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ELECTRONIC CUSTOMS GROUP (LEGAL & IT)

**DEVELOPMENT OF A
BUSINESS CONTINUITY PLAN
FOR THE
ICS/NCTS/ECS/AEO/EORI APPLICATIONS
TO BE APPLIED AS FROM 1 JULY 2009**

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1. PURPOSE OF THIS DOCUMENT

The present document examines possible scenarios to ensure fallback procedures, in this document referred to as *Business Continuity* concerning the trans-European systems to be put in place or upgraded as from 1 July 2009 in accordance with the Community Customs Code (hereafter CC) and the implementing provisions of the CC (hereafter CCIP) - as amended by Regulation (EC) No 648/2005 and Regulation (EC) No 1875/2006. It concerns the following systems and upgrades of those systems in operation:

- Import Control System (ICS) phase 1;
- Export Control System (ECS) phase 2;
- New Computerised Transit System (NCTS) phase 4;
- Authorised Economic Operator (AEO) full system; and Economic Operator Registration and Identification (EORI).

This document has been drafted in order to achieve an agreement on procedures to be followed in cases where these systems are not functioning. This document does not address scenarios for 100% national applications (e.g. lodging of a notification and access to the summary declaration data in the economic operator's computer system within the meaning of Art. 36a (2) third sub-paragraph Code).

2. BUSINESS CONTINUITY

2.1. Background

Business continuity (formerly referred to as "Fallback") was addressed as being one of the open issues within the discussions of the implementation of Regulation (EC) No 1875/2006¹.

2.2. General Considerations

A Business Continuity Plan (BCP) is created for allowing the continuity of activities in case of failure of the IT systems. Due to the fact that the systems to be created should be proportional to the risk of such failure, it is of prime importance to agree and respect quality criteria that will limit the business impact due to the unavailability of the systems concerned.

The first consideration to be made is that as a principle the level of availability of the national IT systems should be kept at least at the current level of 97% until 31.12.2010 and will reach 99% from 01.01.2011 onwards in line with the Terms of Collaboration (TOC) document which has been submitted for review to Member

¹ See document TAXUD/1853/2007 rev. 2, point 11.

States². Of course exception made to duly scheduled maintenance periods. These maintenance periods should be announced well in advance as indicated in the Service Level Agreement for availability and continuity of Customs Trans – European Systems between National Administrations (NA's) and DG TAXUD. The NA's will consequently inform the business users through the existing information tools.

Whereas ICS will only cover summary declarations containing data to be used for safety and security risk analysis (Annex 30A CCIP), both ECS phase 2 and - to a great extent - NCTS phase 4 will cover customs declarations supplemented by data used for safety and security risk analysis.

Under current practise, goods moved under ECS phase 1 and NCTS are accompanied by paper documents, namely the Export Accompanying Document (EAD) and the Transit Accompanying Document (TAD) which are used to "carry" the movement identifier, the so-called Movement Reference Number (MRN), which needs to be given upon presentation of the goods at the office of exit or at destination. In case of systems failure, the templates of these documents are already used in many cases and are complemented by a manual registration number instead of the MRN.

The situation is different for ICS as the Entry Summary Declaration (ENS) has to be lodged prior to arrival of the goods and the relevant legislation does not require an accompanying document. A similar situation is also created for Exit Summary Declarations (EXS). In addition, ICS requirements are different; i.e. a potential decision on prohibitive measures (i.e. no load message) has to be taken prior to loading of goods outside the customs territory of the Community.

The third consideration is linked to the existence of BCP for systems already operational and performing which should only be updated. It is therefore suggested to examine separately the BCP for ICS on the one hand, and NCTS phase 4 and ECS phase 2 on the other hand. The BCP for NCTS and ECS should be only an upgrading of the current procedure, already operational and having proved its workability. The exception concerns the EXS, where no IT procedure existed up till now. For ICS, since it is new system, a full BCP has to be developed.

3. SCENARIOS AND BUSINESS CONTINUITY PLANS

3.1. ICS phase 1

In case of systems failure, Art. 183 CCIP stipulates to use paper declarations or any other procedure replacing it as agreed between the customs administrations³.

² To be updated following agreement on the TOC.

³ Regulation (EC) No 312/2009 OJ L 98 of 17 April 2009. In case of systems failure, Article 183 CCIP (as amended) stipulates "the use of paper declarations or any other procedure replacing it as agreed between the customs administrations"

Paper should only be taken as a last resort means and preference should be given to other instruments for the following reason: in particular in air and maritime transport, paper management would be very time consuming and it would be difficult to run risk analysis for hundreds of ENS's within the prescribed deadlines.

As several factors (e.g. number of ENS's, functioning of systems etc.) are not known, the following solutions could be envisaged and agreed for a limited period in order to test their feasibility.

The solutions proposed depend on different scenarios where the disruption of the system occurs.

ICS scenario I

Unavailability of the Economic Operator's System⁴

In such a case, the economic operator informs the customs authorities of the office of first entry of the unavailability of his system and the nature of that unavailability. There are two possible natures of unavailability:

1. Unavailability to send the ENS message (IE315)

The customs authorities approve the application of the fallback procedure.

One of the following options should be granted to the economic operators:

Business continuity plan A:

Send the ENS as soon as possible after having solved the problem of unavailability of the system. The economic operator has this possibility until the notification of arrival of the means of transport (Article 184g CCIP⁵). However it should be noted that the later the ENS is sent the higher the probability of encountering delays in the safety and security risk assessment at the first office of entry. After the economic operator has solved the problem and sent the ENS, the customs authorities will process the ENS and act accordingly.

