for AEO – assessment of the criterion on financial solvency/Section III - Proven financial solvency: https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/customs/policy_issues/customs_security/aeo_guidelines_en.pdf

Sources of information[20]:

When considering the proven financial solvency criterion it is important that all the information is, where appropriate, considered together in order to get the full overview. One indicator should not be considered in isolation and decisions should be based on the overall position of the applicant.

Customs authorities may rely on various sources of information to assess this criterion, i.e.:

- the record for the payment of customs duties and all other duties, taxes or other charges which are collected on or in connection with the importation or exportation of goods during the last three years;

- the published financial statements and balance sheets of the applicant covering the last three years in order to analyse the applicant's ability to pay their legal debts;

- draft accounts or management accounts, in particular any interim reports and the latest cash flow, balance sheet and profit and loss forecasts approved by the directors/partners/sole proprietor, in particular where the latest published financial statements do not provide the necessary evidence of the current financial position or the applicant has a newly established business;

- the applicant's business case where the applicant is financed by a loan from a financial institution and the facilities letter from that institution;

- the conclusions of credit rating agencies, credit protection associations or any relevant public authorities' rating;

- available audit reports;

- any accessible financial information such as legal record, online databases, financial news etc.

- other evidence which the applicant may provide, for example a guarantee from a parent (or other group) company that demonstrates that the applicant is financially solvent.

The customs authorities can establish whether the applicant is able to meet his or her legal debts to third parties by checking the applicant's full sets of financial statements due in the last three years. The latest draft accounts or management accounts between the latest signed financial statements and the current date should also be reviewed to determine whether there have been any significant changes to the financial position of the applicant that may impact on its proven financial solvency.

In case of concerns, the applicant can take a number of actions to improve the net assets position. For example, additional capital can be raised through a share issue. For multinational companies negative net assets may often arise from inter-group transactions and liabilities. In these circumstances liabilities may often be covered by a guarantee from the parent (or other group) company. In this respect, the AEO guidelines[21] stipulate that:

"*2.III.4. Letters of comfort and guarantees from parent (or other group) companies*

Letters of comfort are documents usually issued by a parent (or other group) company acknowledging the approach of a subsidiary company's attempt for financing. Letters of comfort may be found where the subsidiary company has negative net assets and are used to support the directors' opinion and evidence the auditor's opinion that the company has adequate financial resources to continue to operate as a going concern. They may be limited to a specific period of

[20] More information is included in the Guidelines for AEO – assessment of the criterion on financial solvency/Section III - Proven financial solvency:
https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/customs/policy_issues/customs_security/aeo_guidelines_en.pdf

[21] https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/customs/policy_issues/customs_security/aeo_guidelines_en.pdf

time. They represent a written statement of intention to continue with financial support to the applicant company, but they are not necessarily legally binding.

When judging the proven financial solvency of a subsidiary, it should be taken into account that a subsidiary company may operate under a guarantee from the parent company and the customs authorities could look into the accounts of that parent company providing support to ensure it has the facilities to do so. It is to be noted that letters of comfort are often not legally binding contractual agreements and therefore do not constitute a legally enforceable guarantee.

Where the applicant is dependent on the financial support of a parent (or other group) company to meet the proven financial solvency criterion the customs authorities should, where appropriate, ensure the support is provided in a legally binding, contractual agreement. If a guarantee is required as evidence of support from the parent (or other group) company it must be legally binding according to the national legislation of the Member States where it is accepted, otherwise it cannot be taken into account in assessing compliance with the criterion.

To constitute a legally binding, contractual agreement it must contain an undertaking to irrevocably and unconditionally pay the liabilities of the subsidiary. Once signed, it has to be the legal responsibility of the signatory to pay any customs debts that are not paid by the applicant."

B) Practical application of the Second subparagraph of Article 84(3a) UCC DA

In this context, the customs authorities have to check whether the financial standing of the economic operator is sufficient in relation with the ability of the economic operator to pay in case of incurrence of a potential customs debt higher than the amount of the provided guarantee/undertaking while taking into account the risk of incurrence of the customs debts, if justified. This assessment needs to take into account all elements relevant to the situation while keep it flexible and fit to the particular situation. The customs authorities evaluate the sufficient financial standing for the purpose of the CGU authorisation by taking into account potential risks related to the incurrence of customs debts such as features of the business activity, specificity of transaction and similar[22].

a) Description/meaning of the risk element[23];

According to Article 5(7) UCC, "risk means the likelihood and the impact of an event occurring, with regard to the entry, exit, transit, movement or end-use of goods moved between the customs territory of the Union and countries or territories outside that territory and to the presence within the customs territory of the Union of non-Union goods, which would:

(a) prevent the correct application of Union or national measures;

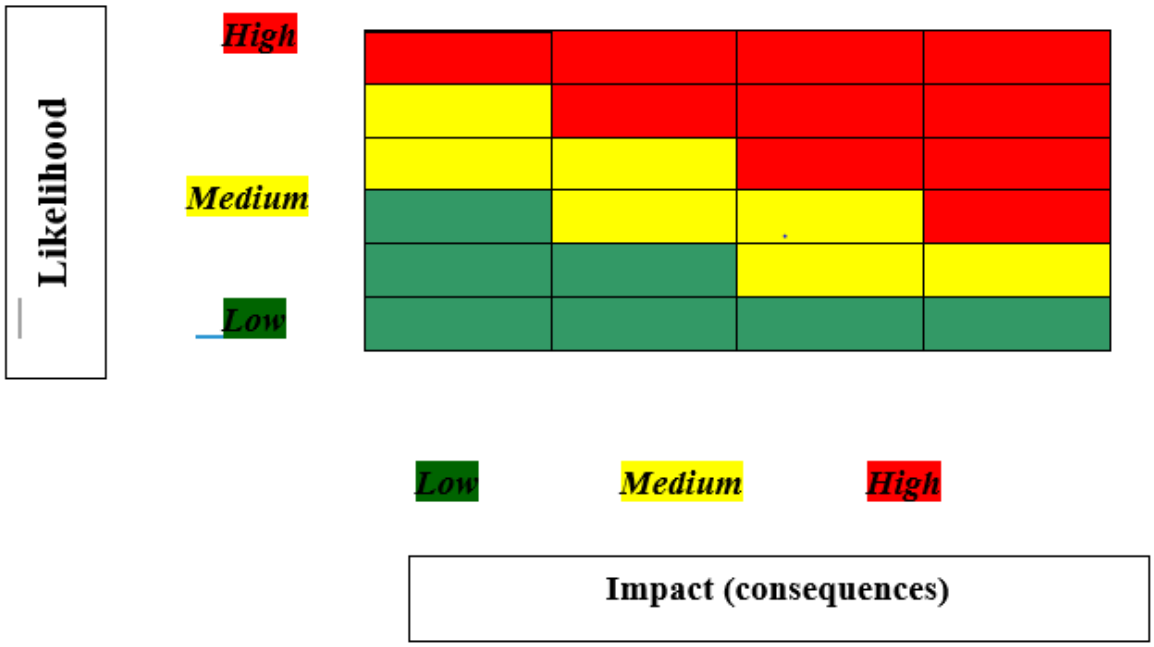
(b) compromise the financial interests of the Union and its Member States; or

(c) pose a threat to the security and safety of the Union and its residents, to human, animal or plant health, to the environment or to consumers;"

According to this definition, two elements have to be considered: the likelihood that an event occurs and its impact. To assess the importance of the relevant risk, these two dimensions should always be taken into account. These concepts can be visualised through the so called risk matrix in the following picture:

[22] For example, when for a container terminal customs cannot take into account the low likelihood of the incurrence of a customs debt, a guarantee may have to be provided for the full reference amount. For these kind of companies, it would be impossible to get a guarantee for hundreds of millions of euros. Even when a company would manage to get a guarantee for this high amount, his business would be affected, as he probably cannot loan anymore to do e.g. investments. However, the CA may take into account the risk of the incurrence of the customs debt and decide on the granting of a level of reduction, if justified.

[23] For risk elements reference was made to the AEO-Guidelines (probability and impact).



A risk can never be reduced to zero (completely eliminated), except when a process is aborted totally.

This matrix shows a high consequence risk would be unacceptable in all but a low likelihood situation, while a medium consequence risk would be unacceptable in a high likelihood situation. The aim is to reduce the level of risk (impact/likelihood) to an acceptable level, and assure through monitoring that it is not changing.

Normally, it should be considered that if:

- the risk is in the red area, it is considered high and further countermeasures should be introduced to reduce the level of risk;

- the risk is in the yellow area, corrective actions can be suggested to move the risk in the green area, either mitigating the impact or reducing the probability that it occurs;

- the risk is in the green area, the risk can be treated as acceptable but improvements can be considered.

These two dimensions should also be used to prioritise risks and envisage appropriate mitigating actions.

The potential customs debts are not 100% certain to incur. They may only incur through non-compliance, as provided for in Articles 79 and 82 UCC. In the context of Article 84 UCC DA, the risk should be read in connection to the likelihood that the customs debt is incurred and its impact in terms of the size of the amount that will actually be incurred through non-compliance.

In order to determine in what situations it could be justified to take into account the risk element, the customs should assess the probability that the potential customs debts arise by looking at the records available for the operations carried out during the past (3 years). After having understood the possible impact of the incurrence of those debt, compare them with relevant ratios[24] that are able to highlight the capacity to face those obligations.

