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Marine Advisory Note 07-2010

Subject: European Union (EU) Advance Cargo Declaration Regime ((EC) No. 648/2005) and the Economic Operators Identification (EORI) Number ((EEC) No. 2913/92)

To: All Ship Owners/Operators and Master's

This Advisory provides information regarding compliance with the European Union (EU) advance cargo declaration regime ((EC) No. 648/2005). The new regime will enter into force on 1 January 2011. In effect, the entry summary declaration (ENS) filing requirement becomes mandatory after midnight December 31, 2010. After entry into force, any failure to comply with the requirement could result in EU Member States imposing penalties upon shipping companies/ship owners in accordance with their respective national legislation.

This Advisory also includes guidance on compliance with the requirements of (EC) No. 648/2005 and Regulation (EEC) No. 2913/92 relating to Economic Operators Identification (EORI) Number. An EORI number means a number, unique throughout the European Community, assigned by a customs authority or designated authority or authorities in a Member State to economic operators and other persons.

Background Information

The EU's advance cargo declaration system will significantly impact the operations of shipping companies trading to and from ports in Europe. All (carriers) ships regardless of flag are required to declare electronically any intended cargo movements to or from ports in the EU within certain time limits. This new requirement will affect bulk and break bulk cargoes as well as containerized freight. In order to comply with the new requirements, ship owners, regardless of the flag of their ships, must have appropriate information technology systems in place. This Marine Advisory is meant to be a summary guidance rather than a fully comprehensive guide.

The European Community Ship owners Association (ECSA) has provided an explanation of the main principles of the EU advance cargo declaration regime in an accessible format. It is anticipated that the ECSA's description of the EU's advance cargo declaration regime will assist shipping companies to understand and comply with the new customs requirements. Further details can be found at the website of the ECSA at <http://www.ecsa.eu/publications/101.pdf> and on the European Commission Customs Portal, below. The full text of the EU Advance Cargo Declaration Regime can be found in Regulation 648/2005.

There is also a recently developed European Commission (EC) online web portal to assist companies to comply with EU customs procedures for the import and export of goods. The EC portal brings together in one place a variety of relevant and practical information, such as EU legislation and explanatory documents, and other explanation through the use of interactive animations, which provide the principal steps focusing on standard import, export, and transit customs procedures for entry and/or exit of the EU ports. Ship owners and shipping companies are directed to the following web link: <http://ec.europa.eu/ecip> <<http://ec.europa.eu/ecip>> for additional information including the **GUIDELINES** for the Economic Operators Registration and Identification System (http://ec.europa.eu/ecip/documents/who_is/taxud1633_2008_rev2_en.pdf).

Procedural Advisement for Advance Cargo Declaration Regime and the Economic Operators Registration and Identification System Guidelines

I. European Union Advance Cargo Declaration Regime

The guidelines relating to this regime can be found at the following web link: http://ec.europa.eu/ecip/documents/procedures/import_entry_guidelines_en.pdf.

The guidelines describe the application of the Community Customs Code (CC) as amended by Regulation (EC) 648/2005 of the Advance Cargo Declaration and the implementing provisions (Customs Code Implementing Provision/CCIP), and in particular safety and security declarations at entry.

- **See Regulation/Section 2.1 (of the Guidelines of Part A): Customs office of entry.** In maritime traffic, where a vessel may enter and exit the customs territory of the Community and call at several ports in the EU without intermediate calls at non-EU ports during the same voyage, the customs office of entry means the customs office competent for the port where the vessel arrives first in the customs territory of the Community. When goods dispatched from a third country are moved between different EU ports on a vessel that leaves the customs territory of the Community temporarily without calling at a non-EU port, safety and security risk analysis is only performed at the customs office of entry where the goods are brought into this territory for the first time. An arrival notification is necessary and is always to be lodged at the actual first customs office of entry.

- **See Regulation/Section 2.2 (of the Guidelines of Part A): Customs office of import.** This is the customs office designated by the customs authorities in accordance with the customs rules where the summary declaration for temporary storage or the customs declaration may be lodged for goods presented to customs and where the formalities for assigning goods brought into the customs territory of the Community to a customs-approved treatment or use are to be carried out and where risk-based controls, primarily for purposes other than safety and security, are performed.