Business continuity plan B:

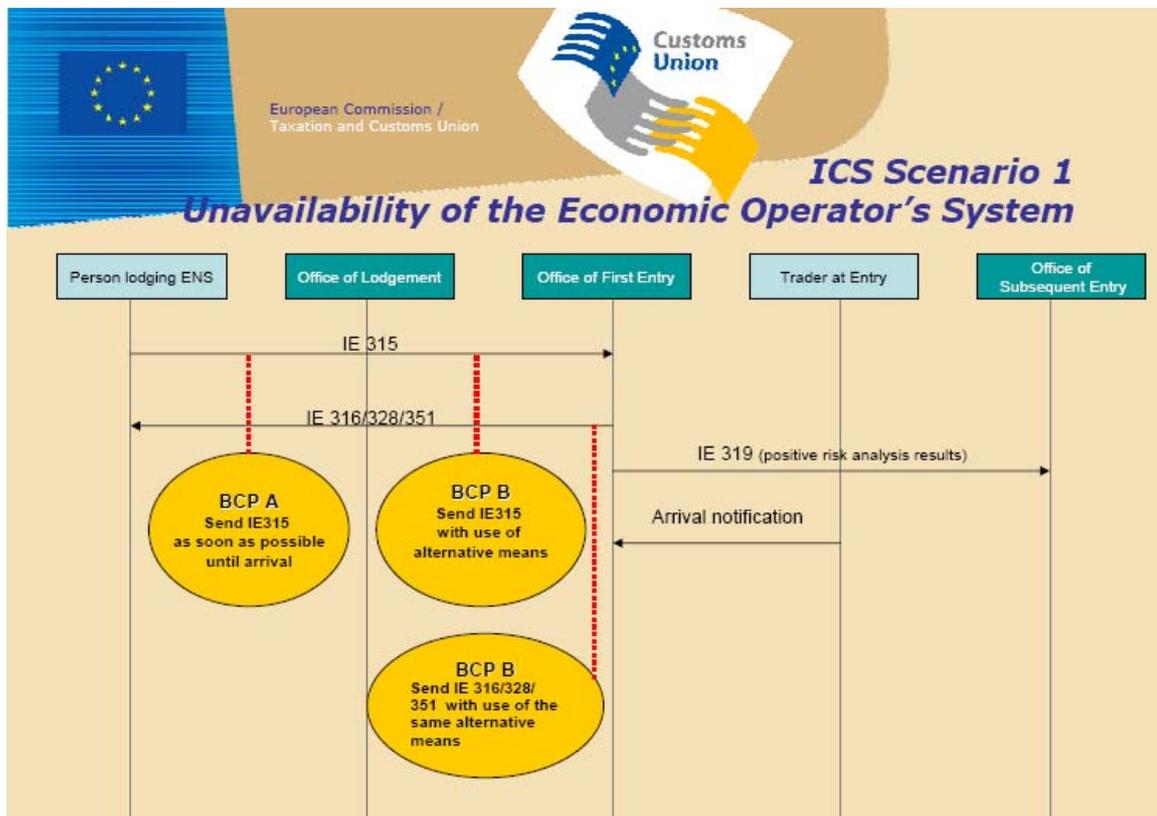
In case the economic operator's system does not function at the time of the arrival of the goods at the external border of the Community or the economic operator fears the existence of delays in the safety and security risk assessment at the first office of entry or, in the case of containerised cargo in maritime traffic, fears the existence of "Do not load messages" which can not be sent and will therefore lead to controls at the first office of entry (Type B risk results), the economic operator must have the possibility to send the ENS message (IE315) via alternative means (see on page 7).

⁴ The notion of Economic operator system comprises the end-to-end telecommunications connection between the trader and the customs services. It contains the telecommunication services network provider of the trader used to connect the trader to the national authorities.

⁵ Regulation (EC) No 312/2009 OJ L 98 of 17 April 2009.

The customs authorities will then process the message and communicate the result (IE316-ENS Invalid; IE328-MRN allocation; IE351-“Do Not Load message”) via the same or other appropriate alternative means used by the economic operator to lodge the ENS (e.g. e-mail or return of the USB key).

The customs authorities should, also, send the positive risk results message (IE319) to the subsequent offices of entry.



2. Unavailability to create and send the ENS message (IE315)

The customs authorities approve the application of the fallback procedure.

One of the following options should be granted to the economic operators:

Business continuity plan A:

Similar to the one above: 1. BCP A; if the problem of unavailability to create and send the ENS has been solved before arrival of the means of transport.