[24] Such as: the working capital, easily convertible assets, net assets and other useful indicators… (latest balance have always to be submitted/other documents)

b) Risks associated to the elements mentioned in the legal text

NB: It is not possible to draft an exhaustive list of the situations where the risk element is relevant. All the elements must be taken into account always in connection with each other.

Three of the risk elements are already listed in Article 84(3a) the second subparagraph UCC DA, namely: the type and the volume of activities and the type of goods.

- Type of customs related business activities (including the relation of the declarant with the holder of the procedure/goods and the customs procedures concerned): Risk is lower when highly secured warehouses or temporary storage facilities are in place, goods are transported in transit by rail (rather than on the road).
- Volume of customs related business activities: The smaller the volume of customs related activities (in terms of the amount of customs debt and of the number of customs declarations), the smaller the risk of incurrence of the customs debt. However, where there are few customs declarations lodged that involve big amounts of customs debt, the risk might be very high.
- Type of goods: The risk is low in case of oil stored in special vessels (warehouses) which are highly protected. On the other hand, sensitive goods, petrol, alcohol, goods including high risk of fraud; annex 71-02 goods; goods that are most affected by irregularities (solar panels, bicycles, textiles, bio-diesel) pose a higher risk. The former Annex 44c could also be used as a reference.

However, these elements and the risk of incurrence of customs debts have to be seen in the context of the existing internal processes and control systems within the company. Other elements may also be taken into account when assessing the risk element here above, for example: facts of the incurrence of the potential customs debt in the past (if the economic operator has some history), being or not being an AEOC or the fact whether an operator has lost the guarantee reduction or the guarantee waiver.

c) How is determined the risk and the final amount to be covered by the guarantee, when the risk factor is applicable (see the relevant examples in this guidance)?

It is recommended that a case by case assessment be performed to determine the risk that a potential customs debt will actually incur (using the same elements described above). However, Member States should decide themselves upon the methodology for the implementation of the second subparagraph of Article 84(3a) UCC DA.

In principle:

- The lower the risk the higher the level of the guarantee reduction to be granted, including guarantee waiver.
- If waiver is not possible, customs authorities may grant a lower level of the guarantee reduction, if requested by the applicant (guarantee amount may be reduced to 50% or to 30% of the reference amount).
- When risk remains high, the customs should not apply the risk element and they should assess the sufficient financial standing against the established reference amount (100%) to grant the guarantee waiver / reduction.

The likelihood that a potential customs debt is incurred should be quantified. For this purpose the customs authorities may take into account the available statistics/records, results of other risk assessment activities, e.g. previous AEO-S checks, controls, on site visits and/or audit reports. The customs will determine afterwards the amount of the customs debts and other charges most likely to be incurred and compare it to the financial standing, in order to decide upon the level of reduction.

The assessment of sufficient financial standing in accordance with Article 84 UCC DA could form an integrated part of the assessment performed in order to grant AEOC status in accordance to Article 26(1)(c) UCC IA. In this case, when assessing the application to use a comprehensive guarantee with a reduced amount or to have a guarantee waiver of those AEOC, CA should only decide if the applicant's financial standing justifies a guarantee reduction or a guarantee waiver – also taking into account the results of any monitoring and/or reassessment done after the granting of the AEOC authorisation. If necessary, additional verification and the submission of additional documents may be required by CA in order to update the results of the previous assessment of the AEOC's financial standing.

VI. TRANSITIONAL PROVISIONS – ARTICLES 7 AND 8 UCC TDA

These provisions are applicable until the GUM is deployed. Union transit falls outside the scope of this section as the existing New Computerised Transit System (NCTS) contains a valid and efficient guarantee management module.

VI.1. Storage of information

Until the GUM is deployed, the Member States may use their existing national systems to register and monitor their part of the reference amount. In accordance with Article 7 UCC TDA, this continuation of the current practice can also be a paper procedure.

The competent CA must retain all data and supporting information that was relied upon when taking a decision for at least 3 years after the end date of its validity.

VI.2. Exchange of information

VI.2.1 Means of exchange — Other than electronic data processing techniques

For the exchange of information on guarantees that have an impact in more than one Member State, transitional measures need to be set up in view of the lack of envisaged electronic systems to ensure that such an exchange takes place.

Until the GUM is deployed, Member States will use email to exchange information on guarantees, within the framework of the management and of the monitoring of guarantees (Article 8 UCC TDA Commission Delegated Regulation (EU) 2016/341 of 17 December 2015).

To limit the divulgation of this information and to establish clear contact points in the different Member States, each Member State should designate one contact point. The idea is that each Member State will have one unique contact point for any exchange of information between different Member States in which the operator would want to use the guarantee. Member States should communicate to the Commission the contact point designated in accordance with Article 3(2) UCC TD. The updated list of contact points designated by MS is available on the Commission website:

https://ec.europa.eu/taxation_customs/sites/taxation/files/ms_contact_points_article_3_tda_update_27_03_18_en.pdf

For the business continuity, in absence of an IT system, the competent authorities may provide to the holder of the procedure a certificate (similar to comprehensive guarantee certificate TC31 used in transit — Annex 72-04 UCC IA).

VI.2.2. Data to be exchanged

Until the date of deployment of the GUM, the person required to provide the guarantee must specify in his application for the CGU authorisation the division of the reference amount between the Member States in which he carries out operations involving different goods, except with respect to goods placed under a Union transit procedure, which are to be covered by the guarantee.

The following information should be exchanged between the CAs where parts of the reference amount[25] have to be valid:

- application data: all data elements included in the application;
- the proposed breakdown of a reference amount to be valid in each Member State where part of the reference amount is required. A further breakdown of the RA to distinguish between

[25] This is not an exhaustive list.

the part of the reference amount corresponding to the customs duties and the other part for the other charges should be attached to the consultation;

- existence and validity of other CGU authorisations granted by the consulted CA to the applicant, including reductions/waiver, if applicable[26];
- AEO information: date of granting the status, type of status, date and results of the latest monitoring/check of the conditions to be fulfilled, if applicable;
- date and reference number of the decision upon the application;
- favourable decision: an identification number of the guarantor's undertaking and the allocated guarantee reference numbers (GRN) and access codes;

  During the transitional period, each Member State is allowed to allocate specific GRNs to its parts of the reference amount. This is based on existing practice for the registration and monitoring of the reference amount. The structure of the GRN to be allocated by each Member State to its part of the reference amount, which has to be monitored according to Article 157 UCC IA, should follow the minimum requirements provided for by the legal provisions in Annex A of UCC DA and UCC IA. A unique reference should in any case be used for the purpose of communications on the guarantee to be used in more than one Member State, i.e. the identification number of the guarantor's undertaking.

  If Member States do not have an IT application to manage guarantees, the paper-based procedure may be allowed, which can be similar to the business continuity procedure provided for in transit. To this end, the documents issued to the economic operator by the COG may take the form provided in Chapters VI and VII of Annex 72-04 UCC IA. The specific data about the appointed agent or the address for services in the Member State where the guarantee may be used should also be exchanged (included in the undertaking).
- Unfavourable decision: information on the right to be heard letter, the reply of the applicant and the position of the consulted Member States. The unfavourable decision may be partial, i.e. in relation to the part of the reference amount for which agreement was not obtained.

[26] This is necessary in view of a correct assessment of the conditions to be fulfilled for a comprehensive guarantee with possible reductions waiver (Article 84 UCC DA).

Annexes A and B of UCC DA/IA provide for the data elements concerning the guarantees, which need to be stored and exchanged by GUM with the other IT applications during the decision making and monitoring processes.

Annex A UCC DA and UCC IA, Title I

Data Element Name	Notes
DE 8/6 – Guarantee	Data element used in applications and authorisations. "Indicate whether a guarantee is required for the authorisation concerned. If yes, enter the Guarantee Reference Number of the guarantee provided in relation with the authorisation concerned." The GRN is required for all the authorisations for which the provision of the guarantee valid in more than one MS is a condition to grant them, as shown in Annex A UCC DA. Annex A UCC IA explains that the element has cardinality 1x and the structure is: GRN an..24. That means that it is impossible to put more than 1 GRN in each authorisation. Only one GRN is to be granted for each part of the reference amount to be monitored in accordance with Article 157 UCC IA. In order to improve the monitoring activities of the reference amount it is recommended to grant one specific GRN for each part of reference amount corresponding to each authorisation for which the guarantee is required, where the reference amount is split among those customs procedures. However, CA may decide to establish a global reference amount for all SPE other than transit together, to be monitored in accordance with Article 157(3) UCC IA. In this case, one GRN will be allocated to the global reference amount corresponding to all the respective SPE other than transit, as provided for in Article 154 UCC IA (it can be repeated for all SPE and TS). According to Article 154 UCC IA, the GRN corresponds to each part of the established reference amount and not to the guarantee itself, but it is granted only upon the provision of the required guarantee. Additional guarantee, if required for the same purpose, will be registered under the same GRN. The use of GRN is obligatory for the guarantees valid in more than one MS. During the transitional period until deployment of GUM and only if the guarantees are valid in only one MS, the MS could use other guarantee references, available at national level. It should be noted that the GRN is not a mandatory data element of the CGU authorisation (Title VI of Annex A) but of the other authorisation for which a guarantee is required. If these authorisations are included in the Customs Decisions System, the other guarantee reference available at national level cannot be used, but a GRN has to be provided instead. The structure of GRN has to follow the rules established for the DE 8/6 of Title I, Annex A.
DE 8/7 – Guarantee amount	Data element used in applications and authorisations. "Introduce the amount of the individual guarantee or, in the case of the comprehensive guarantee, the amount equivalent to the part of the reference

