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Transit, suspensive regimes and security of the distribution chain

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THE AUTHORISED ECONOMIC OPERATOR

This document shall serve as a background for discussions in the relevant forums and shall be regularly updated in order to reflect the respective current state of play as regards the development of an AEO concept and the drafting of Implementing Provisions and Guidelines in the framework of the so-called "security" amendment of the current Community Customs Code.

THE AUTHORISED ECONOMIC OPERATOR

1. THE CONCEPT

The so-called security amendment¹ to the Community Customs Code provides amongst other for the creation of an Authorised Economic Operator (AEO). The legislation stipulates that customs authorities shall grant to reliable traders that are established in the European Community the status of “authorised economic operator”.

1.1. Reasons for the introduction of an AEO:

The Community has a long tradition of reliable economic operators being granted authorisations, on a case by case basis, for simplified customs procedures. Following the increased need for safety and security, particularly as regards the need for securing international supply chains, the Community saw a need to generalise the system at EU level and to extend this concept to allow benefits for operators that comply with security and safety requirements. The idea was to grant AEO status to reliable operators including those that are also compliant in respect of security and safety standards and can therefore be considered as “secure” traders. Those traders should have a specific status, which would accord them the status of secure members of the supply chain and would identify them as most reliable trading partners.

Following discussions with Member States and the European Parliament, it became apparent that the AEO-concept should also incorporate the already existing EU customs authorizations and simplifications. The new AEO concept should be balanced and should take due account of security concerns while ensuring facilitation and simplification of legitimate trade.

The Commission expects the AEO status to be attractive since it will make it apparent that the authorised economic operator is highly reliable, which will be a quality marking for business partners and clients.

Furthermore, the subsequent procedure for the granting of authorisations for simplifications will be more efficient as the customs authorities will have to examine only whether the AEO fulfils the conditions foreseen for the respective simplification he is asking for but will not need to check his compliance with the general fiscal and customs requirements, the latter having been checked already when the status of AEO was granted.

1.2. The future modernisation of the Customs Code

The concept of AEO is a new concept that is being introduced by the security amendment to the Community Customs Code. The discussions held so far on the future modernisation of the Customs Code suggest that the concept of AEO will be maintained and further extended in order to follow up the idea of integrating the granting of all or most of the existing simplifications under one heading. Such extension will also allow the establishment of the so called "stairway" approach. However, work in this area should be done when drafting the implementing provisions to the modernized Customs Code rather than in the context of the implementation of the "security amendments".

1.3. "Transitional arrangement"

¹ Council Regulation No 648/2005 published in OJ 117 from 4.5.2005

When working on the implementation of the security amendments it is important to stress two aspects:

- that any operator who currently benefits from a simplification will still be able to use it without having to request the status of AEO; and

- in designing the AEO concept we will, at this time, have to bear in mind its future, more general, application in order to avoid major changes when implementing the revised Customs Code. Consequently, the present requirements and conditions for the authorization of companies to use existing simplifications will influence the definition of the criteria for the granting of AEO status; operators who choose to contribute to improvement of security in the international supply chain will, however, have to fulfil new requirements on security and safety.

The framework set out in this document should therefore be understood to be an interim or a "transitional" arrangement, for the period up to the adoption and implementation of the modernized Custom Code.

2. FEATURES OF THE AEO

2.1. Provisions contained in the "security amendment"

Article 5a of the amended Code provides for the granting of the status of AEO to reliable traders that fulfil the criteria laid down in Article 5(a), (2).

The status of AEO shall be recognised by the customs authorities in all Member States; under certain conditions, which are to be laid down in the Customs Code Implementing Provisions; it will however be possible to limit the authorisation to one or more Member States. By definition, the appreciation of a "secure" trader must nevertheless be same throughout the Community (see below).

2.2. What kind of benefits can be expected by the AEO?

According to Article 5a², the AEO can benefit from

- simplifications provided for under the customs rules, for example authorised consignor, centralised customs clearance and guarantee waiver, hereinafter called "customs simplifications"; and

- facilitations with regard to customs controls relating to safety and security, for example lower risk score attributed to AEO than to a normal importer and mutual recognition of the status based on international customs cooperation agreements, hereinafter called "security facilitations"

either individually or in a combined form.

2.3. Conditions

² In the current draft of the Modernized Customs Code, the AEO-provisions are contained in Article 10.

An AEO who wishes to benefit only from customs simplifications will have to comply with the requirements in regard of financial and customs reliability (proven financial solvency, appropriate record of compliance with customs requirements, satisfactory system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls) but will not have to comply with the security requirements. In addition, the AEO will have to comply with any specific conditions for the simplifications he wishes to use.

An AEO who wishes to benefit from security facilitations will have to comply with the same criteria and basic requirements as mentioned above (1st sentence previous paragraph), but will also have to comply with specific security standards and requirements (for example, preventing unauthorized access to his premises and the loading area). It is apparent from the above that the basic requirements for being granted AEO status are the same, whether to be used for purposes of customs simplifications or for security facilitations. It will, therefore, be very easy to combine the two aspects or to extend the authorisation to the other area; the only additional criteria then to be fulfilled and checked will be those needed for the specific additional requirements.

Operators may choose which benefits suit them; a sea carrier will not necessarily be interested in simplification for customs rules as he would never use them, whereas an exporter that is trading with the countries outside the EU and who wants to be considered as a secure and reliable partner in the international supply chain can see added value in asking for both, facilitation and simplification.

The Commission expects that being recognised as an authorised economic operator will, in itself, constitute an advantage for the operator, as the operator will be considered as complying with strict criteria; if he is an AEO for security and safety, that status will act as a quality mark that presents the company as a secure and safe participant in the supply chain and which might, therefore, enjoy preference in being chosen as a trading partner.

