

MODERNISED CUSTOMS COMMUNITY CODE

ACCREDITATION OF CUSTOMS REPRESENTATIVES

CLECAT OPINION ON THE GERMAN PRESIDENCY REVISION OF THE MODERNISED CUSTOMS CODE PROPOSAL

Political Statement

On May 16th 2007 the German Presidency presented a compromise text revised in the light of discussions in the Working Party on Customs Union (Customs Legislation and Policy).

In respect of customs representation the compromise texts proposes that:

- If a Customs representative wishes to provide services to a Member State other than the one where he is established, he can do so if he complies with the criteria to be an AEO as laid down in Art. 15.
- In reverse, a Customs representative who acts only in the MS of his location does not need an accreditation at EU level and has to fulfil the national requirements, which have to be in line with the general EU legislation (i.e. the "Services Directive").

CLECAT welcomes the German Presidency compromise text in as far as it enriches the earlier European Parliament amendment in first reading. The criteria proposed (i.e. the AEO customs criteria) include good financial standing and professional integrity, next to reasonable competence. A further merit of the text is that the conditions for accreditation, based on the AEO scheme, are commonly defined and applicable hopefully all over the European Union.

In accordance with the compromise text, however, customs representatives acting only in the MS of their location will have to fulfil *national* requirements. This is far from the harmonious approach which CLECAT has advocated.

As much as we welcome the introduction of common EU criteria, we regret that there is no clear reference to the existence of a role and the recognition of a *status*, which derives from *complying* with these criteria.

We feel that this is an unfortunate missed opportunity. Historically Customs representatives have been regulated in different ways in different EU Members States. Stricter measures co-existed with total deregulation. This situation has created several difficulties, which rightfully traders have complained about. Our reply was clear:

a pan-EU, unrestrictive, simple and robust accreditation scheme for all individuals or enterprises who wish to represent third parties in Customs.

This proposal is in line with EU and international best examples of non-invasive legislation and could pave the way for EU-wide mutual recognition with the most important trading partners of the EU, where such activity is subject to an accreditation process.

As it stands, the proposed merging of customs representation status into AEO-customs status does not prove to be the right approach. To cut a long story short, the details of the implementation of the AEO concept are perhaps fit to correctly assign a business paradigm to traders who wish to deal with Customs directly, but they are less fit to deal with representation; in addition, the absence of common EU waterproof criteria may open a window to unknown and unwanted national distortions, which were supposed to have been eliminated in the process of modernisation.

The elements of a good compromise are all on the table: they have all been intelligently provided by EU institutions. What is missing is the intuition to merge them into a well balanced proposal, which can meet the interests of the public, EU trade and the industry sector – which provides for over two thirds of all EU transactions – without imposing excessive burdens on the institutions.

Clecat sees the possibility of this compromise as a win-win solution, where all parties have something to gain and very little to spend. We are sure the Commission, the Council and the Parliament will not miss the opportunity to come together on a small measure which can show the rest of the world that the EU has the intention of creating a single EU Customs area, not merely in political declarations, but also in creating practical framework arrangements, which can help trade facilitation in practice.

Let us not miss this once-in-a-lifetime opportunity!

Background & explanations

Customs representation

The status of the customs representative in the future modernised EU customs environment is of extraordinary importance for EU trade and has comprehensively attracted great attention both in the European Parliament and among the Member States.

Dealing with customs requires thorough knowledge of customs and trade procedures. A number of traders therefore find it more convenient to outsource this activity and rely on the expertise of a service provider acting on their behalf. The service is offered either as a stand alone product, by specialised customs agents, or as part of a wider package of logistic services, by freight forwarders and logistic service providers. The advantage for traders is in having the opportunity to avail of business expertise which cannot be achieved and maintained other than by making this activity the very core and centre of your business. Customs activity which is not performed on an extensive or regular basis is seldom a synonym for up-to-date competence.

CLECAT recommendation on customs representative accreditation

CLECAT represents the interests of about 19,000 companies in this sector, which are employing about one million people all over the European Union. All these companies offer customs related services to their customers, either as a stand alone activity (customs agents), or as a part of a wider a package of logistic services (freight forwarders and logistic operators). The Members of CLECAT are multinational companies, global players, as well as SME's and even family businesses. Some time ago, the national CLECAT Member federations of freight forwarders, logistic operators and customs agents adopted and circulated a recommendation on the status of customs representatives in the future modernised customs environment. It was *unanimously* endorsed by the Clecat policy making bodies and it was agreed upon by big and small companies alike. The statement was endorsed by customs agents and freight forwarders everywhere in Europe. Such a widespread endorsement for a proposal throughout the industry has never been achieved since the treaty of Rome.