Data Element Name	Notes
	amount allocated to the specific authorisation for temporary storage or special procedure." Within the framework of the provision of a comprehensive guarantee for an authorisation for a special procedure other than transit or for TS, the economic operators are obliged to provide in their application the reference amount established in accordance with Article 90 UCC (data element 8/7 of Annex A). The customs authorities have to assess if the respective amount is sufficient and to establish the actual amount of the guarantee required for that authorisation, taking into account possible reductions/waiver. According to Annex A, the data element 8/7 – "guarantee amount" has the status "A" (mandatory in the application and the decision for an authorisation for SPE or TS) and cardinality "1". It shows the individual guarantee amount or the part of the reference amount that the economic operator believes that would be sufficient to cover the potential customs debts at all times (see Article 90 UCC) corresponding to each authorisation for a customs procedure other than transit or for TS and it has to be provided in the application already. In the current situation, the reference amount is split per procedure and per involved MS according to Article 8 of Regulation 341/2016 (UCC TDA). The underlying guarantee can be provided and accepted at a later stage but before granting the authorisation for SPE or TS. In case of comprehensive guarantees, its amount has to match to the required parts of the reference amount and to possible guarantee reductions approved by the customs authority and shown in the CGU authorisation. All these amounts will also have to be reflected in GUM. The authorisation for the comprehensive guarantee shows information only on the global amount and on the way that the reference amount is established (free text box) - the data element VI/5 ("reference amount"). This amount corresponds at least to the sum of the amounts specific to each authorisation to be granted to the same economic operator, for which that guarantee is required and is obviously different from the data element 8/7 that has to be provided in respect of each authorisation for SPE or TS. Until the CGU authorisation is changed to provide also the reference amounts per procedure and per Member State the parts of the reference amounts per procedure and per Member State can be provided in a separate document attached to the application and the decision.

Annex B, UCC DA and UCC IA, Title I

Data Element Name	Notes
DE 99 02 000 000 – Guarantee type	Data element required for customs declarations. "Using the relevant Union codes, enter the type of guarantee used for the operation".

Data Element Name	Notes
	Its format is of one alphanumeric character. Guarantee codes For guarantee waiver (Article 95(2) of the Code) - 0 For comprehensive guarantee (Article 89(5) of the Code 1 For individual guarantee in the form of an undertaking by a guarantor (Article 92(1)(b) of the Code) 2 For individual guarantee in cash or other means of payment recognised by the customs authorities as being equivalent to a cash deposit, made in euro or in the currency of the Member State in which the guarantee is required (Article 92(1)(a) of the Code 3 For individual guarantee in the form of vouchers (Article 92(1)(b) of the Code and Article 160) 4 For guarantee waiver where the amount of import or export duty to be secured does not exceed the statistical value threshold for declarations laid down in accordance with Article 3(4) of Regulation (EC) No 471/2009 of the European Parliament and of the Council (*) (Article 89(9) of the Code) 5 For individual guarantee in another form which provides equivalent assurance that the amount of import or export duty corresponding to the customs debt and other charges will be paid (Article 92(1)(c) of the Code) I For guarantee not required for certain public bodies (Article 89(7) of the Code) 8 For guarantee furnished for goods dispatched under TIR procedure B For guarantee not required for goods carried on the Rhine, the Rhine waterways, the Danube or the Danube waterways (Article 89(8)(a) of the Code) R For guarantee not required for goods carried by fix transport installations (Article 89(8)(b) of the Code) C For guarantee not required for goods placed under the temporary admission procedure in accordance with Article 81(a) of Delegated Regulation (EU) 2015/2446 (Article 89(8)(c) of the Code) D For guarantee not required for goods placed under the temporary admission procedure in accordance with Article 81(b) of Delegated Regulation (EU) 2015/2446 (Article 89(8)(c) of the Code) E For guarantee not required for goods placed under the temporary admission procedure in accordance with Article 81(c) of Delegated Regulation (EU) 2015/2446 (Article 89(8)(c) of the Code) F For guarantee not required for goods placed under the temporary admission procedure in accordance with Article 81(d) of Delegated Regulation (EU) 2015/2446 (Article 89(8)(c) of the Code) G

Data Element Name	Notes
	For guarantee not required for goods placed under the Union transit procedure in accordance with Article 89(8)(d) of the Code H (*) Regulation (EC) No 471/2009 of the European Parliament and of the Council of 6 May 2009 on Community statistics relating to external trade with non-member countries and repealing Council Regulation (EC) No 1172/95 (OJ L 152, 16.6.2009, p. 23). *The meaning of the code "0" (guarantee waiver) in this context: Although it is just another "level" of the comprehensive guarantee (code "1") and even if all the other levels (30%, 50% and 100%) are not distinguishable, this code is used in order to perform the appropriate monitoring of the guarantees valid in more than one.* *It shows that, where the guarantee needs to be valid in more than one MS, there is no need to identify the correspondent bank in the other MSs (There is no address of the guarantor provided in case of waiver). However, the reference amount established for those comprehensive guarantees has to be monitored by the customs authority in accordance with Article 157 UCC IA.*
DE 99 03 000 000 – Guarantee reference	Data element required for customs declarations. "Enter the reference number of the guarantee used for the operation and, if appropriate, the access code and the office of guarantee." Data element is mandatory and it refers to the reference number of the guarantee used for the operation and, if appropriate, the access code and the office of guarantee. UCC IA explains that this DE has a cardinality of "99x" and it should provide information about: - the GRN OR Other guarantee reference and the Access code - the Currency code and the amount of import or export duty and, where first subparagraph of Article 89(2) of the Code applies, other charges - the COG The GRN is required for guarantees valid in more than one MS (Article 154 of UCC IA). In the cases where the guarantee is valid in only one MS, "other guarantee reference" can be used for the data element 99 03 000 000 in the declaration instead of GRN, as specified in the description of this data element provided by the Annex B of the UCC IA depending on the specifications of the national Guarantee Management System of that MS. The existence and the validity of the guarantee shall be checked by CA each time when an economic operator provides a GRN or other guarantee reference (DE 99 03 000 000 of Annex B) through the Customs Declaration (Article 154(3) UCC IA). For special procedure (other than transit), the monitoring of the part of the reference amount shall be ensured by regular and appropriate audit. That means that CA only needs to check the existence and validity of the GRN or of the other guarantee reference.

Data Element Name	Notes
	In case of a guarantee waiver, in accordance with Article 89(7) and (8) UCC, the customs authorities may provide a special GRN (or other special reference) to fulfil the mandatory requirement of this data element in a customs declaration (i.e. indication of code 8 or C to G and R for DE 99 02 000 000 of Annex B). The format specified in Annexes A and B UCC IA for this data element is binding. This could also be applicable in cases where the "erga omnes" duty rate is zero and the reference amount of the guarantee required is zero. On the contrary, in case of a guarantee waiver that is granted in accordance with Article 95(2) UCC[27] (reference amount >0), the customs authority must issue and communicate a regular GRN number (or other reference) since the reference amount has to be monitored (it is established and it should not be exceeded). This is also applicable for guarantee type code "5"[28] (DE 99 02 000 000 of Annex B).

Obligation to show data elements 99 02 000 000 and 99 03 000 000 (Guarantee type and Guarantee reference) in Annex B DA at the declaration header level for the procedures H1, H3, H4, H6 (respectively release for free circulation and end-use, temporary admission, inward processing, postal traffic for release for free circulation):

It is indicated in annex B UCC DA, in the case of the procedures above, marking that data elements 99 02 000 000 and 99 03 000 000 with letter "A" means that showing those data elements in the declaration lodged within the framework of those customs procedures is mandatory.

However, according to the introductory note 3 of Annex B, "the 'A', 'B' or 'C' symbols listed in Chapter 2, section 3 have no bearing on the fact that certain data is collected only where circumstances warrant it." For example, the supplementary units (status 'A') will only be collected where required by the TARIC. In case where a guarantee is not required in accordance with Articles 89(7) and 89(8) UCC, the GRN should not be mandatory – guarantee type 8 or C to G and R (DE 8/2)

.In some cases, as indicated below, providing the data elements 99 02 000 000 and 99 03 000 000 in the declarations with profile H1, H3, H4 and H6 could be unnecessary (from the point of view of data verification). Submitting and checking this data could be burden for both – declarant and Customs.

For example, when CA accepts the declaration for special procedures, the declaration system checks the existence and the validity of the authorisation from Customs Decisions Management System (CDMS). For this purpose the mandatory DE 12 12 080 000 (Holder of the authorisation) is shown in the declaration. Moreover, the authorisation for SPE cannot be valid in the absence of the required underlying guarantee. Validity of the authorisation means also, that guarantee for that procedure is valid. It is still necessary to assess if the absence of these data elements from the declaration would have a negative impact on the monitoring of the reference amount. However, it is recommended to include these DE in the declaration at least for this purpose.

Data elements 99 02 000 000 and 99 03 000 000 must always be provided for the H1, H3, and H4 profiles declarations when - according to article 163 UCC DA - a customs declaration is considered

[27] Indication of guarantee type code "0"

[28] For guarantee waiver where the amount of import or export duty to be secured does not exceed the statistical value threshold for declarations laid down in accordance with Article 3(4) of Regulation (EC) No 471/2009 of the European Parliament and of the Council (*) (Article 89(9) of the Code)

an application for an authorisation, provided that it is supplemented by additional data elements as laid down in Annex A.

