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**SINGLE EUROPEAN AUTHORISATION (SEA)**

**COLLECTION COSTS**

This document has been drafted by the

Customs 2007 Project Group on Single European Authorisation

## **ISSUE**

The sharing between Member States, if any, of the 25% of traditional own resources (customs duties) that Member States are allowed to retain by way of collection costs when the duties are collected under a Single Authorisation for simplified procedures for release for free circulation.

Under current legislation there is no requirement for Member States to share these collection costs. However participation in Single Authorisations requires joint efforts. This gives rise to the question of whether the participants should be specifically compensated by sharing the collection costs they are allowed to retain. Alternatively, are the benefits accruing to economic operators sufficient justification alone?

### **1. ACTION REQUIRED**

The Commission is urging Member States to agree a single approach. If this to be achieved it will require political agreement and appropriate legal provisions.

A Customs 2007 Project Group on Single European Authorisation agrees that a single solution should be found quickly, as prolonged negotiations may delay the issuing of the authorisation or even result in a refusal to participate in SAs to use simplified procedures.

The Project Group considers that the appropriate way forward is for the Commission to make a proposal e.g. to amend Council Regulation (EC, Euratom) No. 1150/2000<sup>1</sup>. Any such proposal should first be discussed in CPG (Customs Policy Group) Deputies.

### **2. TIMING**

There is no immediate urgency but the failure to agree a common approach has severely hampered a current pilot programme.

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<sup>1</sup> OJ No L 130 from 31 May 2000, pg. 1

### **3. BACKGROUND**

#### **3.1. Single Authorisations – what are they**

Essentially an economic operator may use a simplified procedure to effect the customs formalities in the Member State where they are established for their imports/exports wherever they occur in the Community. A transfer of the goods to the authorised location under a transfer procedure is possible; subsequently a supplementary declaration is lodged.

This is a major facilitation measure as the operator can:

- concentrate in-house customs expertise at a single location,
- deal with only one customs administration; and
- conduct the formalities etc. in only one language.

A number of Member States have been conducting a pilot exercise and, in order to overcome certain gaps in the legislation, they have negotiated bi-lateral Joint Understandings on Co-operation (JUC). These JUCs provide, amongst other things, for the sharing of the collection costs. Some Member States have agreed to keep things as they are and share the collections costs according to the imports into their respective countries (the status quo solution), others have agreed a 50/50 split and one has agreed to use both.

#### **3.2. Legal aspects**

##### *3.2.1. Simplified Procedures*

Council Regulation (EEC) No 2913/92<sup>2</sup> Article 76(c) provides for a simplified procedure whereby goods may be entered for a procedure by an entry in economic operators records. The Regulation is silent on whether the procedure may be used in cross-border situations.

Commission Regulation (EEC) No 2454/93<sup>3</sup> Article 500 provides for Single Authorisations in respect of Customs Procedures with Economic Impact. The regulation will be amended to clarify that cross-border authorisations for the use of Simplified Procedures are permissible.

##### *3.2.2. Customs Debt*

Council Regulation (EEC) No 2913/92 Article 215 specifies that the place where the customs debt occurs is the place where the events from which it arises occurs. In this case this is where the declaration is made i.e. an entry in the economic operators records at his premises; the entry in the records and the subsequent supplementary declaration are a single indivisible instrument (Council Regulation (EEC) No 2913/92 Article 76(3)).

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<sup>2</sup> OJ No L 302 from 19 October 1992, pg 1

<sup>3</sup> OJ No l 253 from 11 October 1993, pg 1

### 3.2.3. *Own Resources*

Council Regulation (EC, Euratom) No 1150/2000 requires each Member State to establish and account for own resources that arise in their respective territories. Council Regulation (EEC) No 2913/92 Article 215 provides an exception in that certain debts not exceeding €5,000 may be collected in the Member State where they are discovered.

Council Decision (EC, Euratom) No 597/2000<sup>4</sup> provides that Member States shall retain, by way of collection costs, 25% of the customs duties they collect.

There is no Community legislation that requires a Member State to share the collection costs with any other Member State.

### 3.2.4. *National Legislation*

National legislation stipulates the authority that is competent to collect the customs duties.

There is no known national legislation that requires or permits Member States to share the collection costs with any other Member State.

### 3.2.5. *Why a Decision is Necessary*

Community legislation provides the legal basis for the centralised declaration and collection of customs duties, but there is no obligation of the collecting Member State to share the collection costs it is allowed to retain with any other Member State.

Generally there is no national legislation or mechanism in place to transfer funds of this nature. For the purposes of the SEA pilot ad hoc arrangements are being used. Negotiating these arrangements is time consuming and the use of two different bases for sharing the collection costs has hindered participation, particularly because the majority of participants have opted to use only one of the options. It is anticipated that a standard form of bi-lateral agreement will be adopted, but before this can be done a single option needs to be agreed. There then need be no more protracted bi-lateral negotiations on this issue and the current limitations arising from the prevalence of the two options removed.

The sharing, if any, of the collection costs will require political agreement and, if possible, provisions in Community legislation.

## **4. OPTIONS**

### **4.1. Status Quo**

Each Member State involved receives the collection costs attributed to all the goods that are physically located in their Member State when they are released for free circulation.