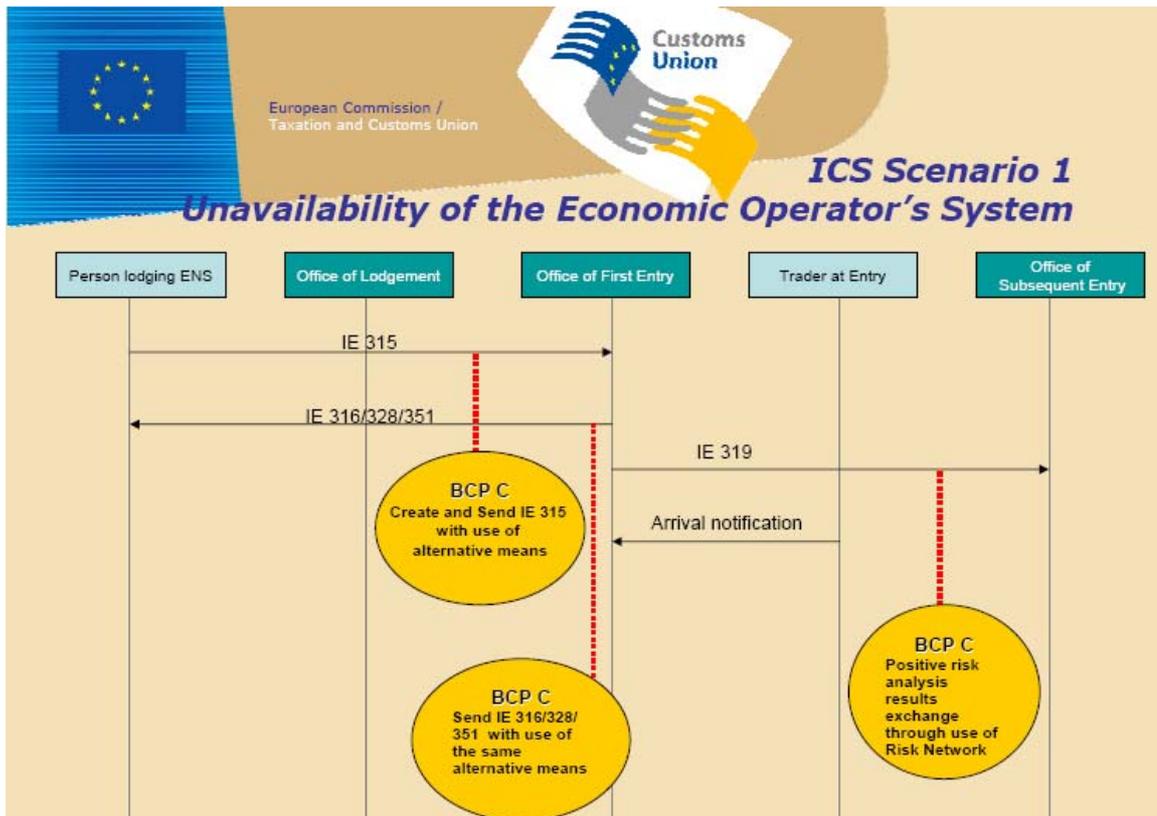
Business continuity plan B:

Similar to the one above: 1. BCP B; if the problem of unavailability to create the ENS has been solved before arrival of the means of transport, but the economic operator cannot send the ENS.

Business continuity plan C:

The ENS should be lodged, at the latest, at the moment of arrival of the means of transport, using one of the alternative means at disposal in order for the economic operator to fulfil the legal obligation of having lodged an ENS for goods introduced in the customs territory of the Community.

The customs authorities should send the positive risk analysis results to the subsequent customs offices of entry using the alternative means foreseen for that effect (see ICS scenario 3 and paragraph 3.5).



The BCP's as described above should be applicable, mutatis mutandis, to the lodging of amendments to the ENS.

Customs authorities – in close consultation with the trade community - can make **alternative means** available to economic operators to submit the ENS, such as:

- Internet connection, USB keys or e-mail using an agreed message standard form, XML, Edifact or another standard agreed with the national authority. In this case a registration number should be returned to the operator;
- Submission through Internet application (Web based solution) if available in the Member State;
- Paper based form (using the forms mentioned in TAXUD/1617/2008); or
- The use of a representative.

ICS scenario 2

Unavailability of national Customs' system (Office of Entry) when lodging the ENS

Business continuity plan A:

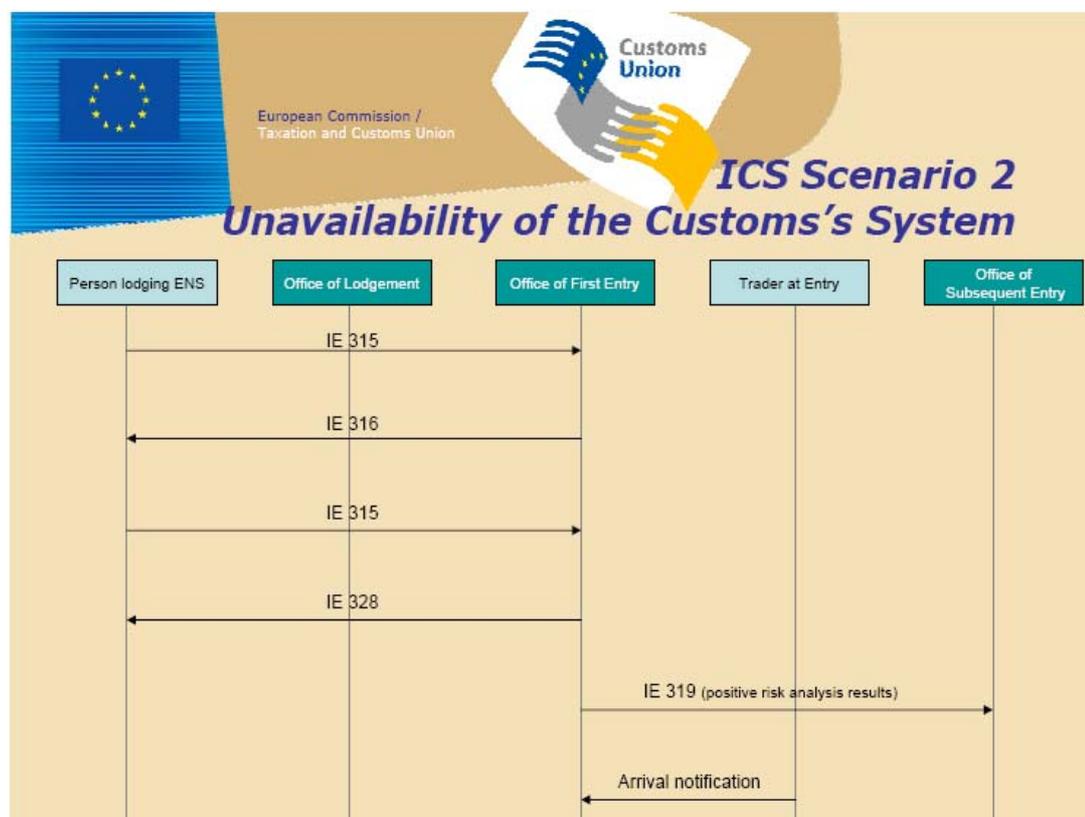
The person lodging the ENS, should keep sending the ENS to the customs authority as long as possible. In case the national system becomes saturated, economic operators can contact the first customs office of entry and revert to the options foreseen for the case of unavailability of economic operator system as described under ICS Scenario 1. However, in any event this scenario shall be covered by article 184a, paragraph 6 CCIP regarding the timelines for customs' risk assessment. Deadlines will therefore apply on the basis of the initially sent ENS.

