



HM Revenue
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Douane
Belastingdienst



Centrale Administratie
Douane & Accijnzen

Blue Belt Pilot Project Legal Gap Analysis

3rd May 2012

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Introduction

In the 188th ECG-meeting it was agreed that a legal gap analysis should be undertaken with the aim to determine the way forward concerning the use of the EMSA Blue Belt information system for goods carried by ships between EU ports. This legal gap analysis is the result of co-operation between the customs authorities of Belgium, United Kingdom and the Netherlands and the trade associations WSC and ESCA and EMSA.

This analysis will provide insight regarding:

- the original objective of the Blue Belt project and the added value it can bring for customs and trade;
- the legislative requirements where maritime carriers want to carry community goods between EU ports;
- conclusions of the analysis and recommendations to reduce administrative burden for shipping between EU ports.

1. Objectives

It is recognised that the objectives of the different stakeholders (Customs, Transport and Port Authorities, Carriers and Associations etc.) in the Blue Belt pilot project are not always the same due to the different roles they play in the control, or movement of goods by maritime traffic of both Community and non-Community status goods. However, this does not necessarily mean that they exclude each other.

1.1 Traders

The general opinion is that this project should contribute to the completion of the internal market and the real free movement of goods and services by sea.

ECSA/WSC are of the view that, in order to reach a level-playing field with other transport modes, a simplification of customs procedures in connection with the movements of Community goods between EU ports is required. Such simplification should apply both to ships plying only between EU ports and to ships carrying Community goods between EU ports in short or deep sea voyages. Currently, the industry suffers from the legal fiction that Community goods carried between EU ports are considered to have left the EU customs territory and therefore lose their Community status. In other words, Community goods loaded in one EU port and unloaded in another EU port are considered as non-Community goods.

This legal fiction increases the administrative burden for carriers and the delay times in ports since, due to the loss of the Community status, the goods have to undergo temporary storage procedure. It also results in a redundant clearance procedure by customs authorities. The only exception to this legal fiction is the status of authorised regular shipping service (RSS) for which there is a presumption of Community status of goods carried onboard.

For shipping companies, including those authorised by customs as a RSS, the main objective is level playing field with road, barge and rail transport. Also, shipping companies would like to include associated ports e.g. Norwegian or Croatian ports. It is perceived that the maritime and veterinary clearance procedures are time consuming and the delays in the ports are costly and hindering the free circulation of the goods.

Additionally, for non-RSS shipping companies that regularly transport goods between EU ports, the concern is that goods are often inspected in the first port of entry and again in subsequent EU port(s). Also, for EU exports that are transhipped in another

EU port onto another vessel there are often more than one inspection of the goods, which causes increased administration, delays and costs that can't be declared to the customer. Finally and importantly, Community goods are treated like non-Community goods in all EU ports, subject to the same procedures and thus imposing on these goods burdensome and redundant procedures that render the sea mode less attractive to businesses interested in the movement of their Community goods across EU. Here the negative effects of redundancy in inspections (administrative burden and costs) occur (first point of entry versus subsequent point of entry).

1.2 Sea-ports

For the European Sea Ports Organization (ESPO), the Blue Belt pilot project may help achieve further facilitation of maritime transport. For European port authorities, it is only through further facilitation that a level playing field with other modes of transport will be achieved.

Complex and often redundant cargo formalities and inspections lead to frustrated port users and complaints from importers, contribute to saturate port capacity and are detrimental to the smooth functioning of supply chains. The efficient and fluid movement of cargo through EU ports is therefore crucial for maritime transport to fully develop into a credible alternative for intra-EU movement of goods.

In addition, for a number of EU port (i.e. Rotterdam, Gioia Tauro, Algeciras, Hamburg, Antwerp, Felixstowe) transshipment activities are increasingly important. As more cargo from third countries is unloaded in these ports for transshipment to other European ports, costs and efficiency of port operations become a significant economic parameter. If goods need to be inspected on entry to the EU in the first port, then the same goods for fiscal purposes should not be inspected again at the port of destination. Undermining the competitive position of EU transshipment ports results in cargo diverted to ports in neighbouring countries and causes a loss of European jobs within the port sector.

1.3 DG Move

Already in 2001, DG MOVE pointed out in the White Paper entitled "European transport policy for 2010: time to decide"¹ the need to simplify the regulatory framework for maritime transport, by encouraging the creation of one-stop offices for administrative and customs formalities.

