



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Customs Debt and Guarantees
Customs Policy

Brussels,
TAXUD/A1/IK/ML/va/

TO THE DELEGATES OF THE CUSTOMS EXPERT GROUP – SECTION "CUSTOMS DEBT AND GUARANTEES" (CEG DEB) AND THE REPRESENTATIVES OF THE TRADE CONTACT GROUP (TCG)

Subject: Follow up on the draft proposal for an amendment of Article 84 UCC DA, establishing the conditions for granting the comprehensive guarantee reductions or the guarantee waiver, as provided for in Article 95(2) UCC

Dear CEG DEB and the TCG delegates,

At the 9th meeting of the CEG DEB held on November 9, 2017 we continued to work on the draft proposal for the amendment of Article 84 UCC DA. At that meeting we also invited you to share with us your suggestions by 17 November. Following that I would like to update you on the state of play of this proposal.

During the meeting we reached an agreement in principle on the text for this amendment. We also invited you to communicate to us your views as regards to the new parts introduced in the text and presented to you during that meeting, namely on the paragraphs 4 and 5.

In total, 17 Member States and 5 representatives of the Trade Contact Group have sent to us their comments.

Your suggestions have been taken on board in the light of the line agreed during the meeting of 9 November 2017 and they have contributed to the finalization of the draft text (please find it in the Annex 1). We have also reviewed the text from a linguistic perspective. Our replies to the other suggestions communicated to us are enclosed in Annex 2 of this note for your information.

With this in mind and the needs acknowledged to move forward swiftly, I am pleased to announce that we have launched the internal consultation procedure for the amendment of the Article 84 UCC DA on this text. I trust that we have collectively arrived at the solution acceptable to all parties and count on your support for this proposal during the next stages of the formal procedure on which you will be duly kept informed.

I also would like to take this opportunity to thank you all again for your collaboration and hard work.

Yours sincerely,

(e-signed)
Ilze Kuniga
Head of Unit

Enclosures: Annex 1 – Draft proposal for the amendment of Article 84 UCC DA
Annex 2 – Tempo Fiche for the amendment of Article 84 UCC DA

Copy: Mr Kermode, Ms Kuniga, Ms Aigner, Ms Papamichalopoulou, Ms Libioule, Ms Lazar, Ms Cassan

ANNEX 1

Article 84

Reduction of the level of the comprehensive guarantee and guarantee waiver

(Article 95(2) of the Code)

1. An authorisation to use a comprehensive guarantee with an amount reduced to 50 % of the reference amount shall be granted where the applicant demonstrates that he fulfils the following conditions:

(a) the applicant maintains an accounting system which is consistent with the generally accepted accounting principles applied in the Member State where the accounts are held, allows audit-based customs control and maintains a historical record of data that provides an audit trail from the moment the data enters the file;

(b) the applicant has an administrative organisation which corresponds to the type and size of business and which is suitable for the management of the flow of goods, and has internal controls capable of preventing, detecting and correcting errors and of preventing and detecting illegal or irregular transactions;

(c) the applicant is not subject to bankruptcy proceedings;

(d) during the last three years preceding the submission of the application, the applicant has fulfilled his financial obligations regarding payments of customs duties and all other duties, taxes or charges which are collected on or in connection with the import or export of goods;

(e) the applicant demonstrates on the basis of the records and information available for the last three years preceding the submission of the application that he has sufficient financial standing to meet his obligations and fulfil his commitments having regard to the type and volume of the business activity, including having no negative net assets, unless where they can be covered;

~~(f) the applicant can demonstrate having sufficient financial resources to meet his obligations, for the part of the reference amount not covered by the guarantee.~~

2. An authorisation to use a comprehensive guarantee with an amount reduced to 30 % of the reference amount shall be granted where the applicant demonstrates that he fulfils the following conditions:

(a) the applicant maintains an accounting system which is consistent with the generally accepted accounting principles applied in the Member State where the accounts are held, allows audit-based customs control and maintains a historical record of data that provides an audit trail from the moment the data enters the file;