The following situations can be envisaged:

1. The customs authorities are able to process the ENS before the arrival of the means of transport at the first office of entry:

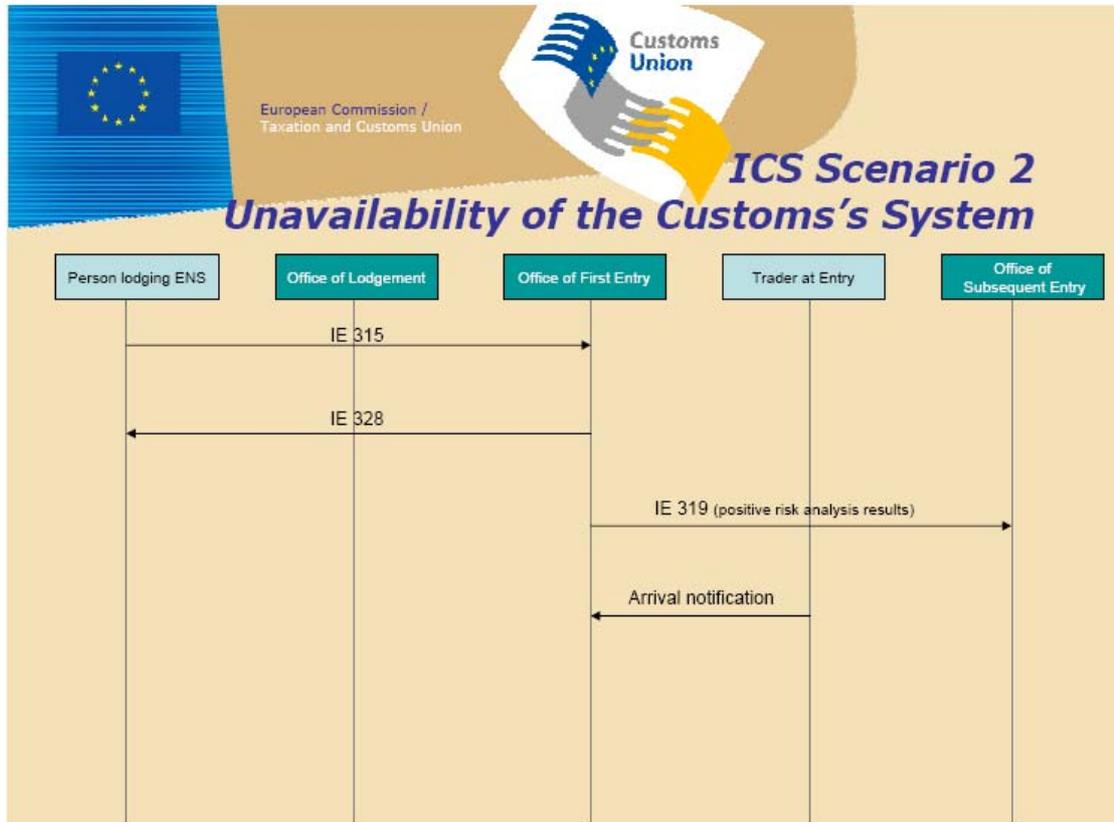
1.1. The ENS is invalid (IE316):

The legal obligation to lodge an ENS before arrival was not fulfilled. A “new” ENS should be sent, at the latest, at the time of arrival of the means of transport at the office of entry. The customs authorities should process this “new” ENS and allocate the MRN (IE328) and send the positive risk analysis results to the subsequent offices of entry (IE319).



1.2. The ENS is valid (MRN Allocated - IE328):

The customs authorities should send the positive risk analysis results to the subsequent offices of entry (IE319).