At present, access to customs representation is regulated on a national basis. Some of the Member States make very high demands on customs representatives' competence, some do not. The Members of CLECAT from all over the EU have overcome these cultural differences by adopting a recommendation for a *Common* approach. CLECAT advocates the accreditation of EU based customs representatives, on the basis of common EU criteria. The accreditation should be granted to legal and natural persons who can provide evidence of good financial standing, professional integrity and competence and should be **valid in all Member States.**

The proposed accreditation scheme is essentially aimed at protecting traders against illegal or questionable trade practices and/or untrustworthy service providers, in an ever more open market. The vast majority of traders outsource their customs activities due to lack of in-house expert resources. Traders should be completely free

in selecting their service providers, however the availability of an official list of customs representatives, recognised on the basis of certain basic and non-restrictive criteria, would be helpful to them in making this selection.

Next to the traders, the authorities should have an interest in customs representatives' accreditation too, considering their interest in protecting state revenue, as well as this being a practical and simple answer to their administrative chores. Moreover, customs are allocated an ever increasing role in the security of the supply chain. Customs perform security risk analysis to control and protect the physical integrity of the chain. For its accuracy, security risk analysis depends on the accuracy of the data provided, and consequently the integrity and competence of the *person* providing it. In the vast majority of the cases it is the customs representative who makes this data available. Some basic and non-restrictive criteria for the integrity and competence of these data-facilitators would be no luxury.

Any economic operator offering customs related services to third parties – not necessarily only Customs agents or freight forwarders - should be able to apply and his/her accreditation, wherever obtained in the EU, should be valid in all Member States. Thus, the proposed accreditation scheme is absolutely unrestrictive and fully consistent with single customs area. It will secure a level playing field at EU level for all operators wishing to provide customs services to third parties as well as freedom of establishment in the entire EU.

The full opening up of the provision of customs services in accordance with the modernised customs code proposal in a single customs area, for the members of CLECAT, is an opportunity rather than a threat.

The proposed accreditation of customs representatives on the basis of basic, Common, unrestrictive and objective criteria does not duplicate or coincide with Authorised Economic Operator accreditation. AEO accredited economic operators will benefit from simplifications and facilitations in respect of customs procedures and controls. The proposed customs representatives' accreditation programme would apply exclusively to companies providing customs services to third parties and is not intended to bring benefits. It is intended to protect both trade and regulatory authorities against illegitimate or substandard service providers, which might flourish in the EU in the aftermath of the introduction of the AEO concept and its entailing consequences.

In this respect **it appears that the minimum bureaucratic investment is more than amply compensated by a measure which is directly addressing a public interest concern.**

CLECAT proposes that national administrations maintain a register of recognised customs representatives. The registration process and the maintenance of the register need not significantly increase the pressure on public resources and could possibly be outsourced if convenient. The number of accreditations will be marginal compared to the number of companies expected to apply for AEO and, even more importantly, other than for AEO, there will be no need for system related audits. For the applicant, good financial standing and professional integrity as well as non-excessive indications of competence on the basis of experience or education should be relatively easy to demonstrate, as well as fairly simple to ascertain for authorities.

The national Member federations of CLECAT are able to help in this task or may provide assistance, if their Administration feels this is the right way forward.

Opinion of the European Parliament

The European Parliament endorsed the need for subjecting the provision of customs services to some basic criteria of competence without this negatively impacting on the internal market, and accordingly amended the Commission Modernised Customs Code Proposal.

CLECAT was very happy with the European Parliament amendment where the CLECAT recommendation finds a certain degree of mirroring. Two elements, however, are missing. First, CLECAT advocates for *good financial standing and professional integrity* as a condition, next to competence. Second and even more importantly, for the reasons outlined above, CLECAT is of the opinion that the standards of competence should be *commonly* defined, in accordance with the Committee procedure.