The Mid-term Review White Paper on Transport Policy announced the creation of a European maritime transport space without barriers to eliminate the disadvantages of intra-EU sea traffic compared with other modes of transport. This need was also emphasised in the "Blue Book" Communication on an integrated maritime policy. For DG Move the main objective of the Blue Belt pilot project is to determine how the use of data in SafeSeaNet might contribute to the basic considerations initiated by the 2001 White Paper entitled "European transport policy for 2010" and lastly reiterated in the White Paper Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system², aiming at the completion of the *internal market for maritime transport*, where considerable bottlenecks and other barriers remain. It is necessary to readdress these issues and respond to the needs of the economy to transport goods while anticipating resource and environmental constraints.

The Blue Belt project could contribute to more efficient maritime traffic in the EU, resulting in more cargo being moved on ships thus avoiding unnecessary road transport in Europe.

The long term perspective of the "Blue Belt" concept is aimed at contributing to the creation of a European maritime transport space without barriers, where ships will be able to operate freely with a minimum of administrative formalities, irrespective of their flag. The combination of technology, maritime transport monitoring capacities and best practices now allows the establishment of such an area.

1.3.1 Maritime Transport Space Without Barriers

In a broader view the pilot project could contribute to the promotion of a maritime transport area without barriers.³

It is paradoxical, for example, that goods shipped by sea between ports as close together as Antwerp and Rotterdam should be considered to have left the territory of the European Union whereas trucks can drive unhindered throughout the territory of the EU.

¹ White paper European transport policy for 2010: time to decide; COM(2001) 370 final September 2001

² White paper-Roadmap to a Single European Transport Area; COM(2011) 144 final March 2011

³ See: communication DG Move "Maritime Transport Without Barriers" 2007

The European Commission has introduced the idea of a European maritime transport space with a view to eliminating or reducing the numerous administrative procedures which apply to goods shipped by sea between EU ports and thus to making shipping a more attractive mode of transport.

The elimination or reduction of administrative barriers could in particular focus on shipments of Community status goods in order to encourage shippers and freight forwarders to use, in line with the objectives of the European maritime transport space without barriers initiative, maritime transport for the transport of Community goods instead of less environmentally friendly transport modes.

The general use of ship tracking systems (e.g. SafeSeaNet) makes it possible for national authorities, including for Customs, to monitor the behaviour of the ships in the area to ensure that the ships are operating correctly. The aim of this is to allay fears of an increase in fraud and smuggling activity resulting from the lifting of controls. The monitoring of ships provided through the Blue Belt project should enhance trust, also for customs, and in this regard contribute to the promotion of a maritime transport space without barriers.

1.3.2 Motorways of the Sea

Establishment of a European maritime transport area is absolutely crucial in ensuring the effective development of the "motorways of the sea" – key sea routes between the Member States of the EU. A whole network of motorways of the sea could be established to absorb the expected growth in the flow of movement of goods.

Ten years after announcing this initiative in the White Paper on European transport policy, the establishment of these transport routes is still in its initial phase and the project isn't getting the expected contribution from the trader even though there is an evident financial incentive.

It is thought that the problems encountered in the establishment of a maritime transport area without barriers (e.g. without/minimal inspections/interventions by the respective authorities) is a key factor for the delay in the building of the motorways of the sea.

In the view of DG Move the Blue Belt pilot project is a first phase to remove the procedures and obstacles that hinder the completion of a true internal market and the founding of a maritime area without barriers.

1.4 DG TAXUD

The contribution of DG Taxud in the Blue Belt pilot project is to give support to the Commission's objective of a European maritime transport space without barriers while making better and more efficient use of Customs resources in accordance with the principles set out in the Lisbon Treaty.

Through information technology, optimised working methods and seamless customs procedures, the EU can tackle both efficiently and effectively today's challenges be it on globalisation, safety and security, protection of Community budgets in a rapidly changing world.

The difficulty under the current customs EU legislation and procedures, is that Customs are required to take action at the point where the goods cross the external borders of the EU. When Community goods are placed on a vessel that sails outside the territorial limit of 12 nautical miles the status of the goods automatically changes to non-Community goods and will be treated like this on arrival. This applies even if the vessel is bound for another EU port. From a legal point the maritime space (seas, oceans) between member states are regarded as international waters i.e. not belonging to the maritime space of the Community and so transports within that area are regarded as international transports.