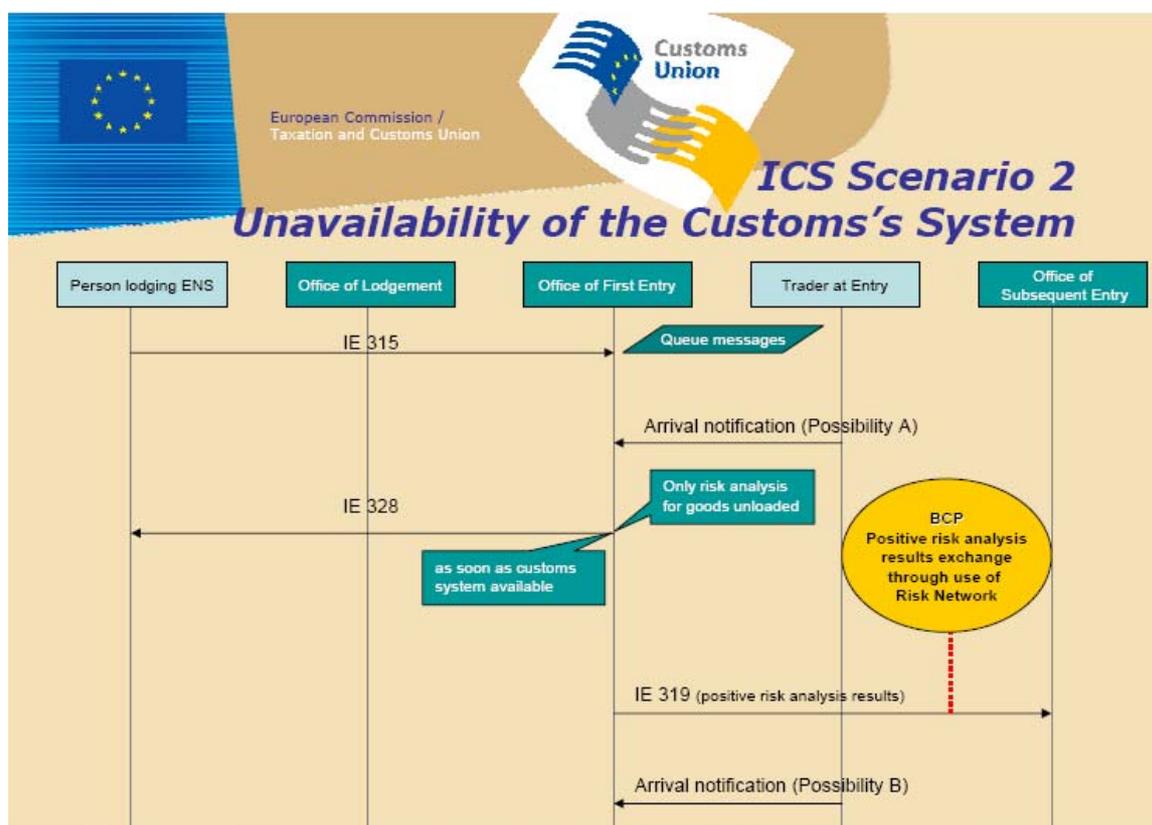


2. The customs authorities are not able to process the ENS before the arrival of the means of transport at the first office of entry.

Then the operator of the active means of transport should only notify the arrival of the means of transport (Article 184g CCIP⁶).

The customs authorities, as soon as the problem is solved, should process the ENS and act accordingly, namely allocating the MRN (IE328) and sending the positive risk analysis results to the subsequent offices of entry (IE319).

In the situation as described above the customs authorities of the first office of entry will only perform risk analysis for the goods which are going to be unloaded at that particular office of entry (e.g. port, airport, railway station) in a similar way to the cases of exemption of ENS (see Article 184d (3) CCIP). In such a case, customs authorities may apply their national processes in place to deal with fallback situations. If the problem is not solved within the time limits necessary for the arrival of the means of transport to the subsequent port or airport, the customs authority of the first office of entry should inform the subsequent customs office through the alternative means which are also foreseen for sending the positive risk analysis results (see ICS scenario 3 and paragraph 3.5).