- **See Regulation/Section 6 (of the Guidelines of Part A): Fallback rules.** The European Commission services have developed a Business Continuity Plan (BCP) for allowing the continuity of activities in case of failure of the IT systems. Information on the procedures together with scenarios to limit the business impact in this respect can be found on the following web link:

http://ec.europa.eu/ecip/documents/procedures/business_continuity_plan_en.pdf

Exceptions to the obligation to lodge an ENS can be found in Part B, Section/Paragraph 2 of the Guidelines.

- **See Regulation/Section 5 (of the Guidelines of Part B): Person Responsible.** Article 36b of the Community Customs Code establishes that the operator of the active means of transport on or in which the goods are brought into the customs territory of the Community is responsible for the filing of an ENS. The operator (or “the carrier”) is the person who brings, or who assumes responsibility for the carriage of, the goods into the customs territory of the Community.

In the case of maritime (or air) traffic involving vessel sharing or similar contracting agreements between the carriers involved, the obligation to file an ENS lies with that carrier who has contracted, and issued a bill of lading or an air waybill, for the carriage of the goods into the customs territory of the Community on the vessel (or aircraft) subject to the arrangement.

- **Filing by a third party.** Since the carrier is legally responsible for the lodging of an ENS and that it is lodged within the deadlines, a third party may only lodge the ENS instead of the carrier with the latter's knowledge and consent. The carrier's EORI number and the carrier's transportation document number (e.g. ocean (master) bill of lading or (master) air waybill number) must always be included in any third party ENS filings. Among other required data elements are several that the third party would need to obtain from the carrier prior to lodging the ENS. These include:

- mode of transport at the border;
- expected date and time at first place of arrival/entry in the customs territory of the Community;
- first place of arrival/entry code;
- country code of the declared first office of arrival/entry;
- the IMO vessel number in the case of maritime shipments;
- the nationality of the active means of transport entering the customs territory;
- voyage or trip number; and
- subsequent ports (or airports) of call in the customs territory of the Community.

- **See Regulation/Section 6 (of the Guidelines of Part B) for: Table of Deadlines and Transportation Mode.** As indicated in the Table reflecting the regulations/guidelines, the deadlines for the lodging of the ENS vary according to the transportation mode and duration of transportation carrying the goods into the customs territory of the Community.

II. Economic Operators Identification (EORI) Number

The EORI system was established in order to implement the security measures introduced by Regulation (EEC) No 2913/92, as amended by the European Parliament and of the Council. The system ensures that the persons/company/traders concerned can be identified by a common number that is unique to each individual and valid throughout the European Community.

An EORI number means a number, unique throughout the European Community, assigned by a customs authority or designated authority or authorities in a EU Member State to economic operators and other persons in accordance with the rules laid down in Part I, Title I, Chapter 6 of the Customs Code Implementing Provisions (CCIP). EORI number may be permanent (or with fixed duration) based on the rules on the registration process for assigning an EORI number which are in accordance the Member States' national legislation. Before assigning EORI number, the responsible authorities in EU Member States will consult the EORI system (data base replications of the central EORI application in the national systems or the central application if no replication is available at national level) to confirm that the person has not previously been assigned one.

For further information available in the EORI Guidelines, go to the following web link:

http://ec.europa.eu/taxation_customs/resources/documents/customs/security_amendment/EORI_guidelines_en.pdf

By registering for customs purposes in one EU Member State, operators are able to obtain an EORI number that is valid throughout the Community. Once it has been assigned, holders must use the EORI number in all communications with any EC customs authorities where a customs identifier is required. Therefore, the filer of an entry summary declaration (ENS) must include his own Economic Operator Registration and Identification (EORI) number in the ENS and, if he is not the carrier, he must also include the carrier's EORI number.

Customs authorities in the EC must have easy and reliable access to operators' registration and identification data. In order to ensure this, a central electronic system has been developed for storing data on the registration of economic operators and other persons and for exchanging data on EORI numbers between customs authorities.