Upon entry of a ship in an EU port, Customs require the completion of certain reporting formalities, submission of declarations, proof of Community status where necessary and other cargo information for the goods that are to be unloaded. Upon arrival of the ship in subsequent EU ports, the goods to be unloaded might be subject to the same/similar controls.

However, there are reduced customs formalities for ships and cargo that is transported by a vessel authorised as a regular shipping service (art 313 a, art 313 b) or approved to use the simplified Level 1 and Level 2 manifest procedures (art 447 and art 448 of CCIP). RSS operators are only required to bring non-Community status goods under customs control, meaning that Community goods being transported between EU ports do not lose their Community status. Level 1 and Level 2 traders may use the manifest instead of a customs declaration to prove the status of the goods.

EU legislation currently provides for the RSS simplified procedure to be used in accord with certain conditions i.e. the vessels must be named, operate to a regular schedule, may only call at Community ports etc. In such cases goods being transported between EU ports, do not lose their community status.

The authorised RSS status only applies to a limited scope of carriers which carry

Community goods between EU ports. Moreover, since the conditions regarding the RSS simplified procedure are very firm the majority of the intra-EU shipping is presently outside the scope of the RSS and thus can't benefit from the presumption of Community goods status up on arrival.

Reasons for the limited use of this instrument are connected to the application and authorisation process and rigidity of the system. This has been proved for example in a study made by Finnish Customs under the EU Presidency in 2006.

Data provided to customs through the Blue Belt pilot project has to satisfy customs on the movement of the goods, particularly where the vessel moves directly between EU ports.

The information provided through the Blue Belt project about a vessel's voyage has been documented to be of assistance for increasing customs confidence in verifying the movement of the ship and its cargo until arrival in the EU port, i.e. they can be effectively tracked when sailing between two EU ports, even when sailing outside EU territorial waters. The accurate scheduling information provided through Blue Belt reports can further aid the customs authorities to determine if a monitored ship shows any abnormal behaviour (e.g. stopping, diversion of announced route, loss of transponder signal) of the ship at open sea.

Furthermore, the allocation of resources (container scans, tracker dogs etc) for carrying out customs procedures and inspections upon arrival, can benefit from the more accurate information on ship arrival and departure in EU ports and can contribute to improved efficiency in the inspection process and harbour logistics.

Consequently, by assisting in ensuring Customs supervision of the goods while in EU waters, the BB information can also facilitate the movement of goods between EU ports through the removal of administrative barriers, including by maintaining the Community status of goods.

2. Questions regarding the way forward

It is clear that the objectives of the stakeholders, while not necessarily the same due to the different roles played in the maritime traffic, are mutually supportive in reducing the administrative barriers for EU maritime goods traffic.

They also agree that it is now essential that DG Move and DG Taxud work together to implement the maritime transport area without barriers, building on the positive result of the Blue Belt pilot project. The focus from the Commission will be on the customs procedures that are, or are supposed to be the first obstacle in establishing the growth in intra-EU transport.

In this respect, at least two questions need to be answered:

- 1. Can the information provided by EMSA be a starting point in the adaptation of the customs procedures?*

The information gives customs adequate information on the behaviour of the ships while at sea but does not give any information about the goods on board of those ships.

From a customs perspective the behaviour of ships while at sea is only one element to be taken into consideration during the risk management process. Other needed data concern the goods on board of ships (transport information, status of goods, description of goods, etc.). The monitoring of the vessels nevertheless provides additional information to customs allowing them to verify the ship's voyage and to maintain Customs supervision during that voyage.

- 2. What influence can the Blue Belt project have with regard to further facilitation of free movement of community goods throughout the EU and avoiding redundancy in inspections by customs and other governmental agencies?*

The increased customs' confidence in the movements of the vessels should enable relevant operators to benefit from the assumption (by contrast to the presumption applicable in authorized regular shipping service movements) that the Community goods identified as such in the ship manifest have been carried as declared during the ship movement between EU ports. This assumption would not prevent customs to carry out specific inspections to confirm the community status of the goods. It would however enable a smoother handling of such goods in the EU discharge port.