### **4.2. 50/50**

The supervising Member State retains all of the collection costs attributed to all the goods that are physically located in their Member State when they are released for free circulation. It also retains 50% of the collection costs attributed to all the goods that are physically located in the participating Member State when they are released for free circulation and the participating Member State receives the remainder.

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<sup>4</sup> OJ No L 253 from 7 October 2000, pg 42

### **4.3. 100%**

The supervising Member State retains all the collection costs.

### **4.4. Other**

Similar to the 50/50 arrangement described above but using some other ratio e.g. 25/75.

## **5. ANALYSIS**

Single Authorisations are, first and foremost, a trade facilitation measure and should be available across the Community, otherwise the playing field is not level. Currently, what happens to the collection costs is a major factor in a Member State's decision whether or not to participate. On the one hand, some Member States put the interests of their economic operators above any cost considerations whilst for others, the collection costs represent a substantial part of the customs administration's budget which they can ill afford to lose.

However, all Member States recognise that all Single Authorisations require partnership, not just with the trade but with customs administrations. None can be controlled in isolation by the supervising Member State, particularly now that the Security Amendment to the Customs Code will require admissibility controls to be performed at the frontier. All require a joint control plan and these invariably require some form of action by the participating Member State.

The economic operators will already be subject to control in their own Member State, so the increased control effort of a Single Authorisation is not necessarily proportionate to the increased volume of trade it encompasses. However, the volume of trade can possibly give rise to a substantial increase in risk for the supervising Member State.

It should not be forgotten that the supervising Member State assumes financial responsibility for all of the imports or exports covered by the authorisation and this can be considerable. This responsibility does not end once the goods have been released and the duties paid. There is always the risk that post clearance action will be required which may also involve a lengthy and costly appeals process.

All Member States recognise that the partnership between customs administrations should be compensated where possible (not all Single Authorisations will give rise to collection cost e.g. SEAs for exports). A few Member States consider that the benefits for the trade far outweigh any financial considerations and will participate regardless of any arrangement for the sharing of the collection costs. However, many feel that the sharing of collection costs is the appropriate compensation.

### **5.1. Status Quo**

This option has no consequences for the budget of the Member States involved. It does, however, require political agreement and, if possible, a legal basis at both Community and national level. It will ensure that all Member States are adequately compensated for the work they are required to perform. Arguably, it will tempt Member States not already participating in the pilot (it is open to all) to join, particularly those that do not have the headquarters of multi-national companies located therein. In a similar vein, there is no budgetary consequence, and the ensuing increased participation will allow the procedure to become established before more radical alternatives are considered.

The main disadvantage of this option is that the supervising Member State receives little or no compensation for the additional administration costs or the financial responsibility.

At best it has a cash flow advantage in that the duties collected in respect of the imports into other Member States are held pending transfer of the funds to those Member States, usually at the same time the own resources are made available to the Community.

## **5.2. 50/50**

This option seeks to compensate the Member States that bear the financial responsibility and major share of the administration costs of set-up and control. It provides a major incentive for the supervising authority to assume responsibility for operations in the participating Member State and to ensure that appropriate controls are carried out.

For the purposes of the pilot project, there was a tacit understanding that participating Member States might have a roughly equal share of the supervisory roles and therefore any budgetary losses would roughly equal budgetary gains. However, this assumption is not valid in the wider context once Single Authorisations become a standard procedure.

The main disadvantage of this option is that this can have quite major budgetary consequences for some Member States, particularly those who do not have headquarters of multi-national companies located within their territory.

## **5.3. 100%**

The supervising Member State retains all of the collection costs. This completely ignores the very necessary part played by the other participating Member States in controlling the authorisation.

It would be a major disincentive to participation. Indeed, some Member States could suffer significant budgetary losses.

Therefore, this is not regarded as a viable option at present.

## **5.4. Other**

One other option has been discussed and that is a variation of the 50/50 option described above and more for the future. As experience is gained and the set up and control procedures streamlined the additional burdens on the supervising office will reduce and therefore a 25/75 split might be more appropriate thus reducing the budgetary losses of the participating Member State(s).

## **6. CONCLUSION**

The current lack of a single approach is inhibiting the use of this facilitation measure. Additionally, economic operators are benefiting, or not as the case may be, on an unequal basis. The adoption of a common basis for sharing the collection costs and appropriate legal provisions should lead to greater participation across the Community thus building confidence.

If agreement on a single approach is to be achieved, the preferred option should recognise both the part played by supervising and participating Member States and the budgetary consequences, particularly for the smaller Member States.

As a confidence building measure, the Status Quo option has much to be desired. It allows participants to gain the necessary experience and statistical data for an evidence based evaluation before committing themselves to any significant budgetary losses. However, for the authorising Member State it provides little or no compensation for the additional risk and work involved.

On the other hand, the 50/50 option provides a real incentive for supervising Member States to look after the interests of their partners. However, this option can have quite major budgetary consequences for some Member States, particularly those who do not have headquarters of multi-national companies located within their territory.

It would be prudent to build a review option into the legal provisions enabling reassessment once experience has been gained and the budgetary consequences more accurately ascertained. Such a review could usefully coincide with the implementation of the modernised Customs Code as this will introduce centralised clearance as a standard procedure.

If possible, the legislation should also contain details of how and when the transfer of funds is to be effected.