However, Article 163(2) (d) stipulates that "A customs declaration cannot be considered an application for an authorisation in the case: d) where an authorisation other than for temporary admission involving more than one Member State is applied for." On the basis of this point it is possible to summarise, that the data elements 99 02 000 000 and 99 03 000 000 of Annex B can only be needed and mandatory when declaration for temporary admission is lodged or if that operation involves more than one MS.

Nevertheless, according to 154(3) UCC IA each time when the GRN is submitted by the declarant, the CA has the obligation, at the stage of the customs clearance, to verify the existence and the validity of the guarantee.

The MS where the guarantee is valid may decide to waive the requirement of these data elements in the customs declaration, but only in cases where the guarantee is valid in one MS. In any case, the CA shall perform the monitoring of the guarantee.

The DE 8/6, 8/7 (Annex A) and 99 02 000 000, 99 03 000 000 (Annex B) are made available only when the required guarantee is provided and accepted by customs. This information is to be stored and exchanged by GUM with the other IT applications concerned (the CDS for the authorisations requiring a guarantee and the Customs Declaration Systems). Until deployment of GUM, the customs authorities may make use of the free text box (field) in the DE VI/5 ("reference amount") of Annex A-Title VI, UCC DA, to indicate how the reference amount was established, the different parts of the reference amount and the corresponding GRNs.

If Member States do not have an IT application to manage the guarantees, the paper-based procedure may be allowed. This may be similar to the business continuity procedure used in transit for the purpose of the management of the guarantees. To this end, the documents issued to the economic operator by the CA may take the form provided in Chapters VI and VII of Annex 72-04 UCC IA.

VI.3. Consultation procedure

The information exchanged during the consultation between Member States for granting a CGU authorisation forms part of the decision-making process. The CDS currently ensures the exchange and storage of information in respect to consultations, which are to take place in accordance with Article 14 of Implementing Regulation (EU) 2015/2447, including the consultations for the granting of CGU authorisation.

The economic operator should indicate in his application for a CGU authorisation in which Member States and for which procedure he intends to use the guarantee, together with an indication of the reference amount to be established in accordance with Article 155 UCC IA to be valid in each MS.

Based on this information, the Competent Authority launches a consultation procedure with the contact points of the Member States affected in order to come to a mutually agreed and, where applicable, acceptable division of the reference amount. A list of customs authorities' contact points responsible for the exchange of information referred to in Article 3(2) of Commission Delegated Regulation (EU) 2016/341 of 17 December 2015 is available on EUROPA website[29].

In practice, the following situations may arise:

a) If two different authorisations for special procedures will be issued by two different Member States as part of the same CGU authorisation, the applicant should indicate the reference amount for each authorisation for a special procedure (both authorisations are

[29] https://ec.europa.eu/taxation_customs/sites/taxation/files/ms_contact_points_article_3_tda_update_27_03_18_en.pdf

covered by the same comprehensive guarantee). In this case, under Article 8 UCC TDA Member States involved must consult each other on the division of the reference amount.

b) If several operations involving different goods but under the same authorisation for special procedures are to be launched in different Member States, where the comprehensive guarantee is valid, the Member States involved should launch the consultation on the division of the reference amount.

c) The split of the reference amount between Member States is not required if the operations, which are covered by one comprehensive guarantee that may be used in more than one Member State, are to be started in only one of the Member States concerned and the goods are moved under the procedure to another Member State or more than one consecutive Member States, no matter if the procedure is discharged in the first or in another Member State after the movement of the goods. Nevertheless, the consultation among these Member States can take place in connection with the other terms (conditions to be fulfilled) of the authorisation for a comprehensive guarantee (e.g. amount of other charges, to check the conditions/criteria in Article 95 UCC).

General rules (Article 22(3) UCC, Article 14 UCC IA) on time limits apply to the consultation between the CAs[30].

Under Article 22(3) UCC, the time limit for taking a decision is within 120 days of the date of acceptance of the application. A request for consultation should be sent immediately after the application was accepted. The consulted Member State should give its opinion within the indicated time (a maximum of 45 days is foreseen by the CDS). This period may be extended under certain conditions by the competent authority. Under Article 14(3) UCC IA, if the consulted Member State does not respond within the time limit, 'the conditions and criteria for which the consultation took place are deemed to be fulfilled' (a positive reply is to be considered on the part of consulted Member States that will bear the financial responsibility of the positive decision for the part for which the consultation was launched).

If the customs debt is incurred in a Member State other than the one where the guarantee has been lodged, Article 165 UCC IA applies (mutual assistance) for the recovery of the customs debt and other charges, if applicable.

No consultation is required on the approval of the guarantor/undertaking even if the guarantee is valid in more than one MS.

VI.3.1. Acceptance of the splitting of the reference amount

To ensure a smooth customs process in the other Member States, it is recommended to inform the relevant contact points for consultation about the draft of the CGU authorisation and the acceptance of the splitting of the reference amount.

VI.3.2. Rejection of the proposed split of the reference amount

If the consulted Member State does not agree with the proposed part of the reference amount, it must immediately inform the Member State that received the application for a CGU authorisation, indicating the grounds on which it proposes to refuse the proposed split of the reference amount.

Before taking a decision that would adversely affect the applicant, the customs authorities of the Member State where the application was lodged communicate the grounds on which they intend to base their decision to the applicant, who is given the opportunity to express his or her point of view

[30] For further information, see the Guidance document on Customs Decision Management – maximum 45 days for CGU authorisation.

within a period prescribed from the date on which he or she receives that communication or is deemed to have received it (Article 22(6) UCC and Articles 8 and 9 UCC IA).

Before taking the decision, another consultation should be launched between the Member States.

Following the expiry of that period, the applicant is notified, in the appropriate form, of the decision.

A decision can also be taken that excludes the part of the reference amount that was not agreed on. A negative opinion issued by the consulted Member State is binding for the Member State taking the decision in the sense that the latter must incorporate the negative opinion into the decision.

Article 44 UCC states that 'Any person shall have the right to appeal against any decision taken by the customs authorities relating to the application of the customs legislation which concerns him or her directly and individually. Any person who has applied to the customs authorities for a decision and has not obtained a decision on that application within the time-limits referred to in Article 22(3) shall also be entitled to exercise the right of appeal.'

VI.4. Monitoring of the reference amount during the transitional period

In accordance with Article 89(6) UCC, the customs authorities have the obligation to monitor the guarantee. This also needs to be done during the transitional period.

Until the date of deployment of the GUM, an alternative has been provided for in Article 8 UCC TDA so that CAs can respect the obligation to monitor guarantees enshrined in Article 89(6) UCC.

Member States monitor their part of the reference amount in accordance with the provisions of Article 157 UCC IA. Each Member State may use its existing practical/national arrangements in order to comply with the obligation of monitoring the reference amount.

Moreover, also the person required to provide a guarantee must ensure that the reference amount is sufficient to cover the import or export duty and other charges due in connection with the import or export of goods where they are to be covered by the guarantee. If there are indications that the reference amount is no longer sufficient to cover all the operations, the person must immediately inform the COG.

VII. ANNEXES

Annex 1 Specific data requirements[31] for the application and CGU authorisation, including a possible reduction or waiver (Annex A, Title VI UCC DA)

No	Data elements required	Application	Authorisation
1.	VI/1. Amount of duty and other charges Indicate the highest amount of duty and other charges applicable on any single consignment, relating to the most recent 12-month period. If such information is not available, indicate the highest likely amount of duty and other charges applicable on any single consignment in the next 12-month-period.	Yes	No
2.	VI/2. Average period between the placing of goods under the procedure and the discharge of the procedure Indicate the average period between the placing of goods under the procedure and the discharge of the procedure, relating to the most recent 12-month period. This information shall only be provided where the comprehensive guarantee will be used for placing goods under a special procedure.	Yes	No
3.	VI/3. Level of guarantee (Article 158 UCC IA) Indicate the level of the guarantee which is to cover the existing customs debts and, where applicable, other charges is 100 % or 30 % of the relevant part of the reference amount and/or whether the level of the guarantee which is to cover the potential customs debts and, where applicable, other charges is 100 %, 50 %, 30 % or 0 % of the relevant part of the reference amount. The authorising customs authority may provide comments, if applicable.	Yes	Yes
4.	VI/4. Form of the guarantee (Article 92(1) UCC) Indicate which form the guarantee will take. In case the guarantee is provided in the form of an undertaking, indicate the full name and address details of the guarantor. Where the guarantee is valid in more than one Member State, indicate the full name and address of the representatives of the guarantor in the other Member State.	Yes-optional for the applicant	No
5.	VI.5 Reference amount (Article 155 UCCIA) Provide information on the reference amount covering all operations, declarations or procedures of the applicant, pursuant to Article 89(5) UCC. If the reference amount established by the decision-taking customs authority is different than the one indicated in the application, justify the reasons for the difference.	Yes	Yes
6.	VI.6 Time-limit for payment (Article 110 UCC) Where the comprehensive guarantee is provided to cover the import or export duty payable in case of release for free circulation or end-use, indicate whether the guarantee will cover: Normal period before payment, i.e. maximum 10 days following the notification to the debtor of the customs debt in accordance with Article 108 UCC.	Yes	Yes

[31] For the other data elements required by the application/authorisation for a comprehensive guarantee, see Title 1 — Chapter 1 of Annex A-DA.

Annex A, Title I UCC DA — Guarantee references (data elements) required by other applications and authorisations

1. Guarantee Reference Number of the guarantee provided in relation with the authorisation concerned;
2. Guarantee amount (the amount of the individual guarantee or, in the case of the comprehensive guarantee, the amount equivalent to the part of the reference amount allocated to the specific authorisation for temporary storage or special procedure).