3. Legal analysis

3.1 Legal framework for Authorised Regular Shipping Services

The requirements for an authorised regular shipping service are published in section 1 chapter 3 of title II of the customs code implementation provisions (CCIP).

In article 313a (1) the definition of a regular shipping line is given as "*a service which carries goods in vessels that ply only between ports situated in the customs territory of the Community and may not come from, go to or call at any points outside this territory ...*"; this means that the vessels may only sail between ports in the member states of the Community.

In article 313f Customs may require proof that the provisions on an authorised shipping services have been met.

Article 313b(2) states that authorisation shall be issued only to shipping companies which:

(a) are established in the customs territory of the Community or have a regional office there and whose records will be available to the competent customs authorities;

(b) fulfil the conditions laid down in Article 14h;

(c) determine the vessel(s) to be used for the regular shipping service and specify the ports of call once the authorisation is issued;

(d) undertake that on the routes of regular shipping services, no calls will be made at any port in a territory outside the customs territory of the Community or at any free zone of control type I in a port in the customs territory of the Community, and that no transshipments of goods will be made at sea;

(e) undertake to register the names of the vessels assigned to regular shipping services and the ports of call with the authorising customs authority.

Article 313b(3) states that the application for an authorisation for a regular shipping service shall specify the Member States concerned by that service. The customs authorities of the Member State to whom the application has been made (the authorising customs authority) shall notify the customs authorities of the other Member States concerned by the shipping service (the corresponding customs authorities) through the electronic information and communication system.

According to Article 313c, once a regular shipping service has been authorised in accordance with Article 313b, the shipping company concerned shall be required to

use the authorisation for the vessels registered for that purpose.

The authorisation for the RSS is only applicable for the transportation of community goods. If, under the authorisation, non-community goods are transported then (article 340e (2) CCIP) the use of the Community transit procedure for goods carried by sea is mandatory. Shipping companies may moreover benefit from a further simplification ("Level I and Level II") as laid down in article 447 (CCIP) and article 448 (CCIP), allowing the company to use the single manifest as a transit declaration.

3.2 Legal framework for the non-authorized regular shipping services

If carriers not fulfilling the formal conditions required for the authorized regular shipping services wish to transport community status goods between ports in the European Union, the status must be proven on discharge of the goods. There are various ways to prove the community status of goods. Regular as well as simplified procedures are available as regulated by subsection 2 of section 2, chapter 3 of title II of the CCIP:

In article 317 (1), the proof of the community status is given by the use of an invoice or transport document relating to the goods.

For shipping lines, the proof of Community status of the goods may instead be given by the use of the shipping company's manifest relating to the goods (article 317a (1)).

In article 317a (2) the conditions for the use of the shipping manifest are detailed. These conditions must be fulfilled to prove the community status of the goods.

For the use of a shipping manifest to prove the status of goods no authorization is necessary, no certificate must be carried on board of the vessel and no records must be kept available for the customs authorities.

In article 317a (3), it is stated that: "*At the request of the shipping company, the manifest it has duly completed and signed shall be endorsed by the competent office. The endorsement shall include the name and stamp of the competent office, the signature of an official at that office and the date of endorsement*". This means that the manifest receives an official status as a transport document. However it is not an electronic procedure.

Because both trade and Customs need to have the possibility to work with electronic manifests, which can be endorsed by customs electronically as well and still can be used to prove the status of Community goods, a specific authorization mechanism has been put in place for non-authorized regular shipping services which regularly carry goods between EU Member States on recognized routes: if a shipping company fulfills the criteria listed in article 373, it may qualify as an "authorized consignor" in the

sense of article 324e. Under this qualification, a shipping company may provide the proof of the community status by producing an electronic manifest until, at the latest, the day after the departure of the vessel and, in any case, before its arrival at the port of destination.

4. Conclusions

The legal system for authorized regular shipping service and the legal system for other services transporting Community goods by sea between EU ports are different and therefore different solutions for facilitation should be considered.

The legal system for the **authorized regular shipping** service creates a presumption of the community goods status for goods carried onboard and thus offers a quasi-level playing field with other modes of transport. However the conditions to be met by shipping companies and the application procedures to be followed are very firm and cumbersome with the consequence that many carriers still refrain from applying for this status.