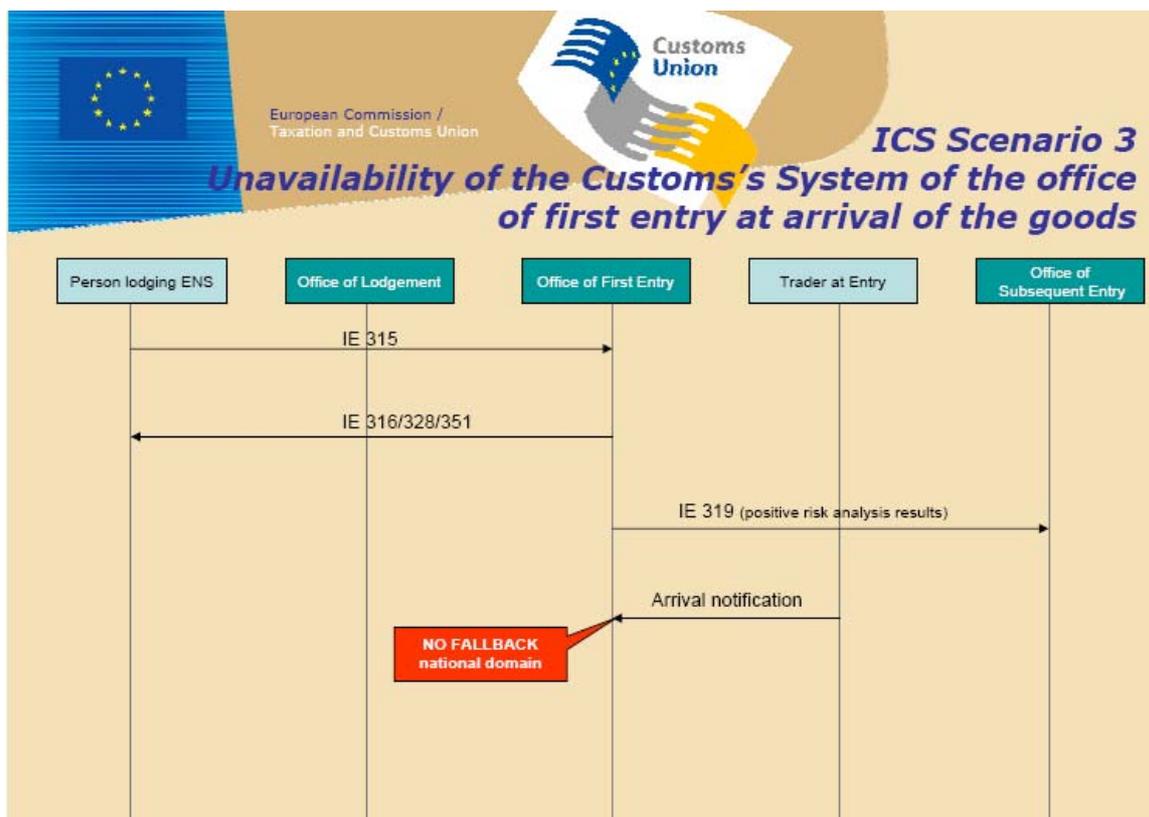


⁶ Regulation (EC) No 312/2009 OJ L 98 of 17 April 2009.

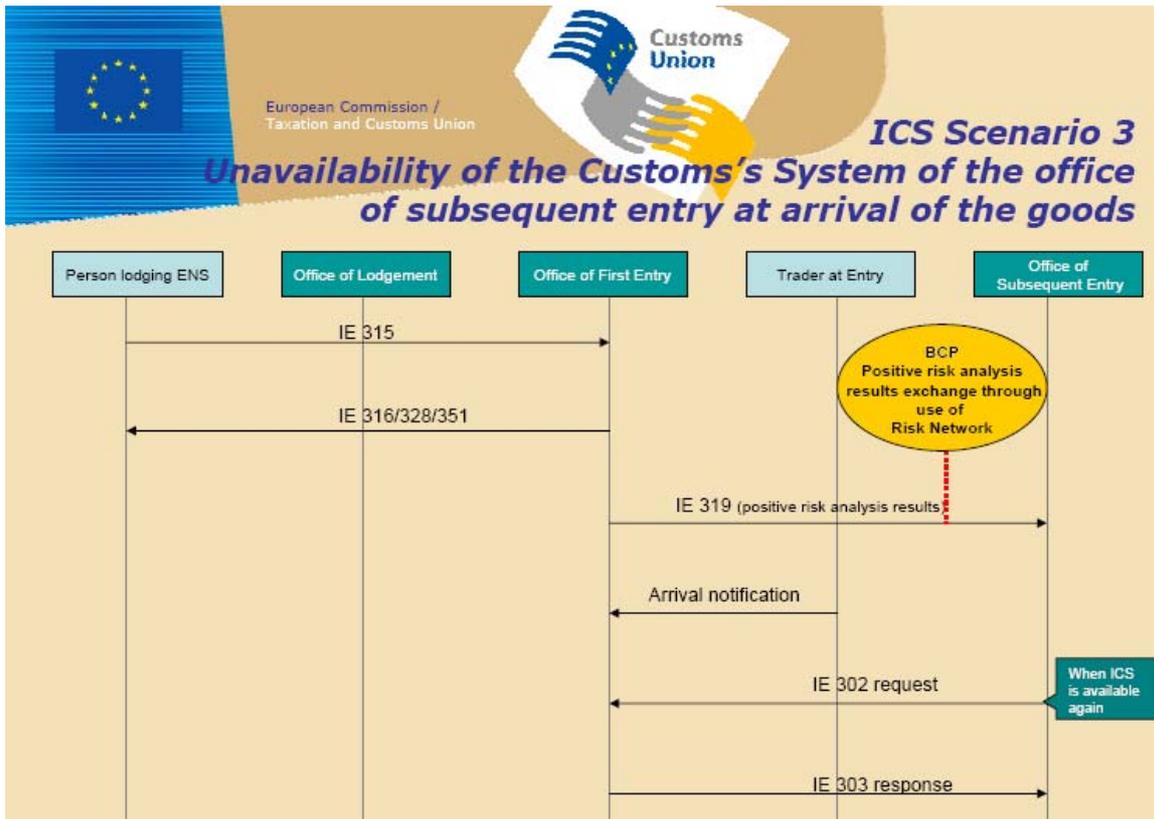
ICS Scenario 3

Unavailability of national Customs' system (Office of Entry or office of subsequent Entry) upon arrival of goods