Applications and authorisations requiring data elements with regard to the guarantees

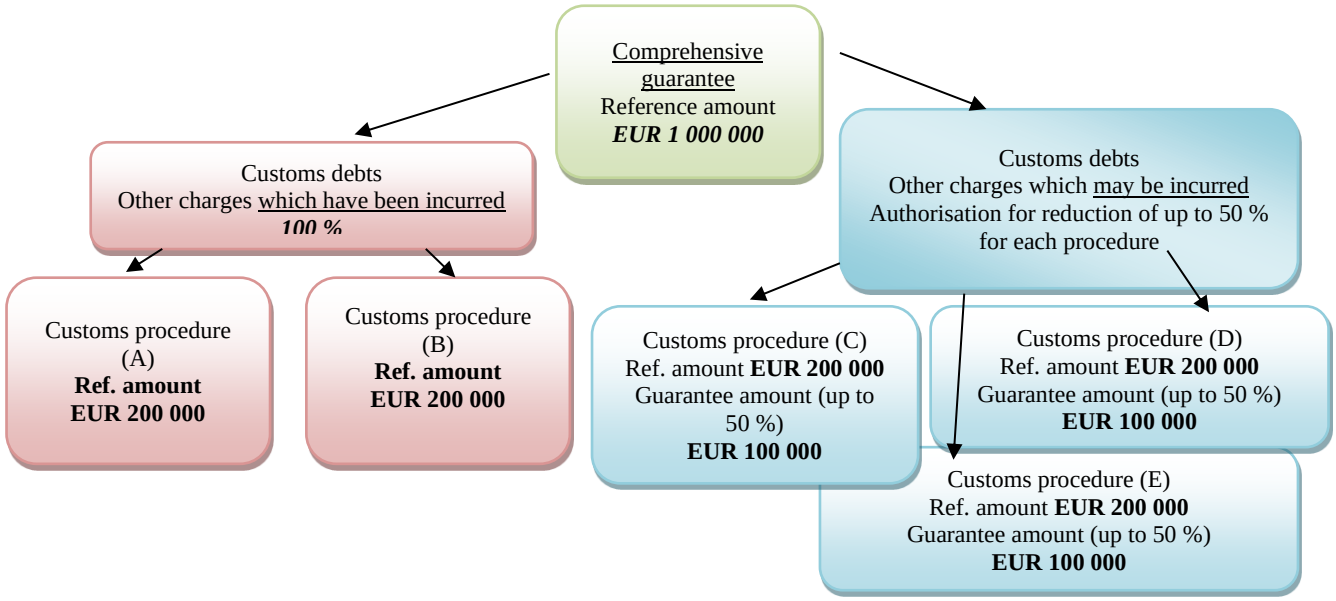
- Application and authorisation of deferment of the payment of the duty payable, as far as the permission is not granted in relation to a single operation (Article 110 UCC/Title VII);
- Application and authorisation for the operation of temporary storage facilities (Article 148 UCC/Title IX);
- Application and authorisation for the use of inward processing procedure (Article 211(1)(a) UCC/Title XVII);
- Application and authorisation for the use of outward processing procedure (Article 211(1)(a) UCC/Title XVIII);
- Application and authorisation for the use of end use procedure (Article 211(1)(a) UCC);
- Application and authorisation for the use of temporary admission procedure (Article 211(1)(a) UCC);
- Application and authorisation for the operation of storage facilities for customs warehousing of goods (Article 211(1)(b) UCC).

Annex 2 Examples

A2.1 Calculation of the amount of the comprehensive guarantee with possible reductions/waiver

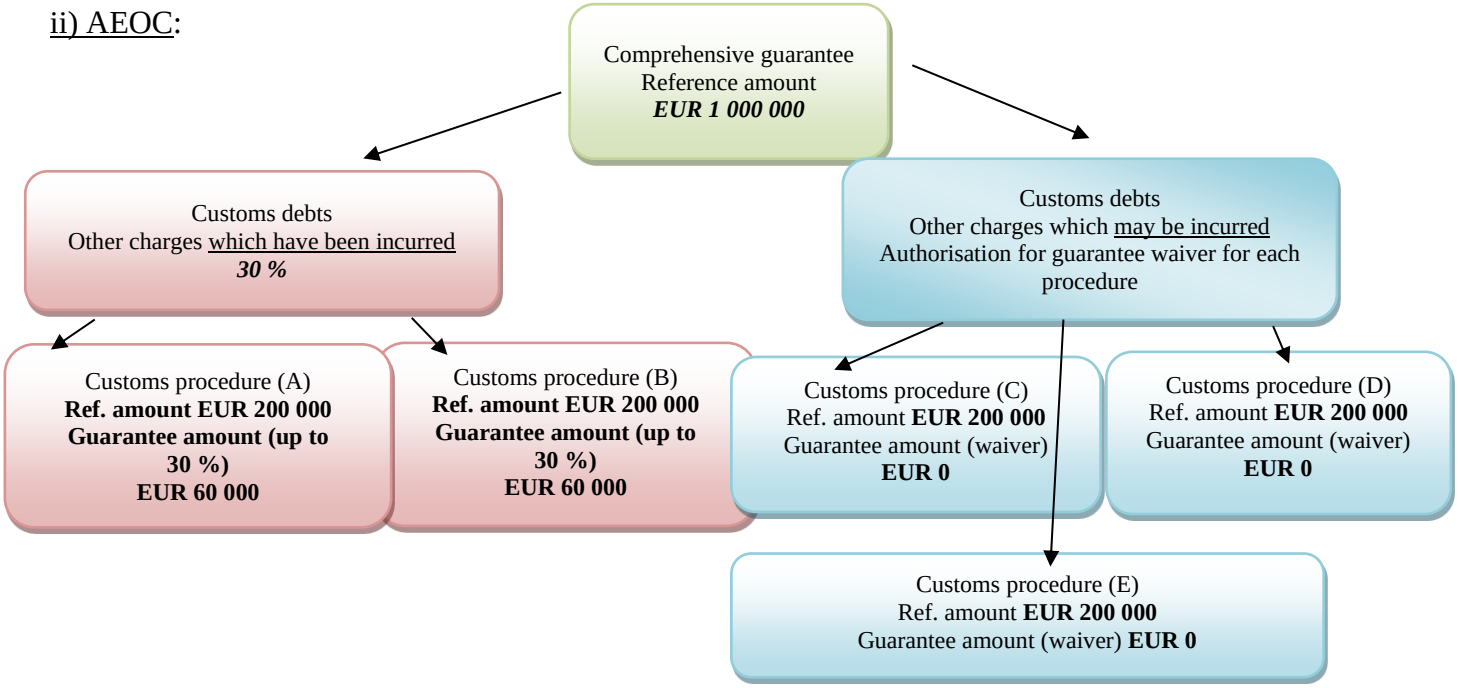
The total reference amount is **EUR 1 000 000**, divided up as follows: customs procedure (A) EUR 200 000; (B) EUR 200 000; (C) EUR 200 000; (D) EUR 200 000; and (E) EUR 200 000.

i) Non-AEOC:



The actual amount of the guarantee to be provided by the economic operator may amount to **EUR 700 000 if a reduction of up to 50 % of the established reference amount for potential customs debts is granted.**

ii) AEOC:



The actual amount of the guarantee to be provided by the economic operator may amount to **EUR 120 000 if the guarantee waiver is granted up to the established reference amount for potential customs debts.**

A2.2 Geographical validity of the guarantee in case of special procedures that concern more than one MS

The following example concerns IP, but it is *mutatis mutandis valid for all special procedures which concern more than one MS.*

An authorisation for IP can stipulate that goods which are placed under the IP-procedure in MS A, can be processed in MS B and MS C.

It's possible that the goods will be unlawfully removed from the procedure in all three MSs (A, B and C) giving rise to the incurrence of a debt in any of these MSs. Therefore the guarantee has to be valid in all three MS.

But the goods can also cross the territory of other MSs (X and Y) than A, B and C under cover of the said special procedure – for instance when moving the goods from MS A to MS B - so the chance exists that a debt is incurred in these other MSs X and Y too, making it necessary that the guarantee is also valid for these MSs.

And because it is not possible to stipulate in the authorisation for special procedures across the territory of which MSs the goods may be moved, the goods could be unlawfully removed from the special procedure concerned in every MS from the EU. Therefore the guarantee should be valid EU-wide.

A2.3 Deferred payment in a multi-Member State guarantee

Situation 1

An economic operator is established and holds its customs related accounts and was granted AEOC status in the host Member State (MS1). The economic operator applies for an authorisation for deferred payment in another MS (MS2) for goods to be released for free circulation in the MS2. The economic operator holds no customs related accounts in MS2.

Competent customs authority for authorisation of deferred payment:

MS2 will grant deferred payment according to Article 110 b) UCC because the goods are imported in MS2 and the monitoring of the deferred payment is possible through the information filed by the economic operator. A further access to the accounts of the economic operator is not necessary in this specific situation in order to grant and monitor the deferred payment authorisation. In case of deferred payment, the relevant information in order to monitor the proper use of the authorisation is the amount of customs and other duties. This information is contained in the customs declaration and the corresponding assessment of customs duties. Considering that aforementioned information to monitor the reference amount are contained in the customs IT-systems / records a more in depths access to the accounts of the applicant is not required in this case.