For a preferred amendment of the regulation see **Annex 1**

The RSS is granted at carrier, vessel level and confirms that goods are Community status unless declared as otherwise. Other carriers carrying Community goods must prove their status upon arrival to the satisfaction of the customs authorities at each and every Community port as necessary.

If other sea carriers wish to benefit from simplifications relating to the movement of Community goods between EU ports, the EU Customs Code and its Implementation Provisions must be amended.

With the use of electronic messages (manifest used as a declaration) it is possible to transport community status goods with limited additional burden.

In order to provide a concrete facilitation for the handling of Community goods carried between two EU ports and to take into account the increased confidence that results from the constant monitoring provided by SafeSeaNet in the context of the Blue Belt pilot, a suggestion is made in **Annex 2**.

5. Recommendations

Short Term:

1. Further examination of the amended legislation for RSS authorizations' to see if relaxation in some of the previous stringent conditions might further facilitate carriage by sea;
2. Examine the benefits of becoming an Authorised Economic Operator (AEO) to enable customs to undertake less controls and examinations;
3. For non RSS applying regular trade between certain Community ports, determine whether an intra EU agreement is possible between the respective customs authorities to reduce the scope for multiple controls on the same goods;

Medium/Long Term:

1. Examination of the legislation for RSS to see if might be applied to members of the Common Transit Convention i.e. Norway, Iceland, Turkey and Croatia;
2. Inclusion in the MCCIP of provisions to encourage greater use of the maritime transport by promoting the movement of Community goods by sea between EU ports by facilitating and simplifying the Customs treatment of such goods, including by exempting them from temporary storage and EXS requirements.

Annex 1 Authorized regular shipping service

The legal system for the authorized regular shipping service creates a presumption of the community goods status for goods carried onboard and thus offers a quasi-level playing field with other modes of transport. However the conditions to be met by shipping companies and the application procedures to be followed are very firm and cumbersome. Compared with road, rail and barge transport there is no level playing field.

1. The authorized regular shipping service facilitation should be maintained but in order to increase the benefit from this status the application procedure should become shorter.
2. The procedure for amendment of the regular shipping service should be more easily and rapidly than is the case today. Hence the procedure for the mutation (change, expand or delete ports in Member States of the system would become less rigid and maybe more attractive for qualifying operators.
3. A study must be performed to determine the possibility and conditions how to add Norwegian ports into the sphere of action of the regular shipping service in conjunction with other simplifications.

Annex 2 Maritime service other than regular shipping services

Many shipping companies which carry community goods between EU ports cannot obtain the status of authorized regular shipping service because they do not meet the conditions for such authorization, in particular the conditions that the concerned vessels can only ply EU ports and as a consequence not come from or head to a non-EU port. In order to achieve the goals set by the European Maritime Transport Space Without Barriers, and because of the verifiable Customs supervision provided by the Blue Belt, shipping companies that cannot qualify for the status of authorized regular shipping service should also benefit from simplifications relating to the movement of Community goods between EU ports.

1. The customs status of the goods may be indicated in the electronic manifest in line with article 317a CCIP on departure from the port.
2. In the electronic departure manifest, the customs status of the goods shall be indicated by "C" for community status goods, "F" for goods whose Community status can be demonstrated, consigned to or originating in a part of the Community customs territory where the provisions of Directive 77/388/EEC do not apply, "X" for export community goods and a "N or blank" for non-community goods.
3. The manifest transmitted shall be provided by electronic data exchange (data exchange manifest) to the customs authorities at the port of departure and the port of discharge within to-be-determined time lines.
4. The goods identified with a "C", "F" or an "X" in the shipping manifest shall be treated in the EU port of discharge as Community goods, thus creating a real concrete facilitation for the handling of such goods at discharge and transshipment, if applicable.
5. For carriers with an AEO-certificate this simplified manifest procedure shall be automatically granted, Other carriers (i.e. "Blue carriers") must demonstrate a trustworthy record to avail themselves of the procedure.

This facilitation is justified by the verification of Customs supervision of the movement of the ship and its cargo provided by the Blue Belt project, supplemented with other reasonable conditions for non-AEO operators.

This facilitation would not impinge on customs' authority to carry out specific inspections whenever deemed appropriate. The goods identified with "N or blank" would continue to be considered as non-Community goods and would thus remain subject to the current customs procedures.