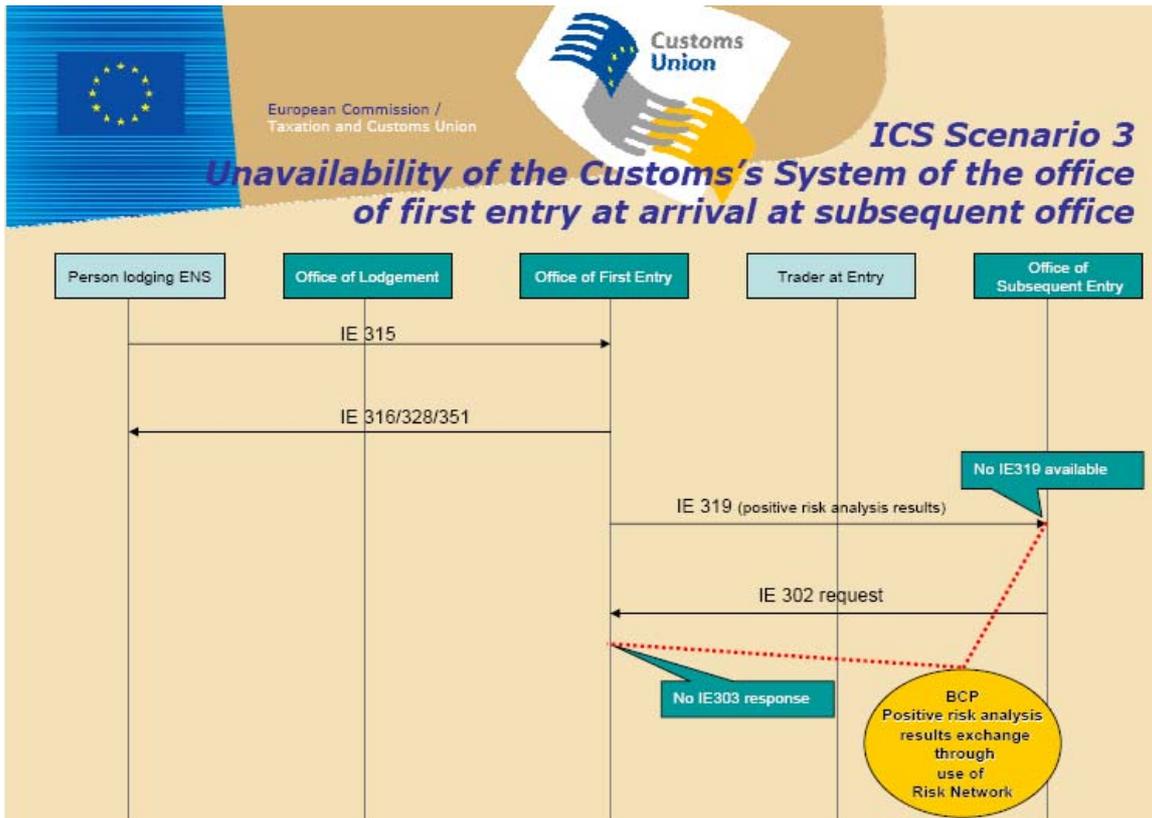
In this scenario, the system at the office of entry was up and running and the entire tasks were performed prior to the arrival. As such traders can refer to the ENS previously submitted.



If the system is unavailable in the subsequent office of entry, the information about the possible positive risk results could be provided by the first office of entry upon request; possibly using the Community Risk Management System (CRMS, e.g. secure e-mail). The subsequent office of entry might obtain information on the first office of entry from the operator of the active means of transport or from the port/airport information systems.



If the system at the office of subsequent entry is not available at the moment when the office of entry sends the IE319 the information about the possible positive risk results should be sent by using CRMS, e.g. secure e-mail.



If the system at the first office of entry is not available at the moment when the goods arrive at the subsequent office of entry and the subsequent office does not receive a reply on their request IE 302, the information about the possible positive risk results can be requested by using CRMS, e.g. secure e-mail.

3.2. NCTS phase 4

NCTS will be adapted, on 1 July 2009 at the latest, to receive a transit declaration containing security data.

It is noted that it is not mandatory to include security data in transit declarations. Therefore, situations where a separate ENS is lodged will/can occur even if NCTS is operational.

When NCTS is not functioning the provisions of Annex 37d CCIP⁷ on the fallback procedure concerning Community transit and of Annex V of Appendix I of the Convention on a common transit procedure⁸, apply.

As from 1 January 2009, NCTS is also used for the TIR procedure, there are therefore two scenarios foreseen:

<p><i>NCTS Scenario 1</i></p> <p><i>Community/common transit procedure</i></p>
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For continuity of Community/common transit operations, three BCPs can be used in two situations either including security requirements or without security requirements:

<p><i>NCTS Scenario 1 <u>without security requirements</u></i></p>
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Business continuity plan A:

The Single Administrative Document (SAD);

Business continuity plan B:

A SAD printed out on plain paper by the trader system as foreseen in Annex 37d CCIP and Annex V Convention;

Business continuity plan C:

A document with the layout of the Transit Accompanying Document (TSAD or TAD) containing or not the security data, where the trader's needs are considered justified by the customs authorities.

⁷ As amended by Commission Regulation (EC) No 1192/2008 published by OJ L 329 of 6 December 2008

⁸ Decision No 1/2008 of the EC/EFTA Joint Committee on Common Transit published by OJ L 274 of 15 October 2008

NCTS Scenario 1 including security requirements

In those cases where the trader wants to include the security data in a transit declaration the preferred fallback procedure is the use of a TSAD since its layout allows the security data to be incorporated into this document, and the use of the TSAD is therefore always considered to be justified.

Business continuity plan A:

A document with the layout of the Transit Accompanying Document containing the security data (TSAD).

Business continuity plan B:

The Single Administrative Document (SAD) and in addition a Safety and Security Declaration as presented in Annexes 45i/45j CCIP⁹ (SSD) in order to accommodate the data requirements.