Competent customs authority for CGU authorisation:

According to Article 345 IA an authorisation for deferred payment requires a corresponding authorisation for a comprehensive guarantee (CGU authorisation). As the economic operator was granted AEOC status in MS1, same MS is responsible to grant the corresponding CGU authorisation. Here it has to be kept in mind that MS1 already assessed the criteria of Article 39 a) and d UCC. In this case MS1 customs has to consult the reference amount with MS2 according to Article 14 IA. MS2 is responsible for the monitoring of the reference amount.

It should be avoided that MS2 consults the criteria that were already assessed and monitored by MS1 in the framework of AEOC. The customs authority competent for the AEOC should also be able to take note of the activities of the economic operator in other Member States.

Situation 2

An economic operator is based and holds its customs related accounts in MS1. The economic operator has no authorisations in MS1. The economic operator applies for an authorisation for deferred payment in MS2 for goods released for free circulation in MS2. The economic operator holds no customs related accounts in MS2.

Competent customs authority for authorisation of deferred payment:

MS2 will grant deferred payment according to Article 110 b) UCC because the goods are imported in via MS2 and the monitoring of the deferred payment is possible through the information filed by the economic operator (as in Example 1).

Competent customs authority for CGU authorisation:

As the relevant information to monitor the reference amount for deferred payment are accessible in MS2 (via customs IT-system), MS2 would also be competent according to Article 22(1) UCC to grant the CGU authorisation. In case of a CGU authorisation for deferred payment, Article 95(1) a), b) and c) UCC must be met and consulted with MS1 according to Article 14 UCC IA. Access to the accounts of the economic operator is sufficient in this situation. The reference amount will be established and monitored by MS2 customs; a consultation on the reference amount is not necessary as the customs declarations will be filed and the goods will be imported in MS2.

A2.4 Proposal for the GRN structure

The structure of the GRN could be the same as it was agreed for transit. MS are already used to this structure because of the GRN being used in transit. It is easy to identify from it the MS in which the guarantee is lodged and registered. Each guarantee refers to a unique Guarantee Reference Number (GRN), which is used for validation in the guarantee management sub-system. The "Guarantee Reference Number" (GRN) is allocated by the office of guarantee to identify each single guarantee. The GRN contains 17 to 24 characters - alphabetic characters must be upper case - and it is structured, as follows:

Field	Content	Field type	Examples
1	Last two digits of the year in which the guarantee was accepted (YY)	Numeric 2	18
2	Identifier of the country where the guarantee is lodged (ISO alpha 2 country code)	Alphabetic 2	SI
3	Unique identifier for the acceptance given by the Office of Guarantee per year and country	Alphanumeric 12	1234AB788966
4	Check digit	Alphanumeric 1	8
5	Identifier of the type of the guarantee (Article 92 UCC/ 83 DA).	Alphanumeric 7	Annnnnn

Fields 1 and 2 as explained above.

Field 3 has to be filled in with a unique identifier per year and country for the acceptance of the guarantee given (allocated) by the office of guarantee. The first six characters would be used to identify the national number of the office of guarantee.

Field 4 has to be filled with a value that is a check digit for the fields 1 to 3 of the GRN. This field allows the detection of an error when capturing the first four fields of the GRN.

Field 5 – OPTIONAL (not mandatory for MS): to be used to identify the type of guarantee used according to Article 92 UCC/ 83 DA.

A2.5 Examples concerning the consultation procedure

i) Proposal for a scheme for the management of authorisations to use a comprehensive guarantee in another MS

Conditions:

- Main accounts for customs purposes are held in MS1;
- Authorisation to use a comprehensive guarantee is valid in MS2.

Application submission and examination:

The application is submitted to MS1.

Before the decision, MS1 consults MS2:

- informs about the received request,
- the reference amount proposed by the applicant,
- Average duration of operations indicated by the applicant.

MS2:

- calculates the reference amount,
- informs MS1:
  - about the fulfilment of reliability conditions and
  - the reference amount established.

Adoption and implementation of the decision:

MS1:

- accepts guarantee and issues an authorisation,
- informs MS2 of the issued authorisation;

MS2:

- includes authorisation data in the national guarantee management system;

MS1:

- carries out monitoring of authorisation conditions,
- informs MS2 of guarantee management decisions;

MS2:

- carries out monitoring of authorisation conditions,
- performs monitoring of the reference amount,

– informs MS1 of factors affecting the validity or content of the authorisation (e.g. reference amount).

ii) Procedure proposal for granting a CGU authorisation when several member states are involved

An application for global guarantee is received in MS A. The application involves MS A, B and C.

1. **Consultation procedure before granting the authorisation.**

   There are two options depending on the obligation to split the reference amount:

   - If the reference amount has not to be split among MS A, B and C: a consultation procedure might not be necessary. The global guarantee authorisation will be part of the CDS and it is visible to all the MSs concerned (where the guarantee has to be valid).
   - If the reference amount has to be split among MS A, B and C: a consultation procedure should be launched through CDS.
   - Proposal for the duration of the consultation: 45 days (PG on CDS)

2. **Once the authorisation has been granted:**

   MS A should communicate MS B and MS C the following aspects:

   - The guarantee reference number for MS B (GRN 1) and the guarantee reference number for MS C (GRN 2).

     MS B and MS C have to include the GRN in their IT import systems to control the existence of the guarantee. When a customs declaration is submitted, the import system has to check if the GRN included in the customs declaration is valid.

   - The part of the reference amount for MS B (i.e. 20.000 euros) and the part of the reference amount of MS C (i.e.: 30.000 euros). MS B and MS C has to control their part of the reference amount.
   - An access code to be used in MS B and an access code to be used in MS C.

3. **Any application for modifications in the global guarantee authorisation should be consulted if it can affect the reference amount split.**

4. **Before returning the guarantee to the holder of the authorisation or to the guarantor, MS A has to consult to MS B and MS C in order to check if there is any debt pending of the GRN 1 and GRN 2.** If there is not any debt pending, the guarantee can be returned to the holder of the authorisation or to the guarantor.

iii) Comprehensive guarantee for an authorisation granted by a MS for inward processing and sending the goods to another MS

The CA from MS1 has granted an authorisation for inward processing and the guarantee is provided as a comprehensive guarantee. The authorisation for inward processing involves importing goods from a third country to MS1, with sending the goods to MS2 for processing in a factory there. The processed goods are then returned to the company's warehouse in MS1 so it can re-export them to the third country. All goods are imported and re-exported via MS1, with the goods not declared in MS2.

In this specific situation, the reference amount does not need to be split between MS1 and MS2 as the authorisation for inward processing is granted by the CA from MS1, and the release of goods for inward processing and the discharge is also carried out by MS1.

As a result, there will be no consultation on the split of the reference amount between MS1 and MS2 authorities for the granting of the authorisation to provide a comprehensive guarantee. The monitoring of the reference amount is therefore the responsibility of the CA from MS1. However, MS2 should be consulted on the draft authorisation for inward processing in accordance with Article 260 UCC-IA. The details of the planned activities including those in MS2 must be indicated in the draft authorisation (Data Element 7/5 Annex A – Details of planned activities). The information about other operators involved must also be provided.

According to the guidance on special procedures, the inward processing authorisation should be used for the movement of goods to MS2; in this case, there is no need to provide a separate guarantee for this operation. It might be advisable for an exchange of information to take place between customs authorities from both Member States on the arrival of goods at the inward processing facility and the departure of processed products to the customs warehouse in MS1 for the purpose of the discharge of the procedure, unless the bill of discharge is sufficient in terms of customs controls (Article 265 UCC-IA).

A2.6 Guarantors and their undertakings

1) The person referred to in Article 89(3) UCC provides a guarantee to be used in MS2 in the form of an undertaking by a guarantor, namely a bank established in MS1, to the COG in MS2. In light of Article 82(1) UCC DA, the bank from MS1 shall appoint an agent or an address for services in MS2 for the purpose of further communication with CA of MS2 within the framework of the operations concerning that guarantee. If this bank is accredited in the Union in accordance with Union provisions in force, the CA of MS2 does not need to approve the guarantor. However, they will want to reassure themselves that indeed this bank is accredited in the Union in accordance with Union provisions in force. Therefore, the CA of MS2 will get in touch with the National Competent Authority, in charge of bank accreditation in MS2, in order to obtain confirmation if the respective bank has been accredited in accordance with Union provisions in force to provide specific financial services (guarantees) on the territory of MS2."

2) An accredited guarantor, a bank, provides a guarantee to the COG in MS1, which is also valid in MS2. The bank doesn't appoint an agent in MS2. In this case, the COG in MS1 can refuse the undertaking by referring to Article 82(1) UCC-DA and to Article 94(3) UCC.

3) Economic operator A provided one comprehensive guarantee for inward processing (IP). It received the authorisation to provide a comprehensive guarantee on 1 January 2017. An undertaking issued by bank B is linked to this authorisation.

Person A places goods under the IP procedure with declaration X on 1 April 2017, using said guarantee.

Bank B cancels its undertaking and the cancellation takes effect on 1 January 2018 (last date of validity is 31 December 2017).

Person A provides a new undertaking issued by bank C in connection with the CGU authorisation already granted. The approval of such an undertaking and the guarantor by customs, if applicable, has to be done before the cancellation of the other undertaking takes effect.

On 1 May 2018 a customs debt is incurred relating to the goods that were placed under the IP procedure on 1 April 2017 and the customs operation was not discharged before the cancellation of the undertaking took effect. The debtor does not pay that debt and customs has to turn to the guarantor to get payment. Customs should turn to bank B because he was the guarantor when said

goods were placed under the special procedure (said goods were placed under the procedure covered by the comprehensive guarantee to which the undertaking issued by bank B was linked and the operation was not discharged before the cancellation of the undertaking took effect).