German Presidency draft Revision of the MCC Proposal – opinion of CLECAT

On May 16th the German Presidency presented a compromise text revised in the light of discussions in the Working Party on Customs Union (Customs Legislation and Policy).

In an explanatory note the Council recognizes some of the most essential lines of thought which underline CLECAT's recommendation. It states the opposition expressed by some MS to the full liberalisation of customs representation mainly results from their (legitimate) concern that customs agents from another MS might – in the absence of harmonised conditions for customs representation throughout the Community – offer reliability and professional quality standards which might be different from those offered by their nationals.

The Presidency seems to share the objective of maintaining high-quality service of customs agents because not only it is a guarantee of compliance with customs law, but it also facilitates the access to international trade for EU companies, in particular SME's. However whatever compromise is arrived at, it should not jeopardize the freedom to provide customs-related services to business.

Furthermore the German Presidency is of the opinion that a 'common core' of equivalent conditions for customs agents ("level playing field") should be established. The solution should address the concerns expressed by the customs agents and some MS who are in favour of an accreditation procedure. The common criteria for the accreditation of customs agents /.../ would be relevant to:

1. Good financial standing
2. Professional integrity
3. Competence

As much as we can agree with the above, we are of the opinion that these thoughts are not consistently transposed in the actual German Presidency compromise proposal. The German Presidency proposed that:

- If a customs representative wishes to provide services to a Member State other than the one where he is established, he can do so if he complies with the criteria to be an AEO as laid down in Art. 15.
- In reverse, a customs representative who acts only in the MS of his location does not need an accreditation at EU level and has to fulfil the national requirements, which have to be in line with the general EU legislation (i.e. the "Services Directive").

In accordance with the German Presidency compromise proposal national conditions remain the discretion of the MS, within the limits of the general EU legislation, i.e. the Services Directive. Apparently the Member States are not able to agree a harmonised approach. This is unfortunate because national divergences lead distortion of competition, and add to bureaucracy. **Applying the same rules all over Europe is a way to minimize bureaucracy, not of increasing it.** Furthermore, the Services Directive was adopted after long and difficult political debate. Leaving aside the issue of its uncertain implementation and untested benefit, determining whether existing or future national rules are in line with it may entail much discussion and controversy.

For that matter, we are uncertain whether in accordance with the Treaty Member States will be allowed to demand compliance with the criteria concerned from customs representatives established in another Member State, unless they impose the same or equivalent conditions upon their nationally established customs representatives. The appreciation of "equivalence" will not be an easy task either.

Why these additional complications? Why not simply apply the same minimum conditions anywhere in the EU?

The German Presidency compromise text makes the provision of customs related services subject to certain conditions, i.e. the AEO-customs *criteria*. The introduction of Common EU criteria is a good start, but there is no clear reference to a *status*, whereby evidence is given that the person concerned *complies* with these criteria. Apart from a vague reference to the regulatory procedure with scrutiny, in Article 11(3)[c], neither is there a clear reference to procedures for granting/revoking this status or for the exchange of information among Member State authorities.

The merging of customs representation status into AEO-customs status, in the opinion of CLECAT, is not the best possible approach. First of all, the very possibility for service providers to employ their AEO status for use on behalf of their customers is not self-evident, even to date. In the draft AEO guidelines issued on May 7th 2007 (doc. TAXUD/2006/1450, we read: *"It should be noted here that an AEO certificate is issued to the applicant and not to his clients. Therefore benefits can be used by the AEO only in their own name and behalf. This is a general principle for all types of operators in the international supply chain."*

The Commission's Modernised Customs Code proposal makes an explicit reference, in the Proposal's Article 11, to the possibility for customs representatives to apply for AEO. **This Article has been now deleted!** How does this match with the merging of customs representation status into AEO-customs status?

Conclusion:

CLECAT welcomed the European Parliament amendment in that it identified customs representation as a specific status, function, role, which should be subject to certain minimum criteria.

CLECAT welcomes the German Presidency compromise text in that it identifies *good financial standing and professional integrity* as a condition, next to competence, and above all because of the importance it attaches to a Common core of equivalent conditions for the customs agents ("level playing field") should be established."

CLECAT is of the opinion that the European Parliament amendment and the principles contained in the Presidency proposal are mutually enriching and provide for a good compromise solution, which is able to send a strong signal of harmony and cohesion for EU trade.