(b) the applicant has an administrative organisation which corresponds to the type and size of business and which is suitable for the management of the flow of goods, and has internal controls capable of preventing, detecting and correcting errors and of preventing and detecting illegal or irregular transactions;

(c) the applicant ensures that relevant employees are instructed to inform the customs authorities whenever compliance difficulties are discovered and establishes procedures for informing the customs authorities of such difficulties;

(d) the applicant is not subject to bankruptcy proceedings;

(e) during the last three years preceding the submission of the application, the applicant has fulfilled his financial obligations regarding payments of customs duties and all other duties, taxes or charges which are collected on or in connection with the import or export of goods;

(f) the applicant demonstrates on the basis of the records and information available for the last three years preceding the submission of the application that he has sufficient financial standing to meet his obligations and fulfil his commitments having regard to the type and volume of the business activity, including having no negative net assets, unless where they can be covered;

~~(g) the applicant can demonstrate having sufficient financial resources to meet his obligations, for the part of the reference amount not covered by the guarantee.~~

3. A guarantee waiver shall be granted where the applicant demonstrates that he fulfils the following requirements:

(a) the applicant maintains an accounting system which is consistent with the generally accepted accounting principles applied in the Member State where the accounts are held, allows audit-based customs control and maintains a historical record of data that provides an audit trail from the moment the data enters the file;

(b) the applicant allows the customs authority physical access to its accounting systems and, where applicable, to its commercial and transport records;

(c) the applicant has a logistical system which identifies goods as Union or non-Union goods and indicates, where appropriate, their location;

(d) the applicant has an administrative organisation which corresponds to the type and size of business and which is suitable for the management of the flow of goods, and has internal controls capable of preventing, detecting and correcting errors and of preventing and detecting illegal or irregular transactions;

(e) where applicable, the applicant has satisfactory procedures in place for the handling of licences and authorisations granted in accordance with commercial policy measures or relating to trade in agricultural products;

(f) the applicant has satisfactory procedures in place for the archiving of its records and information and for protection against the loss of information;

(g) the applicant ensures that relevant employees are instructed to inform the customs authorities whenever compliance difficulties are discovered and establishes procedures for informing the customs authorities of such difficulties;

(h) the applicant has appropriate security measures in place to protect the applicant's computer system from unauthorised intrusion and to secure the applicant's documentation;

(i) the applicant is not subject to bankruptcy proceedings;

(j) during the last three years preceding the submission of the application, the applicant has fulfilled his financial obligations regarding payments of customs duties and all other duties, taxes or charges which are collected on or in connection with the import or export of goods;

(k) the applicant demonstrates on the basis of the records and information available for the last three years preceding the submission of the application that he has sufficient financial standing to meet his obligations and fulfil his commitments having regard to the type and volume of the business activity including having no negative net assets, unless where they can be covered;

~~(l) the applicant can demonstrate having sufficient financial resources to meet his obligations, for the part of the reference amount not covered by the guarantee.~~

4. To decide on the level of reduction of the comprehensive guarantee or on the guarantee waiver, the assessment of the sufficient financial standing as referred to in paragraphs 1 (e), 2 (f) and 3 (k) shall include, in particular, an assessment of the ability of the applicant to fulfil his obligations of paying his customs debts and other charges which may be incurred and for which the reduced amount of the guarantee would prove insufficient.

When carrying out the assessment referred to in the first subparagraph, customs authorities may take into account the risk of incurrence of those customs debts and other charges in relation, inter alia, to the volume and type of customs related business activities of the economic operator and to the type of goods for which the guarantee is required.

5. If the condition on sufficient financial standing has already been assessed as a modality for the application of the criterion referred to in Article 39(c) of the Code, it shall not be re-examined, in accordance with Article 38 (5) of the Code. It can only be evaluated for the purpose of granting of an authorisation to use a comprehensive guarantee with a reduced amount or a guarantee waiver.

6. Where the applicant has been established for less than three years, the requirement as referred to in paragraphs 1(d), (e), 2(e), (f) and 3(j), (k) shall be checked on the basis of available records and information.