In this respect, point 3 of Annex 32-03 of UCC IA states that:

> 'This undertaking shall be valid from the day of its approval by the office of guarantee. The undersigned shall remain liable for payment of any debt arising during the customs operation covered by this undertaking and commenced before any revocation or cancellation of the guarantee took effect, even if the demand for payment is made after that date.'

In other words, the customs debts that may arise for goods that were placed under the procedure before the date when the cancellation by the guarantor took effect have to be secured by the undertaking issued by the bank B.

This is applicable also in the case where person A would not receive a new authorisation for a comprehensive guarantee after 1 January 2018, including the provision of a new undertaking. In this case, person A would not obviously have been able to declare 'new' goods for placement of the special procedure, but the fact that person A would no longer have a valid comprehensive guarantee would not have any effect on the goods that were already placed under said procedure beforehand.

4) The guarantor gives an undertaking of 100.000 € for all special procedures. The guarantor receives request to pay 60.000 EUR on 28/04/2018.

The guarantor have now two options:

a) Guarantor can immediately cancel his undertaking,

The cancellation will take effect on the 16th day following the date on which the cancellation is notified by the guarantor to the customs office where the guarantee was provided. In this case the guarantor knows that he will never have to pay more than 100.000 euros IN TOTAL, because he can refer to the last paragraph of point 2 of the undertaking.

Example: the guarantor receives request to pay 60.000 euros on 28/04/2018. He pays the 60.000 euros (in 30 days) and he immediately sends a letter to cancel the undertaking to COG. The cancellation letter is received on 01/05/2018 so the cancellation takes effect on 17/05/2018.

It's possible that the operator still places goods under the procedure, using the said guarantee on 16/05/2018, but even if later on it would be established that in relation to that last declaration a debt of, let's say 80.000 euros is incurred, the guarantor can only be held to pay 40.000 euros (maximum amount of 100.000 euros minus the 60.000 euros already paid).

If the guarantor does not cancel the undertaking right after receiving the request for payment of the 60.000 euros, he knows that he may have to pay more than 100.000 euros in total on the basis of his undertaking.

b) If the guarantor chooses not to cancel his undertaking.

Example: request for payment of 60.000 euros on 28/4/2018, the guarantor does not cancel his undertaking, he pays the 60.000 euros in 30 days. If then, under cover of the same undertaking a new procedure is started on 01/06/2018, the guarantor is liable to pay "the full maximum amount of 100.000 euros" in relation to that new procedure, so in this example the guarantor could in the end have paid 160.000 euros on the basis of an undertaking which is only valid for a nominal maximum amount of 100.000 euros.

In other words: if the guarantor does not decide to cancel his undertaking upon receiving a request for payment, he implicitly accepts that he will be liable for the full maximum amount for future procedures which have started under cover of the guarantee (= procedures started more than 30 days after the first request/demand for payment addressed by customs to the guarantor).

A2.7 Practice for audit monitoring of the RA in accordance with Article 157(3) UCC IA

An authorisation to use a comprehensive guarantee for potential debts is granted, the reference amount is established and a guarantee is provided for the full reference amount or the reduced amount.

- Periodically (at least once a year,) the holder of the authorisation has to provide the following information (data about twelve months has to be assessed):
  - description & CN-code of the goods
  - value of the goods in a given period (12 months); a distinction has to be made between potential customs debts (e.g. warehousing excluding Transit), Transit and customs debts to incur (release for free circulation)
  - average time of placement under the customs procedure in case of potential customs debts

For "new" economic operators (no records of customs operations) it is recommended that the first audit take place after a period shorter than 12 months.

- With this information the reference amount is calculated and checked against the current reference amount and/or the reference amount requested by the holder of the authorisation
- When required the provided guarantee is amended by the authorisation holder
- The reference amount for potential customs debts is also checked during administrative controls of the provided authorisation
- The available reference amount for customs debts to incur and in case of Transit is also checked transaction per transaction during the declaration process when the declaration is done in the standard procedure.

A2.8 Examples of Optional guarantee

1. CA may waive the requirement to provide a guarantee in the situation provided for in Article 89(9) UCC. The statistical value threshold for the customs duty is EUR 1 000 for each customs declaration.

   In practice, a customs declaration includes the following information:

   - Customs duties of EUR 900
   - Other charges of EUR 1 500.

   Member States may waive the requirement of the provision of a guarantee (optional) as the value of the customs duty does not exceed EUR 1 000, or they may ask for a guarantee to cover the amount of EUR 2 400.

2. The legal provision in Article 91 UCC on the optional guarantee is applicable in the case regulated in Article 10(3) Council Regulation (EC) No 1186/2009 (reliefs from customs duty):

   > 'Duty-free admission shall also be subject to an undertaking from the person concerned that he will actually establish his normal place of residence in the customs territory of the Community within a period laid down by the competent authorities in keeping with the circumstances. The latter may require this undertaking to be accompanied by a security, the form and amount of which they shall determine.'

3. A guarantee may also be required for the operation of free zones facilities, if provided for in the national legislation of the MS concerned.

A2.9 Guarantee for TORO

At a point in time 1 (PiT1), goods are placed under a special procedure with customs declaration X, by operator A, who is the holder of that procedure and of the authorisation for SPE.

At that PiT1, the potential debt that might be incurred in relation to the said goods is covered by a guarantor's undertaking in which the guarantor (Bank Y) guarantees payment of the debts of operator A which may occur in relation to goods placed under the said special procedure.

At a later point in time 2 (PiT2), a TORO takes place in which operator A transfers all his rights and obligations concerning the goods which were placed under the procedure with declaration X, to another operator (Operator B) who has a TORO authorisation.

Prior to PiT2, the moment of the TORO, there was a perfect compliance with all the obligations of the said special procedure (specified in the authorisation for SPE granted to the operator A).

But at PiT3, which lies after PiT2, a fact of non-compliance occurs which gives rise to the existence of a customs debt in relation to the goods which were placed under the procedure with declaration X.

This means that operator B, who from the moment of the TORO (PiT2) was the person who had to comply with all the obligations stemming from the said special procedure, will be the debtor of the debt in question (Operator A was released from his obligations since the TORO).

Before the TORO takes place, the supervising customs administration should require that the transferee (operator B) provides a new guarantor's undertaking which stipulates that the guarantor who underwrites the new undertaking is securing the payment of all the debts of operator B, which may be incurred in relation to the goods which were placed under the procedure with declarations A, B and C, due to events of non-compliance that took place at a moment in time after the TORO took effect.

A2.10 Article 89(3) second paragraph UCC-the person other than the debtor/potential debtor who may be accepted to provide a guarantee for customs purposes

The following situation do not constitute an exhaustive list of examples of other persons who may be allowed to provide a guarantee for the account of the debtor, but they have been put forward by the customs administrations of the Member States during the discussions on this topic:

Parent companies

Multinational or big companies usually consist of a parent company and subsidiaries or branches, which can be established in one or several Member States. Different branches in different MS can be Permanent Business Establishments (hereafter a PBE) of the same parent company. A branch can have different legal status in the different Member States as the legal form under which they operate in Member States depends on how they have chosen to operate and mainly on the national legislation of the Member State concerned. As a result, a parent company may have some of its branches considered as individual legal persons in accordance with Article 5(4) UCC in some Member States (i.e. an individual legal person registered in the local company register according to the Member State's company law) and some of its branches as PBEs in accordance with Article 5(32) UCC, which are not considered as being individual legal person in other Member States. Subsidiaries are individual legal persons.

An economic operator who wants to apply for a comprehensive guarantee for all its branches has to assess in which group they belong. In case they are legal persons under the definition of persons described in Article 5(4) UCC, they have to apply separately for the CGU authorisation in the relevant Member State. In all other cases, they cannot apply separately for the CGU authorisation; instead, a single application covering all of them shall be submitted by the parent company considered a person in accordance with the EU legislation. Customs authorities should also consider that the general conditions are the same for all kinds of authorisations/decisions for which the economic operator applies. For example customs cannot deem an economic operator to be a legal person when applying for example for an EORI number and deem it to be a PBE when it applies for AEO status or for the comprehensive guarantee, while using the same legislation to do so.

Nevertheless, the customs authorities may accept that the parent company provides a guarantee in accordance with Article 89(3) UCC for the benefit of another person be it its subsidiary or a branch, only if complying with the legal provisions in force, as explained in the sections II.3.4.2. of this document. A PBE is a legal part of its parent company and can only be included in its parent's authorisations and guarantees.

In line with Article 94 UCC, the customs authorities may approve companies/persons other than a credit institution, financial institution or insurance company accredited in the Union in accordance with Union provisions in force to play the role of a guarantor. This could refer to the case of an undertaking issued by the parent companies for the account of their subsidiaries or branches. This is explained under III.2.2.

A2.11 Persons not established in the EU customs territory

A legal person not established in the EU customs territory complained about the difficulties they have met after the entry into force of the UCC, when it comes to bring cars to EU for upgrading. The level of the guarantee they have to provide is too high since only an individual guarantee can be accepted from persons established outside EU territory, without the possibility to apply any guarantee reduction.

Where these customers cross the EU border with their vehicles, they can, provided they respect certain conditions, benefit from a relief from import duty on the basis of the temporary admission procedure.