Business continuity plan C:

The SAD printed out on plain paper by the trader system as foreseen in Annex 37d CCIP and Annex V Convention and in addition an SSD as presented in Annexes 45i/45j CCIP¹⁰ (SSD) in order to accommodate the data requirements.

NCTS Scenario 2

Declarations for the NCTS/TIR procedure

Concerning TIR, no special fallback provisions have been established as the TIR carnet already contains the transit declaration.

The security data are therefore to be provided separately. Consequently, in case of fallback, the corresponding solutions as mentioned in case of the use of the SAD apply (see NCTS scenario 1), in particular the use of the SSD in case the security data will have to be provided in addition.

⁹ TAXUD/1617/2008 as voted (soon to be published)

¹⁰ TAXUD/1617/2008 as voted (soon to be published)

3.3. ECS phase 2

ECS Scenario 1

Electronic export declaration

As from 1 July 2009, the **export declaration** shall contain the particulars of Annex 30A CCIP. In case of fallback, it is suggested to use the paper procedure as foreseen in Article 787 CCIP:

Business continuity plan A:

Preferred option is the use of a paper export declaration with the additional security data (ESS) (Annexes 45k/45l CCIP¹¹).

Business continuity plan B:

Use of an SAD format complemented with a paper exit summary declaration established on an SSD (Annexes 45i/45j CCIP¹²)

ECS Scenario 2

Exit Summary Declarations (EXS)

Paper should only be taken as a last resort means and preference should be given to other instruments for the following reason: in particular in air and maritime transport, paper management would be very time consuming and it would be difficult to run risk analysis for EXS's within the prescribed deadlines.

As several factors (e.g. number of EXS's, etc.) are not known, the following solutions could be envisaged and agreed for a limited period in order to test their feasibility.

Business continuity plan A:

Possibility of using an alternative filing method (information systems of ports or airports) if agreed by the customs authority, to submit the necessary information including security data as indicated in Annex 30A CCIP.

Business continuity plan B:

Submission of an incomplete Export Accompanying Document (EAD).

¹¹ TAXUD/1617/2008 as voted (soon to be published)

¹² TAXUD/1617/2008 as voted (soon to be published)

Business continuity plan C:

Submission of a paper exit summary declaration established on an SSD.

3.4. EORI/AEO

EORI/AEO Scenario 1

Unavailability of the national EORI/AEO (if implemented)

Countries that will rely on a national IT application for AEO and/or EORI could face an unavailability of that national application.

Identification EORI number

Business continuity plan A:

The customs authorities should consult online the central EORI/AEO repository and retrieve the relevant economic operator details (messages IER10 and IER11).

Registration EORI

Business continuity plan B:

The validity of the declared EORI number can be checked against the central system.

Identification AEO

Business continuity plan C:

The customs authorities can consult the detailed AEO information via the EORI/AEO "CDCO light web client".

EORI/AEO Scenario 2

Unavailability of the EORI/AEO central system

Identification EORI number

Business continuity plan A:

If a declaration is lodged and not accepted due to the unavailability of the EORI/AEO central system, the declaration should be accepted by the economic operators simply declaring the EORI number, if the declared number is deemed acceptable to the customs authority.

Registration EORI

Business continuity plan B:

An EORI number will be assigned to the applicant. The central system will be checked as soon as it will be available again and an official confirmation of the decision and/or a correction to the previous assignment will be sent to the applicant. If the check of the central system will indicate that the economic operator was already registered, the 'fall-back' assignment will be annulled and all details shall be changed to the existing ones.

Identification AEO

Business continuity plan C:

The customs authorities can check the AEO information via TAXUD's website on Europa: http://ec.europa.eu/taxation_customs/dds/cgi-bin/aeoaeoquery?Lang=EN where Authorised Economic Operators will be published (the ones who gave their agreement on dissemination). In case where the economic operator is not listed, this should NOT prevent from processing the declaration further and carrying out risk analysis.

EORI/AEO Scenario 3

Unavailability of the EORI/AEO central AND national system

This scenario of unavailability of both the central and national systems is not very likely to happen. In case this situation will occur, other systems maybe down as well. However, in case it may happen the BCP's as mentioned under scenario 2 will come into effect.

Identification EORI number

Business continuity plan A:

If a declaration is lodged and not accepted due to the unavailability of the EORI/AEO central and national system, the declaration should be accepted by the economic operators simply declaring the EORI number, if the declared number is deemed acceptable to the customs authority.

Registration EORI

Business continuity plan B:

An EORI number will be assigned to the applicant. The central system will be checked as soon as it will be available again and an official confirmation of the decision and/or a correction to the previous assignment will be sent to the applicant. If the check of the central system will indicate that the economic operator was already registered, the 'fall-back' assignment will be annulled and all details shall be changed to the existing ones.

Identification AEO

Business continuity plan C:

The customs authorities can check the AEO information via TAXUD's website on Europa: http://ec.europa.eu/taxation_customs/dds/cgi-bin/aeoaeoquery?Lang=EN where Authorised Economic Operators will be published (the ones who gave their agreement on dissemination). In case where the economic operator is not listed, this should NOT prevent from processing the declaration further and carrying out risk analysis.

3.5. National risk analysis system

In the case of non-availability of their national risk analysis system, Member States' customs authorities should revert to manual risk analysis within the time limits set by using alternatives such as CRMS or other databases.

4. FUTURE REVISION

A revision of these procedures should take place by the end of 2010 when all the systems will be fully operational, in order to allow further fine tuning of the BCP. In order to meet this deadline, it is foreseen to launch a review of this document by May/June 2010.