2.4. Certification

The AEO will receive a certificate that will lay down whether he can benefit from customs simplifications or security facilitations, or both. Taking into account that the AEO is a *status* and not an authorisation for automatic access to simplifications for customs rules, the AEO will have to be separately authorised to use specific simplifications, for example centralised clearance as authorised consigner, guarantee waiver or the use of customs procedures with economic impact (existing EC customs legislation).

It is proposed to define the following distinct types of certificates:

a) AEO – Customs Simplifications: The AEO with this certificate avoids duplication of comprehensive administrative measures in every Member State for assessing compliance with the minimal common criteria required in every Member State for a particular simplification.

For the sake of clarity it should be remembered that the simplifications provided for under the current customs rules will still exist and remain open to all economic operators to apply for them under the existing Community Customs Code. The advantages of AEO status will be that when an operator applies for a (further) simplification only the specific criteria connected to that simplification will need to be checked.

b) AEO – Security facilitations: The AEO will have to fulfil all specific security requirements and will obtain a certification whereby his status will be taken into account during risk analysis for selection of customs control and he will be eligible for mutual recognition with third countries where relevant arrangements are concluded. In addition, he may qualify for exceptional reduction in the deadlines for pre-arrival information or other facilitations relating to customs legislation ensuring the security of the supply chain.

c) "Full" AEO – Security Facilitations + Customs Simplifications: The AEO with this certificate shall benefit from the facilitations with regard to customs controls relating to safety and security as explained above. Major benefits will not only be a lower risk score but also the quality marking of being a secure and safe partner for government and trading partners in the international supply chain. Regarding the simplifications for customs simplifications, the AEO will be treated in the same way as those mentioned in point a) above.

2.5. AEO operating in more than one Member State:

The AEO who wants to have facilitations for customs controls will be recognised as secure and safe AEO by the customs authorities of all 25 Member States.

Concerning the simplifications to the customs rules, the status of AEO is, in principle, recognised in all Member States but to operate in more than one Member State, the AEO will have to be authorised accordingly, even by several Member States if that is required under the relevant customs rules (for instance, an authorised consignor in transit is recognised in all Member States, but already today, the authorisation is granted only by the Member State where the consignor's premises are located). For these purposes, it is not necessary to have a Single European Authorisation; the SEA will continue to exist in parallel.

The conditions under which there may be exceptions to the recognition by all Member States will be laid down in the Implementing Provisions.

3. INTERNATIONAL ASPECTS

The AEO concept provides for a framework that could lead to mutual recognition at a global level. This could result in faster clearance at borders and avoid the need to go through several different administrative procedures to meet similar criteria in different countries.

It is expected that the AEO status will not only be recognised within the EC but might also provide for international mutual recognition, within the concept of international customs agreements. This is, for example, the objective of the currently ongoing EC-US cooperation on container security. The EC-US Agreement strives for reciprocity and mutual recognition of security standards and business partnership programs.

In the framework of EC-US cooperation on container security, a joint study comparing the US C-TPAT and the EC audit approach on companies (including the COMPACT-framework) is currently being carried out with a view to assess the communalities and differences. The results will feed into the further drafting of requirements and guidelines that are to be established for the AEO.

It is important for the EC to co-operate closely with the World Customs Organisation and to participate in their discussions in order to ensure a harmonised approach.

4. STATE OF PLAY AND WAY FORWARD

4.1. Implementing Provisions (CCIP)

The security amendments of the CC will only be applicable once the related Implementing Provisions have been adopted by the Commission (comitology procedure) and come into force. The adoption of the CCIP is expected in mid 2006.

The CCIP will lay down the legal provisions necessary for the functioning of the AEO concept:

According to Article 5 a, they shall determine the rules

- for granting the status of AEO,
- for granting authorisations for the use of simplifications,
- laying down which customs authority is competent to grant such status and authorisations,
- for the type and extent of facilitations that may be granted in respect of customs controls relating to security and safety, taking into account the rules for common risk management,
- for consultation with, and provision of information to, other customs authorities;
- and the conditions under which:
 - an authorisation may be limited to one or more MS,
 - the status of AEO may be suspended or withdrawn,
 - the requirement of being established in the Community may be waived for specific categories of AEO, taking in particular in account international agreements.

4.2. Guidelines

The CCIP cannot lay down all of the details necessary for the functioning of the AEO concept. It is therefore envisaged that guidelines will be established for the very detailed technical aspects, for example, the detailed security requirements; content of COMPACT framework. The Commission does not consider it necessary to lay down the most technical details in the Implementing Provisions. The guidelines will have legal value but not the same legal status as the CC and CCIP. The advantage of guidelines is that they can be amended and adopted more easily and quickly than the CCIP and more in step with the evolution of the trading business

4.3. Databank

In order to fully implement the provisions on the AEO, and in particular the recognition of AEOs by the customs authorities of all Member States, it is necessary to establish a

databank in which the names and details of AEOs must be introduced and made accessible to all customs authorities.

This databank will not be available before 2008, and it is therefore envisaged that, in the meantime, data relating to AEOs will be stored in CIRCA. CIRCA allows for the storage and exchanging of data; the main drawback is that it is only accessible to authorised officials.

5.4. State of play of discussions

The Customs 2007 Working Group on AEO started its work in December 2004 and consists of 18 Member States. The objective of the group is to set the major guidelines for the implementing provisions; it is expected to report in June 2005.

The Group meets in three sub-groups (criteria, certificates and authorisations, benefits) and has made good progress. The major lines to follow are more or less clear, but the subgroups have to fine-tune some details. The details will be further developed and discussed in a last plenary meeting of the project group on the 6 – 8 June.