Where this is not the case, another customs procedure will have to be applied. This can indeed be inward processing. EU garages can apply for authorisations to carry out inward processing operations. In this case, the UCC requires a guarantee to be provided. Nevertheless, where they carry out such operations on a regular basis, they can apply for the use of a comprehensive guarantee and where applicable, can be eligible for different levels of reduction of such guarantee up to a waiver.

However, where the garages request the non-EU customer to complete the customs formalities, the only option available for that customer is the lodging of a declaration to place their vehicle under the inward processing procedure. Such declaration needs to be accompanied by an individual guarantee, which needs to cover, depending on the geographical validity, at least the amount of import duty (10% of the value).

It is the business model of the EU garages to determine their choice between both options. Nevertheless, by applying for an inward processing authorisation, these EU garages can offer their non-EU customers this extra service of not having to provide such individual guarantee.

A2.12 Assessment of sufficient financial standing in accordance with subparagraphs 3a and 3b of Article 84 UCC DA

There are three main steps for the assessment of the sufficient financial standing in accordance with Article 84 UCC DA:

1. Establish the reference amount
2. Assess the criterion of sufficient financial standing in relation to the part of the reference amount not covered by a guarantee (undertaking); i.e. 30%, 50%, waiver
3. During the assessment, customs may consider justified to take into account the risk of incurrence of the customs debt. (E.g. the financial standing is not that good as customs would like when granting a reduction to 30% (Article 84(2) UCC-DA). However, the risk that a customs debt incurs is negligible because it is storage of bulk like coal.)

Example a)

An economic operator applies for an authorisation for a special procedure. He wants to be able to place goods under that procedure for a reference amount of EUR 1.000.000.

Consequently, he needs to have a comprehensive guarantee with a reference amount of EUR 1.000.000.

The operator applies for such a comprehensive guarantee and asks to for a reduction to 30% of the reference amount.

If the reduction is granted the operator would only have to provide an actual guarantee amount of EUR 300.000.

In the hypothesis that all the other conditions to get a reduction to 30% are satisfied, there has to be checked if the operator has a sufficient financial standing in order to be entitled to such a reduction.

Normally customs would have to check of the operator has sufficient financial standing to - should the need arise - pay the difference between the reference amount (EUR 1.000.000) and the amount of the actual guarantee (EUR 300.000). In practice, he has to prove that he can pay EUR 700.000 out of his own means.

If the operator is unable to prove that he has the financial means to pay the amount of EUR 700.000, a negative decision should be taken, but a lower level of reduction could be granted (e.g. to 50%).

However, according to the current wording of Article 84 UCC DA, in justified cases, the customs authorities may take into account the risk/probability of the actual incurrence of debts regarding

the type and volume of the customs related business activities of the operator and the type of goods which are to be placed under the special procedure under cover of the comprehensive guarantee.

For instance:

The maximum debt that theoretically could be incurred is EUR 1.000.000 (the reference amount).

Customs could be of the opinion that a debt of EUR 1.000.000 will have a very small risk to be incurred.

In order to assess the "realistic worst case scenario" customs analyse

1) *Whether over the last three years losses occurred and whether these losses were paid for by the applicant. E.g. the occurred losses amounted up to 50.000 € and were fully covered by the applicant. If this is the case, customs can proceed with the assessment of the risk elements named in Article 84(3a).*
2) *If the control actions are sufficient.*
3) *Whether or not the performed business has changed.*
4) *No risky goods.*

The customs records of the previous three years show that the probability of the incurrence of a customs debt lies around 5% which sums up to an amount of EUR 50.000 a year. If there are no changes to his business (e.g. new customs procedures he is not familiar with) it is highly probable that the risk of incurrence remains at 5%.

Taken into account all of the above mentioned factors to determine the risk, customs may decide to grant the reduction because the operators' business can be considered to have a low risk and the probable customs debts that might occur EUR 50.000 can be covered by the financial standing of the economic operator.

Example b)

Another example of a situation where the highest debt that can be incurred in a realistic scenario could be much lower than the debt that theoretically could be incurred, you could refer to the following situation:

On a container-terminal (facility for temporary storage) there could be thousands of containers that represent a potential customs debt of hundreds of millions of euros. However, the chance that all these containers are detracted from the "procedure" at the same time is non-existent. Given the highly secured zone for the temporary storage facility based open customs requirements but also the ISPS-code, customs could come to the conclusion that the highest debt that could be incurred in a realistic scenario is much lower than the reference amount, which they could take into account for the assessment of the sufficient financial standing.

A2.13 Release of guarantee provided for deferred payments in accordance with Article 110 (b) and (c) UCC

Pursuant to Article 110(b) and (c) UCC, the amounts of customs duties may be subject to a deferral of payment, covering all amounts entered separately during a given period as set out in the first subparagraph of Article 105(1) UCC or entered in the accounts globally, at the end of the period determined by the Customs Authorities according to the second subparagraph of Article 105(1) UCC.

From a combined reading of these provisions and of Article 102(2) UCC and without prejudice to Article 244 UCC IA one may believe that the scope of the guarantee provided with respect to the release of goods for free circulation with deferral of payment, relates only to obligations arising when the customs declaration is accepted for the release of goods.

However, taking account of the second subparagraph of Article 89(4) UCC, a guarantee should cover the amount of duties payable in respect to all goods released against a customs declaration, being correct or not. In other words, the Member States have the right to use the guarantee also for the recovery of the customs debts and of other charges, if applicable, which are payable following post release controls, in line with Article 48 UCC (see section II.3.3. of this document).

It arises that in case of a comprehensive guarantee provided for deferment of payment, the guarantor assumes financial responsibility for the amounts incurred at the moment of the acceptance of a declaration for free circulation, whether the amount initially established was correct or not, up to the available amount of the guarantee. The customs authority can claim that amount from the guarantee, within the limits of its available amount and only if the debtor does not make the payment within the due date, prescribed by the customs authority in line with Article 111 UCC.

Upon extinguishment of the customs obligations in accordance with Article 124(1)(b) UCC (full payment of the correct amount of import or export duty) and where the guarantee is no longer required for other customs transactions/declarations/goods, the customs authority would need to release the guarantee immediately, but only after assessing risks of possible occurrence of new customs obligations as per Articles 48 and 105(4) UCC (see section II.3.6. of this document).

Practical Example:

An Economic Operator is authorised to defer payment of the duties entered in the accounts in accordance with the first subparagraph of Article 105(1) UCC for the period provided for in Article 111(3) UCC ("payment is deferred in accordance with point (b) of Article 110, the period shall begin on the day following that on which the aggregation period ends. It shall be reduced by the number of days corresponding to half the number of days covered by the aggregation period.") within the maximum limit of the reference amount of EUR 120,000.

The beneficiary of the authorisation for deferral makes payment of the amounts entered in the accounts during the period before the expiry of the payment deadline set by CA (EUR 120,000 only with regards to the debts incurred when the relevant declarations have been accepted and entered in accounts pursuant to the first subparagraph of Article 105(1) UCC) and no post release establishments pursuant to a check under Article 48 UCC have been made during the validity of the guarantee that were not paid. The beneficiary requests the release of the guarantee provided for the due amount of EUR 120,000. Following this request, the customs authority ensures that the guarantee is released immediately, if:

1) *All the incurred debts have been paid which have been established before the end of the validity period of the guarantee irrespective of the period of deferral,*
2) *No future transactions to be covered by that guarantee are envisaged, and*
3) *New customs obligations as per Articles 48 and 105(3) UCC are not estimated to occur by taking into account the information available at the moment of the release of the guarantee.*

A2.14 Release of the guarantee provided for goods subject to tariff quota in a critical situation

Article 153 UCC DA sets out that:

"Where, before the release of goods which are the subject of a request for the granting of a tariff quota, the tariff quota in question is not considered critical, the release of the goods shall not be conditional upon the provision of a guarantee in respect of those goods."

It follows that, without prejudice to the possibility for the CA to request its provision for different reasons, the guarantee under tariff quotas is always required if the quota is in the 'critical' state, in accordance with Article 53 UCC IA.

With the full allocation of the quantity applied for, upon the request of the Economic Operator concerned, the guarantee provided can be released if it is an individual guarantee. In the case of a "continuous guarantee" the blocked guarantee amount corresponding to this custom operation can be available for future transaction.

Conversely, in case of non-allocation (partial or total) of the quota, where the Economic Operator does not pay the amount[32] due, the guarantee must be enforced, except for the part in excess of the due amount, if any.

Practical Example:

An Economic Operator imports flat rolled steel products belonging to VD 7210 (TARIC header for "Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, clad, plated or coated "), within the non-preferential tariff quota provided for in UCC IA, and submits to the customs authority a specific application.

Given a critical situation of the tariff quota evaluated through an access to the QUOTA system, the customs authority requires the importer to provide a guarantee to cover the amount of customs duties with respect to imports exceeding the quota.

In this example, the guarantee is an individual guarantee and it is provided in the form of cash deposit, pending the allocation of the relevant quota.

Once the partial allocation of the application is cleared, the customs authority must request the payment of the customs duties, which are calculated based on the quantity of goods exceeding the quota. The importer shall make the due payment and at the same time he makes an application for the release of the guarantee provided.

Once the payment has occurred, the customs authority must release the guarantee provided immediately, but only upon assessing risks of possible occurrence of new customs obligations as per Articles 48 and 105(4) UCC in relation to the import declaration at stake, (see section II.3.6. of this document).

[32] The amounts of customs debts to be collected are established in accordance with the exact percentage of quantities of goods exceeding the allocated quotas (in relation to the requests received by the Commission (Article 51 UCC IA))