As a result of practical experience and in view of the highly specific situations arising from the EORI implementation, the EORI Guidelines will be further explained and illustrated with examples of best practice on an ongoing-basis when the need arises by the EU.

- **See Regulation/Section 1.1 (of the Guidelines): Who will have to be registered for an EORI number?** This provides the details pertaining to the definition of "Economic Operator." This section of the regulation includes detail explanation of Economic operators not established in the customs territory of the EC. The role of economic operators, or other persons, is to initiate the registration procedure with the national authority of a Member State, and provide the information and regular updates required by the national legislation of the Member State

responsible for registration and fulfill the criteria set by the designated authority and/or customs authority.

For the **GUIDELINES** on the Economic Operators Registration and Identification System follow the web link at (http://ec.europa.eu/ecip/documents/who_is/taxud1633_2008_rev2_en.pdf).

- **See ANNEX I to the Regulation (of the Guidelines) for:** examples of forms of entities that in accordance with national laws of Member States are legal persons or associations of persons recognized as having the capacity to perform legal acts but lacking the legal status of a legal person (see section 1.1.1 of the Regulations).
- The list of authorities responsible for assigning EORI numbers in each Member State has been published and can be accessed by going to the following link for the EORI National Implementation:

http://ec.europa.eu/ecip/security_amendment/who_is_concerned/index_en.htm

- **See Regulation 1.3. (of the Guidelines): Place of registration**, which covers multinational companies and provide detail descriptive examples.
- **See Regulation 1.4. (of the Guidelines): Registration process** - Rules on the registration process for assigning an EORI number are provided in Member States' national legislation.

Before assigning an EORI number the responsible authorities in Member States should consult the EORI system (database replications of the central EORI application in national systems or the central application if no replication is available at national level) to confirm that the person has not previously been assigned one.

The identity of economic operators not established in the customs territory of the Community may be confirmed by:

- in the case of natural persons: a valid passport or other travel document;
- in the case of legal persons or associations of persons: a document from the business register (original or certified copy of an official document providing identification data and issued at the latest six months earlier by the authorities responsible for the business register or by chambers of commerce in the EU or in the third country).

- **Detailed information on the procedure** for assigning an EORI number can be found on the websites of Member States' national customs authorities via:
http://ec.europa.eu/ecip/security_amendment/who_is_concerned/index_en.htm

Indicative information about the EORI implementation is published at:

http://ec.europa.eu/taxation_customs/customs/security_amendment/who_is_concerned/index_fr.htm#EORI

- **Apply early for EORI.** Since the registration process could take several days, economic operators who do not have an EORI number are recommended to apply for registration in advance, i.e. before they lodge a summary or customs declaration. Late (“last-minute”) applications for EORI registration (e.g. at the customs office of entry) could result in delays in processing the summary or customs declarations, since information about the newly assigned EORI number will not be available to electronic customs systems.
- **Access by:** External users may have access to **some** of the EORI data made available via the Europa web portal (over the Internet). They have access to the public interface of the EORI system (which requires no identification, authentication or authorization by the system) to check if the EORI number is active and/or the name and address of the person concerned if consent for publication has been given.
- **See Regulation 4.1.2. (of the Guidelines): Publication of identification and registration data.** Identification and registration data on economic operators and other persons listed in Annex 38d, points 1, 2 and 3 (an EORI number, the full name of the person and the address of establishment or residence) may be published on the Internet by the Commission only if the persons concerned have freely given specific, informed written consent to such publication. Publication is not compulsory and that refusal of publication will in no way affect either processing of the application for an EORI number or any customs formalities involving the person concerned.

In this context, “consent” must be understood as any freely given specific, informed indication of wishes by which economic operators or other persons indicate their agreement to publication of personal data relating to them. This will involve giving proper information about the fact that the data may be disclosed to the public via the Internet, apart from any other information that would be necessary to consider the consent as “freely given, specific and informed”.

Action Necessary

Owners and Operators should take due note of the contents of this Advisory and bring it to the attention of the Masters of their Liberian flag vessels and instruct them accordingly to take all necessary action to comply with EU advance cargo declaration requirement in order to avoid inadvertent violation of the EU requirement in this regard.

Point of Contact

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